

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. No. 579 & 580/JPR/2023
निर्धारण वर्ष/ Assessment Years : 2017-18

Sh. Madan Lal Gupta Keshav Nagar, Alwar.	बनाम Vs.	ACIT, Central Circle, Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABQPG 6222 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 07/02/2024
उदघोषणा की तारीख/ Date of Pronouncement : 09/02/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These two appeals are filed by the assessee and are arising out of the two separate orders of the learned Commissioner of Income Tax (Appeals)-4, Jaipur both dated 18.08.2023 & 04.08.2023 [Here in after referred as “(CIT(A)”] for the assessment year 2017-18 respectively, which in turn arises from the order passed by the ACIT, Central Circle, Alwar passed under Section 143(3) r.w.s. 153A of the Income tax Act, 1961 (in short 'the Act') dated 31.12.2019 and penalty order passed u/s. 271D of the Act dated 26.03.2022.

2. First, we are taking up the appeal filed by the assessee in ITA No. 579/JPR/2023. The grounds upon which this appeal is marched are as under :-

“1. The Ld. CIT(A), NFAC has erred on fact and in law in confirming the addition of Rs. 10 lacs made by AO solely on the basis of lumpsum surrender made by the assessee considering the loose papers/documents, etc. found in search in the statement recorded u/s 132(4) ignoring that AO has made the addition of more than the surrendered amount in earlier AYs and no undisclosed income for the year under consideration was found in the loose papers/documents seized in search.

2. The Ld. CIT(A), NFAC has erred on fact and in law in confirming the addition of Rs. 3 lacs made by AO on account of alleged unexplained cash solely on the basis of surrender made by the assessee in the statement recorded u/s 132(4) without rebutting the explanation of assessee. He has further erred in taxing this amount u/s 115BBE @ 60% ignoring that same is applicable from AY 2018-19.

3. The appellant craves to alter, amend, and modify any ground of appeal

4. Necessary cost be awarded to the assessee.”

3. Brief facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 was carried out by the Income Tax Department on the members/concerns of Gupta Group, Alwar on 22.09.2017 of which the assessee is one of the members. During the above referred action(s), cash, jewellery, valuables, stock-in-trade, documents, books of account on/or loose papers were found and/or seized from the premises of the members of the Gupta Group of which one such member happens to be the assessee.

3.1 Notice under section 153A of the Act was issued and served upon the assessee on 09.10.2018 requiring him to file a true and correct return of income as prescribed under Rule 12 of the Income Tax rules, 1962 within 15 days of the service of the said notice. The assessee filed its return of income u/s 139 on 31.10.2017 vide Ack. No. 279012510311017 declaring income of Rs. 8,99,290/-. In response to the said notice, a return declaring an income of Rs. 8,99,290/- was e-filed by the assessee vide acknowledgement No. 372266941021118 on 02.11.2018. The assessee primarily derives his income from Business, House Property Income and income from Other Sources.

3.2 The proceedings of assessment of income were initiated by issuing of notices u/s 143(2) of the Act on 09.08.2019 & 142(1) of the Act on 09-09-2019 and served online on the e-mail of the assessee. Notice u/s 142(1) dated 09-09-2019 was issued to the assessee and information and details pertaining to the case of the assessee relevant to assessment of his income were called for u/s 142(1) of the Act by means of a questionnaire. Further, queries were raised vide notices under section 142(1) of the Act from time to time. In response to the above referred notice(s), the assessee filed a written submission through his A.R. The information furnished by the A/R was examined on a test-check basis and placed on record. Undisclosed income of Rs. 10,00,000/- surrendered in the

statements given during the search proceedings. During search proceedings, statements of Sh. Madan Lal Gupta were taken on oath on 22/09/2017. In response to question no. 25 of his statement he voluntarily declared undisclosed income of Rs. 10,00,000/-in A.Y. 2017-18. The ld. AO noted that it is clear from the statements itself that the assessee had voluntarily surrendered undisclosed income of Rs. 10,00,000/- during search proceedings and agreed to pay due taxes on such declared undisclosed income for the year under consideration. However, the assessee has not declared such income in his ITR filed in response to notice u/s 153A of the Act nor has paid any taxes on such income. The assessee vide notice u/s 142(1) dated 09.09.2019 the ld. AO asked that it is seen that declared returned income is only Rs. 8,99,290/- which does not include the surrendered income meaning thereby that assessee has not shown the declared undisclosed income in his ITR and retracted from his statement recorded / taken on oath. However, the retraction seems without any proper basis and justification.

3.3 In response to the notice, the ld. AR of the assessee has filed written submission on 09.12.2019 contending that surrender of Rs. 10 lacs on the basis of various loose paper and seized document, it is submitted that during the course of search assessee has surrendered a lump sum amount of Rs. 10 lacs in respect of various loose paper and

documents seized during search. Now the assessee as well as all his family members has explained all the seized document hence there is no meaning of lump sum surrender of income of Rs. 10 lacs.

3.4 The Id. AO contended that once statements have been recorded on oath, duly signed, it has great evidentiary value and it is normally presumed that whatever stated at the time of recording of brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence. The Id. AO based on the sworn statements recorded u/s 132(4) of the I.T. Act, 1961 wherein the disclosure made during search proceedings is supported by sworn statements of the assessee which have evidentiary value and accordingly the disclosure made by assessee is being taxed in his hands. In view of the above discussion addition of Rs. 10,00,000/- is being made in the total income of the assessee.

3.5 During the course of search proceedings, cash of Rs. 3,81,000/- was found at the residential premises of the assessee. The statement of Sh. Madan Lal Gupta was taken on oath on 22.09.2017. In response to question No. 20 of his statement he voluntarily surrendered undisclosed

income of Rs. 3,00,000/- related to A.Y. 2017-18. During assessment proceeding, the assessee vides notice u/s 142(1) dated 09.09.2019 was asked that in this statement recorded under oath as per the provisions of section 132(4) of the Act in reply to question no. 20 assessee admitted that out of the above cash the amount of Rs. 3,00,000/- was not verifiable from books and was out of his unaccounted income earned during F.Y. 201617 relevant to A.Y. 2017-18. However, on perusal of the ITR for the year under consideration filed on 02.11.2018 in response to notice u/s 153A of the I.T. Act, 1961, it is seen that the admitted unaccounted income is not declared by the assessee meaning thereby he now retracted from his statement recorded / taken on oath. However, the retraction seems without any proper basis and justification. In response, the ld. AR of the assessee has filed written submission on 18.09.2019 contending that the assessee and his family members are partner/proprietor in various business concerns. Cash balance of all the business concerns were lying at home. During the course of search proceedings, position of cash found from various premises is as under:-

Name of Person	Cash Found
Shri Madan Lal Gupta	3,81,000

Shri Tara Chand Gupta	64,05,270
Shri Ashok Gupta	55,000
Total	68,41,270

Provisions of cash balance as per books of accounts of various business concerned and family members is as under:-

Name of Person	Cash Balance as per Books of Accounts as on 22.09.2017
Shri Ashok Gupta	2,91,304.71
Ashok Gupta HUF	5,29,614.20
Shri Madan Lal Gupta	1,62,108.99
Madan Lal Gupta HUF	4,95,879.29
Tara Chand Gupta HUF	13,22,492.76
Divyansh Gupta	8,100.00
Puran Mal Gupta & Sons	1,13,783.00
M/s Gu to Iron Store	88,965.28
M/s Ganpati Motors	66,571.73
M/s Gupta Iron Traders	4,08,580.00
Smt. Hemlata Gupta	3,36,845.29
Smt. Rani Gupta	2,10,975.78
Smt. Manju Gupta	3,83,840.05
Ms. Priyanka Gupta	17,60,511.00
Ms. Shalu Gupta	1,04,300.00
Smt. Shanti Devi	7,595.29
Total	62,91,645.29

Relevant extract of cash book of various family members & business concerns was placed before the Id. AO. Thus, cash balance as per regular books of accounts as on date of search in Rs. 62,91,465/-whereas cash found during search is Rs. 68,41,270. Minor difference of Rs. 5,94,805/- represent savings & pin money of various family members. Hence the cash balance found during the course of search is fully verifiable.

3.6 The reply of the assessee is not found acceptable to Id. AO as the assessee declared in his statements given on oath that the amount of Rs. 3,00,000/- was earned out of his undisclosed sources during the F.Y. 2016-17 relevant to A.Y. 2017-18. In view of the factual matrix of the case the assessee has no valid justification of cash at the time of search as well as at the time of assessment proceedings and therefore, addition of Rs. 3,00,000/- is being made in the total income of the assessee on account of unexplained cash within the meaning of provisions of section 69A r.w.s. 115BBE of the Act found and surrendered during search. Accordingly, assessment was completed on 31.12.2019 by making addition of Rs. 13,00,000/-.

4. Aggrieved from the above order of the Assessing Officer, an appeal before the Id. CIT(A) was preferred by the assessee. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) on both the addition is reiterated here in below:-

“(ii) In the statement, the appellant had further stated that this income of Rs. 10,00,000/- surrendered voluntarily will not be set-off against any other income/loss and that the taxes relevant for this additional income offered for surrender, will be deposited on time.

(iii) The appellant in the statement had further stated that he has also surrendered a sum of Rs. 3,00,000/- as his additional income from other sources in respect of cash, which is in addition to the Rs. 10,00,000/- offered for taxation as 'Income from Other Sources' (This is relevant for the 2nd Ground of Appeal, adjudicated on the later part of the appellate order).

(iv) In view of this categorical statement and relying on the various judicial pronouncements, as mentioned in detail in the assessment order i.c. Commissioner of Income-tax, Bikaner Vs. Ravi Mathur of Hon'ble Rajasthan High Court, Dy. Commissioner of Income-tax, Central Circle-IV(1), Chennai, in TC No. 738 to 744 of Hon'ble Madras High Court, I do not find any infirmity in the order of the AO and the addition of Rs. 10,00,000/- is upheld and Ground of Appeal No. 1 is treated as dismissed.”

(ii) I have considered the submissions of the Ld. A/R of the appellant and it is observed that section 115BBE was first introduced in the Income Tax Act, 1961 by the Finance Act, 2012 which was designed to impose higher tax burden on the assessee's who failed to explain the nature of source of their income, expenditure, investments etc. with the object to curb the black money and penalize the assesses for evasion of tax. Subsequently, amendment in the said section was brought by the Taxation Laws (Second Amendment) Act, 2016 to clearly tax the income at a higher rate of 60% in all the cases where the income is assessable under sections 68, 69, 69A, 69B, 69C or 69D of the Act. When the rate of taxation stands enhanced from 01.04.2017, for every assessment carried out in that year, related to the previous year, the rates as applicable on 01.04.2017 has to be applied.

(iii) Therefore the contention of the appellant that the provisions of section 115BBE is not applicable is found not acceptable. In fact the addition has been made u/s 69A and 69C of the Act and therefore the provisions of section 115BBE are found applicable in the instant case of the appellant. In view of the above legal position, I find that the AO was justified in taxing such undisclosed income at the higher tax rate at 60% u/s 115BBE of the Act u/s 69A of the Act respectively. Thus, the levy of higher rate of tax at 60% u/s 115BBE is confirmed and the provisions of section 115BBE of the Act are clearly applicable and this Ground of Appeal No. 3 is accordingly rejected.”

5. Feeling dissatisfied with the finding of the Id. CIT(A) the assessee preferred the present appeal before the Tribunal on the grounds as stated in para 2 above. In support of the various grounds so raised the Id. AR of the assessee heavily relied upon the written submission. The written submission filed reads as under :

Written Submission for ground no. 1:-

1. It is submitted that adhoc surrender of Rs.10 lacs was made without analyzing the documents found in search only to buy peace of mind. In course of assessment proceedings assessee explained each and every paper found in search and undisputedly no paper relating to the AY under consideration establishing any undisclosed income was found. The AO has also not made addition referring to any seized material found in search. In fact the AO on the basis of the documents found during search has made addition in the hands of the assessee in earlier years as follows:-

AY	Addition	Reason for addition
2012-13	15,00,000/-	Unexplained investment in purchase of property
2015-16	2,77,466/-	Difference between the sales consideration and Stamp Duty Value is added u/s 56(2)(vii)(b)
Total	17,77,466/-	

Thus when the addition is already made by the AO in the earlier years on the basis of documents found in search, then the addition cannot be made in the year under consideration solely on the basis of the statement without pointing out any evidence leading to undisclosed income.

2. The lower authorities have relied on the decision of Rajasthan High Court in case of Ravi Mathur and Madras High Court in case of B. Kishore Kumar. Both the decisions are distinguishable on facts. In case of Ravi Mathur the assessee retracted from the statement after more than 1 year and on those facts it was held that statement recorded on oath, duly signed has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statement u/s 132(4) are true & correct. Such statement can be used as strong evidence against the assessee and the burden lies on the assessee to establish that admission made in the statements are incorrect/wrong. Similarly the decision in case of B. Kishore Kumar is also not applicable since in that case undisclosed income of Rs.42.74 lacs was supported by printouts which the assessee admitted to be from separate business income and Rs.30 lacs was stated to be outstanding loan which is recoverable with interest @ 18%. In the present case, from the statement recorded it can be noted that with reference to each of the annexure **(PB 13-28)** assessee explained the paper and stated that he would get verified all these papers from his books of accounts. He nowhere admitted that any of the annexures refer to any undisclosed income earned by him. Still in the last Q. No.25 he admitted income of Rs.10 lacs even if all the papers got verified from the books of accounts to purchase peace of mind. This in itself shows that the statement is not voluntarily but under pressure. There is no provision under the Act to get surrender of income to buy peace of mind. Further the AO has also not found any undisclosed

income on the basis of documents/loose papers found. Hence based on these decisions, addition confirmed in the hands of assessee is unjustified.

3. It is a settled law that addition cannot be made only on the basis of statement by ignoring the documentary evidence. Though an admission is an important piece of evidence it is not conclusive. An admission which stood retracted has to be weighed with reference to facts and circumstances of that case. This is also accepted by CBDT in Instruction No.286/2/2003-IT(Inv.) dt. 10.03.2003 where it was directed as under:-

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

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

This is again reiterated in Instruction No.286/98/2013-IT(Inv.II) dt. 18.12.2014. Therefore, solely on the basis of the statement made by the assessee without bringing any corroborative material/ evidence on record, addition made is not justified. Reliance in this connection is also placed on the following cases:-

Pullangode Rubber Produce Company Ltd. Vs. State of Kerala and Another 91 ITR 0018 (SC)

Admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs.

CIT Vs. Ashok Kumar Soni 291 ITR 172 (Raj.) (HC)

Admissions are relevant & strong piece of evidence that may be used against the person making such admission but they are not conclusive proof of the statement contained in the admission & can always be explained.

PCIT &Ors. Vs. Anand Kumar Jain (HUF) (2021) 110 CCH 102 (Del.) (HC)

(i) A statement recorded u/s 132(4) has evidentiary value but cannot justify the additions in the absence of corroborative material. (ii) The statement also cannot,

on a standalone basis, constitute 'incriminating material' so as to empower the AO to frame a block assessment u/s 153A (iii) If the statement was recorded in the course of search conducted in the case of a third party, and assuming the statement is construed as 'incriminating material belonging to or pertaining to a person other than person searched', the only legal recourse available to the department is to proceed in terms of S. 153C of the Act by handing over the same to the AO who has jurisdiction over such person. An assessment framed u/s 153A on the basis of alleged incriminating material (being the statement recorded u/s 132(4) of the Act) is not valid. The assessee also had no opportunity to cross-examine the said witness.

Chetnaben J. Shah LR of Jagdishchandra K. Shah Vs. ITO (2016) 140 DTR 235 (Guj.) (HC)

CIT(A) has rightly appreciated the case based on the sound principles of law and has also considered the statement made by the assessee at the relevant point of time. He clearly found that there is no evidence to support the very existence of the income except the so called statement u/s 132(4). Mere speculation cannot be a ground for addition of income. There must be some material substance either in the form of documents or the like to arrive at a ground for addition of income.

Federal Bank Ltd. Vs. State of Kerela 124 CTR 355 (Ker.) (HC)

While an admission made by an assessee is relevant, it is not conclusive. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect the true state of affairs.

Ashok Kumar Vs. ITO 201 CTR 178 (J&K) (HC)

It is true that an admission is no doubt a relevant piece of evidence but it is never conclusive. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect true state of affairs.

ShriNirmal Kumar Kedia Vs. DCIT ITA Nos. 124 to 126/JP/2019 order dt. 03.06.2019 (Jaipur) (Trib.)

"124. From the record we found that except to search statement which was later on retracted by assessee by filing affidavit there is nothing with the department to visualize that the assessee made undisclosed investment in jewellery. It is well settled principal of law that no addition can be made only on the basis of survey/search statement more so when there is no supporting evidence with department to prove that the surrender made in the statement was correct. The department has no evidence/documents which prove that surrender in statement by assessee is correct, therefore the same cannot be relied upon. The Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd v/s State of Kerala & Another (1973) 91 ITR 18 (SC) has held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is upon to the assessee to show that it is incorrect. The Hon'ble Rajasthan High Court in the case of CIT v/s Ashok Kumar Soni 291 ITR 172 (Raj.) has held that admission in

statement during search is not conclusive proof of fact and can always be explained.

125. Hon'ble Gujarat High Court, vide its order dated 14.07.2016, in the case of CHETNABEN J SHAH LEGAL HEIR OF JAGDISHCHANDRA K. SHAH, in TAX APPEAL NO. 1437 of 2007, laid down the ratio that no additions can be made in the hands of the assessee merely on the basis of statements recorded, during the course of search, under section 132(4). Hon'ble High Court in the above mentioned case relied on its earlier order in the case of Kailashben Manharlal Chokshi [2008] 174 Taxman 466 (Guj.), wherein a similar ratio was laid down. Further, in the case of Narendra Garg & Ashok Garg (AOP) [2016] 72 taxmann.com 355 (Gujarat), Hon'ble Gujarat High Court held that "....It is required to be borne in mind that the revenue ought to have collected enough evidence during the search in support of the disclosure statement. It is a settled position of law that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes are collected. The Assessing Officer cannot proceed on presumption u/s 134(2) of the Act and there must be something more than bare suspicion to support the assessment or addition. In the present case, though the revenue's case is based on disclosure of the assessee stated to have been made during the search u/s 132(4) of the Act, there is no reference to any undisclosed cash, jewellery, bullion, valuable article or documents containing any undisclosed income having been found during the search..."

126. In view of the above discussion vis a vis finding of the ld. CIT(A), which has not been controverted by the ld DR by bringing any positive material on record, we do not find any reason to interfere with the findings so recorded by the ld. CIT(A) for deleting the addition of 5,93,76,213/- made by the A.O.

127. In the result, appeals of the revenue are dismissed whereas the appeals of the assessee are allowed in part in terms indicated hereinabove."

In view of above, addition confirmed by Ld. CIT(A) be deleted.

Written Submission for ground no. 2:-

1. It is submitted that the assessee resides at 32B Keshav nagar, Alwar and his two brothers namely Ashok Gupta and Tara chand gupta resides at 9, Keshav nagar, Scheme-3, Alwar. Ashok Gupta resides at Ground Floor and Shri Tara Chand Gupta resides at First Floor. All the three brothers and their family members are partners/proprietor in various business concerns. All the business concerns are run as a group and it is a customary practice to keep cash balance of all the business concerns at the residence. The cash of the business concerns and the family members is mainly kept with Tara Chand Gupta though some cash also remains with assessee and Ashok Gupta. From Shri Tara Chand Gupta cash of Rs.64,05,270/- (**PB 100**), from Shri Ashok Gupta cash of Rs.55,000/- (**PB 98**) and

from the assessee Rs.3,81,000/- (**PB 99**) was found. Thus the total cash found is Rs.68,41,270/-.

2. Shri Tara Chand Gupta in his statement u/s 132(4) dt.22.09.2017 (**PB 63-85**) in reply to Q.No.19 (**PB 72**) with reference to cash found at the residence stated that it includes cash of M/s Raja Bricks, M/s Gupta Iron stores, Gupta Iron Traders, Ganpati Motors Stores etc. Again in reply to Q.No.37(**PB 82-83**) he clarified that the cash found at his residence belongs to all firms of the group and of individuals whereas in earlier reply he by mistake has given the name of only four firms. This fact is also clarified by Hemant Gupta, accountant in his statement recorded u/s 132(4) on 22.09.2017(**PB 86-97**).In reply to Q.No.11(**PB 90**) he explained that cash from the bank is withdrawn and kept by the partners at Alwar and accounting entries are made on the basis of entries in bank statement. The actual cash remained with the partners. The cash is taken from the residence to the extent required for day to day expenses. Therefore the cash found at residence is required to be considered in totality. The position of cash balance as per books of accounts of various group concerns and family members is as under:-

S. No.	Name of Person	Cash balance as per books of accounts as on 22.09.2017
1.	Shri Ashok Gupta	2,91,304/-
2.	Ashok Gupta HUF	5,29,614/-
3.	Shri Madan Lal Gupta	1,62,108/-
4.	Madan Lal Gupta HUF	4,95,879/-
5.	Tara Chand Gupta HUF	14,33,751/-
6.	Divyansh Gupta	8,100/-
7.	Puran Mal Gupta & Sons	1,13,783/-
8.	M/s Gupta Iron Store	88,965/-
9.	M/s Ganpati Motors	71,576/-
10.	M/s Gupta Iron Traders	4,08,580/- (AO considered it at Rs.3,12,867/-)
11.	M/s Ambuja Ispat	1,99,994/-
12.	M/s Alwar Ispat Pvt ltd	63,390/-
13.	M/s Jindal Steel	1,97,289/-

14.	Smt. Hemlata Gupta	3,36,845/-
15.	Smt. Rajni Gupta	2,10,975/-
16.	Smt Manju Gupta	3,83,840/-
17.	Ms. Priyanka Gupta	17,60,511/-
18.	Ms. Shalu Gupta	1,04,300/-
19.	Smt. Shanti Devi	7,595/-
	Total	68,68,399/-

Thus the cash found in search almost tally with the cash as per books of accounts and therefore the addition confirmed by the lower authorities is unjustified.

3. The assessee in his statement has surrendered Rs.3,00,000/- out of the cash found from him. The surrender was made erroneously without looking to the actual position in books of accounts. The AO has not found any defect in the cash balance as per the books of account. Hence only on the basis of statement recorded u/s 132(4), addition cannot be made in view of the various case laws referred in ground no.1 (supra).
4. Otherwise also, the cash found from the residence of assessee is covered by the cash balance of assessee of Rs.1,62,108/- and cash balance of his HUF of Rs.4,95,879/-, totaling to Rs.6,57,987/-.
5. It is further submitted that AO made addition in the year under consideration whereas the cash was found on 22.09.2017 which falls in AY 2018-19. Section 69A provides that where in any Financial Year the assessee is found to be owner of any money not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of the money or the explanation offered by him is not, in the opinion of the AO, satisfactory, the money may be deemed to be the income of the assessee for such FY. Therefore even if any addition is to be made the same can be only in AY 2018-19 and not in AY 2017-18. Hence the addition confirmed by the lower authorities is otherwise not as per the provisions of the Act.
6. The lower authorities have taxed the cash surrendered in course of search @ 60% u/s 115BBE. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. Hence, this section will operate on the income referred to in sections 68, 69, 69A, 69B, 69C or 69D which accrues or arises on or after 01.04.2017. It may also be noted that Taxation Laws (Second Amendment Act), 2016 also inserted a new sub clause (1A) to section 271AAB whereby the liability of penalty in case of searches was increased. However this clause was specifically made applicable only where searches has

been initiated on or after the date on which the Taxation Laws (Second Amendment Act) Bill, 2016 receives the assent of President and thus this clause was specifically made effective only where the searches took place on or after 15.12.2016. Section 115BBE inserted by the same Amendment Act is specifically made effective from 01.04.2017. Thus from the analogy of section 271AAB it is evident that section 115BBE is also applicable where income referred to in that section is assessed on or after 01.04.2017 i.e. AY 2018-19. Hence the substituted section 115BBE is not applicable for AY 2017-18.

7. It is a settled proposition of law that legislations which modify accrued rights or which impose obligations or imposed new duties or attach a new disability have to be treated as prospective. This is so held by the **Hon'ble Supreme Court in case of CIT Vs. Vatika Township Private Limited (2014) 109 DTR 33** where the Hon'ble court has given the following finding for deciding whether a provision has prospective operation or retrospective operation:-

“39(e) There is yet another very interesting piece of evidence that clarifies the provision beyond any pale of doubt, viz. understanding of CBDT itself regarding this provision. It is contained in CBDT circular No.8 of 2002 dated 27th August, 2002, with the subject “Finance Act, 2002 – Explanatory Notes on provision relating to Direct Taxes”. This circular has been issued after the passing of the Finance Act, 2002, by which amendment to Section 113 was made. In this circular, various amendments to the Income Tax Act are discussed amply demonstrating as to which amendments are clarificatory/retrospective in operation and which amendments are prospective. For example, explanation to Section 158BB is stated to be clarificatory in nature. Likewise, it is mentioned that amendments in Section 145 whereby provisions of that section are made applicable to block assessments is made clarificatory and would take effect retrospectively from 1st day of July, 1995. When it comes to amendment to Section 113 of the Act, this very circular provides that the said amendment along with amendments in Section 158BE, would be prospective i.e. it will take effect from 1st June, 2002. Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to sub-section (3) of Section 2 of Finance Act, 2003. This proviso reads as under:

“Provided further that the amount of income-tax computed in accordance with the provisions of section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated under section 132 or requisition is made under section 132A of the income-tax Act.”

Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be

construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.

*40. The aforesaid discursive of ours also makes it obvious that the conclusion of the Division Bench in **Suresh N. Gupta** treating the proviso as clarificatory and giving it retrospective effect is not a correct conclusion. Said judgment is accordingly overruled.”*

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.”

5.1 The ld. AR of the assessee in addition to the above written submissions vehemently argued that the addition made and confirmed by the lower authority are in complete violation of the judicial precedence and in complete violation of CBDT instructions while dealing with the search cases and making additions on such cases. The addition made and confirmed is not supported by in tangible material and are merely made on the statement recorded at the time of search. The assessee surrendered the lumpsum amount of Rs. 10 lac in respect of various loose paper and document seized. During the assessment proceeding the assessee has explained all the seized documents and therefore, there is no basis of making the addition merely on the statement made u/s. 132(4) when all the related material / documents are explained.

6. Per contra, the ld. DR relied upon the orders of the ld. CIT(A). The ld. DR also submitted that the additions were made based on the statement recorded u/s. 132(4) of the Act. The assessee has not filed any retraction to the statement so given so ld. DR also relied upon the case laws cited in the order of the ld. CIT(A) and prayed that the additions be sustained based on the findings recorded in the order of the ld. CIT(A).

7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions.

7.1 In ground no. 1 the assessee has challenged the addition of Rs. 10,00,000/-. The brief facts of the case is that during the course of search proceedings the statement of assessee on 30 Annexures found from him was recorded u/s 132(4) on 22.09.2017 running into 31 pages(PB 1-29). The assessee, with reference to the various annexures stated that he would get verified the transaction recorded in these annexures from his books of accounts. Thereafter in Q. No.25 (PB 28) which is the last question, assessee was asked to state whether he wants to state anything else and in reply thereto assessee stated that there might be some transactions recorded in loose papers which do not match with the transactions recorded in regular books of accounts and thus admitted undisclosed

income of Rs.10,00,000/- to buy mental peace even if all the papers are verified from the books of accounts and would not take the benefit of set off elsewhere. The AO observed that assessee has not declared such income in his return filed in response to notice u/s 153A nor has paid any tax on such income. The assessee vide letter dt. 09.12.2019 (Pg 4 of assessment order) submitted that he has explained all the seized documents and hence, there is no meaning of lump sum surrender of income of Rs.10 lacs. The AO, however, after relying on the various case laws mentioned at Pg 4-8 of the order held that the disclosure of Rs.10 lacs made during search proceedings is supported by sworn statements of the assessee which have evidentiary value and thus made addition for the same as undisclosed income surrendered during search. The Ld. CIT(A) after reproducing Q. No.25 of the statement at Para 4.3(vi), Pg 6 upheld the addition in view of the categorical statement of the assessee relying on the decision of Rajasthan High Court in case of Ravi Mathur, Madras High Court in case of B. Kishore Kumar TC No.738 to 744.

Before us the ld. AR of the assessee vehemently submitted that the adhoc surrender of Rs.10 lacs was made without analyzing the documents found in search only to buy peace of mind by the assessee and the same is not supported by any tangible material or incriminating material. While assessment proceeding assessee explained each and every paper found in

search and undisputedly no paper relating to the AY under consideration establishing any undisclosed income was found this aspect of the matter has not been controverted by revenue by placing anything on record at the time of hearing by the ld. AO through the ld. DR. The bench also noted from the assessment order that the ld. AO made addition merely based on the statement and has not referred any seized material found in search. In fact the AO on the basis of the documents found during search has made addition in the hands of the assessee in earlier years as follows as argued by the ld. AR:-

AY	Addition	Reason for addition
2012-13	15,00,000/-	Unexplained investment in purchase of property
2015-16	2,77,466/-	Difference between the sales consideration and Stamp Duty Value is added u/s 56(2)(vii)(b)
Total	17,77,466/-	

Thus, when the addition is already made by the AO in the earlier years on the basis of documents found in search, then the addition cannot be made in the year under consideration solely on the basis of the statement without pointing out any evidence leading to undisclosed income bring

any corroborative evidence. The lower authorities have relied on the decision of Rajasthan High Court in case of Ravi Mathur and Madras High Court in case of B. Kishore Kumar. We found that the facts and *pari materia* contained in the cases are different from the facts contained in the present case. Therefore, the said two decisions relied on are of no help to the revenue. The facts of the case of Ravi Mathur, wherein the assessee retracted from the statement after more than 1 year and on those facts it was held that statement recorded on oath, duly signed has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statement u/s 132(4) are true & correct. Such a statement can be used as strong evidence against the assessee and the burden lies on the assessee to establish that admission made in the statements are incorrect / wrong. Whereas in the case of B. Kishore Kumar is also not applicable since in that case undisclosed income of Rs.42.74 lacs was supported by printouts which the assessee admitted to be from separate business income and Rs.30 lacs was stated to be outstanding loan which is recoverable with interest @ 18%. In the present case, from the statement recorded it can be noted that with reference to each of the annexure (PB 13-28) assessee explained the paper and stated that he would get verified all these papers from his books of accounts. He nowhere admitted that any of the annexures refer to any undisclosed

income earned by him based on any evidence. Still in the last Q. No.25 he admitted income of Rs.10 lacs even if all the papers got verified from the books of accounts to “purchase peace of mind”. This statement of the assessee that to purchase the peace of mind statement suggest that the same is not voluntarily but under pressure at the time of search. There is no provision under the Act to get surrender of income to buy peace of mind. Further the AO has also not found any undisclosed income based on any documents / loose papers found. Hence based on these decisions, addition confirmed in the hands of assessee is unjustified and we found merits in the facts and arguments raised. The bench also noted that addition cannot be made only on the basis of statement by ignoring the documentary evidence. Though admission is an important piece of evidence it is not conclusive. An admission which stood retracted has to be weighed with reference to facts and circumstances of that case.

The disclosure surrendered based on the statement is dealt by the CBDT in its Instruction No.286/2/2003-IT(Inv.) dt. 10.03.2003 where it was directed as under:-

“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of

search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

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

Considering all the aspect as discussed and considered the Instruction No.286/98/2013-IT(Inv.II) dt. 18.12.2014, we are of the considered view that addition cannot be made solely on the basis of the statement made by the assessee without bringing any corroborative material/ evidence on record, addition made is not justified. We take support of our this view from the following cases:-

Pullangode Rubber Produce Company Ltd. Vs. State of Kerala and Another 91 ITR 0018 (SC)

Admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs.

CIT Vs. Ashok Kumar Soni 291 ITR 172 (Raj.) (HC)

Admissions are relevant & strong piece of evidence that may be used against the person making such admission but they are not conclusive proof of the statement contained in the admission & can always be explained.

PCIT &Ors. Vs. Anand Kumar Jain (HUF) (2021) 110 CCH 102 (Del.) (HC)

(i) A statement recorded u/s 132(4) has evidentiary value but cannot justify the additions in the absence of corroborative material. (ii) The statement also cannot, on a standalone basis, constitute 'incriminating material' so as to empower the AO to frame a block assessment u/s 153A (iii) If the statement was recorded in the course of search conducted in the case of a third party, and assuming the statement is construed as 'incriminating material belonging to or pertaining to a person other than person searched', the only legal recourse available to the

department is to proceed in terms of S. 153C of the Act by handing over the same to the AO who has jurisdiction over such person. An assessment framed u/s 153A on the basis of alleged incriminating material (being the statement recorded u/s 132(4) of the Act) is not valid. The assessee also had no opportunity to cross-examine the said witness.

Chetnaben J. Shah LR of Jagdishchandra K. Shah Vs. ITO (2016) 140 DTR 235 (Guj.) (HC)

CIT(A) has rightly appreciated the case based on the sound principles of law and has also considered the statement made by the assessee at the relevant point of time. He clearly found that there is no evidence to support the very existence of the income except the so called statement u/s 132(4). Mere speculation cannot be a ground for addition of income. There must be some material substance either in the form of documents or the like to arrive at a ground for addition of income.

Federal Bank Ltd. Vs. State of Kerela 124 CTR 355 (Ker.) (HC)

While an admission made by an assessee is relevant, it is not conclusive. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect the true state of affairs.

Ashok Kumar Vs. ITO 201 CTR 178 (J&K) (HC)

It is true that an admission is no doubt a relevant piece of evidence but it is never conclusive. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect true state of affairs.

The bench also noted that similar view has been taken by the co ordinate bench in the case of ShriNirmal Kumar Kedia Vs. DCIT ITA Nos. 124 to 126/JP/2019 order dt. 03.06.2019 (Jaipur) (Trib.) where in the bench has observed as under :

“124. From the record we found that except to search statement which was later on retracted by assessee by filing affidavit there is nothing with the department to visualize that the assessee made undisclosed investment in jewellery. It is well settled principal of law that no addition can be made only on the basis of survey/search statement more so when there is no supporting evidence with department to prove that the surrender made in the statement was correct. The department has no evidence/documents which prove that surrender in statement by assessee is correct, therefore the same cannot be relied upon. The Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd v/s State of Kerala & Another (1973) 91 ITR 18 (SC) has held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is upon to the assessee to show that it is incorrect. The Hon'ble Rajasthan High Court in the

case of CIT v/s Ashok Kumar Soni 291 ITR 172 (Raj.) has held that admission in statement during search is not conclusive proof of fact and can always be explained.

125. Hon'ble Gujarat High Court, vide its order dated 14.07.2016, in the case of CHETNABEN J SHAH LEGAL HEIR OF JAGDISHCHANDRA K. SHAH, in TAX APPEAL NO. 1437 of 2007, laid down the ratio that no additions can be made in the hands of the assessee merely on the basis of statements recorded, during the course of search, under section 132(4). Hon'ble High Court in the above mentioned case relied on its earlier order in the case of Kailashben Manharlal Chokshi [2008] 174 Taxman 466 (Guj.), wherein a similar ratio was laid down. Further, in the case of Narendra Garg & Ashok Garg (AOP) [2016] 72 taxmann.com 355 (Gujarat), Hon'ble Gujarat High Court held that "....It is required to be borne in mind that the revenue ought to have collected enough evidence during the search in support of the disclosure statement. It is a settled position of law that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes are collected. The Assessing Officer cannot proceed on presumption u/s 134(2) of the Act and there must be something more than bare suspicion to support the assessment or addition. In the present case, though the revenue's case is based on disclosure of the assessee stated to have been made during the search u/s 132(4) of the Act, there is no reference to any undisclosed cash, jewellery, bullion, valuable article or documents containing any undisclosed income having been found during the search..."

126. In view of the above discussion vis a vis finding of the ld. CIT(A), which has not been controverted by the ld DR by bringing any positive material on record, we do not find any reason to interfere with the findings so recorded by the ld. CIT(A) for deleting the addition of 5,93,76,213/- made by the A.O.

127. In the result, appeals of the revenue are dismissed whereas the appeals of the assessee are allowed in part in terms indicated hereinabove."

In the light of the above discussion based on the facts and legal precedent we are of the view that the addition of Rs. 10,00,000/- merely based on the statement has no merits and is directed to be deleted. Based on these observations the ground no. 1 raised by the assessee is allowed.

7.2 Ground no. 2 raised by the assessee relates to the addition of Rs. 3,00,000/- made by the ld. AO and sustained by the ld. CIT(A) being the alleged unexplained cash solely on the basis of the surrender made by the assessee in the statement record u/s. 132(4) without considering the explanation and evidence placed on record by the assessee. The brief facts related to the addition are that in search cash of Rs.3,81,000/- was found at the residential premises of the assessee (PB 99). In statement recorded u/s 132(4) dt. 23.09.2017 the assessee in reply to Q. No.20 (PB 26) stated that out the cash found he would get Rs.81,000/- verified from his books of accounts and for the balance Rs.3 lacs he is unable to explain the source and thus surrendered the same for FY 2016-17. During the assessment proceeding ld. AO observed that assessee has not declared cash surrendered income on account of Cash of Rs. 3 lac in search in the return filed u/s 153A. The assessee vide letter dt.18.09.2019 submitted that the cash balance as per books of various concerns and family members as per regular books of accounts as on date of search is Rs.62,91,465/- whereas cash found during the course of search of the entire group is Rs.68,41,270/-. Minor difference of Rs.5,49,805/- represent savings & pin money of various family members. Hence cash balance so found during the course of search is fully verifiable. The AO rejected the assessee's contentions and made an addition of Rs.3,00,000/-

based on the statement of assessee. The Ld. CIT(A) upheld the order of AO on the basis of the statement of assessee u/s 132(4) of the Act.

Before us the ld. AR of the assessee submitted that the assessee resides at 32B Keshav nagar, Alwar and his two brothers namely Ashok Gupta and Tara chand gupta resides at 9, Keshav nagar, Scheme-3, Alwar. Ashok Gupta resides at Ground Floor and Shri Tara Chand Gupta resides at First Floor. All the three brothers and their family members are partners/proprietor in various business concerns. All the business concerns are run as a group and it is a customary practice to keep cash balance of all the business concerns at the residence. The cash of the business concerns and the family members is mainly kept with Tara Chand Gupta though some cash also remains with assessee and Ashok Gupta. From Shri Tara Chand Gupta cash of Rs.64,05,270/- (PB 100), from Shri Ashok Gupta cash of Rs.55,000/- (PB 98) and from the assessee Rs.3,81,000/- (PB 99) was found. Thus the total cash found is Rs.68,41,270/-. Shri Tara Chand Gupta in his statement u/s 132(4) dt.22.09.2017 (PB 63-85) in reply to Q.No.19 (PB 72) with reference to cash found at the residence stated that it includes cash of M/s Raja Bricks, M/s Gupta Iron stores, Gupta Iron Traders, Ganpati Motors Stores etc. Again in reply to Q.No.37(PB 82-83) he clarified that the cash found at his residence belongs to all firms of the group and of individuals whereas in earlier

reply he by mistake has given the name of only four firms. This fact is also clarified by Hemant Gupta, accountant in his statement recorded u/s 132(4) on 22.09.2017(PB 86-97). In reply to Q.No.11(PB 90) he explained that cash from the bank is withdrawn and kept by the partners at Alwar and accounting entries are made on the basis of entries in bank statement. The actual cash remained with the partners. The cash is taken from the residence to the extent required for day to day expenses. Therefore, the cash found at residence is required to be considered in totality. The position of cash balance as per books of accounts of various group concerns and family members is as under:-

S. No.	Name of Person	Cash balance as per books of accounts as on 22.09.2017
1.	Shri Ashok Gupta	2,91,304/-
2.	Ashok Gupta HUF	5,29,614/-
3.	Shri Madan Lal Gupta	1,62,108/-
4.	Madan Lal Gupta HUF	4,95,879/-
5.	Tara Chand Gupta HUF	14,33,751/-
6.	Divyansh Gupta	8,100/-
7.	Puran Mal Gupta & Sons	1,13,783/-
8.	M/s Gupta Iron Store	88,965/-
9.	M/s Ganpati Motors	71,576/-
10.	M/s Gupta Iron Traders	4,08,580/- (AO considered it at Rs.3,12,867/-)
11.	M/s Ambuja Ispat	1,99,994/-
12.	M/s Alwar Ispat Pvt ltd	63,390/-
13.	M/s Jindal Steel	1,97,289/-
14.	Smt. Hemlata Gupta	3,36,845/-
15.	Smt. Rajni Gupta	2,10,975/-
16.	Smt Manju Gupta	3,83,840/-
17.	Ms. Priyanka Gupta	17,60,511/-
18.	Ms. Shalu Gupta	1,04,300/-
19.	Smt. Shanti Devi	7,595/-

	Total	68,68,399/-
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Thus, the cash found in search almost tally with the cash as per books of accounts. The assessee in his statement has surrendered Rs.3,00,000/- out of the cash found from him. The surrender was made erroneously without looking to the actual position in books of accounts. The AO has not found any defect in the cash balance as per the books of account of the persons listed but since in the statement recorded u/s 132(4) the addition was made. The bench also noted from the facts of the case and as argued alternatively that the cash found from the residence of assessee is covered by the cash balance of assessee of Rs.1,62,108/- and cash balance of his HUF of Rs.4,95,879/-, totaling to Rs.6,57,987/-. It is also noted that the Id. AO made addition in the year under consideration whereas the cash was found on 22.09.2017 which falls in AY 2018-19. Section 69A provides that where in any Financial Year the assessee is found to be owner of any money not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of the money or the explanation offered by him is not, in the opinion of the AO, satisfactory, the money may be deemed to be the income of the assessee for such FY. Therefore, even if any

addition is to be made the same can be only in AY 2018-19 and not in AY 2017-18.

Since we have in detailed while dealing with the ground no. 1 of the assessee herein above held that the addition merely based on the statement recorded at the time of search if the same is explained by the assessee cannot be made and considering the detailed finding recorded in ground no. 1 above the ground no. 2 raised by the assessee is allowed.

Ground no. 3 & 4 being general and there is no specific submission on the same are not adjudicated.

In the light of the above discussion the appeal filed by the assessee in ITA no. 579/JP/2023 is allowed.

8. The appeal of the assessee in ITA No. 580/JPR/2023 has following grounds:-

“1. The Ld. CIT(A), NFAC has erred on fact and in law in confirming the levy of penalty of Rs. 8 lacs u/s 271D of IT Act by allegedly holding that assessee has received cash of Rs. 8 lacs against agreement to sale the land.

2. The appellant craves to alter, amend and modify any ground of appeal

3. Necessary cost be awarded to the assessee.”

9. Ground no. 2 & 3 being general, and no specific arguments were raised the same we feel are not required to be adjudicated. Thus, now the sole ground left is for levy of penalty u/s. 271D of the Act.

The brief facts of the case for levy of the penalty are that the assessee filed his return of income declaring income of Rs. 8,99,290/-in response to notice u/s 153A of the IT Act on 02.11.2018. A search & seizure operation u/s 132(1) of the IT Act, 1961 was conducted at various premises of Gupta Group on 22.09.2017 of which the assessee is one of the members covered u/s 132 of the Act. The assessment of the assessee was completed u/s 143(3) r.w.s. 153A of the by the ACIT, Central Circle- Alwar on 31.12.2019. During the course of assessment proceedings the AO noticed that the assessee has taken advance of Rs. 8,00,000/- in the F.Y. 2016-17 from Shri Rajendra Prasad Agarwal s/o Shri Ganeshi Lal Agarwal r/o village Narehda, Tehsil Kotputli, Distt. Jaipur in contravention to the provisions of section 269SS of the Act.

The Assessing Officer i.e. ACIT, Central Circle, Alwar referred the matter to Addl. CIT, Central Range, Jaipur vide his office letter No. 474

dated 27.01.2020 for initiation of penalty proceedings under section 271D of the Act.

Accordingly, a show cause notice for imposing penalty under section 271D of the Act was issued on 06.03.2020 and the assessee was asked to show cause as to why the penalty may not be imposed u/s 271D of the Act for violation of provisions of section 269SS of the Act.

The first & only argument put forth by the assessee is that he has not accepted any cash advance of Rs. 8,00,000/- from Shri Rajendra Agarwal. The argument of the assessee is not acceptable as there is no dispute with regard to the paper under consideration on the basis of which it has been determined that the assessee has accepted cash loan of Rs. 8,00,000/- in the year under consideration. The assessee argued that the agreement is signed only by Madan Lal Gupta and Manish Jain. Both these persons received Rs. 17,50,000/- each totaling to Rs. 35,00,000 by RTGS. The other three co-owners of the land were to be paid Rs. 16,00,000/- in cash but the purchasers did not pay this amount. Even the purchaser have not signed this agreement. As can be seen from the above, the transaction is recorded on an agreement dated 12.04.2016 wherein, at page No. 2. it is clearly mentioned that the assessee has received 51,00,000/- (16,00,000/- Rupees cash & 35,00,000/- Rupees through

RTGS) as advance and signed by the assessee himself & his another co-seller Shri Manish Jain Thus, it is clear that the assessee has accepted cash advance of his share of Ra 8,00,000/- otherwise than by account payee cheque / account payer draft in contravention to the provisions of Section 269SS of the IT Act, 1961. In view of the above discussion, it is established that the assessee has accepted a specified sum in cash amounting to Rs. 8,00,000/- in violation of provisions of section 269SS of the Act. Based on that finding it was hold that the assessee is liable for penalty of Rs. 8,00,000/- being the amount of specified sum taken in cash against transfer of immovable property. The cash advance of Rs. 8,00,000/- received by assessee falls under the definition of specified sum as defined u/s 269SS of the I.T. Act, 1961. Accordingly, penalty for Rs. 8,00,000/- was imposed on the assessee in terms of section 271D of the IT Act, 1961.

10. Aggrieved from the above order of the Addl. CIT an appeal was preferred before the ld. CIT(A) by the assessee. Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:-

(iv) Adjudication on the submissions of the appellant:

(a) The appellant has conceded the existence of the agreement and also accepted the receipt of part payment of Rs. 35,00,000/- through RTGS.

(b) The self-statement that Rs. 16,00,000/- was not received in cash, cannot be accepted at its face value. The agreement is very specific that the payment has

been received in cash. Relevant portion of the agreement is reproduced as under:

".....पूला हक मालिकाना सुखाधिकार आदि बहक श्री राजेन्द्र प्रसाद अग्रवाल पुत्र श्री गणेशीलाल अग्रवाल जाति महाजन निवासी नारेहडा, तहसील कोटपूतली जिला जयपुर राजस्थान को बिल एवज 80,00,000/- अक्षरे अस्सी लाख रुपये प्रति पक्की बीघा यानि 0.25 हैक्टेयर के हिसाब से विक्रय करने का इकरार किया है। बिल एवज की रकम में से साईं पेटे के 51,00,000/- अक्षरे इक्यावन लाख रुपये (16,00,000/- रुपये नगद व 35,00,000/- रुपये जरिये आर.टी.जी.एस.) द्वारा प्राप्त कर लिये थे एव शेष रकम दिनांक 31.07.2016 तक प्राप्त कर विक्रित भूमि का विक्रय पत्र क्रेता के हक में या क्रेता के कहे अनुसार किसी भी दीगर व्यक्ति / संस्था / कम्पनी/व्यक्तियों के नाम तस्दीक करवा के लिए पाबंद रहेंगे। अगर क्रेता शेष रकम का भुगतान तय दिनांक 31.07.2016 तक विक्रेतागण को अदा करने में असमर्थ रहता है तो विक्रेतागण को हक होगा कि यह साईं पेटे की राशि को खाई-पिई कर सकेंगे। यदि हम विक्रेतागण तय दिनांक 31.07.2016 तक चिक्रित भूमि का विक्रय पत्र क्रेता के हक मे या क्रेता के कहे अनुसार करवाने में असमर्थ रहते है या किसी प्रकार की आनाकानी करते है तो क्रेता को हक होगा कि वह उक्त इकरारनामे को मूल दस्तावेज मानकर जरिये न्यायालय कानूनी प्रक्रिया द्वारा स्वयं न्यायालय कीरा जमा करवाकर उक्त विक्रित भूमि का विक्रय पत्र अपने हित में या अपने पक्ष में तस्दीक करवा सकेगा

(V) The subsequent filing of court case by one of the co-owners, Sh. Bheemsen and the return of the money received through RTGS to the buyer is immaterial as regards the facts that cash of Rs. 16,00,000/- in pursuance of the said agreement is received in cash and in the same proportion as of RTGS amount Rs. 8,00,000/- was received by the appellant. The existence of the agreement has not been challenged by the appellant and no independent evidence is filed viz-a-viz non- receipt of the cash component of the payment.

(VI) For both the payments i.e. the receipt through RTGS and the receipt through cash, the agreement is very categorical that the payments have been received. Merely because there is documentary evidence of receipt by RTGS does not mean that the appellant can deny, the second part of the receipt at his own whims and fancies simply by denying the receipt. The same is not acceptable in view of the contrary documentary evidence.

(VII) As regards the appellants claim that the said agreement is not signed by all the parties, the same is immaterial since there is a categorical finding that the payments have been received. It is not a case wherein the other co-owners ie. Manju Gupta, Meeta Jain, who are family members of the two persons, who have received the payments through RTGS have filed any case in the court that they are not party to this agreement. As regards the third co-owner Sh. Bheemsen, even though he has filed a court case, but he is also accepting that an agreement has been made, but his only case is that his share in Khasra No. 795 (which is only a small portion of the total land for which agreement is made) is not determined.

(VIII) In view of the above discussed facts, there is no denying the fact that the appellant had received cash of Rs. 8,00,000/- in violation of the Provisions of Section 269SS of the Act and therefore the penalty as imposed by the Additional Commissioner of Income-tax amounting to Rs. 8,00,000/- is upheld. Accordingly, Ground of Appeal No. 1 is treated as dismissed.”

11. Feeling dissatisfied with the above finding of the Id. CIT(A) the assessee carried the matter before this tribunal challenging the levy of penalty. To support the various contentions so raised by the assessee the Id. AR of the assessee relied upon the written submission which is reiterated here in below:-

Submission:-

1. At the outset it is submitted that the lower authorities have incorrectly presumed that at Pg 2 of the agreement it is mentioned that assessee along with Manish Jain received cash of Rs.16,00,000/- as advance. From Pg 2 of the agreement as reproduced in the assessment order it can be noted that nowhere in the agreement it is stated that Rs.16,00,000/- has been paid to assessee and Manish Jain. In fact in the agreement there is reference of all the co-owners and therefore it cannot be assumed that assessee received Rs.8,00,000/- in cash as per the agreement.
2. It may also be noted that one of the co-owner of this land i.e. Shri Bheemsen whose name is also appearing in the agreement has filed a court case on 13.07.2016 against Manju Gupta and Meeta Jain who were joint owner in Khasra No.795 for prohibiting the other parties of this agreement to execute the sale deed and to maintain the status quo. Finally this agreement was not executed and the amount of Rs.17.50 lacs received by the assessee was returned back by him on 05.06.2019. Thus when the agreement is not

executed, only because cash amount is mentioned therein it cannot be presumed that assessee received the cash in contravention of section 269SS of the Act.

3. It is further submitted that in the agreement dated 12.04.2016 it is clearly mentioned that an advance amount of Rs.51,00,000/- (35,00,000/- through RTGS and 16,00,000/- through cash) is already received. This means that amount is received earlier to the date of agreement. The RTGS is received on 04.02.2016 and therefore in the absence of any evidence otherwise, it has to be inferred that cash was also received on 04.02.2016 which falls in AY 2016-17 and not in AY 2017-18. Hence no penalty u/s 271D is otherwise imposable in the year under consideration.
4. The provisions of section 269SS and consequential penalty u/s 271D is applicable only when the assessee receives the specified amount in cash. In the present case from the perusal of agreement it can be noted that the agreement nowhere mentions that the cash amount of Rs.8,00,000/- is received by the assessee. The lower authorities only on assumption and presumption held that assessee is 50% owner of the land and therefore he received 50% of the cash. In fact the assessee is owner of 11.23% portion of the land. As against this he has already received RTGS of Rs.17,50,000/- which is much more than his share in Rs.51,00,000/-. Therefore even if it is presumed that cash is received, no contravention u/s 269SS can be alleged as assessee received his share by RTGS only.
5. It is settled law that penalty provisions should be interpreted strictly and not liberally. In the agreement it is nowhere mentioned that assessee and Manish Jain only received cash amount of Rs.16 lacs. Only because RTGS amount was received by assessee and Manish Jain it cannot be presumed that cash amount is also received by them in equal share. In case of Manish Jain no penalty proceedings has been initiated against him. Therefore, it is incorrect to presume that assessee received Rs.8 lacs in cash in violation of section 269SS of the Act.

In view of above, levy of penalty confirmed by Ld. CIT(A) be deleted.”

12. The ld. AR of the assessee to support of the contentions so raised herein above has also relied upon the following evidences / records:

S No.	Particular	Pg No.	Filed before AO/CIT(A)
1.	Copy of submission filed before Ld. CIT(A)	1A -10A	CIT(A)
2.	Copy of Index of paper book filed before ld. CIT(A)	11A	CIT(A)
3.	Copy of statement dt. 22.09.2017 of assessee recorded u/s 132(4) of the IT Act.	1-30	Both

4.	Copy of statement dt. 22.09.2017 of Sh. Ashok Gupta recorded u/s 132(4) of IT Act.	31-62	Both
5.	Copy of statement dt. 22.09.2017 of Sh. Tara Chand Gupta recorded u/s 132(4) of IT Act.	63-85	Both
6.	Copy of statement dt. 22.09.2017 of Sh. Hemant Gupta recorded u/s 132(4) of IT Act.	86-97	Both
7.	Copy of cash panchnama	98-11	Both

The ld. AR of the assessee in addition also vehemently argued that there were 5 sellers and in fact in the agreement there is reference of all the co-owners and therefore it cannot be assumed that assessee received Rs.8,00,000/- in cash as per the agreement. This aspect of the correct facts has not been appreciated by the lower authorities, they have also incorrectly presumed that at Pg 2 of the agreement it is mentioned that assessee along with Manish Jain received cash of Rs.16,00,000/- as advance. From Pg 2 of the agreement as reproduced in the assessment order it is evident that nowhere in the agreement it is stated that Rs.16,00,000/- has been paid to assessee and Manish Jain. The ld. AR of the assessee also submitted that one of the co-owner of this land i.e. Shri Bheemsen whose name is also appearing in the agreement has filed a court case on 13.07.2016 against Manju Gupta and Meeta Jain who were joint owner in Khasra No.795 for prohibiting the other parties of

this agreement to execute the sale deed and to maintain the status quo. Finally, this agreement was not executed and the amount of Rs.17.50 lacs received by the assessee was returned by him on 05.06.2019. Thus, when the agreement is not executed, only because cash amount is mentioned therein it cannot be presumed that assessee received the cash in contravention of section 269SS of the Act. Alternatively, the ld. AR submitted that the agreement not speak that assessee and Manish Jain only accepted the cash. The ld. AR of the assessee also submitted that in the agreement dated 12.04.2016 it is clearly mentioned that an advance amount of Rs.51,00,000/- (35,00,000/- through RTGS and 16,00,000/- through cash) is already received. This means that the amount is received earlier to the date of agreement. The RTGS is received on 04.02.2016 and therefore in the absence of any evidence otherwise, it has to be inferred that cash was also received on 04.02.2016 which falls in AY 2016-17 and not in AY 2017-18 and even on that aspect of the matter the no penalty u/s 271D is otherwise imposable in the year under consideration.

13. Per contra, the ld. DR relied heavily upon the orders of the ld. CIT(A) wherein the detailed finding based on the contention raised is recorded by passing a speaking order in the matter. The ld. DR submitted

that the based on the document found it is very well clear that the assessee has received the money through banking channel and also in the same agreement the handing over of the cash is recorded. Merely the same is not signed cannot absolve the assessee from levy of penalty.

14. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions.

14.1 The brief facts of the case is that the assessee along with Manju Gupta, Meeta Jain, Madan Lal HUF, Manish Jain & Bhim Sen were co-owner of land situated at gram Potli, Tehsil Kotputli. The total area of the land was 118.54 ayer. The assessee has only $\frac{1}{2}$ share in Khasra No.797 of 31 ayer. Thus, the assessee's share in this Khasra is 15.5 ayer and in the total land holding is only 11.23%. These persons agreed to sale this land to Rajendra Prasad for Rs.80,00,000/- per bigha. Accordingly, agreement dt. 12.04.2016 (PB 3-5, penalty order Pg 4-6) was entered into by all the parties with Shri Rajendra Prasad Agarwal. As per the agreement Rajendra Prasad Agarwal paid Rs.16,00,000/- in cash and Rs.35,00,000/- through RTGS and the balance payment was to be made by 31.07.2016. The RTGS amount was paid to Manish Jain (17,50,000) & assessee (17,50,000) on 04.02.2016 (PB 8). The cash amount was payable to other

three landowners but since the amount was not received, the agreement was signed only by assessee and Manish Jain but not signed by the other three land co owners. While in the course of penalty proceedings assessee vide reply dt. 09.08.2021 (PB 9-10) explained that the property under consideration is jointly sold by 5 individuals including the assessee against which Mr. Rajendra Prasad (buyer) had paid Rs.17,50,000/- each to the assessee and Mr. Manish Jain (co-owner) through banking channels and since the balance Rs.16,00,000/- was not paid by him to the other 3 co-owners of the property, they have not signed the agreement. Accordingly, Mr. Bheemsen (one of the co-owners) filed a court case on 13.07.2016 (PB 11-17) stating that his share in Khasra No.795 is not determined and therefore, the agreement is illegal. Considering the dispute assessee returned the amount of Rs.17,50,000/- to Rajendra Prasad Agarwal on 05.06.2019 (PB 6) through cheque and the sale deed was not executed. The Add. CIT, however, held that at page 2 of the agreement it is clearly mentioned that assessee has received Rs.51,00,000/-(Rs.16,00,000/- in cash and Rs.35,00,000/- through banking channels) as advance and the agreement is signed by the assessee himself and his another co-seller Manish Jain. Thus, he hold that assessee has accepted cash advance of his share of Rs.8,00,000/- in violation of provisions of section 269SS of the Income Tax Act,1961. Accordingly, he

imposed a penalty of Rs.8,00,000/- u/s 271D of the Act to the assessee. The Ld. CIT(A) at Para 4.2(iv) to (viii) at Pg 5-6 held that existence of the agreement is accepted by the assessee, the sale agreement specifically mentioned that Rs.16 lacs is received in cash, the subsequent filing of court case by one of the co-owner and the return of money received through RTGS is immaterial, since 50% of RTGS amount is received by the assessee, 50% of cash amount, i.e. Rs.8 lacs is also received by the assessee, and non-signing of agreement by all the parties is immaterial and accordingly the penalty levied u/s 271D was confirmed by the Id. CIT(A).

14.2 Before us it was argued that there were 5 sellers and in fact in the agreement there is reference of all the co-owners. Therefore it cannot be assumed that assessee received Rs.8,00,000/- in cash as per the agreement. This aspect of the facts is not discussed by the lower authorities. The lower authority merely based on the Page 2 of the agreement taken a view that the assessee along with Manish Jain received cash of Rs.16,00,000/- as advance. From Pg 2 of the agreement as reproduced in the assessment order it is evident that nowhere in the agreement it is stated that Rs.16,00,000/- has been paid to assessee and Manish Jain. The bench also noted that one of the co-owner of this land i.e. Shri Bheemsen whose name is also appearing in the same agreement

that he has filed a court case on 13.07.2016 against Manju Gupta and Meeta Jain who were joint owner in Khasra No.795 for prohibiting the other parties of this agreement to execute the sale deed and to maintain the status quo. Finally, this agreement was not executed and the amount of Rs.17.50 lacs received by the assessee was returned by him on 05.06.2019. Thus, when the agreement is not executed, only because cash amount is mentioned therein it cannot be presumed that assessee received the cash in contravention of section 269SS of the Act.

14.3 Based on the facts on record it was also factually argued alternatively that the agreement does not speak that assessee and Manish Jain only accepted the cash(page 2 of agreement). The agreement is dated 12.04.2016 and it is clearly mentioned that an advance amount of Rs.51,00,000/- (35,00,000/- through RTGS and 16,00,000/- through cash) is already received. This means that the amount is received earlier to the date of agreement. The RTGS is received on 04.02.2016 and therefore in the absence of any evidence otherwise, it must be inferred that cash was also received on 04.02.2016 which falls in AY 2016-17 and not in AY 2017-18 and even on that facet of the matter no penalty u/s 271D is otherwise levied in the year under consideration and this aspect of the matter has not been dealt with by the lower authorities.

14.4 The bench noted that the provisions of section 269SS and consequential penalty u/s 271D is applicable only when the assessee receives the specified amount in cash. In the present case from the perusal of agreement it can be noted that the agreement nowhere mentions that the cash amount of Rs.8,00,000/- is received by the assessee. The lower authorities only on assumption and presumption held that assessee is 50% owner of the land and therefore he received 50% of the cash. In fact the assessee is owner of 11.23% portion of the land and this fact is not disputed by the revenue. As against this he has already received RTGS of Rs.17,50,000/- which is much more than his share in Rs.51,00,000/-. Therefore, even if it is presumed that cash is received, no contravention u/s 269SS can be alleged as assessee received his share by RTGS only. As the penalty provisions are separate then the assessment proceeding and it is settled law that penalty provisions should be interpreted strictly and not liberally. In the agreement it is nowhere mentioned that assessee and Manish Jain only received cash amount of Rs.16 lacs. Only because RTGS amount was received by assessee and Manish Jain in same portion it cannot be presumed that cash amount is also received by them in equal share. In case of Manish Jain no penalty proceedings has been initiated against him. Therefore, it is incorrect to presume that assessee received Rs.8 lacs in cash in violation of section 269SS of the Act.

14.5 In the light of the facts and circumstances discussed here in above and considering the overall aspect of the matter as discussed here in above we allow the ground no. 1 raised by the assessee direct the ld. AO to delete the levy of penalty u/s. 271D of the Act. In the result appeal of the assessee in ITA No. 580/JP/2023 is allowed.

In the result, the appeals of the assessee are allowed.

Order pronounced in the open Court on 09/02/2024.

Sd/-

Sd/-

(राठौड. कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/02/2024

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Madan Lal Gupta, Alwar.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 579 & 580/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar