IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI BENCH, VARANASI

Before Shri B R Baskaran, Hon'ble Accountant Member,
& Shri Amit Shukla, Hon'ble Judicial Member

ITA No. 52/VNS/2022
(Assessment Year : 2016-17)

Shri Ashok Agrawal, J-12/120, Dhoopchandi, Jagatganj, Varanasi 221001 PAN AGEPA0153G		Dy.CIT Central Circle, Varanasi
(Appellant)		(Respondent)

ITA No. 23/VNS/2023
(Assessment Year : 2016-17)

Dy.CIT Central Circle, Varanasi		Shri Ashok Agrawal, J-12/120, Dhoopchandi, Jagatganj, Varanasi 221001 PAN AGEPA0153G
(Appellant)		(Respondent)

For the Assessee : Shri V K Jindal & Sh Ashish Jindal
For the Revenue : Shri Robin Chaudhary, CIT

Date of Hearing : 27.09.2023		Date of Pronouncement : 21.11.2023

O R D E R

Per B R Baskaran, Accountant Member:

These cross appeals are directed against the order dated 06-12-2022 passed by Ld CIT(A), Lucknow-3 and they relate to the AY 2016-17. The revenue is aggrieved by the decision of Ld CIT(A) in granting relief of Rs.3.91 crores and the assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.94.00 lakhs.

2. The facts relating to the case are stated in brief. The revenue carried out search and seizure operations in the residential premises of the assessee on 15.3.2016. During the course of search, a statement u/s 132(4) of the Act was recorded from the assessee, wherein he surrendered a sum of Rs.6.00 crores. However, while filing return of income of the year under consideration, i.e., AY 2016-17, the assessee offered a sum of Rs.37.00 lakhs only towards marriage expenses. Before the AO, the assessee submitted that he had surrendered the amount of Rs.6.00 crores out of pressure and stress. Further, no incriminating material supporting the undisclosed income of Rs.6.00 crores was found during the course of search. The assessee relied upon Circular issued by CBDT and also various decisions to contend that the surrender so made without any supporting material should not be assessed as income of the assessee.

3. The AO, however, did not agree with the contentions of the assessee. He observed that above said surrender includes marriage expenses of assessee's daughter, jewellery found and cash found during the course of search. He also observed that the assessee did not retract the statement so made and the amount so surrendered was not included in the return of income only. Accordingly, he held that the surrender of Rs.6.00 crores shall be assessed to tax. With regard to cash balance of Rs.1.05 crores seized from the premises, the AO did not make separate addition, since he held that the same is included in the above said amount of Rs.6.00 crores. With regard to marriage expenses, the assessee had offered an aggregate amount of Rs.1,12,30,000/- in AY 2014-15 to 2016-17. Hence the AO gave set off of the above said sum.

4. The assessee submitted before the AO that his brother named Shri Ved Prakash Agrawal and brother's wife Smt Nirmala Agrawal had surrendered a sum of Rs.5.00 crores in the Income tax settlement application filed by them. The assessee claimed that the surrender of Rs.6.00 crores made by

him included the above said amount of Rs.5.00 crores also. The AO, however, did not accept the above said claim of the assessee.

5. As stated earlier, the AO noticed that the assessee has surrendered following amounts in the return of income filed for AY 2014-15 to 2016-17:-

AY	2014-15	-	48,33,000
AY	2015-16	-	27,00,000
AY	2016-17	-	37,00,000
			1,12,33,000

Accordingly, the AO made net addition of Rs.4,87,67,000/- (Rs.6,00,00,000/- less Rs.1,12,33,000/-), which consisted of cash balance addition of Rs.1,05,00,000/- and other amount of Rs.3,82,67,000/-.

6. In the appellate proceedings, the Ld CIT(A) examined the cash balance addition of Rs.1,05,00,000/-. He granted relief of Rs.11.00 lakhs (mentioned as Rs.9.00 lakhs in the order by Ld CIT(A) in a later paragraph) and confirmed balance addition of Rs.94,00,000/-. With regard to the remaining addition of Rs.3,82,67,000/-, the Ld CIT(A) deleted the same on the ground that there are no incriminating material supporting the said addition. With regard to jewellery found during the course of search, the Ld CIT(A) held that all of them stood explained and no addition is called for on that count. Hence the assessee has filed appeal challenging the addition of Rs.94.00 lakhs confirmed by Ld CIT(A). The revenue is aggrieved by the relief granted by Ld CIT(A). The amount of relief is mentioned as Rs.3,91,67,000/- (Rs.3,82,67,000/- (+) Rs.9,00,000/-).

7. The facts relating to the cash balance addition of Rs.1,05,00,000/- are stated in brief. During the course of search proceedings, physical cash of Rs.1,15,98,570/- was found, out of which Rs.1,05,00,000/- was seized. At that point of time, the assessee admitted that he was not able to state anything with regard to the sources of cash. However, during the course of

assessment proceedings, the AO explained the above said cash belonged to various group concerns and individuals as detailed below:-

(a) Gurukripa Manufacturing P Ltd	-	59,00,000
(b) Grukripa Wovensacks P Ltd	-	6,00,000
(c) Ashok Agrawal **(assessee herein)**	-	11,00,000
(d) Ashok Agarwal HUF	-	8,00,000
(e) Sunita Agarwal	-	9,00,000
(f) Rammurti Agarwal	-	12,00,000

		1,05,00,000
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The assessee substantiated the same with the return of income filed by each of the above said persons and also their respective cash book. However, the AO did not accept the same holding it to be an afterthought. He also took support of the decision rendered by Hon'ble Allahabad High Court in the case of Ravindra Kumar Verma vs. CIT (2013)(214 Taxman 117), wherein retraction of surrender of cash, after a period of four years, was held to be an afterthought. Accordingly, the AO held that the cash amount of Rs.1,05,00,000/- is undisclosed money and part of Rs.6.00 crores surrendered by the assessee.

8. The Ld CIT(A) examined the explanations given for each of the group companies/individuals. He accepted the explanation with regard to availability of cash with the assessee herein to the tune of Rs.11.00 lakhs. Accordingly, he directed to delete the addition to that extent in paragraph 5.4.7 of his order. (However, in paragraph 5.4.11 of the order, the Ld CIT(A) has erroneously mentioned the relief as Rs.9.00 lakhs).

9. We heard the parties and perused the record. There does not appear to be any dispute that the address of all the above said six persons is the same, which is the main reason for the assessee to contend that the cash so

seized belong to all of them. The assessee has furnished cashbook of all the persons upto the date of search and claimed that the above said cash balance was available with each of them. We noticed earlier that the Ld CIT(A) has accepted the above said claim in respect of cash available with the assessee only and did not accept the claim of other five persons.

(a) In respect of M/s Grukripa Manufacturing P Ltd, the assessee has submitted copy of ITR and Balance Sheet as on 31.3.2015 and also copy of cashbook from 01-04-2015 to 15.03.2016. The cash balance available with this company as on the date of search was Rs.59,33,124/-. The Ld CIT(A) has rejected the claim only on the reasoning that the assessee, being one of the directors of the above said company, must be aware of the huge cash available with the company, but he did not mention about it in the preliminary statement taken from him at the time of search. We notice that the Ld CIT(A) has applied the principle of preponderance of probabilities in deciding this issue. On the contrary, the assessee has produced cash book pertaining to this company, which shows availability of cash balance as on the date of search. It is not shown to us that the said books of accounts pertaining to financial year 2015-16 were rejected. Further, we notice that this company is a 'limited company' and hence, its books of accounts are being audited under Companies Act. It is not the case of the tax authorities that the auditors have qualified their audit report on defects, if any, available in the books of accounts. When no defect has been pointed out by the auditors and by the tax authorities, in our considered view, it may not be correct on the part of the tax authorities to ignore them, that too without rejecting the said books of accounts of the year of search. Under these set of facts, we are of the view that the Ld CIT(A) was not correct in applying the theory of preponderance of probabilities. In the similar manner, the observation of the AO that the books of accounts are cooked up is also not correct. In our view, the observations so made by the tax authorities are based on only surmises and conjectures. Accordingly, we are of the view

that the availability of cash of Rs.59.00 lakhs with M/s Grukripa Manufacturing P Ltd cannot be rejected. Accordingly, we set aside the order passed by Ld CIT(A) on this company and direct the AO to delete the addition of Rs.59.00 lakhs.

(b) In respect of M/s Gurukripa Wovensacks Pvt Ltd also, the assessee has submitted copy of ITR and Balance Sheet as on 31.3.2015 and also copy of cashbook from 01-04-2015 to 15.03.2016. The cash balance available with this company as on the date of search was Rs.6,00,000/-. In this case also, the Ld CIT(A) did not accept the availability of cash on the reasoning that the assessee, being one of the directors of the above said company must be aware of the huge cash available with the company, but he did not mention about it in the preliminary statement taken from him at the time of search. However, on the very same reasoning given by us in the case of M/s Gurukripa Manufacturing P Ltd (supra), we hold that the availability of cash with this company should have been accepted. Accordingly, we set aside the order passed by Ld CIT(A) on this company and direct the AO to delete the addition of Rs.6.00 lakhs.

(c) In respect of Shri Rammurti Agrawal and Smt Sunita Agrawal, the claim was about availability of cash balance of Rs.12,00,000/- and Rs.9,00,000/- respectively with them. The Ld CIT(A) noticed that both these persons did not show any cash balance as on 31.3.2015 in their return of income, but availability of cash was shown as on the date of search in the books of accounts. We notice that the tax authorities have rejected the books of accounts of both these persons without examining them. When the assessee has produced books of accounts, in our view, it is imperative for the tax authorities to examine them properly. The said books should have been rejected after bringing the defects therein on record. Accordingly, we are of the view that the addition pertaining to both these persons requires fresh examination at the end of AO. Accordingly, we set aside the order

passed by Ld CIT(A) in respect of both these additions and restore the same to the file of AO for examining them afresh by duly considering the books of accounts and explanations of the assessee.

(d) In respect of M/s Ashok Kumar Agrawal (HUF), the claim of availability of cash was Rs.11.00 lakhs. We notice that this assessee has shown opening cash balance as on 1.4.2015 at Rs.9,86,320 and the cash balance as on the date of search at Rs.18,66,320/-. However, the Ld CIT(A) noticed that the profits from business was shown at Rs.40,000/- every fifteen days. Accordingly, he has opined that the books of accounts are cooked up one and accordingly did not accept them. In this case, there is no dispute that the opening cash balance available with this assessee was Rs.9,86,320/-. However, the Ld CIT(A) is only suspecting the business income declared by this assessee for the reason that it is received every fortnightly and the amount of receipt is identical. We notice that the Ld CIT(A) did not discuss about the nature of receipt and how it cannot be relied upon. In any case, in our view, the reasoning so given by Ld CIT(A) is very filmsy and not justified. It is not the case of Ld CIT(A) that this business income was not assessed in the hands of M/s Ashok Kumar Agrawal (HUF). When the income so declared has been accepted in the hands of the above said person, in our view, the Ld CIT(A) was not justified in rejecting the books on filmsy grounds. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.11,00,000/-.

10. We shall now take up the appeal filed by the revenue. As noticed earlier, the revenue is challenging the relief granted by Ld CIT(A), which included the relief of Rs.11,00,000/- (erroneously mentioned as Rs.9.00 lakhs) in respect of cash balance and remaining amount of Rs.3,82,67,000/-
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11. With regard to relief of Rs.11.00 lakhs granted by Ld CIT(A) with regard to cash balance available with the assessee, we notice that the first appellate authority has examined the books of accounts of the assessee and noticed that the opening cash balance as on 1.4.2015 available with the assessee was Rs.8,61,145/- and the cash available with the assessee as on the date of search was Rs.11,51,915/-. In the preliminary statement and final statement also, he has mentioned about the availability of his cash, which is near equal to the book balance. Under these set of facts, the Ld CIT(A) has come to the conclusion that the assessee's statement is corroborated by the books of accounts. Further, it was seen by Ld CIT(A) that the book cash balance available with the assessee was not disproportionate. Under these set of facts, the Ld CIT(A) has accepted the fact that the sum of Rs.11.00 lakhs belong to the assessee and is available in books of accounts. Accordingly, he has granted relief to the assessee. In view of the above, we are of the view that the order passed by Ld CIT(A) on this issue cannot be interfered with. Accordingly, we uphold his order passed on this issue.

12. With regard to the relief of Rs.3,82,67,000/- granted by Ld CIT(A), we shall recapitulate the facts relating to this issue. Even though, the assessee had offered a sum of Rs.6.00 crores in the statement taken from him u/s 132(4) of the Act, the AO noticed that the assessee has surrendered aggregate amount of Rs.1,12,33,000/- in assessment years 2014-15 to 2016-17. Accordingly, the AO brought to tax remaining amount of Rs.4,87,67,000/- (Rs.6,00,00,000/- less Rs.1,12,33,000/-), which consisted of cash balance addition of Rs.1,05,00,000/- and other amount of Rs.3,82,67,000/-.

13. The contention of the assessee throughout was that the surrender of Rs.6.00 crores made by him was out of pressure and it is not supported by any incriminating material. The surrender was made towards marriage

expenses of daughter and the income belonging to assessee's brother/brother's wife. With regard to marriage expenses, the assessee has admitted to tax a sum of Rs.1,12,33,000/- in aggregate in AY 2014-15 to 2016-17. With regard to the remaining amount, as noticed earlier, the assessee contended that it cannot be assessed to tax in the absence of any incriminating material supporting the said amount.

14. We notice that the Ld CIT(A) has examined this issue in detail. With regard to the jewellery found during the course of search, the Ld CIT(A) has examined factual aspects relating thereto and has concluded that the jewellery stood explained. Before us, no material to contradict above said finding was given by the revenue and accordingly, we uphold the order passed by Ld CIT(A) on the point of jewellery. We notice that the Ld CIT(A) has deleted the addition of Rs.3.82 crores with the following observations:-

> *"5.5.1 Regarding remaining addition of Rs 3,95,75,210/- observation in query no 30 that the assessee has made surrender of Rs 6 crore during the statement recorded u/s 132(4), however no such income has been offered in the return filed by the assessee, it has been submitted that no incriminating documents have been found during search operation from the possession of the assessee. The statement made by the assessee during search operation for surrender of Rs. 6 crore is not corroborated by any documentary evidence. Therefore the statement given by the assessee for surrender of the income cannot be the sole basis for making addition. It has been held in the following cases that a statement made on the date of the search under difficult circumstance does not held much evidentiary value and mere confessional statement without there been any documentary proof shall not be used as evidence against the person who made the statement.*
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> *(a) ITAT Ahemadabad bench in the case of Smt. Susheela Devi S Agarwal (1994) 50 ITD 524 (Ahmedabad)*
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> *(b) Hon'ble ITAT Jodhpur SMC bench, in Maheshwari Industries81 TTJ 914 (ITAT Jodhpur SMC Bench)*
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> *(c)Hon'ble Andhra Pradesh High Court in the case of CIT vs Shri. Ram Das Motor transport (1999) 238 ITR 177 AP*

(d)Mumbai bench in the case of Deep Chand & Co. vs ACIT (1995) 51TTJ 421

(e) Hon'ble Supreme Court in the case of Pullangode Rubber produce co. ltd. Vs State of Kerala 91 ITR 18 SC

5.5.2 In view of the settled judicial precedence no addition was called for in the hands of the assessee merely on the basis of statement given u/s 132(4) of the Act without having reference to any incriminating material found during the course of search. It has been also observed that the assessee made surrender of Rs. 6 crore during the course of search but offered by the assessee's brother in whose name incriminating material was found, Hon'ble settlement commission has duly accepted the surrender of Rs. 5 crore and the tax paid thereon statement on the basis of which addition of Rs. 5 crore has been made by the AO are vague, bald and without adhoc having any nexus to incriminating material found during the search. During the search proceeding statement of the assessee was recorded u/s 132(4) of the Act. In response to question no. 30 Shri Ashok agarwal made a lumsump disclosure of Income of Rs. 5 crore for himself and on behalf of his family members, proprietary concern, companies and partnership firm comprised in the group. It was also stated that he would provide assessee wise break-up of the amount surrender for himself and on behalf of the other family members. In the disclosure no reference to any seized material on the basis of which disclosure of additional income has been made. Disclosure made does not relate to any specific assessment year. The additions made on the basis of such tentative figure and rough analysis and which was subject to modification/correction/reason has no legal sanctity and factual basis.

5.5.3 During the search proceedings nothing was found to establish that assessee was having any source of income other than reported sources. The assessing officer made an allegation without bringing on record any cogent material that assessee has earned income than other than reported sources of income. Neither could the AO bring on record any specific instances of the assessee having earned any undisclosed income or unexplained investment.

5.5.4 While passing the order the AO did not make any reference to any incriminating material but the addition was made by referee to the disclosure made in the statement recorded during search operation. There is no nexus with the seized material and the declaration made in the statement recorded during the search operation, no reference have been made to any incriminating documents found during the search operation which could be co-related to the alleged surrender of income earned by the assessee from undisclosed sources.

5.5.5 In the case declaration was not made with reference to any specific incriminating documents and was neither with reference to any undisclosed asset or income found during the course of search, it was a vague declaration made under duress. It is well settled proposition that the strict rules of evidence are not attracted in relation to income tax proceedings. In order to tax any income under the income tax act it is required to be shown that such income has accrued to the assessee or is deemed to have accrued. The income presupposes receipt ornament of fund which are revenue in nature.

5.5.6 Though admission is the best piece of evidence yet the same is not conclusive. It is well within right of the assessee to demonstrate that the same was incorrectly made and not voluntary the revenue acceptance are also required to corroborate the admission cautioned in the statement with independent statement more particularly with the incriminating material found during the course of search relating to the admission made in the statement.

5.5.7 As per section 31 of the Indian evidence act admission are not conclusive proof of the matters admitted but they may operate or estoppel under the provision of law has contained. For an admission to the effective, corroboration with third party is required. It is well settled that though statement recorded will have evidentiary value, yet such statement are not always conclusive proof, since the person making the statement can rebut and retract.

5.5.8 In the present case addition has been made on the basis of statement, assessee retracted the statement by not including it in the return filed for the impugned year.

5.5.9 In the given case in absence of any unrecorded asset found and seized the only possibility for finding any undisclosed income relating to the assessee were by way of perusal of seized document, which in fact is nil.

5.5.10 U/s 132(4A) of the Act presumption is only on the basis of books of accounts or documents or assets found in the course of search. In the absence of any cogent evidence or corroboration in support of the entries no adverse conclusion can be drawn against the assessee on mere guess and pure suspicion. It is important and vital fact in the case that nothing incriminating was found during the conduct of search pertaining to the impugned addition made. There was nothing incriminating found and seize during the course of search in relation to the adverse view taken by the AO on addition made as per the disclosure in statement recorded during the search operation. The soul basis for making addition is the

statement of the assessee. The AO being the quasi-judicial authority is not competent to draw inferences in vacuums without the base of any material as has been done in this case. The AO is required to yet in a judicial manner while framing assessment order u/s 153A/143(3). The AO being quasi-judicial authority must not based his finding on no evidence. There is fundamental rule of justice and established legal proposition that there may be something more than bare suspicion to support the findings in the assessment order. The AO quasi-judicial authority cannot make addition being expedient as a matter of policy or the basis of assumed on non-existent material.

5.5.11 The Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd Vs. State of Kerala 91 ITR 18 (SC) held that "an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect."

5.5.12 Further in case of Nagubai Ammal Vs. B. Sharma Rao AIR 1956 SC 593 it has been held "an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue".

5.5.13 In the case of Krishanlal Shivchand Rai Vs. CIT 88 ITR 293 (P & H) it has been held that,

"it is an established principle of law that the party is entitle to show and prove that the admission made by him probably is in fact not correct and true".

5.5.14 In the case of Rajesh Jain Vs. DCIT, ITAT Delhi Bench, reported in 100 TTJ (Del) 929/935 held that

"it is to be noted that it is not possible to lead direct evidence of the use of pressure tactics. It is to be gathered from the evidence mostly circumstances. The Appellate Tribunal in para 8 of page 933 further held that "it is true that authorized officer carrying on search u/s 132 is entitled as per the statutory provision, to record statement of the person searched u/s 132(4) of the IT Act and use that statement for the purpose of assessment. All the same person carrying the search is a person possessing some authority and, therefore, the assessment wholly and exclusively based on confessional statement procured by the revenue authority then, there was no need to have elaborate provision in the statute. There was no need to use long arm of search to collect material for making assessment. Therefore, it is insisted that confessional statement

should be corroborated some material to show that assessment made is true and fair.

5.5.15 Further in the case of M/s Aishwarya K. Rai Vs, DCIT reported in 105 TTJ (Mum) (TM) 825/896 held that "it is well settled that a statement u/s. 132(4) is not the last word, and if the person concerned retracts/clarifies the same subsequently on ascertainment of correct state of affairs and explains the same it can be allowed."

5.5.16 Further in the case of Shrikrishna Vs. Kurukshetra University reported in AIR 1976 SC 376 held that "any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. Mere admission cannot be bedrock or foundation of an assessment."

5.5.17 Further in the case of Pushp Vihar Vs. ACIT reported in 48 TTJ (Bom) 389 held that it cannot be concluded that what the assessee said originally was sacrosanct and the assessee is not at liberty nor it does not lie in his mouth to correct the error, originally committed by giving a different version of truth. As said by the Apex Court in the case of Shri Krishnan (supra) that any admission made in ignorance of the legal rights cannot bind the maker of the admission. It is always opened to the assessee to demonstrate the correct facts. In the absence of any other material apart from the original admission, there is nothing to support the admission.

5.5.18 Further in the case of Awad Kishore Dass AIR 1979 SC 861 held that "it is true that the evidentiary admissions are not conclusive proof of the facts admitted and may, be explained or shown to be wrong."

5.5.19 Further the Allahabad High Court in the case of CIT Vs. Radhakishan Goel reported in 278 ITR 4541460- para 11 (All) held that "It is a matter of common knowledge, which cannot be ignored that the search is being conducted with the complete team of the officers consisting of several officers with the police force. Usually telephone and all other connections are disconnected and all ingress and egress are blocked. During the course of search person is so tortured harassed and put to a mental agony that he loses his normal mental state of mind and at that stage it cannot be expected from a person to pre-empt the statement required to be given in law as a part of his defense."

5.5.20 Further in the case of Kailash Ben Manharlal Chouksi Vs. CIT reported in 220 CTR 138 1147 para 26 (Guj) held that "We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be

considered to be a voluntary statement. If it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the AO and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the AO under s 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee".

5.5.21 In a decision of Hon'ble Madras High Court in the case of CIT Vs. Smt.

Jaya Lakshmi Ammal reported in (2017) 390 ITR 189 (Mad), wherein the Hon'ble Court held that "we are of the considered view that, for deciding any issue, against the assessee, the authorities under the IT Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under s. 132(4) of the IT Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the IT Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore, under Judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred."

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

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

"We also find that disclosure was not made by the assessee hence it is not binding on him. We also rely on the decision in the case of CIT v. Chandra

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

5.6 In this case the addition amounting to Rs 3,95,75,210/- was made on the basis of statement recorded u/s 132(4), for the sake of clarity question no 33 and 34 are reproduced here under for ready reference:

प्रश्न ३३: सर्च के उपरांत आपके परिसर से एक मोटी बड़ी राशि, काफी मूल्य के आभूषण पाए गए है जिसके स्त्रोतों के बारे में बताने में आपने बयां के दौरान असमर्थता जाहिर की साथ ही पिछले कुछ वर्षों के दौरान आपके परिवार में दो बड़ी विवाह सहरोह का आयोजन किया गया था जिस पर किये गए राशि के बारे में भी आपने कुछ भी substantiate तथ्य नहीं प्रस्तुत किया आपने पुनः इस संबंध में पुचा जा रहा कि क्या इस उपलक्ष्य में कुछ बताना चाहते है।

उत्तर: मैं आपके द्वारा उठाए गए प्रश्नों को पूर्ण रूप से स्वीकार करता हु इस समय मई अप्पके किसी भी प्रश्न का उत्तर convincing नहीं दे पा रहा हूइ मुझे अहसास है के मै उपरोक्त उठाए गए सभी प्रश्नों जो की वाजिब है। उचित है परन्तु मेरे उनके उचित उत्तर न दे पाने से एक अविश्वसनीय सिस्थी उत्पन्न हो गयी है। मै स्वीकार करता हु की पिछले सालो में कुछ आय अधोसहित रह गए है तह कुछ व्यय अगोसित स्त्रोतों से हुए है। मैं इस सम्बन्धी विवरण दे पाने में असमर्थ हूं। आपसे अनुरोध है की बिना किसी दबाव के अथवा किसी मजदूरी के बिना स्वच्छिक तौर से मैं रूपए छ करोड़ अघोषितआया के रूप में आयकर हेतु सपर्पित कर रहा हु और इसे मैं वर्तमान वितत्य वर्ष के सामान्य आय के उपर अलग से अपनी आयकर विवरणी में दिखाऊंगा।

5.7. From the above statement it is clear that disclosure was given by the appellant on account of cash found, jewellery found and two marriages held in past. However, there was evidence only in respect of heavy cash found. Addition on account of cash and jewellery was discussed above separately. It has been further observed that in respect of marriage expenses no supporting documents were found in the premises of the appellant. In the para 5.5.1 to 5.5.22 it has been discussed that only on

the basis of statement u/s 132(4) any addition cannot be made, unless there are any supporting incriminating documents. Since in this case no incriminating documents were found in respect of addition made by the Assessing Officer for the marriage expenses, therefore addition made on this account is hereby deleted as per discussion made in the para 5.5.1 to 5,5.22. thus addition of Rs 3,91,67,000/- is hereby deleted INCO partly allowed

In effect, the appeal is partly allowed."

15. In our view, the Ld CIT(A) has examined this issue in correct perspective and has taken conscious decision to delete the addition. Accordingly, we affirm the order passed by him on this issue.

16. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.11.2023

Sd/-	**Sd/-**
(Amit Shukla) JUDICIAL MEMBER	(B R Baskaran) ACCOUNTANT MEMBER

Mumbai, Dated : 21st November, 2023
SA

<u>Copy of the Order forwarded to</u> :

1. The Appellant.
2. The Respondent.
3. The PCIT,
4. The CIT
5. The DR, ITAT,Varanasi

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Varanasi