आयकर अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई।

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.267/Chny/2022** निर्धारण वर्ष**/Assessment Year: 2013-14**		
Shri D. Vijay Mohan, No.232, Tea Estates, Race Course Road, Coimbatore-641 018.	**v.**	The DCIT, Central Circle-3, Coimbatore.
[**PAN: AATPM 1202 F**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./ **ITA No.268/Chny/2022** निर्धारण वर्ष**/Assessment Year: 2013-14**		
Smt. Vanitha Mohan, No.232, Tea Estates, Race Course Road, Coimbatore-641 018.	**v.**	The DCIT, Central Circle-3, Coimbatore.
[**PAN: ADJPM 0478 J**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./**ITA No.497/Chny/2022** निर्धारण वर्ष**/Assessment Year: 2013-14**		
The DCIT, Central Circle-3, Coimbatore.	**v.**	Shri D. Vijay Mohan, No.232, Tea Estates, Race Course Road, Coimbatore-641 018.
		[**PAN: AATPM 1202 F**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

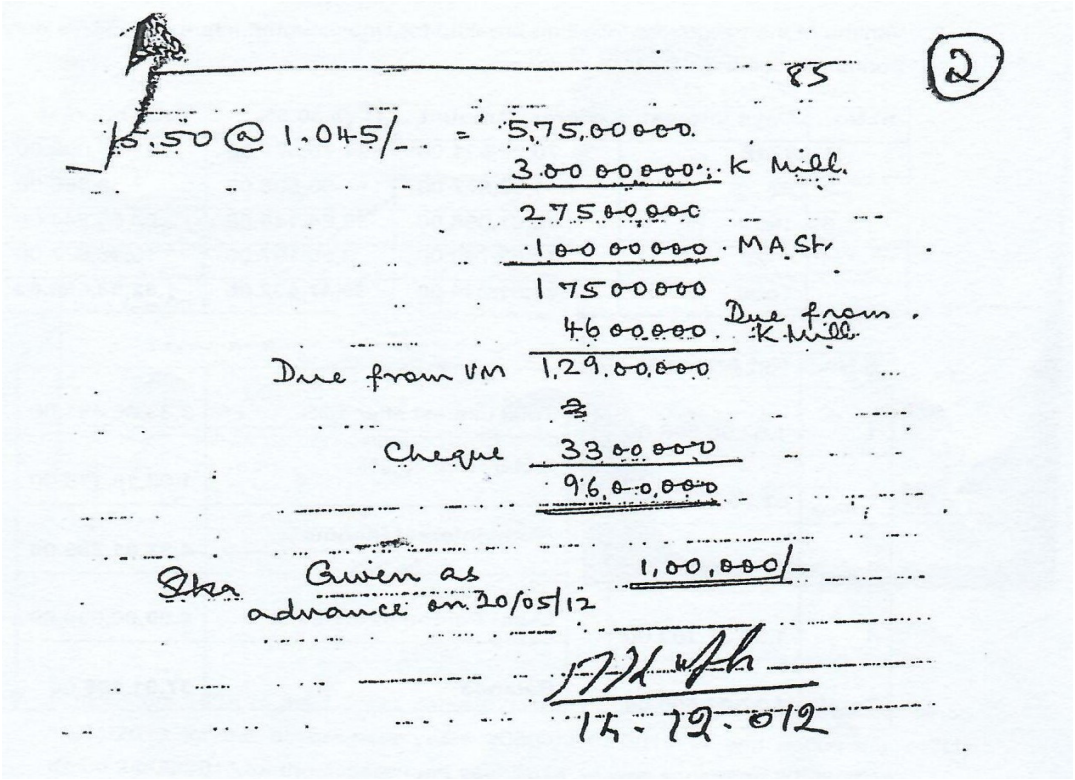
आयकर अपील सं./**ITA No.498/Chny/2022** निर्धारण वर्ष/**Assessment Year: 2013-14**		
The DCIT, Central Circle-3, Coimbatore.	**v.**	Smt. Vanitha Mohan, No.232, Tea Estates, Race Course Road, Coimbatore-641 018.
		[**PAN: ADJPM 0478 J**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Shri T. Banusekar, Advocate & Shri Suraj Nahar, CA
Department by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	03.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	03.07.2024

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These cross appeals preferred by the assessees as well as the Revenue arises against the orders of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter in short "the Ld.CIT(A)”), Chennai, for the Assessment Year (hereinafter in short "AY”) 2013-14. Since, issues involved in all the appeals are similar/identical, they were heard together. Accordingly, for the sake of brevity, we dispose all the appeals by this consolidated order.

2. Briefly stated the facts of the case are that, a search action u/s 132 of the Income-tax Act, 1961 [in short 'the Act'] was conducted upon Smt. Vanitha Mohan [hereinafter also referred to as 'the assessee'] and her spouse, Shri D Vijay Mohan on 09.05.2013. In the course of search, the assessee was confronted with a loose sheet marked as ANN/MKY/SS/S/P-85, which was found and seized in the course of an earlier search conducted upon Shri M.K.Yousuf, an unrelated party, on 07.02.2013. For the sake of convenience, the relevant extract of this loose document, which was confronted to Smt & Shri Mohan is extracted below:-


85 (2)
5.50 @ 1.045/- = 5,75,00000.
3,00,00,000/- K Mill.
2,75,00,000
1,00,00,000 MA St.
1,75,00,000
46,00,000 Due from K Mill
Due from VM 1,29,00,000
Cheque 33,00,000
96,00,000
Given as advance on 20/05/12 1,00,000/-
14.12.012

3. It is noted that the assessee had admitted that the notings on this loose sheet was in her handwriting and confirmed that she had signed the same as well. In her statement recorded u/s 132(4) of the Act, she had explained that, these notings related to the negotiations for the purchase of property of 5.50 acres of land for a consideration of Rs.5.75 crores, whose break-up in light of the above loose sheet was explained as under:-

Amount (Rs.)	**Particulars**
3,00,00,000	KM Mill
1,00,00,000	MA Steels
46,00,000	Due from KM Mill
33,00,000	Cheque as per Sale Deed
96,00,000	Balance due to be payable to Yousuf
1,00,000	Advance as on 20.05.2012
5,75,00,000	**Total**

4. According to the assessee, she and her husband had initially advanced loan to Shri Yousuf who was unable to repay the same and thereafter they had acquired his immovable property at Madukkarai. It was pointed out that the first three entries in the name of KM Mill and MA Steel represented entities owned by Mr. Yousuf. The assessee explained that these figures aggregating to Rs.446 lacs were adjusted from the purchase consideration of Rs.575 lacs. It was further stated that, sum of Rs.1 lac was paid in cash and Rs.33 lacs was paid in cheque. Accordingly the balance sum of Rs.96 lacs remained payable. The assessee is noted to

have admitted before the Investigating officer that, out of the above mentioned consideration of Rs.575 lacs, only Rs.33 lacs was paid in cheque and thus agreed to pay tax on the balance sum of Rs.542 lacs [575 lacs – 33 lacs] by way of their unaccounted investment in the property.

5. In the course of search, the assessee was confronted with another loose sheet in the document ID marked ANN/MKY/SS/S/P-84, which was also found and seized from the premises of Shri M K Yousuf on 07.02.2013. It is noted that this document was in their local language, whose English translation, as taken note of by the lower authorities as well, is as follows:-

Mr.MK Yousuf

Loan obtained	
Mrs. Vanitha Mohan	1,00,00,000
Mr. Vijay Mohan	1,70,00,000
Shrimay Enterprises	1,00,00,000
Total	3,70,00,000

S. No.	**Loan Repayment done**		**Interest**
1	Shrimay Enterprises	1,00,00,000 (15,00,000 (24/1/2012))	70,24,521
2	Mr. Vijay Mohan	1,00,00,000	42,73,973
3	Mrs. Vanitha Mohan	25,00,000 (27/1/2012)	11,52,740
	Total	2,25,00,000	1,24,51,234
	Balance amount to be paid	1,45,00,000	
	IT @30.9%: 3847432/-		

NET AMOUNT:

S.No.	Amount
1	1,62,98,666
2	62,75,131
3	80,90,696
	3,06,64,493
4	1,30,37,103
	4,37,01,596

Total Interest	3,33,85,481
Total IT @ 30.9%	1,03,16,115
	4,37,01,596
02/02/2012 paid	4,00,00,000
Balance	37,01,596

S. No.	Days interest	Interest Amount	IT @ 30.9%
1	1718	70,24,521	21,70,577
2	89	1,82,877	-
3	1991	40,91,096	13,20,658
4	1122	11,52,740	3,56,197
		1,24,51,234	38,47,432
			Total: 1,62,98,666

6. The assessee is noted to have also admitted in her statement recorded u/s 132(4) of the Act that, the notings in this loose sheet pertained to her and her spouse and her entity, M/s Shrimayi Enterprises. It was further explained that, the notings contained the details of the loan to the tune of Rs.3.70 crores which was earlier advanced to Shri M K Yousuf on which the assessee had claimed interest along with income-tax component thereon and the total of principal with interest worked due from Shri M K Yousuf worked out to Rs.4,37,01,596/-. The notings showed that sum of Rs.4,00,00,000/- was paid on 02.12.2012 which, according to assessee, was not actually received by her but she offered to pay tax on Rs. 4 crores in the preceding AY 2012-13 i.e. the year in which the loan was stated to have been advanced.

7. Pursuant to the above search, notices u/s 153A of the Act are noted to have been issued upon the assessee and her husband. It is observed that, the assessee and her spouse had inter alia offered aggregate sum of Rs.4,47,00,000/- by way of their undisclosed income in the returns of

income filed for AYs 2012-13 & 2013-14 on 27.11.2013, details of which are as under:-

Particulars	**Vanitha Mohan**	**Vijay Mohan**	**Total**
FY 2011-12	1,41,08,012	2,58,91,988	4,00,00,000
FY 2012-13	47,00,000	-	47,00,000
Total	**1,88,08,012**	**2,58,91,988**	**4,47,00,000**

8. According to the appellant, the above sum disclosed by way of her undisclosed income was the source out of which she had acquired the earlier discussed property being land at Madukkarai. It was explained that, out of the Rs.5.75 crores agreed for 5.5 acres of land, sum of Rs.33 lacs was paid by cheque, the loan along with interest of Rs.4.47 crores which was due from Mr. M K Yousuf was adjusted/paid against the acquisition of property. According to assessee, the payment made/adjusted was Rs.4.81 crores only and that balance of Rs.96 lacs was never actually paid and thus it was contended that no further sum was required to be offered to tax in this regard. The assessee is accordingly noted to have retracted the earlier offer to pay tax on the sum of Rs.5.42 crores on 18.12.2013. To put it briefly, the explanation put forth by the assessee regarding the documents ID marked ANN/MKY/SS/S/P-85 can be summarized as under:-

Particulars	Amount	Explanation regd. source of Funds
Purchase of land at Maddukarai		
Amount paid by Cheque	33,00,000	Accounted in regular accounts.
Amount noted to have been paid in cash	4,47,00,000	Inter alia paid/Adjusted out of the loan & interest receivable from M K Yousuf. *The assessee has separately offered notings relating to loan & interest and other additional income totaling to Rs.4,47,00,000/- to tax by way of undisclosed income in AYs 2012-13 & 2013-14 by way of source towards this investment.*
Amount noted as due / payable	96,00,000	This sum has been claimed to have been never actually paid and hence not offered to tax.
TOTAL	5,75,00,000	

9. It is noted that the AO was not satisfied with the above explanation offered by the assessee. The AO was of the view that, the assessee and her husband did not offer the admitted /surrendered income to tax and had retracted their promise thus show caused the assessee to explain as to why the admitted income of Rs.5.42 crores [Rs.5.75 crores – Rs.0.33 crores] should not be brought to tax. The AO was of the view that, the loose sheet no. 85 wherein the assessee had hand written the manner in which the payment for the property at Maddukarai was independent and separate of the notings regarding the loan & interest receivable / received

by the assessee from Shri M K Yousuf. According to AO, the notings relating to loan & interest inter alia contained a line item which stated that Rs.4 crores had been paid on 02.02.2012 by Shri Yousuf to the assessee and thus the AO was of the view that this amount could not be said to be available for being telescoped/set-off against the payment made towards unaccounted investment in property. The AO further observed that the land deal was agreed upon only on 20.05.2012 i.e. three months after receipt of Rs. 4 crores on 02.02.2012 and that the cryptic descriptions in the names of 'K Mill', 'MA St', 'Due from K Mill' cannot be said to reflect the payments made out of the recovery of loan of Rs.4 crores on 02.02.2012. The relevant findings of the AO, as taken note of by us, is set out below:-

> "B-15 The assessee's intention to set off the interest receipts against the unaccounted investment made in the Madukkarai property is evident from the fact that in the sworn statement recorded from her, she stated that, as against the interest amount receivable at Rs. 4.37 crores from Shri M.K. Yousuf, she settled the interest to be received at Rs. 4 crores in answer to question no. 17 of the sworn statement dated 15/03/2016. However, as per the working of interest noted in the loose sheet no. 84 seized from the Residence of Shri M.K. Yousuf, the borrower of loans, which was shown to the assessee during search in her residence (Copy presented below), it is clear without any ambiguity or confusion that out of the total interest payable of Rs. 4,37,01,596/- an amount of Rs. 4,00,00,000/- was mentioned or noted in Tamil as 02/02/2012 "koduthadu' meaning 'paid' as on 02/02/2012 leaving a balance of only Rs. 37,01,596/-. The above noting abundantly clarifies that the interest payable by Shri M.K. Yousuf on the loan account of Smt Vanitha Mohan and family was settled to the extent of Rs. 4 crores as on 02/02/2012.
>
> B-16. Further in the notings of Smt. Vanitha Mohan made in the seized loose sheet no. 85 (copy presented below), in respect of her acquisition of property at Madukkarai though she made a cryptic description of certain amounts adjusted as 'K Mill', 'MA St. and 'Due from K Mill', no lead or hint is available to show that

interest receivable from Shri M.K. Yousuf is being adjusted. Further, it is to be noted that the settlement of interest of Rs. 4 crores was made almost 3 months before the said land deal was initiated by way of a token advance of Rs. 1 lakh on 20/05/2012. Thus, the seized loose sheets 84 & 85 reflecting the notings with respect to the loan amount and property acquisition are the solid and tangible evidence gathered during the search which show in clear terms that no interest payable was available from Shri M.K. Yousuf except for the meager balance of Rs. 37,01,596/- for adjustment, if any, towards the property acquired by the assessee during May 2012. The retraction statement of the assessee and clarification submitted by her during the course of hearing are only meant to serve her personal interest of escaping tax on the undisclosed investments admitted during the search and cannot be solely relied upon. The statements of the assessee made on different occasion need to be read in conjunction with the seized material. As the seized material is clear on the transactions relating to interest receivable and property acquired and no nexus whatsoever is emanating from it in so far as the alleged amount of adjustment between the two transactions, I relay on the seized material and complete the assessment as under.

B-17 As per the interest working seized from the premises of Shri M.K. Yousuf in page no. 84 of annexure ANN/MKY/SS/LS/S/SI No.1 shown below, the interest due to Smt Vanitha Mohan, her husband, Shri Vijay Mohan and the concern Shrimayi Enterprises is worked out at 15% and further interest under the head "Income tax 30.9% "has been worked out additionally at Rs. 1,03,16,115/-. This shows that the assessee has not only received interest @ 15%, but also the IT component calculated at 30.9% from Shri M.K. Yousuf aggregating to Rs. 4,37,00,000/-.

B-18 From the above facts and circumstances, it can only be considered that the claim now being made by the assessee is only an afterthought to avoid the disclosure of unaccounted investment in the property purchased at Madukkarai. As the assessee is an equal partner in the firm M/s Libra Industries in whose name the property described above has been purchased and since she has also admitted to have made the investment in the said property out of her unaccounted income, an amount of Rs. 2,71,00,000/- (50% of the unaccounted investment of Rs. 5,42,00,000/-) is added to the returned income of the assessee."

10. With the above observations, the AO is noted to have concluded that the sum of Rs.5.42 crores paid for acquisition of property was over and above the loan & interest income of Rs.4.47 crores offered to tax by the assessee and her husband in AYs 2012-13 & 2013-14. The AO held that the explanation given by the assessee to set-off the undisclosed

income of Rs.4.47 crores offered in return of income against the unaccounted investment in property was an after-thought and thus not tenable. The AO is accordingly noted to have added Rs.2,71,00,000/- [5,42,00,000 / 2] each separately in the hands of the assessee and her husband. Being aggrieved by this action of the AO, both the assessee and her husband carried the matter in appeal before the Ld. CIT(A).

11. On appeal, the Ld. CIT(A) accepted the contention of the appellant claiming telescoping/set-off of the undisclosed income to the extent of Rs.4.00 crores, which was found to be noted to have been received on 02.02.2012 against the unaccounted investment of Rs.5.42 crores. According to Ld. CIT(A), this amount was available with the appellant and her husband to pay for the unaccounted investment in property acquired on 20.05.2012. The Ld. CIT(A) is noted to have accordingly deleted addition to the extent of Rs.4 crores made by the AO in the hands of the assessee and her husband. The Ld. CIT(A) confirmed the remaining balance of Rs.1.42 crores [Rs.5.42 crores - 4.00 crores] in the hands of the assessee and her husband. The relevant findings of Ld. CIT(A), as taken note of by us, is as under:-

> "6. The appeal is against the addition of Rs.2,71,00,000 made as unexplained investment in Madukkarai property in the hands of the appellant. (total unexplained investment arrived at by AO being Rs.5.42 crores and 50% thereof attributed to each of the appellant and her spouse).

6.1 The AO found that during the course of search in the case of one Shri M.K.Yousuf on 07.02.2013, loose sheet was seized and it was marked as Doc. ANN/MKY/SS/S/p.85. It related to transfer of Kunamuthur Mill, Coimbatore in which the sale consideration of Rs.5,75,00,000 was mentioned. Followed by it, there was a search in assessee's residential premises also on 9.5.2013. When the assessee was questioned about the above transaction, she has deposed as under:

> "I have gone through the above loose sheet No.85 vide ANN/MKY/SS/S/p-85 stated to be seized on 14.12.2012 from the residence of Mr. M.K. Yousuf The copy of the said loose sheet marked as Annexure II (signed by me on the copy of the said sheet appended to this statement for having gone through same). In the said loose sheet, I admit that the entries are made in my own hand writing during the month of May, 2012 in my residence 232, Tea Estate, Race Cource, Coimbatore. These entries are made reflecting transaction of a real estate property. i.e. 5.31 acres of land (in the loose sheet it was mentioned as 5.5. acres) for a consideration of Rs.5,75,00,000/-. Against the said consideration, Rs. 3 crores which was given earlier to Mr. M.K. Yousuf was adjusted. Out of the balance amount of Rs. 2,75,00,000/-, Rs. 1 crore was adjusted on account of M.A. Steels in which Mr.M.K. Yousuf is one of the Directors and the amount of Rs. 46 lakhs which was to be received from Mr. Yousuf from sale of Kuniamuthur Mill was also adjusted and the balance due from me Rs. 1.29 crores. From this amount of Rs. 1.29 crores, Rs. 33 lakhs being the registered value of the land was paid by cheque from Libra Industries, a partnership firm, was reduced and the balance to be paid Mr. M.K. Yousuf was Rs. 96 lakhs. This has not been paid by me since he owes me interest on the loans extended to him by me earlier. The value of the property is Rs.5.75 crores was registered for Rs. 33 lakhs. I agree to pay tax on the difference of Rs. 5.42 crores as mu unaccounted investment in the purchase of the Madukkaral property

Another document seized showed the interest income of the assessee on the loans advanced to Mr.M.K.Yousuf by the assessees Smt. Vanitha Mohan and her husband Shri. D.Vijay Mohan, when questioned, Smt. Vanitha Mohan gave the following reply:

> "I have gone through the loose sheet 84 and state that it pertains to the loan of Rs. 1 crore, Rs. 1.70 crores and Rs. 1 crore advanced by Mrs. Vanitha Mohan, Mr. Vijay Mohan and Shrimayi Enterprises to Mr. M.K. Yousuf. This loose sheet also contains the interest worked on the above loan. The total interest component on the above loan is worked out at Rs. 1,24,51,234/-. Income tax portion on the interest is worked out at Rs. 38,47,432/. The total interest and income tax on the above loan is worked out at Rs. 1,62,98,666/- The reverse of this loose sheet contains total interest and income tax is worked out at Rs. 4,37,01,596/- The statement says I have received Rs. 4,00,00,000/-. I would like to state I have not received Rs. 4 crores. I am not in a position to prove that I have not received Rs. 4 crores. Therefore, I am willing to pay tax on Rs. 4 crores for Fin. Year2011-12 Fin. year 2011-12."

The AO found that the property at Madukkarai was purchased by the assessee - Smt. Vanitha Mohan and her spouse Shri.D. Vijay Mohan (in the name of M/s Libra Industries, in which they are partners holding 50% share each) for Rs.5,75,00,000 from Mr.M.K.Yousuf, while the property was registered for a consideration of Rs.33 lakhs only (paid by cheque from Libra Industries) and the balance sum of Rs.5.42 Cr. was paid by the assessee Smt. Vanitha Mohan and her spouse, Shri.D. Vijay Mohan. When the assessee was called upon to explain the source for the unexplained investment, it was submitted that interest of Rs.4 Cr. due to them from Mr.M.K.Yousuf was adjusted against the sale consideration which was offered for tax by them in their returns of income for AY 2012-13 and that Rs.33 lakhs was paid by cheque. A sum of Rs.47 lakhs was offered as additional income in the hands of the assessee Smt. Vanitha Mohan in her return of income filed for the AY 2013-14 and Rs.96 lakhs was claimed by the assessees as not paid. In other words, the assessee had explained the investment as under:

Total Investment in Madukkarai property	Rs.	5,75,00,000
Less: Amount paid by cheque as per sale deed	Rs.	33,00,000
	Rs.	5,42,00,000
Less: Interest due to the assessee and her spouse adjusted	Rs.	4,00,00,000
	Rs.	1,42,00,000
Less: Addl. Income offered	Rs.	46,00,000
Not paid	Rs.	96,00,000

The assessee further submitted that the statement given earlier during the course of search was in the state of shock and could not explain with clarity of mind, the sequence of payments by way of adjustments made and as to the quantum of amount liable to tax, etc.

6.2. The AO did not accept the submissions of the assessee. According to him, though the documents were not seized from the premises of Mr.M.K. Yousuf, the notings in the loose sheet were made in the assessee's (Smt. Vanitha Mohan) own handwriting and that the adjustment of interest against the sale consideration is not acceptable as the loan account was settled on 02.02.2012 itself when the sale happened subsequently. AO stated that there was no nexus between the interest and the investment in the property. He further found that the sum of Rs.47,00,000 offered represents interest due and not towards unexplained investment in the property. The AO rejected the submissions of the assessee as an afterthought to avoid the disclosure of unaccounted investment in the property purchased in Madukkarai. He therefore held that the total unexplained investment by the assessee Smt. Vanitha Mohan and her spouse Shri.D. Vijay Mohan was Rs.5,42,00,000 and 50% thereof attributable to each of the assessee and her spouse of Rs.2,71,00,000 was added as unexplained investment in the property individually in each hands.

6.3. In the detailed written submissions given by the assessee and her spouse, it was submitted that interest income of Rs.4 cr. was not received by the assessee from Mr. M.K. Yousuf and was only adjusted against the sale consideration due from them. The interest of Rs.4 cr. was offered by the assessee and her spouse for tax in the AY 2012-13, even though the assessee and her spouse had not received the interest and the same was accepted by the AO in the assessment. It was therefore submitted that the interest amount of Rs.4 cr. should be deducted from the investment of Rs.5.42 cr. It was further submitted that Rs.96 lakhs was not paid by the assessee and there was no material with the AO to prove that the amount was paid.

6.4. I have considered the submissions. There is no dispute that the consideration paid for purchase of the property was Rs.5,75,00,000 and a sum of Rs.33,00,000 was only paid by cheque at the time of registration being the sale consideration as per the sale deed. There is a shortfall of Rs.5.42 Cr. It is also not in dispute that a sum of Rs.4 Cr. was offered as interest income in the hands of the assessee- Smt. Vanitha Mohan and her spouse Shri.D.Vijay Mohan in the AY 2012-13. The dispute is whether the said sum of Rs.4 cr was actually received by the assessee and her spouse or adjusted against the sale consideration as claimed by them. The AO stated that as per seized slip (loose sheet 84) Rs.4 Cr. was paid on 02.02.2012 itself and therefore the same could not have been adjusted against the sale consideration. In the statement on the said loose sheet, reproduced above, Smt. Vanitha Mohan stated this amount was not received from Mr.M.K.Yousuf. Except the noting in the loose sheet, there are no other independent evidence to show that Rs.4 Cr was in fact paid by Mr.M.K.Yousuf. On the contrary, the seized document viz. page 85 of ANN/MKY/SS/LS/SI.No.1 clearly indicates adjustment of Rs.3 cr and Rs.1 Cr. against the sale consideration and the balance is shown only as Rs.1,75,00,000/-. This document was found at the time of search itself and therefore it cannot be doubted. There was no evidence to show that Shri.M.K.Yousuf had actually paid the amount of Rs.4 Cr. on 02.02.2012 such as by way of bank statements of either Mr.M.K.Yousuf or of the assessee or her spouse. Taking the above evidences in totality, it can be reasonably concluded that set off of Rs.4 Cr. being interest offered as income on due basis in the AY 2012-13 can be given against the sale consideration as adjusted. I therefore hold that a sum of Rs.4 Cr. should be excluded as explained from Rs. 5.42 crore to arrive at the balance Rs. 1.42 crore as unexplained."

12. Being aggrieved by the above order of the Ld. CIT(A), both the assessee and her husband are in appeal before us. The assessee and her husband are agitating the addition of Rs.1.42 crores confirmed by Ld. CIT(A) and the Revenue has preferred appeals in both their matters challenging the Ld.CIT(A)'s action of deleting Rs.2 crores each, in the hands of the assessee and her husband, aggregating to Rs.4 crores.

13. Assailing the action of the Ld.CIT(A) deleting addition to the extent of Rs.4 crores, the Ld. CIT-DR contended that, the action of the assessee by not offering the sum of Rs.5.42 crores admitted by way of unaccounted investment in Madukkarai property amounted to retraction of her admission on oath, which was an after-thought and therefore not tenable. The Ld. CIT-DR showed us that, the search was conducted on 09.05.2013 and the statement of Smt. Vanitha Mohan was recorded on 25.06.2013 and thereafter, she retracted the same after six months on 18.12.2013. Relying on the decision of the Hon'ble Rajasthan High Court in the case of **PCIT v. Roshanlal Sancheti reported in [2023] 150 taxmann.com 227 (Rajasthan)**; and several other decisions of this Tribunal, the Ld. CIT-DR thus contended that such retraction was not admissible. According to him, the AO had given elaborate reasoning as to why the additional income offered by way of loan & interest income from Shri Yousuf could not be adjusted/set-off against the admitted unaccounted investment of Rs.5.42 crores and thus the Ld. CIT-DR vehemently supported the order of the AO and prayed that the order of Ld. CIT(A) deleting the addition of Rs.4.00 crores be reversed.

14. Per contra, the Ld. AR appearing for the assessee first challenged the legal validity of the proceedings conducted u/s 153A of the Act. According to the Ld. AR, the AY 2013-14 in question was an unabated

assessment. Referring to the decision of the Hon'ble Supreme Court in the case of **Pr. CIT v. Abhisar Buildwell (P.) Ltd. (149 taxmann.com 399)**, the Ld. AR submitted that, this unabated assessment could not have been reopened unless any incriminating material was found in the course of search conducted upon the assessee. The Ld. AR pointed out that, the incriminating material in question i.e., ANN/MKY/SS/S/P-84 & 85 was found from the premises of Shri M K Yousuf and not the assessee. The Ld. AR submitted that, the statement of the assessee was recorded on the basis of the aforesaid material which was never found in the course of search conducted upon the assessee on 09.05.2013. The Ld. AR thus contended that ,when the purported incriminating material was found in the premises of other person and that too on a much earlier date than the date on which search conducted upon the assessee viz., the searched person, the AO could not have legally reopened the unabated assessment for AY 2013-14. For this, the Ld. AR placed reliance on the decision of Hon'ble Delhi High Court in the case of **Pr.CIT Vs Subhash Khattar 2017 (7) TMI 1091**.

15. On merits, the Ld. AR submitted that the undisclosed income of Rs.4.47 crores *[Rs.4.00 crores in FY 2011-12 and Rs.47 lacs in FY 2012-13]* offered by the assessee and her spouse in the returns of income for AYs 2012-13 & 2013-14 represented secret profits / intangible additions

and thus was available to be telescoped against any unaccounted investment unearthed in course of search. The Ld. AR thus claimed that, when the AO had accepted and assessed undisclosed income of Rs.4.47 crores to tax and it was not a case that any other unexplained expenditure or asset or investment was found in the course of search, then the only logical inference was that such undisclosed income was utilized for acquiring the unaccounted investment in property. The Ld. AR thus claimed that the assessee had rightly set-off the undisclosed income of Rs.4.47 crores against the purported notings of unaccounted investment in property. He accordingly pleaded that the Ld. CIT(A) had erred in restricting the benefit of telescoping to only Rs. 4 crores not allowing set-off for the balance additional income of Rs.47 lacs offered to tax. He thus prayed that the AO be directed to allow the same and accordingly delete the addition to that extent.

16. With regard to the addition on account of sum of Rs.96 lacs mentioned as due from assessee in document ID marked ANN/MKY/SS/S/P-85, the Ld. AR submitted that, the noting itself showed that the amount was due / payable and that there was no material found which suggested that the impugned sum was actually paid by the assessee. According to the assessee therefore, unless there was any material which showed that this amount was actually transacted, no

addition could be made on this count. The Ld. AR submitted that, the statement of the assessee recorded u/s 132(4) of the Act cannot be the sole basis for making the impugned addition unless the same is backed by material or evidence. The Ld. AR further contended that, the original statement had been retracted and therefore such retracted admission could not be used against the assessee. To support the assessee's retraction that, the sum was not actually paid, he pointed out that, the notings in question evidently suggested that, the negotiations were held for land having area of 5.50 acres whereas the admitted fact remained that the land which was finally acquired was only 5.31 acres. This according to him lent credence to the assessee's argument that the final consideration could not possibly have been the amount as found mentioned on this loose noting.

17. The Ld. AR further submitted that, inspite of an intrusive action of search conducted both upon the assessee and Shri Yousuf, the Investigating authorities did not find any material to show that the sum of Rs.96 lacs which was stated to be due was actually transacted and therefore, according to him, the presumption drawn by the Revenue that, it ought to have been paid was a mere surmise. The Ld. AR also emphasized on the fact that, despite the search, there was no other incriminating material found which would suggest any unrecorded sales,

bogus expenses etc. to advocate the proposition that the assessee had earned unrecorded income to make the purported unaccounted investment in question. He accordingly urged that the addition of Rs.96 lacs having been made on conjectures ought to be deleted.

18. Heard both the parties. Before adverting to the facts of the case, we first take note of the principle of telescoping which has since been judicially approved by the Hon'ble Supreme Court in the case of **Anantharam Veerasinghaiah & Co. Vs CIT (123 ITR 457)**. In the decided case, it was held that where the assessee offers any income on ad hoc basis, then such income is commonly described as intangible addition; but it is very much a part of assessee's real income as disclosed in his account books and has the same concrete existence. The Hon'ble Court held that the secret profits or undisclosed income of an assessee earned in the same or an earlier assessment year may constitute a secret fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. The intangible additions were held to be available to the assessee as the regular book profits could be. The Apex Court thus held when the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or by

reference to concealed income earned in that very year then no addition is warranted on account of such cash deficits or cash credits.

19. Gainful reference in this regard may be made to the decision of the jurisdictional Hon'ble Madras High Court in the case of **S K. Muralidhar Vs CIT (51 ITR 757)**. In the decided case the AO had initially made an addition by way of inflation of purchases in the hands of the assessee across AYs 1947-48 to 1950-51. Thereafter, the AO came in possession of information that the assessee had lent certain amounts in mortgage in the name of his brother and also made investment in name of his wife and daughter in an entity 'S', for which separate additions were made in AYs 1949-50 & 1950-51. On appeal, the AAC is noted to have held that there was no justification in making the subsequent addition as it stood justified out of the addition made on account inflated purchases in AYs 1947-48 to 1950-51. On further appeal, the Tribunal upheld the action of AO. On appeal by the assessee, the Hon'ble High Court is noted to have elaborately discussed the theory of telescoping of income against investment / expenditure and allowed the assessee's claim by holding as under:-

> "The question in issue is quite simple and yet the Tribunal misdirected itself and went wrong. It is a hard fact that for the two years 1947-48 and 1948-49 a total addition of Rs. 52,230 was made by the department in computing the assessable income. This was, therefore, treated as the real income of the assessee for the years in question. There was nothing notional or fictional about it. However

convenient it might be to describe the addition as "intangible" as has been done by the department and the Tribunal, the fact is that it was found to have accrued to the assessee and was not merely supposed to have been earned by him. Once the addition is made the department is fixed to the position that the assessee earned the amount in the relevant year. There can be no relaxation from that position and we have no doubt that the department cannot deviate from or wriggle out of it without departing from ordinary standards of justice and fairplay. If in such a case the assessee points to that addition as the source from which he got a particular amount which he is called upon to explain, the department is bound to accept it as exceedingly likely and probable, consistent with its previous act in treating the addition as income, unless it be that it is possible to say that the source was not available to the assessee. The onus of proving this would be on the department. Otherwise, it would amount to the department saying, "heads I win, tails you lose".

The decision of the Andhra High Court in Lagadapati Subba Ramaiah v. Commissioner of Income-tax [1956] 30 ITR 593is a case in point. In that case the assessee was a shareholder of a private limited company styled the Nellore Bus Transport Co. Ltd. According to the books of the company its profits for its entire period of existence, that is to say, for the years of account ending with 31st December, 1946, 31st December, 1947, 31st December, 1948, nth May, 1949, amounted in all to Rs. 34,352. The revenue declined to accept the books of the company and estimated its income at a higher sum on which tax to the tune of Rs. 62,000 was assessed and paid. The company purported to issue the dividend warrants to its shareholders aggregating to a sum of Rs. 1,16,280. The assessee stated that he got the dividends of Rs. 6,800 and Rs. 4,800 for the account years ending with 31st December, 1946, and 31st December, 1947, respectively, the dividends having been declared by the company on 2nd March, 1949. The assessee, however, claimed a refund on the basis of only one dividend warrant dated June 9, 1949, for Rs. 6,800. The department as well as the Tribunal rejected the claim of the assessee. The view taken was that after the payment of income-tax of Rs. 62,000 levied on the company there were no funds available with it out of which, dividends could have been declared and paid. The question before the High Court was whether the assessee was not entitled to a refund of tax in respect of the dividends in question. In dealing with the matter, Viswanatha Sastri J. observes thus at page 599:

> "In the present case, it is somewhat difficult to say that there were no profits of the company out of which a dividend could have been paid. When the revenue authority levied a tax of Rs. 62,000 on the company, it proceeded on the basis that the books of the company which showed a total income of only Rs. 34,532 for all the four years of its existence were unreliable and that the bulk of the company's profits had been kept outside its books. Now those secret profits less the income-tax paid, therefore, would be available with the company for distribution as dividends. Once the secret profits had been assessed to tax, it would have been open to the company to bring those profits into the books and distribute them, or what remained after payment of tax, as dividends.... Having assessed the company on a large sum as its undisclosed income, it cannot, at the same breath, say that these profits did not in fact exist because they did not appear from the company's books and could not, therefore, have been available for the payment of dividends.

> Among common men, such an attitude would be regarded as blowing hot and cold or playing fast and loose."

The order of the Tribunal shows that it has missed the real point for decision. The only question that the Tribunal had to decide was whether the assessee could have derived the amount of Rs. 52,230 from the prior years which according to the department the assessee did earn. The Tribunal does not say, nor would the materials on record enable it to say, that the sum was not available to the assessee either to advance the mortgage loan in the name of Murugesa Mudaliar or for the other advances. If there had been any evidence to show that the assessee devoted that amount for other purposes it may well be that the mortgage loan and other advances were made from an unexplained or undisclosed source. But that is not so in the present case. The Tribunal's conception of "intangible additions" is somewhat queer and we confess our inability to appreciate it. The Tribunal observes in its order : "Intangible additions, as the name itself suggests, are purely matters of estimate which may err on the wrong side for the department. For want of proper evidence, additions on account of deficiency of gross profit or other defects may be made but this would not mean putting in possession of the assessee their equivalent in hard cash available for expenditure or investment. It may be said that having suffered a harsh assessment in a particular year, the assessee's case should be considered sympathetically in the subsequent year when an investment of the nature we are discussing is brought to light."

Additions are no doubt made very often on estimate basis. But it can never be said, or at any rate the department cannot contend, that the amount of the addition is not the real income but something which the assessee may not have earned. It is wholly illogical for the department to contend that the addition was only for purposes of taxation and that it should never be taken as true income of the assessee. We must point out that the Tribunal is wrong in thinking that an assessee suffers a "harsh assessment" when his income is computed by making additions. Such an assessment is perfectly within the four corners of the Act and there is no reason to suppose that it is in any way inequitable or unjust. We are also unable to understand the real scope of a sympathetic treatment of the assessee in the matter of assessment to tax. The assessee is either liable to tax or not, and if he is really liable to tax he cannot get rid of it by pleading equity or by invoking the sympathy of the assessing authority. The faulty reasoning of the Tribunal was certainly not conducive to a correct conclusion in the matter.

In our opinion, there are no materials for the addition of Rs. 40,000 and Rs. 12,230 in respect of the two assessment years 1949-50 and 1950-51 respectively, and that the order of the Tribunal cannot be sustained."

(Emphasis supplied)

20. The above view is noted to have been reiterated by Hon'ble jurisdictional Madras High Court in the case of **CIT v. K. S. M**

Guruswamy Nadar and Sons, [1984] 149 ITR 127. In the decided case also, it was held that when there are two separate additions viz., one on account of suppression of profit and another on account of cash credit, then it is open to the assessee to explain that, the suppressed profits had been brought in as cash credits and has to be telescoped into the other.

21. Gainful reference may also be made to the decision of the Hon'ble Bombay High Court in the case of **CIT vs J.J. Gandhi (39 CTR 127)**. In this judgment also, the Hon'ble High Court had approved the theory of telescoping and held that it could be applied in cases where additions in relation of unexplained money/investment are sought to be made in the hands of the assessee. The Hon'ble Court explained that if an addition towards undisclosed income was made and the AO also seeks to make certain addition in relation to unexplained investment then, it can be treated by the assessee that the unexplained investment is sourced out of the undisclosed income already taxed.

22. The principle which emerges from the above is that, the same income should not be taxed twice i.e. once at the time of generation and thereafter at the time of application for making investment or any undisclosed asset. Having regard to this settled legal position, we now come back to the facts of the case. It is noted by us that, in the course of

search conducted upon Shri Yousuf, a loose document ID marked ANN/MKY/SS/S/P-84 was found, which contained notings regarding the loan & interest thereon availed by him from the assessee and her spouse. The notings found on this document was admitted by the assessee and she and her spouse is noted to have offered aggregate sum of Rs.4,00,00,000/- qua this document along with further additional income of Rs.47,00,000/- to tax by way of their undisclosed income in AYs 2012-13 & 2013-14. It is also not in dispute that this amount offered in the return of income filed u/s 153A of the Act was accepted by the AO and assessed to tax. On these facts, we note that, the income of Rs.4,47,00,000/- offered to tax by assessee and her spouse represented an intangible addition or to say secret profit available with them, which applying the judicially approved principle of telescoping, was legally available for being set off against any unexplained money/investment found by the Revenue.

23. In light of the above, we now turn our attention to the loose document ID marked ANN/MKY/SS/S/P-85 which contained notings regarding payment towards acquisition of land at Madukkarai by the assessee from Shri Yousuf and examine as to whether the undisclosed income of Rs.4.47 crores offered and assessed to tax in AYs 2012-13 & 2013-14 could be set-off against the same, by applying the judicially

approved principal of telescoping. Reading of the notings suggest that, the land admeasuring 5.50 acres was negotiated for Rs.5.75 crores, against which an advance of Rs.1,00,000/- was initially paid on 20.05.2012 and thereafter cheque of Rs.33,00,000/- was paid and further sums of Rs.3,00,00,000/-, Rs.1,00,00,000/- and Rs.46,00,000/- was shown to have been adjusted, thereby resulting in balance payable of Rs.96,00,000/-. The notings considered holistically suggests that, sum of Rs.4,79,00,000/- had already been paid out of which Rs.33,00,000/- was paid in cheque and Rs.4,46,00,000/- had been paid in cash.

24. The assessee is noted to have claimed that the income of Rs.4,47,00,000/- offered to tax by them, was available to be set-off and telescoped against this unaccounted investment found noted on this loose sheet. The case of the Revenue however is that, the payment for unaccounted investment was from some other source, over and above the undisclosed income of Rs.4,47,00,000/- offered by the assessee and her spouse to tax. Having regard to the facts discussed in the foregoing, we are however unable to agree with this contention of the Revenue. The facts on record more particularly document ID mark ANN/MKY/SS/S/P-84 shows that, the assessee and her spouse had initially advanced loan to Shri M K Yousuf which carried interest. The notings on loose sheet suggests that he was required to pay interest along with taxes to the tune

of Rs.4.37 crores out of which only sum of Rs.4 crores was stated to have been paid on 02.02.2012. There is a dispute as to whether the sum was actually paid or not, as the assessee has denied the same. Irrespective of the foregoing, the fact however remains that the notings found on document ID mark ANN/MKY/SS/S/P-84 pertained to FY 2011-12 & 2012-13. The Ld. AR explained that, since Mr. Yousuf was unable to pay the interest to the assessee and her spouse, he had come with a proposal to transfer his land in their favour in satisfaction of the loan. For this reason, the assessee had acquired the land at Madukkarai and the interest income due from Mr. Yousuf was adjusted / paid against the consideration value. The Ld. AR pointed out that, even assuming without accepting that, out of loan/interest income of Rs.4.37 crores, sum of Rs.4,00,00,000/- was purportedly paid on 02.02.2012, then also, it was evident that the sum was paid prior to the agreement for purchase of property. In such a scenario as well, we find merit in the Ld. AR's explanation that, the receipt of Rs.4,00,00,000/- on 02.02.2012 found noted on loose sheet ID marked ANN/MKY/SS/S/P-84 was indeed available to be utilized / adjusted against the notings regarding acquisition of land at Madukkarai which was agreed to only on 20.05.2012.

25. As far as additional income of Rs.47 lacs offered to tax in AY 2013-14 is concerned, the assessee has clearly stated before the lower

authorities that the impugned sum has been offered to tax by way of source of investment of Rs.46,00,000/- found mentioned in document ID marked ANN/MKY/SS/S/P-85 which also relates to AY 2013-14. Having regard to the foregoing, we find that both the interest income of Rs.4 crores received/due from Mr. Yousuf offered to tax in AY 2012-13 as well as the additional income of Rs.47 lacs offered to tax in AY 2013-14, was relatable to the subsequent acquisition of land at Madukkarai from the same person, Mr. Yousuf. We note that, even the chronology of events and the surrounding circumstances supports the case of the assessee that the income of Rs.4,47,00,000/- offered to tax by them in AYs 2012-13 & 2013-14 was available for investment towards the purchase of immovable property acquired in AY 2013-14. We also find merit in the Ld. AR's contention that, the Revenue was also not able to show that this source of Rs.4.47 crores was not available to be set-off against the investment or that it was shown to have been utilized against some other investment or asset. For the reasons as discussed aforesaid and, having regard to the judicially approved principle of telescoping and following the ratio laid down in the above judgments (supra), we hold that, the additional income offered to tax in AYs 2012-13 & 2013-14 was rightly set-off against the unaccounted investment claimed to have been made by assessee, and no separate addition was required to be made to that extent in the hands of

assessee and her spouse. We accordingly allow the telescoping benefit and set-off of the amount of undisclosed income aggregating to Rs.4,47,00,000/- already assessed to tax as income of the assessee and her spouse in AYs 2012-13 & 2013-14 towards the unaccounted investment to the extent of Rs.4,46,00,000/- found mentioned in loose document ANN/MKY/SS/S/P-85 and hence addition by way of unaccounted investment to that extent stands deleted.

26. Now we come to the balance sum of Rs.96 lacs [5,42,00,000 – 4,46,00,000] which was mentioned as amount due from the assessee to Shri Yousuf towards the purchase of property, which has been added by the AO and confirmed by the Ld. CIT(A). From the facts available before us, it is not in dispute that, the notings denotes that the sum of Rs.96 lacs was due and it nowhere suggests that it had been later on paid by the assessee. It is also not the Revenue's case that, there was any other document or material or noting was found in the course of search conducted on Shri Yousuf or the assessee which would suggest that the impugned sum was ultimately paid by the assessee. Instead, we note that, the case of the Revenue that, the impugned sum was actually transacted, hinges on the admission of the assessee made in her statement recorded u/s 132(4) of the Act. The Ld. DR has claimed that the admission was an important piece of evidence in itself and that the

subsequent retraction of the assessee is of no relevance. In order to adjudicate this contention, it is first relevant to examine the extant provisions of Section 132(4) of the Act, which reads as follows:

> "(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.
>
> For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act."

27. From a bare reading of the aforesaid provision, it is noted that Section 132(4) of the Act empowers the authorized officer to examine on oath any person who is found to be in possession or control of any books of account, documents, money etc. Such a statement made by that person may thereafter be used in evidence in any proceedings under the Act. Evidence is a mode or means to prove a fact-in- issue. Statement is an oral testimony of relevant fact; and an admission of a fact-in-issue is an important piece of evidence, provided it has been voluntarily given without any inducement, promise, threat or coercion. Once a statement recorded of a person who is in possession of any valuable thing or control of books found during search then it can be used as evidence in any proceedings under the Act and the presumption would be that it has been

given by that person voluntarily. The burden to prove that the statement was incorrect based on mistake of fact or that it was not voluntarily obtained, but due to threat, coercion, promise etc., is upon the maker of statement. In this context, the Hon'ble Apex Court in the case of **Pullengole Rubber Produce Co. Ltd. v. State of Kerala (91 ITR 18)** has held that although an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It was held that, it is open to the assessee who made the admission to show that it is incorrect based on mistake of fact. An oral statement on a relevant fact is a piece of evidence, and the weight to be attached to it must depend on the factual circumstances in which it was made. It is open for the assessee to show the contents/facts stated therein to be erroneous or untrue, based on mistake of fact. Hence, the position which emerges is that a statement u/s 132(4) of the Act by itself cannot be reason enough to justify an addition, if the assessee is able to show that the facts admitted by him was purely based on wrong assumption of facts and able to adduce evidence/material to show that he was wrong on the facts he admitted. So, when an admission u/s 132(4) of the Act has been retracted on the aforesaid reasons, then the AO should cross-examine the person again to ascertain the correct facts. The AO ought to conduct proper investigation into the affairs of the assessee and gather corroborative material which

would negate such retraction and prove that the facts admitted originally is correct and thus retraction can be discarded.

28. Hence, the position which emerges is that a statement u/s 132(4) of the Act by itself cannot be reason enough to justify an addition if the assessee is able to raise a reasonable doubt that it was obtained by threat or coercion or able to prove that the facts admitted by him was purely based on wrong assumption of facts and able to adduce evidence/material to show that he was wrong on the facts he admitted. The maker of statement can later explain the circumstance which led him to make the admission and bring out the correct facts and rebut the facts stated in the admission and in that way retract from the admission made by him u/s 132(4) of the Act. The settled position of law on this is that admission legally made by a person u/s 132(4) of the Act is relevant evidence in any proceedings of the Act and if that person later explain the circumstances which led him to make such a statement which raises *'reasonable doubt'* that the admission was obtained by threat or inducement, or the admission was based on wrong assumption of facts (and able to show/prove that assertion) then it would be unsafe to rely solely on the "retracted admission" without independent corroboration. So when an admission u/s 132(4) of the Act has been retracted on the aforesaid reasons, then the AO should cross-examine the person again to ascertain

the correct facts and conduct proper investigation into the affairs of the assessee and gather corroborative material which would negate such retraction and prove that the facts admitted originally is correct facts and thus retraction can be discarded. Otherwise, an addition made solely on the basis of a statement which has been subsequently retracted, and is not backed by corroborative evidence, may not be sustainable. For this, we may gainfully refer to the **Circular No. F.NO.286/98/2013-IT (INV.II)], dtd 18-12-2014** which read as follows:

> "Instances/complaints of undue influence /coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.
>
> 2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.
>
> 3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.
>
> 4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.
>
> 5. I have been further directed to request you to closely observe /oversee the actions of the officers functioning under you in this regard.
>
> 6. This issues with approval of the Chairperson, CBDT."

29. In view of the above position of law, we now revert back to the facts on the present case. As discussed earlier, the notings found on document ID marked ANN/MKY/SS/S/P-85 does not state that the sum of Rs.96 lacs was paid by the assessee. Hence, the admission of the assessee is not per se backed by any independent evidence. Taking us through Pages 22 & 44 of paper book, the Ld. AR has rightly shown us that the area of land finally acquired is not matching with the document ID marked ANN/MKY/SS/S/P-85. The size of the land acquired was 5.34 acres as opposed to 5.50 acres mentioned in the seized document. The Ld. DR was unable to rebut this contemporaneous fact. The Ld. AR also invited our attention to Pages 10 & 15 of Paper Book which showed the subsequent variations in measurement of land and its undulated terrain. Overall therefore, we find force in Ld. AR's submission that, the contemporaneous facts does show that the assessee did not acquired land admeasuring 5.50 acres but only 5.34 acres and therefore her admission that she had paid consideration of acquiring 5.50 acres was an incorrect admission based on inconsistent fact and no person of prudence would rationally deduce that the consideration for 5.34 acres would be the same as consideration for 5.50 acres. Hence, prima facie, the retraction of the assessee cannot be out-rightly discarded.

30. Before us, the Revenue had also emphasized that Shri Yousuf had offered the impugned sum to tax as receipt from sale of land and therefore the admission of the assessee stood corroborated. This averment is however found to be faulty and not conducive to a correct conclusion in this matter. It is noted by us that, Shri Yousuf to buy peace of mind and avoid litigation had approached the Settlement Commission wherein he had offered several cash notings and scribblings found in across all his seized material in the course of search as his undisclosed income wherein several figures were matched / set-off or telescoped against each other. The admission has been noted to have been made before Settlement Commission without mentioning the name from whom the money has been received. The Revenue has not brought on record before us any specific admission by Shri Yousuf stating that he had received the impugned sum of Rs.96 lacs from the assessee. The Ld. AR has rightly pointed out that, even if Shri Yousuf had indeed given such a statement, no opportunity was given to the assessee to cross-examine Shri Yousuf and hence, such statement which was collected at the back of the assessee was not admissible. For this, we may gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. CCE (2015) 281 CTR 241**. In this case, the Hon'ble Apex Court had held that, *"failure to give the assessee the opportunity to*

cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity." The Ld. AR also pointed out to us that, if one considers the surrounding circumstances qua Shri Yousuf, it would be discernible that his offer to pay tax on cash notings found from his premises by way of capital gains was in fact self-serving and biased. The Ld. AR theorized that, by offering the cash notings by way of capital gains on sale of land, Shri Yousuf was able to avoid higher rates of tax which was otherwise applicable to undisclosed income as compared to special lower rates applicable to capital gains. Also, otherwise the cash notings would have been ordinarily presumed to be from his business activities which would have entailed VAT/CST implications as well. Also, according to Ld. AR, by claiming receipt of cash in land dealings, he had avoided penal consequences u/s 269SS of the Act. Having considered the gamut of facts before us and the surrounding circumstances, we find sufficient force in the submission of the Ld. AR that, the income offered by Shri Yousuf before Settlement Commission, could not be used to justify the addition being made in the hands of the assessee.

31. The Ld. AR also pointed out to us that, in spite of an intrusive action of search conducted both upon the assessee and Shri Yousuf, the Investigating authorities did not find any material to show that the sum of

Rs.96 lacs which was stated to be due was ultimately transacted. We thus note that, the presumption drawn by the Revenue that, the impugned sum would have been paid by the assessee, was based only on suspicion. The Ld. AR also rightly contended that, despite the search, there was no other incriminating material found which would suggest any unrecorded sales, bogus expenses etc. of the assessee, which would otherwise corroborate the Revenue's case that, the assessee had earned unrecorded income to make the purported unaccounted investment of Rs.96 lacs in question. Hence, even though, on first blush, the original statement of the assessee may have appeared relevant but for the reasons discussed in the foregoing viz., the factual inconsistency and failure of the Revenue to corroborate the same with some independent evidence, it is not prudent to solely rely on such unsafe admission to draw adverse inference against the assessee.

32. As far as the effect of the retraction is concerned, it is noted that, although the same was filed before the AO, but the AO never bothered to cross-examine the assessee to unearth the truth to support his case, particularly in light of the factual inconsistencies, as discussed above. The decision of **Pr.CIT Vs Roshanlal Sancheti (supra)** relied upon by the Revenue is found to be distinguishable from the facts of the present case, for the reason that, in the decided case, the statement recorded under

section 132(4) of the Act was later on again confirmed by the assessee in statements recorded in a gap of one and three months under section 131 of the Act. It was under such circumstances, that the Hon'ble High Court refused to accept that the retraction of the assessee. In the said judgment, it is noted that the Hon'ble High Court had reiterated the above discussed legal position viz., ordinarily the statement recorded u/s 132(4) of the Act carries evidentiary value but the same is rebuttable if the maker of statement brings on record cogent material to show that the original statement was given under duress or coercion or wrong facts. The relevant findings of the Hon'ble High Court, as taken note of by us are as under:-

> "13. The judgment of the Delhi High Court in Sunil Aggarwal, supra, relied on by the assessee does not in any manner extend any assistance to him because that was a case in which the court found that the assessee, apart from retracting the statement, also discharged the onus on him through cogent material to rebut the presumption that stood attracted in view of the statement made under section 132(4) of the IT Act with reference to the entries in the books of accounts of the sales made during the year and the stock position. Similar was the position in Kailashben Manharlal Chokshi (supra) wherein the High Court of Gujarat found that the assessee gave proper evidence in support of his retraction. The High Court of Madras in M. Narayanan and Bros. (supra), held that when assessee had explained his statement as not correct in context of materials produced, no amount could be added to his income on the basis of his statement. Similarly, what has been held by the High Court of Bombay in Omprakash K. Jain (supra) was that the assessing officer, while considering whether retraction was under duress or coercion, had also to consider genuineness of documents produced before him."

33. Instead, we find the decision of Hon'ble Jharkhand High Court in the case of **Shree Ganesh Trading Co Vs CIT (214 Taxman 262)** to be relevant to the facts involved in the present case. In the decided case,

one Mr. S had admitted undisclosed income of Rs.20 lakhs in his statement recorded u/s 132(4) of the Act in the course of search. However in the return of income filed for the relevant year, the said disclosure was not admitted and it was contended that the declaration u/s 132(4) of the Act was misconceived and divorced from real facts. The AO however added the sum of Rs.20 lakhs to the total income of the assessee by placing reliance on the statement given u/s 132(4) of the Act. On appeal the appellate authorities noted that the addition had been made by solely relying on the statement which was not backed by any corroborative evidence unearthed during the course of search. It further observed that, in view of the retraction, the AO had full jurisdiction to proceed for further enquiry and could have collected evidence in support of alleged admission of undisclosed income of the assessee, which he failed to do. The appellate authorities accordingly deleted the addition holding that the statement alone lacked any evidentiary value. On appeal, the Hon'ble High Court upheld the order of the lower authorities by holding as under:

> "6. We are of the considered opinion that statement recorded under section 132 (4) of the Income Tax Act, 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case, all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee . The statement on oath of the assessee is a piece of evidence as per section 132 (4) of

the Income Tax Act and when there is incriminating admission against himself, then it is required to be examined with due care and caution . In the judgement of Kailashben Manharlal Chokshi (supra), the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also, no specific reason has been given for rejection of the assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search, there was no recovery of assets or cash by the Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation, no assets or cash was recovered from the assessee, in that situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lakhs. Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore, we are of the considered opinion that in the present case, a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lakhs."

(emphasis supplied)

34. For the above discussed reasons, we find ourselves in agreement with the Ld. AR that, the impugned addition of Rs.96 lacs made by the AO based on retracted admission was not justifiable. We therefore hold that, there was no cogent material available with the Revenue which would show that the assessee had actually paid Rs.96 lacs so as to justify the impugned addition. It is settled proposition of law that suspicion howsoever strong it may be cannot take the place of proof or evidence as held by the Hon'ble Supreme Court in **Uma Charan Shaw & Bros. Vs CIT (37 ITR 271)**. For these reasons, the addition of Rs.96 lacs made by the AO is directed to be deleted.

35. Overall therefore, the additions of Rs.2,71,00,000/- each made in the hands of both the assessee and her spouse in the relevant AY 2013-14 is held to be unsustainable both on facts and in law and is accordingly directed to be deleted. Since the addition impugned before us has been deleted on merits, the legal challenge raised by the assessee to the validity of proceedings initiated u/s 153A of the Act for the unabated AY 2013-14 has become academic in nature and is thus not being separately adjudicated upon.

36. In the result, the appeal by the assessee in ITA No.268/Chny/2022 and her spouse in ITA No.267/Chny/2022 stands allowed and the appeals of the Revenue in ITA Nos.497 & 498/Chny/2022 stands dismissed.

Order pronounced on the 03rd day of July, 2024, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 03rd July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.

4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF