

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

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

आयकर अपील सं./ITA No. 626/JP/2023  
निर्धारण वर्ष / Assessment Years : 2016-17

M/s Rajesh Products G-31, 37, 38, 39, RIICO Industrial Area, Tonk	बनाम Vs.	ACIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHFR 5416 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahesh Jain, CA (Th. V.C)  
राजस्व की ओर से / Revenue by : Shri Bhanwar Singh Ratnu, (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 12/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 18/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee and is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 10/10/2023 [here in after (Id. CIT(A))] for assessment year 2016-17 which in turn arise from the order dated 29.12.2017 passed under section 143(3) r.w.s. 153B(1)(b) of the Income Tax Act, by ACIT, Central Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

*“1. That on facts and in law, the impugned search assessment order dated 29.12.2017 passed by the Ld. Assessing Officer ("AO") u/s. 143(3)/153B(1)(b) of the Income-tax Act, 1961 ("the Act") and upheld by the Ld. Commissioner of Income Tax (Appeal) ["CIT(A)"] vide impugned appellate order dated 10.10.2023 confirming the impugned additions made and income assessed at Rs. 3,81,94,640/- are both legally unsustainable for being arbitrary, bad in law and liable to be quashed.*

*2. That on facts and in law, the impugned addition of Rs.56,20,268/- attributed to alleged excess stock is legally unsustainable, factually incorrect and devoid of any merit on account of the Appellant's duly produced and unchallenged documentary evidence in the form of books of accounts etc. identifying the same as pre-disclosed and recorded stock-in-trade/inventory.*

*3. That on the facts and circumstances of the case and in law, the impugned addition of Rs.3,20,00,000/- attributed to alleged unaccounted profit is legally unsustainable for being solely based on the retracted statement of an unrelated third party i.e. Shri Trilok Chand Jain, without any corroborative evidence in support thereof, despite the inapplicability of such statement against the Appellant u/s. 132(4)/(4A) of the Act and in light of contrary findings made vide binding decision of the Hon'ble ITAT, Jaipur "B" Bench in ITA No.96-102/JP/2022, ITA No.103-109/JP/2022 and ITA No.110-115/JP/2022 dated 15.06.2022 and decision of Hon'ble ITSC dated 20.03.2020 in the case of R.T.Industries and Ors vide RJ/JP-51/17-18/01 to 05-IT.*

*4. That on facts and in law, the impugned search assessment order passed and impugned additions made therein by the Ld.AO and the impugned appellate order passed by the Ld. CIT(A) confirming the same are patently unlawful, erroneous and perverse as no incriminating material was unearthed during the course of search action against the Appellant vide Pr.CIT vs Abhisar Buildwell (P) Ltd. 332 CTR 385 (SC).*

*5. The Appellant craves leave to add, delete, modify or vary any of the grounds of appeal at any time during the pendency of the appeal or at the time of hearing.”*

3. Succinctly, the fact as culled out from the records is that the assessee firm is engaged in the business of manufacturing and trading of mustard and production of mustard oil. It has declared income under the head business or profession and Interest Income as other source income.

A search & seizure operation u/s 132(1) of the Act was carried out on 10.12.2015 at the residential and business premises of RT Group Tonk, where in the premises of the firm was also covered. Consequent to search action, the case of the assessee centralized to ACIT, Central Circle-1, Jaipur by Pr. CIT-3, Jaipur vide order dated 27.06.2016. Notice u/s 142(1) of the Act was issued to the assessee on 27.03.2017 and in response the assessee furnished return of income on 16.10.2016 declaring total income of Rs. 5,74,370/-. Notice u/s 143(2) of the Act was issued on 24.07.2017 and notice u/s 142(1) of the Act dated 09.08.2017 issued along with detailed questionnaire. Later, Id. AO raised query based on the order sheet by the Id. AO. The assessee furnished the desired details / information / documents / books of accounts, which were examined from time to time along with the seized records.

3.1 During the course of search proceedings, Shri Trilok Chand Jain in his statements recorded u/s 132(4) on 10.12.2015 at his residential premises in the reply to question no. 18 of the statement surrendered of Rs. 56,20,268/- in A.Y 2016-17 in the hands of the assessee M/s Rajesh Products on account of undisclosed investment in stock which was found excess as per the books of accounts. The Id. AO noted that this surrender

was made after the partner of assessee firm, Shri Ashok Kumar Jain had surrendered this amount in his statements recorded u/s 133A on 10.12.2015 in the statement recorded at G-31, 37, 38, 39, RIICO Industrial Area, Tonk, which are the business premises of the assessee firm. He had also stated in his statements that he has surrendered this amount after due consultation with the rest of the partners of the firm. He also while replying to question no. 6 stated that all the books of accounts of the assessee firm are updated till 09.12.2015. He did not mention about any stock which has arrived at the premises of the firm but are yet to be entered in the stock register. Further he in question no. 11 admitted that an excess stock of Rs. 56,20,268/- has been found at the business premises of the assessee firm and there also he has not mentioned about any bill or vouchers that remained to be entered in the books of accounts, pertaining to the stock that was found during the physical verification of the business premises of the assessee firm. The other partner Shri Trilok Chand Jain in his statement u/s. 132(4) dated 10.12.2015 recorded at his residential premises also confirmed that surrender of Rs. 56,20,268/- made by Shri Ashok Kumar Jain. While filing the return the Id. AO noted that the assessee has not included that surrendered income of Rs. 56,20,268/-. Therefore, a show cause notice was issued to the assessee firm on

10.11.2017 asking as to show cause as to why that surrendered income should not be added as income of the firm. The reply dated 20.11.2017 was not proper, another show cause notice dated 24.11.2017 was issued to the assessee. The assessee on 11.12.2017 replied contending that there is no such excess stock as contended at the time of search at the premises of the assessee firm. The alleged difference was on account of the fact that on that date some goods arrived at the premises but corresponding bills / invoice in regard to the same was received on the next day. Therefore, assessee contended that as such there is no difference in the stock and the assessee furnished that copy of bill for which the goods were received but the invoice not entered into the books. The Id. AO contended that the assessee did not enclose any bill with the reply so submitted. As the partner of the firm, when asked specifically he did not mention that the bills as alleged not received while recording his statement. Therefore, another show cause notice dated 07.12.2017 raising the contention as such wherein the assessee reiterated the same submission made in earlier two replies. The assessee on 20.12.2017 furnished the copy of bills and claimed that the stock pertaining to those bills were received to the assessee firm on 09.12.2015 but the bills were pending to be incorporated

in the stock register. The Id. AO did not consider that contention of the assessee on the reasons that

(i) As stated in the reply to question no. 6 of his statement u/s. 131 dated 10.12.2015, Shri Ashok Kumar Jain clearly stated that the books of accounts of the assessee firm updated till 09.12.2015. While replying that he did not mention any pending bills to be entered into the books of accounts.

(ii) Valuation of the stock was admitted while replying to question no.11 of the statement recorded on 10.12.2015 and he surrendered that amount of excess stock of Rs. 56,20,268/-. While accepting that fact of excess stock he has not mentioned any bills or vouchers remaining to be entered in the books of accounts. Had it so, Shri Ashok Kumar Jain would have mentioned in his statement.

Based on these observations the Id. AO made the addition of Rs. 56,20,268/- being the amount of the excess stock found during the survey proceeding conducted at the business premises of the assessee.

3.2 Shri Trilok Chand Jain, in his statement u/s. 132(4) recorded on 10.12.2015 at his residential premises, in reply to question no. 26

surrendered of Rs. 3.20 cores on account of undisclosed income from unaccounted profits on the sale and purchase of material in the firm. This surrender was made based on records seized as Annexure-AS Exhibit-7,9,10,11,12,13,14,16,21,22,24,26. Further, on the last page of statement of Shri Trilok Chand Jain recorded on 10.12.2015 u/s. 132(4) of the Act, Shri Ashok Kumar Jain and Shri Rejash Kumar Jain, the partner of the assessee firm duly accepted the surrender of undisclosed income made by Shri Trilok Chand Jain on their behalf and signed the statement.

In the assessment proceeding the Id. AO noted that the assessee has not included that surrendered income in its return of income, a show cause notice dated 10.11.2017 was issued to the assessee asking to show cause as to why the amount of Rs. 3.20 crores should not be added to its income on account of unaccounted profits as recorded in the seized documents. The assessee submitted the reply on 20.11.2017, wherein it was contended that the entries stated in the aforesaid exhibit are duly reconciled with the books of accounts. The assessee also contended that the decision of Shri Ravi Mathur relied upon by the Id. AO are on different facts. As the perusal of the said decision the statement u/s. 132(4) of various other persons were recorded, whereas in this case the statement of

Shri Trilok Chand Jain was recorded. Even the provision of section in that case with that of the assessee's case are different and therefore, ratio of that judgement being on different facts cannot be relied upon. The statement of Shri Trilok Chand Jain was a solitary statement without confronting of the fact with the other partners of the firm. Shri Trilok Chand Jain since filed the retraction statement that statement cannot further be relied upon by the revenue. As regards the contention that the disclosure was made in connection with the seized material, the assessee submitted that material is not at all incriminating as the same duly forms part and parcel of the regular books of account and are duly considered / explainable and verifiable. The assessee contended that once the retraction from the statement is made no addition can be made merely based on surrender made without the existence of any corroborative evidence found or seized. The Id. AO noted that reply of the assessee but considered it as not acceptable on the following reasons:

- (i) The assessee firm has furnished an excel sheet along with its reply dated 20-11-2017, in which it has submitted that Exhibits 7,9,10,11,12,14,16,21,22,24,26 have been considered in the case of M/s RT Industries who has filed an application u/s 245C(1) before the Hon'ble ITSC, New Delhi. On this pretext, the assessee firm did not produce any books of accounts or documentary evidence for the purpose of verification of the seized records on which the surrender of unaccounted profits had been made in its hands. However, the application of M/s RT Industries has been rejected by the Hon'ble ITSC, New Delhi vide order u/s 245D(1) dated 08-05-2017. M/s RT Industries had filed a Writ Petition before the Hon'ble Delhi High Court against this order.

However, the Writ Petition is still pending and no directions have been issued by the Hon'ble Delhi High Court to Hon'ble ITSC, New Delhi in this regard.

(ii) It is clarified that the above exhibits contain the entries related to M/s Rajesh Products also, apart from those related to M/s RT Industries. For instance, the following page nos. of exhibits mention the name of "RP" and "RT" separately:

- a. Page No. 26 of Exhibit -18, Party No. 1
- b. Page No 6 & 8 Exhibit – 8, Party No 1
- c. Page No. 15, Exhibit-25, Party No. 1
- d. Page No. 18, Exhibit-7, Party No. 1
- e. Page No. 20, Exhibit-12, Party No. 1
- f. Page No. 4 & 6, Exhibit-11, Party No. 1

The above instances clearly establish the fact that the entries related to both M/s Rajesh Products and M/s RT Industries are recorded in the said seized records. Therefore, purely on the basis of the facts, it cannot be accepted that the entries in the said exhibits pertain to only M/s RT Industries. The assessee firm has not verified the seized records with its books of accounts to substantiate its contention that all the said seized records pertain to M/s RT Industries only. The entries in the seized records clearly show that they pertain to both M/s Rajesh Products and M/s RT Industries.

(iii) The assessee has stated in point no. 2 of its reply dated 20-11-2017, that the surrender has been made by only Shri Trilok Chand Jain and no statement of the instant assessee was recorded. However, as explained above, Shri Ashok Kumar Jain, who is one of the partners of the assessee firm has given his consent to the surrender made by Shri Trilok Chand Jain and has duly signed the statement of Shri Trilok Chand Jain.

(iv) The assessee has stated in his reply that "Even if any surrender is made by the some related person in case of the assessee, and the entries are duly verifiable from the books of the assessee, no adverse view can be taken against the assessee". However, during the assessment proceedings, the assessee has not verified any entries from any books of accounts for the purpose of explaining the income surrendered during the search.

(v) The assessee has stated in his reply that "no addition can be made merely on the basis of surrender without the existence of any corroborative evidence found or seized during the search operation". However, it is clarified that the surrender

has been made by the assessee on the basis of Exhibits 7, 9, 10, 11, 12, 14, 16, 21, 22, 24 & 26, seized during the search at residential premises of partners of the firm. Therefore, the assessee has completely ignored the evidence found during the search.

(vi) In this regard, it is pertinent to mention CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Rajasthan High Court, in which it was held that, "Once a statement is recorded u/s 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time.... such a so- called retraction in our view is no retraction in law and is simply a self- serving statement without any material".

On 24-11-2017, another show cause notice u/s. 142(1) was issued to the assessee firm requiring them to explain how all the said exhibits seized during the search be considered as not pertaining to it at all. In reply dated 11.12.2017 the assessee contended that exhibits are owned up or considered by M/s R. T. Industries in the application filed before the Income Tax Settlement Commission (ITSC). Thus, once that seized material is already considered by one assessee the same cannot be again considered in the case of the assessee. The contention so raised by the assessee was not found acceptable by the Id. AO on the reasons that the application u/s. 245C(1) of M/s. R. T. Industries has already been rejected by the ITSC against which it has filed a write petition before the Hon'ble Delhi High Court and in the absence of any direction the document seized pertains to the assessee the explanation cannot be considered. Further the assessee

preferred an application before the Addl. CIT for direction as per provision of section 144A of the Act wherein the Addl. CIT considered that application filed before the ITSC is rejected and direction from the Delhi High Court that material owned by M/s. R. T. Industries cannot be accepted. Thus, in the interest of the principles of natural justice again a show cause notice dated 07.12.2017 was issued to the assessee asking them to explain how all these exhibits can be considered as not pertaining to the assessee firm. The Id. AO by referring to the specific page where in "RP" [ M/s. Rajesh Products ] and RT [ M/s. RT Industries ] referred separately clearly establish that the entries related both the firm M/s. Rajesh Products and M/s RT Industries are recorded in the said seized records. Thus, the fact that it is solely related to M/s. RT Industries cannot be accepted. Based on that aspect of the matter Id. AO again asked the assessee to show cause as to why the surrender of Rs. 3.2 crore made by Shri Trilok Chand Jain be considered as income of the assessee firm. In reply to this specific show cause notice the assessee simply reiterated the contention so raised earlier and failed to get verified the seized records with that of the books of accounts. Therefore, in the absence of any explanation by the assessee despite sufficient opportunity provided to the assessee since that seized material is not explained and therefore, the Id. AO made

an addition of Rs. 3,20,00,000/- as income of the assessee arising out of the transaction recorded in Exhibits – 7,9,10,11,12,14,16,21,22,24 & 25 seized at the residential premises of the partner of the assessee firm added as income of the assessee.

Since the assessee made surrendered which was in two parts, one of the surrenders made was on account of excess stock of Rs. 56,20,268/- and the second addition made based on unaccounted profits of Rs. 3.20 crore recorded in the seized documents were added in the hands of the assessee.

4. Assessee felling aggrieved from the order of the assessment, preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

**Finding of the Id. CIT(A) on the ground that the addition is based on any incriminating material or not.**

“6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In this ground of appeal the appellant has raised legal grounds regarding non-availability of any incriminating material however the appellant has not delineated how the material referred by the Ld. AO is not sufficient for proceedings to make the assessment. In making the additions, the Ld. AO has referred to the handwritten seized documents which are not part of regular books of accounts and even though the appellant claimed that the information contained therein is

recorded in his regular books of accounts however supporting documents & books of accounts were not produced during the assessment despite of no. of opportunities. In the assessment order there is also reliance placed upon the statement of Sh Triluk Chand Jain recorded during search operation which is counter affirmed by Shri Ashok Kumar Jain and Shri Rajesh Kumar Jain, the partners of the appellant firm who duly affirmed and confirmed the surrender of undisclosed income made by Shn Trilok Chand Jain on their behalf and signed the statement.

As per principles emanating from the judgements of Hon'ble High Courts and Hon'ble Supreme Court the addition in assessment u/s 153A should be connected with something found during the search or requisition and that in such a scenario the Id. assessing authority while determining the total income may also make addition on other issues even if not emanating from incriminating seized material.

Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)/[2023] 293 Taxman 141 (SC)/[2023] 454 ITR 212 (SC)[24-04-2023]

6.3 In para 7.1 Hon'ble Supreme Court has observed as under

7.1 In the case of Kabul Chawla (supraj, the Delhi High Court, while considering the very issue and on interpretation of section 1534 of the Act. 1961, has summarised the legal position as under:

"Summary of the legal position

38. On a conspectus of section 1534(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under.

i.....

ii.....

vii Completed assessments can be interfered with by the AO while making the assessment under section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

(emphasis supplied)

In para 7.2 Hon'ble Supreme Court has observed as under:-

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) uniu after considering the entire scheme of block assessment

under section 1534 of the Act, 1961, it is held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AD and the AO has no jurisdiction to re-open the completed assessment. In paragrapha 15

& 16, it is held as under.

15.....

16..... When, the very purpose of the provision is to make assessment in case of search of requisition, & goes without saying that the assessment has to have relation to the search of requisition. In other words, the assessment should be connected with something found during the search or requisition, viz incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 1534 of the Act in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition

(emphasis supplied)

Further in para 14 Hon'ble Supreme Court has held as under:

"14. In view of the above and for the reasons stated above, it is concluded

as under

(i)....

(ii).....

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

(iv)...."

(emphasis supplied)

It is important to note that in the judgements ie. CIT v. Kabul Chawla (2015) 61 taxmann.com 412/234 Taxman 300/[2016] 380 ITR 573 (Delhi) and Pr. CIT v. Saumya Construction (P.) Ltd. (2017) 81 taxmann.com 292/[2016] 387 [TR 529 (Guj.) the scope of "incriminating material is not restricted to the "seized material".

The judgements refer to

"should be connected with something found during the search or requisition" and some incriminating material unearthed during the course of search or requisition of documents" and

"undisclosed income or property discovered in the course of search".

These judgements have been approved by Hon'ble Supreme Court in *Abhisar Bulldwell* (supra) and conclusion is stated in para 14(iii) of the judgement as referred above.

Incriminating material has to be found or unearthed during the search/requisition and there is no restriction placed to limit the scope to addition to be based on seized material i.e. material found or unearthed during search which cannot be seized and/or material which has not been seized, can also be the basis of addition

*Commissioner of Income-tax, Thichur v. ST. Francis Clay Decor Tiles* [2016] 70 taxmann.com 234 (Kerala)/[2016] 240 Taxman 168 (Kerala)/[2016] 385 ITR 624 [Kerala]/[2016] 287 CTR 187 (Kerala)[22-03-2016]

"18. On going through Section 132 of the Income Tax Act, what we find is that if the authority specified therein has reason to believe that any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 192 under sub-section (1) of section 131 of the 1961 Act) or a notice under subsection Ay of section 22 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub section 1 of section 142 of 1961 Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice etc etc., can authorise the officers referred therein to enter and search and seize etc. etc. Such authorised officer under sub-section (4) of Section 132 may during the course of search or seizure examine on oath any person who is found to be in possession or control of any books of account, document, 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 or under the Act 1961. to the learned counsel, was retracted by the Managing Partner subsequently. Thus it Therefore, going by the said provision not only the books, documents etc etc that are unearthed during the course of search but a statement made by such person during such examination can also be used in evidence in any proceeding under the Income Tax Act, 1961. Thus viewing the provision in such manner, it is an admitted fact that the Managing Partner of the firms in question has given a voluntary statement to the Assessing Officer that there is a undisclosed income of Rs.2.75 Crores, which according to the learned counsel, was retracted by the Managing Partner subsequently. Thus it can be seen that even according to the assessee, there was a disclosure made by giving a statement during the course of search and therefore, the Assessing Officer, by virtue of the power conferred on him under section 153A was competent to issue notice under the said provision and require the assessee

firms to furnish the returns as provided thereunder. Neither under section 132 or under section 153A, the phraseology incriminating is used by the Parliament. Therefore, any material which was unearthed during search operations or any statement made during the course of search by the assessee is a valuable piece of evidence in order to invoke section 153A of the Income Tax Act, 1961.

(Emphasis Supplied)

The word "incriminating, in the context of section 153A has to be seen as something which can have or may have a bearing on the assessment of correct total income /s 2(45) as per provisions of the Act. Incriminating material for the purposes of section 153A has to be necessarily construed to be in the nature of a prima facie evidence only (including a circumstantial evidence). Such evidence may or may not turn out to be conclusive evidence after the verification/inquiry during the assessment proceedings.

Explaining the above discussion with reference to judgement of Hon'ble Supreme Court in *Abhisar Buildwell* (supra) and judgement of Hon'ble Kerala High Court in *ST. Francis Clay Decor Tiles* (supra) as discussed above, the incriminating material can be in any form such as evidence in the nature of:-

- i) a document, content of any document,
- ii) an entry in books of account;
- iii) an asset;
- iv) a statement given on oath;
- v) absence of any fact claimed earlier but coming to notice during search;
- vi) absence of books being found during search: or
- vii) absence of the office/ business premises as claimed during returns filed or any other documents, etc.

In short, any fact/ evidence which could suggest that the documents/ transactions claimed or submitted in any earlier proceedings were not genuine, being only a device/ make belief based on non-existent facts or suppressed/ misrepresented facts, would constitute an incriminating material sufficient to make assessment for the purposes of the Act. A mere statement u/s 132(4) is an evidence for making an assessment as held by apex court in *B Kishore Kumar Vs DCIT 234 Taxman 771(SC)* and even a statement u/s 132(4) shall also constitute incriminating material to dislodge any earlier finding for the purpose of making an assessment u/s 153A.

In the context of section 153C, the use of the expression books of accounts u/s 153C again suggests that even the entries recorded in the books of accounts, which have not been correctly recorded or camouflaged would also partake the

character of incriminating material, if the same has a bearing on the determination of income which has not been already disclosed in the return filed, if any. The entries in the regular books of accounts would also trigger the assessment u/s 153A/153C, if there is some prima facie evidence that the entry recorded therein is camouflaged, or incorrect, wholly or partially, and such entries have a bearing on determination of total income of such person.

The definition under clause (ii) of 271AAB(c) also defines undisclosed income as any income based on entry in books of accounts wholly or partly false and would not have been found to be so, had the search not been conducted. This clearly implies that any entry even recorded in the books, which is found to be wholly or partly false along with having a bearing on determination of income based on evidence gathered during search, would also be in the nature of incriminating material

Further, recently introduced section 2704, which is also applicable to search asstt, for AYs other than specified years, mandates to levy penalty even in cases where the expenses had been claimed in the books without any evidence or where the entries recorded in the books were found to be false. This also supports the contention that mere recording of an entry in the books of accounts does not take away its incriminating character, if such entry was without evidence or had been falsely recorded in the books of accounts.

The same principle will also hold good for the documents submitted earlier in relation to entries recorded in the books but later found that the documents were not genuine or manipulated or camouflaged.

The provisions of section 155A/133C are not the normal assessment provisions like 143(3): rather they are curative provisions to plug the mischief of evasion of taxable income based on evidences found in pursuance to search and if on account of search, the facts and circumstances suggest that any entry already appearing in books or accepted in earlier assessments based on at that point of time, are camouflaged or manipulated or reflected to be in the nature of from a source which is different from the real nature or source appearing from the evidences found during a subsequent search, then such material/ facts coming to fore now will definitely constitute an incriminating material, in co sence of the sume the earlier recorded entries/earlier admitted documents and evidence shall have no forec as genuine evidence, if it were held not to be then the po of 1534 would be defeated as it would fail to prevent the mischief, which it sought to prevent just because the entries were already recoded in the boooks or some documents had already been accepted.

Applying the Hayden's Rule of Mischief. the mere fact that such entries are recorded in the books of accounts or some fabricated or colourful documents have adrody been accepted as correct, will not prevent such material or entry from being incriminating, the circumstances suggest otherwise. The Haydens rule of mischief has been judicially accepted and applied by Calcutta High Court in Reclatt Colman of India Ltd. ACIT (20011 252 ITR 550 (Cal)

There is a distinction between a mere change of opinion and a change of opinion based on fresh facts. The latter would imply that the earlier conclusions of the AD were misled by placing evidence on suppression or misrepresentation of material facts. An order passed by the AO relying upon such material documents, suppressed or misrepresented facts, which were later found to be not true, shall become void or voidable, as the case may be. Under such circumstances, the acceptance of any claim relief etc. in any earlier order shall also have no binding force in any subsequent proceedings and the change of opinion would be permissible. The Courts have accepted the principle that any fraud practiced on the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment, which would not have been given if the whole conduct of the case had been fair.

The Hon'ble Madras High Court in case of L. Mohanams Mohamed idns on 24 June 2011 in O.S.A.No.310 of 2010 has observed as under:

19. In support of his contention, the learned senior counsel for the appellant/plaintiff relied on the decision of the Hon'ble Supreme Court in Hamza Haji V. State of Kerala and another reported in (2006) 7 SCC 416, wherein it has been observed that a decision obtained by playing a fraud on Court is liable to be set aside on the basic principle that the party who secured such a decision by fraud cannot be allowed to enjoy its fruits. The learned senior counsel also relied on the observation of the Hon'ble Supreme Court in State of Andhra Pradesh and another Vs. T.Suryachandra Rao reported in (2005) 6 SCC 149 to the effect that the fraud vitiates every solemn Act and fraud and justice never dwell together. In A.V.Papayya Sastry and Others Vs. Govt. of Andhra Pradesh and others reported in (2007) + Supreme Court Cases 221 also, the Hon'ble Supreme Court has observed that fraud vitiates all judicial acts whether in rem or in personam and that a judgment, decree or order obtained by fraud has to be treated as non-est and nullity, whether by the Court of first instance or by the final Court and that the same can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. In North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (dead) By Lrs reported in (2008) 8 Supreme Court Cases 511, the Hon'ble Supreme Court has again reiterated the point that a judgment or decree obtained by fraud either in the first court or in the highest Court, is a nullity in the eye of law.

Further, Section 44 of the Evidence Act also enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision gives jurisdiction and authority to a Court to consider and decide the question whether a prior adjudication is vitiated by fraud. The above propositions of law abundantly make clear that the AO also being a quasi-judicial authority while functioning under the Act, shall also be bound by similar principles of jurisprudence. For the purposes of assessment of total income u/s 1534 also, any findings given in respect of any claim/relief in earlier proceedings shall stand vacated by operation of legal principles where it is found

that in earlier proceedings the AO has been misled by suppression or misrepresentation of material facts or by producing only make belief documents, which were not found to be genuine subsequently based on emergence of new facts during enquiries. The view that the AO cannot rescind from accepting the documents admitted earlier is not a gospel truth which can be applied in each and every circumstance.

Further in judgement of *Abhisar Buildwell* (supra) it has been held that once the incriminating material is found / unearthed during the search/requisition the AO can make addition not only on issues connected with such incriminating material but also on other issues Le. which have emanated from search action and the AO is required to /empowered to make assessment of 'total income' including both the search material and non-search material.

In this regard. Hon'ble Supreme Court in para 15.1 has held as under

15.1 in view of the discussion hereinabove, once during search undisclosed income is found an unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee *M/s Kesarwani Zarda Bhandar, Sahson, Allahabad* deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

The conclusion with respect to the same as in para 14 of the judgement is as under:

"(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns: and"

6.4 The sufficiency or otherwise of the material gathered during the search and seizure for the purpose of making of assessment is to be seen from prospective of the stage at which assessment enquiry on the issue is initiated in the assessment proceedings. Such material may or may not be fully conclusive in its self as the same is subject to verification and enquiries and replies of the assessee

6.5 Handwritten seized documents and evidences gathered in the stores/ 132(4) of the Act are not part of regular books of accounts. In the present case the Ld. AO provided opportunity to the appellant to explain the seized material

with supporting documents. However whereas the appellant identified the transactions in such papers and claimed that such transactions are recorded in the books of accounts, as seen from in the reply of the appellant extracted on page no. 19 of the assessment order however the appellant did not support his statement with supporting documents which were in his possession. Number of opportunities were provided to the appellant during assessment proceedings to produce the supporting documents and books of accounts however the same were not produced. In this regard, adverse inference is required to be drawn against the appellant. In view of this it can be concluded that the entries in seized papers as pertaining to Rajesh Products i.e. the appellant are not recorded in books of accounts.

6.6 In these seized documents the information pertain to RT Industries and Rajesh Products. The appellant has submitted that RT Industries offered income pertaining to these documents in application before Hon'ble ITSC. Thereby, qua the appellat undisclosed income remains. These facts itself shows the incriminating nature of documents.

6.7 Further the addition is supported by the statement of Sh. Trilok Chand Jain which is counter affirmed by other family members including Shri Ashok Kumar Jain and Shri Rajesh Kumar Jain, the partners of the appellant firm who duly affirmed and confirmed the surrender of undisclosed income made by Shri Trilok Chand Jain on their behalf and signed the statement.

6.8 Thus it cannot be concluded that the addition done in the assessment order 18 without basis of any incriminating material gathered during search and seizure.

In view of the above, this ground of appeal is dismissed.

**Finding of the Id. CIT(A) regarding the addition on account of the alleged excess stock**

8.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The appellant has also filed written submissions vide there submissions dt. 20.09.2023. The contentions/submissions of the appellant are being discussed and decided as under:

8.3 A search & seizure operation under section 132(1) of the Income-tax Act. 1961 (hereinafter "the Act") was carried out on 10-12-2015 at the various premises of RT Group, Tonk. Residential/business premises (G-31, 37, 38, 39, RIICO Industrial Area. Distt. Tonk, Tonk.) of the assessee were also covered. Partner of assessee firm, Shri Ashok Kumar Jain surrendered an amount of Rs. 56,20,268 on account of excess stock found in his statements recorded on 10-12-2015 at G-31, 37, 38, 39, RICO Industrial Area, Tonk, which are the business premises of the assessee firm. He had also stated in his statements that he has

surrendered this amount after due consultation with the rest of the partners of the firm. He reconfirmed his statement on 05.01.2016.

8.4 Subsequently, Shri Trilok Chand Jain in his statements recorded on 10-12-2015 at his residential premises, in the reply to question no. 18 of the statement, surrendered Rs. 56,20,268/- in AY 2016 17 in the hands of the assessee M/s Rajesh Products on account of undisclosed investment in stock which was found excess к пер the books of accounts. Accordingly the addition was done by the id. Assessing officer in the assessment order. However the appellant has challenged the same in appeal.

8.5 The main argument of the appellant are two fold, firstly, stock material (mustard) was received by the appellant but the bills for the same were received lateron which explain the excess stock and secondly, the statement was retracted by Sh. Trilok Chand Jain and the retraction has been accepted by the Hon'ble ITSC

8.6 On the first issue that the bills regarding the excess stock were received after the search und seizure action the onus is on the appellant to prove that the excess stock found was actually pertaining to those bills. The appellant has claimed that the bille produced were not verified by the Ld. AO. This needs to be seen and examined considering the facts of the case including the physical verification results and statements made during search and survey action.

It is a known fact and a fact accepted in various judgements that accommodation bills (fictitious bills) have been used by some of the parties time and often to justify the unexplained transactions/facts. Such accommodation bills are prepared with complete meticulousness and payments are also made through banking channels. The pernicious practice of recording bogus purchases has led to mushrooming of facilitators, commonly referred to as 'accommodation entry providers who rotate funds for such purchase/sales in an attempt to authenticate such transactions. Many a times the entities doing genuine business also provides accommodation bills and is it not necessary that the accommodation entry provider has to be exclusively into such practice. There are number of judgements wherein it is upheld that mere invoice and payment through banking channel do not in itself prove the transaction to be genuine.

8.7 In case where an assessee is called upon to establish the genuineness of purchase transactions recorded in its books of account, requente evidences have to be brought on record to establish authenticity of purchases Whether a transaction of purchase is proved or not is a question of fact and the primary omas is at the assessor to prove the genuineness of purchases. Along with the bills/Invoices etc. the assessee is required in produce jag Bilty/Goods Receipt Note of the transporter of goods (b) Detail of Stock Register reflecting the quantity of material purchased and subsequently sold/shifted to manufacturing (c) production record to justify the consumption of raw material/consumables purchased for achieving the sup/production in case of manufacturing concerns, etc, as discussed further heren under. The appellant has not discharged the onus

in this regard and thus the appellant did not shift the onus and burden to the assessing authority and thus the appellant cannot rightfully claim any action of bill verification and parties on part of the assessing authority

Where assessee failed to prove actual delivery of material with transportation status transport receipt, stock inward register, etc., the purchases so made could be held as bogus (refer Toscano Infrastructure (P) Ltd. e. Dy. CIT (2017) 89 taxmann.com 858 (Mum Trib

As noted by the Ld. AO in the assessment order

“(i) As stated earlier, in the reply to question no. 6 of his statement u/s 13110 12-2015 Shri Ashok Kumar Jain clearly stated that the books of accounts of the assessee firm are updated till 09-12-2015 In the reply to this question, he did not mention any bills pending to be entered which are yet to be incorporated in the accounts as on 10-12-2015

(ii) As stated earlier, in the reply to question no. 11 of his statement u/s 131 dated 10-12-2013, Ashok Kumar Jain admitted the loss of stock done by the department during the course of survey proceedings at the business premises of the assessee firm and surrendered the amount of excess stock of Rs 56,200,268 in the reply to this question also, Shri Ashok Kumar Jain did not mention any bills or vouchers remaining to be entered in the books of accounts-Had any such stock been pending for incorporation in the stock register for want of purchase bills. Shri Ashok Kumar Jain would have mentioned about the same in his statements. It is noteworthy that sufficient opportunity was provided to him during the recording of statement during the survey proceedings.

Further, regarding the legal principles to examine the validity of the retraction of statement, guidance is taken from the following judgements

Commissioner of Income-tax v. Hotel Meriya [2010] 195 Taxman 459 (Kerala)/[2011] 332 ITR 537 (Kerala) [26-05-2010]

What is evidence? We shall examine it first. Evidence is defined in section 3 of the Evidence Act as follows:

"Evidence": "Evidence" means and includes (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence."

The Court mentioned above in the definition of evidence would include all persons except arbitrators, legally authorised to take evidence as defined under section 3. In section 3, Court is defined as follows:

"Court" "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence."

A reading of section 131 of the Income-tax Act would show that the Assessing Officer is vested with the same powers as are vested in a court under the Code of Civil Procedure, 1908 in respect of (a) discovery and inspection, (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath and (c) compelling the production of books of account and other documents. It is not disputed that the Assessing Officer recorded the statement of the partner of the respondent as well as the employees in exercise of the powers vested by him under section 131 of the Income-tax Act. The documents were also seized in exercise of such powers. In the above circumstance, the statement of the partner and the employees recorded by the Assessing Officer as well as the documents seized would come within the purview of the evidence under section 158BB of the Income-tax Act read with section 3 of the Evidence Act and section 131 of Income-tax Act. Therefore, such evidence would be admissible for the purpose of block assessment",

.....

.....

"9. It appears that the Tribunal had arrived at a conclusion that the statements recorded by the Assessing Officer under section 132[4] of the Income-tax Act has only very limited application without appiving the mind. Exploration to section 132/41 of Income-tax Act would make it very clear that the evidence so collected would the relevant for all purposes of any investigation connected with any proceeding under the Income-tax Act. We find that a reading of section 132(4) with Explanation wrtild be relevant. Hence we quote the same for easy reference:

"Section 132(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 hooke of account, documents, money, bullion jewellery or other valuable article or thing ind 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.

Explanation For the removal of deubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of arty 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.

Going by the above provision along with its Explanation we find that the statement of the partner and employees recorded and documents collected are relevant and admissible in respect of all matters for the purpose of any investigation connected with any proceedings under the Income tax Act. Hence,

we are of the opinion that the statements so recorded and documents collected by the Assessing Officer cannot be brushed aside as done by the appellate Tribunal stating that it is having only very limited application. We answer the question in favour of the appellant."

Pr. CIT v. Shri Roshan Lal Sancheti [IT Appeal No 47 of 2018, dated 30-10-2018), Hon'ble Rajasthan High Court

This court in CIT, Bikaner v. Ravi Mathur, supra, which judgment has been relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under section 132(4) of the IT Act have great evidentiary value and they cannot be discarded summarily and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by flung a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion. We deem it appropriate to reproduce para 15 of the said judgment, which reads thus,

15. In our view, the statements recorded under section 132(4) have great evidentiary value and it cannot be discarded as in the instant case ITA No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd. Bhilwara . ACIT, Central Circle-Ajmer by the Tribunal in a summary or in a cryptic manner, Statements recorded under section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9-11-1995 and onwards but retraction is almost after an year and that too when the assessment proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under section 132(4), are true and correct and 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 which we have observed hereinbefore. Once a statement is recorded under section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect and that burden has to be discharged by the assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes:-

"Regarding the amount of Rs. 44.285 lakhs, it is now contended that the statement u/s 132(4) was not correct and these amounts are in ITA. No. 720/JP 2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara ACIT, Central Circle-Ajmer thousands, not lakhs. It is now attempted to retract from the statements made at the time of S & S operations."

Therefore, what we gather from the Assessment Order and on perusal of the above finding that the retraction was at the stage when the assessment proceedings were being finalized. i.e. almost after a gap of more than an year. Such a so called retraction in our view is no retraction in law and is simply a self-serving statement without any material

In the above judgement, inter-alia, the following arguments were taken on behalf of the assessee which stand rejected:

"Per contra, Mr. Prakul Khurana, learned counsel for the respondent-assessee submitted that the surrender was extracted from the assessee by income tax authorities during the search proceedings by use of coercion, duress and threat, which facts have been explained by the assessee in greater detail in the affidavit of retraction. It is argued that affidavits of Shri Suresh, Shri Ashok Jat and Shri Padam Kumar Jain were also filed, in which they have stated on oath that they did not own any land and therefore there did not arise any question of their accepting any advance from the assessee. Learned counsel referred to Instruction No. 286/2003-IT(Inv.) dated 10.03.2003 issued by the Central Board of Direct Taxes which acknowledges the fact that in certain cases assessee are forced to disclose the income during the course of search, seizure and survey operations. It was advised therein that there should be focus and concentration on collection of evidence of income which lead to information of what has not been disclosed or is not likely to be disclosed before the Income Tax Department and no attempt should be made to obtain confession as to any disclosed Income. Circumstances in which the assessee had to give the statements under Section 132(4) and/or under Section 131 of the Act have been explained in the affidavit filed on 20.05.2013. The very fact that the search continued for as long as 36 hours indicates that coercion and undue influence were exercised by the authorities of the appellant department for making surrender. The affidavit filed by the assessee on 20.05.2013 explained in minute details the circumstances which led to surrender and how the surrender was extracted from the assessee from the aforesaid seven papers. The assessee has not brought any evidence on

record to prove the facts mentioned by the assessee affidavit. The persons whose names were mentioned on the papers seized by the department have also denied any amount having been received by them from the assessee as advance against the sale of the properties/land

Learned counsel argued that the Assessing Officer has not given any reason in the assessment order as to why the explanation given by the assessee in the affidavit was not acceptable. Learned CIT(A) has given detailed reasons in respect of each deletion of the addition made by the Assessing Officer. Learned counsel in support of his arguments relied upon the judgment of the Supreme Court in Pullangode Rubber Produce Company Ltd Vs. State of Kerala & Another, (1973) 91 ITR 0018 (SC) and submitted that the Supreme Court therein held that the admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs. Reliance is also placed on the judgment of Madras High Court in M. Narayan and Bros. Vs. Assistant Commissioner of Income Tax, Special Investigation Circle, Salem, (2011) 13 Taxmann.com 49 (Madras) wherein retraction made during the course of assessment proceedings was entertained and relief was granted on merits of the explanation. It is argued that additions cannot be made merely on the basis of statements which are subsequently retracted even belatedly as held by Delhi High Court in CIT Vs. Sunil Aggarwal, (2015) 84 Taxmann.com 107 (Delhi). Learned counsel relied on the judgment of this Court in Escorts Heart Institute and Research Centre Limited Vs. DCIT (TDS) JP. (2017) 87 Taxmann.com 184 Rajasthan, Commissioner of Income Tax Vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC) and argued that if two views are possible, the view in favour of the assessee should be preferred. Reliance is also placed on the judgments in Commissioner of Income Tax VI KY Pillah & Sons, (1967) 63 ITR 411 (SC), Deputy Commissioner of Income Tax Ratan Corpn., (2005) 197 CTR 530 (Gujarat), The Assistant Commissioner of Income Tax, Central Circle, Ajmer Vs. Shri Devendra Kumar Choudhary, 2 S-10 to 2-5-18, Basant Vihar, Bhilwara, ITA No. 828/JP/16, Commissioner of Income Tax Vs. Ashok Kumar Soni (2007) 291. ITR, 172 (Raj.); Kailashben Manharial Chokshi Vs. Commissioner of Income Tax, (2008) 174 Taxman 466 (Gujarat); Commissioner of Income Tax, Central-II, Mumbai Vs. Omprakash K. Jain. (2009) 178 Taxman 179 (Bombay); Mehta Parikh & Co. Vs. Commissioner of Income Tax, (1956) 30 (TR 181 (SC), Shree Ganesh Trading Co Vs. Commissioner of Income Tax. Dhanbad, (2013) 257 CTR 159 (Jharkhand), Commissioner of Income Tax Karnataka Vs. Shri Ramdas Motor Transport Ltd. (2015) 230 Taxman 187 (Andhra Pradesh); Chetnaben J. Shah Vs. Income Tax Officer, Ward10(3), (2016) 288 CTR 579 (Gujarat)"

(Emphasis Supplied)

The Hon'ble Rajasthan High Court in this case further held as under,

"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days".

(Emphasis supplied)

CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Hon'ble Rajasthan High Court

"Once a statement is recorded u/s 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time.... such a so called retraction in our view is no retraction in law and is simply a self- serving statement without any material"

Commissioner of Income-tax v. MAC Public Charitable Trust [2022] 144 taxmann.com 54 (Madras)/[2023] 450 ITR 368 (Madras) (31-10-2022)

"63. The statements given to the Assessing officer under section 132 (4) have legal force Unless the retractions are made within a short span of time, supported by affidavit swearing that the contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, the same cannot be treated as retracted. This position laid down in catena of decisions by the various High Courts in Lekh Raj Dhunna (supra), Bachittar Singh (supraj. Rameshchandra d Co. v. C[1987] 35 Taxman 153/168 ITR 375 (Bom). Dr Sc Gupta (supra), CIT v. Hotel Meriya [2010] 195 Taxman 459/20111 332 ITR 537 (Ker.). O. Abdul Razak (supra)."

(Emphasis Supplied)

Dr. S.C. Gupta v. Commissioner of Income-tax [2001] 118 Taxman 252 (Allahabad)

"6. As regards the assessee's contention that the statement having been retracted, the Assessing Officer should have independently come to a conclusion that there was additional income as sought to be assessed and that there was no

material to support that there was such income, this contention in our view is not correct. As held by the Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala (1973) 91 ITR 18 an admission is an extremely important piece of evidence though it not conclusive. Therefore, a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and, in fact, there was no additional income. This burden does not even seem to have been attempted to be discharged. Similarly, case P.K Palwankar v. CGT(1979) 117 ITR 768 (MP) and CITY. Mrs. Doris S. Late (1974) 96 ITR 646(Ker.) on which also the learned counsel for the assessee placed reliance, are of ne help to the assessee. The Tribunal's order is concluded by findings of fact and moor view, no question of law arises. The applications are, accordingly, rejected."

Emphasis supplied

(in the above case the statement was recorded during survey. The above judgment is thus in the context of evidentiary value of statement recorded during survey.

Bachittar Singh v. Commissioner of Income-tax [2010] 328 ITR 400 (Punjab & Haryana)

"6. It is not disputed that the statement was made by the assessee at the time of survey, which was retracted on May 28, 2003, and he did not take any further action for a period of more than two months In such circumstances, the view taken by the Tribunal that retraction from the earlier statement was not permissible, is definitely a possible view. The mere fact that some entries were made in a diary could not be held to be sufficient and conclusive to hold that the statement earlier made was false. The assessee failed to produce books of account which may have been maintained during regular course of business or any other authentic contemporaneous evidence of agricultural income. In the circumstances, the statement of the assessee could certainly be acted upon.

7. As regards the judgments in Pullangode Rubber Pruduce Co.(1973) 91 ITR. 18 (SC) and Ester budustries Limited 20091 316 ITR 260 (Delhil relied upon by the assessee, even though it may be open to show an earlier statement or an entry to be erroneous, in the present case, the Tribunal was justified in holding that the earlier statement was not proved to be incorrect. As regards the judgment of the Madras High Court in S Khader Khan Son 2008 300 ITR 157, we are of the view that even if the statement under section 133A was not at par with the statement under section 132 and d have that evidentiary value, such statement cannot be held to be irrelevant material as as to be ruled out of consideration in totality of facts, particularly in the absence of regular books of account. The Tribunal rightly followed the observations of the Allahabad High Court in Dr. SC Gupta 2001 248 ITR 782 and of this court in Surinder Kumar

(2006) 282 ITR 78 (P&H). Thus, having regard to the facts and circumstances of the case, the view taken by the Tribunal cannot be held to be perverse or illegal

(Emphasis supplied)

(In the above case the statement was recorded during survey. The above judgement in this in the context of evidentiary value of statement recorded during survey)

Commissioner of Income-tax v. Hotel Meriya [2010] 195 Taxman 459 (Kerala)/[2011] 332 ITR 537 (Keralaj[26-05-2010]

10. No person, other than the partner of the respondent had in unambiguous terms stated that 20 per cent of the sales outturn is suppressed and only 80 per cent is recorded in the account books and it was the practice from the very beginning. So, it is just and appropriate to presume that there was uniform concealment of income in all assessment years during the block period. There is no material on record to show that the concealment of the sales out turn during any of the assessment year in the block period is lesser than the concealment detected under section 132 of the Income-tax Act There is no whisper in the statement given by the partner of the respondent or any of the employees that there was any change of the rate of concealment in any year during the block period. No good reason was given to reject the above mentioned statement of the partner and employees recorded during search. Oral evidence was corroborated by the documentary evidence. So, it is just and appropriate to conclude that the concealment was same in all the years during the block period. Adding to that we find that when it is revealed in a search under section 132 of Income-tax Act that the assessee was following a particular method to conceal the income, it is just and reasonable to presume that the same practice was followed by the assessee throughout all the assessment years in the block period for the purpose of block assessment. Of course, the presumption is rebuttable. In such circumstances, it is for the assessee to establish that the same method of concealment was not followed in the earlier assessment years in the block period or that the method of concealment detected was practiced only from a particular period. Here, regarding that, assessee had not adduced any evidence to rebut the presumption or to come to a contrary finding. On the other hand, in unambiguous terms, it was stated by the partner of the respondent, who is in charge of the bar that only 80 per cent of the sales outturn is recorded in the cash books and that is the practice followed from the beginning of the business. In the light of the above statement it is just and appropriate to presume that what is detected out in search is the practice followed throughout the block period to conceal the income. The first appellate authority adopted different slabs with no good explanation. We find that there is no material to adopt an assessment in any year during the block period at a lesser rate than that was assessed for the assessment year during which search was conducted. The appellate Tribunal was not justified in arriving a conclusion that there is no evidence regarding concealment of the income for the assessment years 1996-97 to 2000-01. The

procedure adopted by the first appellate authority in calculating the concealment of income at different rates is also without any supporting materials and against the intention of the Legislature expressed in Chapter XIV-B of the Income-tax Act. Hence, we answer the question in favour of the appellant and find that the respondent is liable to be assessed during the block period at uniform rate."

Commissioner of Income-tax v. Lekh Raj Dhunna [2012] 20 taxmann.com 554 [Punjab & Haryana]/[2012] 344 ITR 352 (Punjab & Haryana)/[2010] 236 CTR 414 [Punjab & Haryana][29-09-2010]

"15. Having crystalized legal position, it is now apt to delve on the factual situation of the present case. It is not in dispute that the assessee had made a statement under s. 132(4) of the Act whereby a surrender of Rs. 2,00,000 was made. Besides this, the assessee had admitted that he had earned commission from M/s P.M.S. Enterprises, Phagwara which was not disclosed in the return filed by him. The relevant portion of the statement reads as follows:

1 am selling agent of M/s P.M.S. Enterprises, Railway Road, Phagwara and get commission 2 per cent on the sales effected through me. I have no other source of income except interest from firm on deposit with the firm. My wife is a housewife and does tailoring work on a very small scale.

16. Further, during search, certain sale documents were seized which show the signatures of the assessee as well. The said documents depicted total sales of 4,92,03,005 as noticed earlier

17. Thus, in view of sub-ss. (4) and (4A) of s. 132 of the Act, the AO was justified in drawing presumption against the assessee and made addition of Rs 4,00,000 in his income under s. 68 of the Act. The onus was upon the assessee to have produced cogent material to rebut the aforesaid presumption which he had failed to disprove. The assessee retracted from the said statement vide letters dt. 24th Nov., 1998 and 11th March, 1999 during the course of assessment proceedings. However, no value could be attached thereto in the present case. In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee could have retracted from the same at the earliest. No plausible explanation has been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search cannot be held to be bad. The Tribunal, this, erred in concluding otherwise. The Tribunal, therefore, was not justified in reversing the order of the AO which was affirmed by the CIT(A) also.

(Emphasis supplied)

Kantilal C. Shah v. Assistant Commissioner of Income-tax, Circle-3, Ahmedabad [2011] 14 taxmann.com 108 (Ahmedabad - ITAT)/[2012] 15 ITR/T) 62(Ahmedabad- ITAT)/[2011] 133 ITD 57 (Ahmedabad ITAT)/[2011] 142 TTJ 233(Ahmedabad - ITAT)[24-06-2011]

## Headnotes

Section 132, read with section 69, of the Income-tax Act, 1961 - Search and seizure Block periods 1-4-1985 to 31-3-1995 and 1-4-1995 to 12-12-1995 Whether section 132(4) enables an authorized officer to examine a person on oath and such a sworn statement made under section 132(4), thus can be used as an evidence under Act Held, yes A search operation was carried out at premises of assessee whereby cash, jewellery, books of account and certain documents were found and seized - Assessee on same day had given a statement under section 132(4) whereunder admissions with regard to unaccounted Income of Rs. 6.20 lakhs were made. Said unaccounted income consisted of marriage expenditure, unexplained household expenditure, etc. Assessing Officer, made additions in respect of unaccounted income of Rs. 6.20 lakhs admitted under section 132(4) However, after lapse of about nine months from date of admission, assessee through an affidavit sought to retract from statement made under section 132(4) on ground that at the time when there was no evidence or incriminating material discovered at time of search no addition could have been made merely on the basis of statement under section 132(4) and (that the impugned disclosure under admission was obtained forcefully and, hence, not binding) Whether statement recorded under section 132(4) is an evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion Held, yes Whether assessee retracted from his earlier statement without demonstrating any evidence to establish that statement recorded earlier was incorrect an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated Held, yes Whether, therefore, addition made on basis of statement recorded under section 132(4) was to be upheld Held, yes

8.8 Appellate has not produced any complaint lodged with higher officials supported by affidavit swearing that the contents of statement are incorrect along with person & time in a manner specific force & coercion. Further. The statements in the retraction has to be duly supported with evidences. Similarly the allegations of coercion etc., if any, in the retraction has to be supported with evidences.

The appellant has not furnished evidences to prove the earlier evidence statement u/s 132(4) as incorrect.

The argument of the assessee that the earlier admission statement was without any evidence is not a sufficient argument for the retraction as the statement u/s 132(4) itself is evidence (as per judgement in Kantilal C. Shah (supra)).

In the present case on the date of physical verification by the Department there was no entry of stock in the stock register w.r.t. the bills allegedly received by the appellant later on. Even though the bills are claimed to have been received subsequently the appellant is silent on the aspects of documents proving actual loading, transportation, delivery, unloading of the material e.g. truck/trolley bill, challan, weighment (dharamkanta) slips, labour bill for unloading the material etc.

these documents, some of them if not all, should have been found when the search and survey action by the Revenue took place.

During the search/survey/seizure none of the persons claimed or clarified the excess stock on the ground that receipt of bills are pending. Name, address etc. of the selling party etc. were also to be informed for the verification of the same if required by search/survey/seizure party.

8.9 Sh. Ashok Kumar Jain while giving statement under section 131 of the Act was also assisted by Sh. Mohit Jain and staff members of the appellant in this regard as per his statement (answer to Q 11 as produced in assessment order and as also stated in reply to Q. 11, he also obtained concurrence of the other two partners of the firm before making surrender/acceptance of the excess stock as undisclosed income. The excess stock was accepted as excess and excess income was accepted on this account by Sh. Ashok Kumar Jain and Sh. Trilok Chand Jain in two separate statements at different locations.

8.10 Further, if the bills were received on the next day ie on 11-12-2015, the appellant would have informed the revenue officers immediately along with correction in his statement. However the appellant has not claimed of having informed by appropriate documentation in this regard. As per the submissions the statement of Shri Ashok Kumar Jain partner of the appellant firm has not been retracted. Further it is crucial to note that Sh. Trilok Chand Jain retracted his statement (recorded on 10.12.2015 and on 05.01.2016) vide letter dated 18.11.2016 which is after 11 months of the date of search/survey/seizure.

8.11 Acceptance of Retraction of Sh. Trilok Chand Jain in order of Hon'ble ITSC

The main argument of appellant are the case of the appellant is that retraction of statements by Sh. Trilok Chand Jain is covered by decision of Hon'ble ITSC. The appellant has referred to para 78 of the order of Hon'ble ITSC.

It is observed that the appellant was not a party before the Hon'ble ITSC and it can be safely concluded that the specific facts of the case of the appellant and the arguments of the revenue vis-à-vis the information and findings in the material gathered from search & seizure as pertaining to for relevant to the appellant were not before the Hon'ble ITSC. As per principles of natural justice, only the case of parties to the litigation can be decided by the adjudicating authorities. This fact that out of total 16 entities, 11 of out of these were not even applicants before the Hon'ble ITSC in recorded in the order itself. The statement in present case is not only confirmed by other family members but also linked to and supported by the information gathered during search/survey as far as the case of the appellant is concerned. Further the appellant has placed reliance on the order of the Hon'ble ITSC without matching facts with the complete facts of the entities who filed an application before Hon'ble ITSC and such facts have not been placed by the appellant before the undersigned.

Further the scope and jurisdiction of Hon'ble ITSC is different and there is an approach a settlement whereas the undersigned is to only adjudicate the appeal following the relevant law and procedure applicable to appeal. The fact that the appellant did not file application before Hon'ble ITSC also indicates that the facts of the case of the appellant are different from the other family entities.

Qua the appellant, while the statement has been retracted by Sh. Trilok Chand Jain only, the statement (10.12.2015) was also counter verified and confirmed by the partner of appellant Shri Ashok Jain by counter signing the statement of Sh. Trilok Chand Jain and was reconfirmed on 05.01.2016. It is crucial to note that Sh. Trilok Chand Jain retracted his statement vide letter dated 18.11.2016 which is after 11 months of the date of search/survey/seizure. As per the submissions the statement of Shri Ashok Kumar Jain partner of the appellant firm has not been retracted.

The appellant has not claimed that Shri Ashok Jain has also retracted the statement/confirmation and thus the retraction by Sh. Trilok Chand Jain qua the appellant lacks sufficient and equal authority vis-a-vis the authority while giving the statement as in the statement Sh. Trilok Chand Jain has specially stated that he has confirmed the amount and surrender with the family member qua in-charge/legal signatory of the respective legal entities including the appellant and that further statement of Sh. Trilok Chand Jain has also been affirmed and confirmed by the partners of the appellant. Shri Ashok Kumar Jain and Shri Rajesh Kumar Jain, the partners of the appellant firm duly accepted the surrender of undisclosed income made by Shri Trilok Chand Jain on their behalf and signed the statement. It is not shown that Sh. Ashok Jain and Sh. Rajesh Jain validly retracted the statement. The statement in present case is not only confirmed by other family members but also linked to and supported by the information gathered during search/survey as far as the case of the appellant is concerned. This aspect apparently has not been placed before Hon'ble ITSC as did not discussion on issue in the para 78.

The Hon'ble ITSC w.r.t. the retraction w.r.t. the additions of parties who filed applications has given relief on the main premise that there was no linkage between the information found/gathered and the amount of surrender. Whereas in case of the present issue the surrender/accepted amount is linked with and based on the excess amount of stock found at the premises as per physical inspection and verification.

Further, in deciding the validity of retraction, in the order the Hon'ble ITSC has not considered the judgements of Hon'ble Jurisdictional High Court in the cases of:-

- (i) Pr. CIT v. Shri Roshan Lal Sancheti [IT Appeal No 47 of 2018, dated 30-10-2018), Hon'ble Rajasthan High Court
- (ii) CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Hon'ble Rajasthan High Court

In view of the above the order of Hon'ble ITSC is not binding on the issue in the present appeal.

8.11 A party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. (Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540). If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. [Hon'ble Supreme Court in CIT v. Durga Prasad More (1971) 82 ITR 540) The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. (Hon'ble Supreme Court in CIT v. Durga Prasad More (1971) 82 ITR 540).

8.12 Considering the facts and circumstances of the case, the explanation of the appellant that the bills were received on next day whereas goods were received before the search/survey/seizure action is not supported by any circumstantial evidences and preponderance of probabilities and the explanation of the appellant is not acceptable

In view of the above, this ground of appeal is dismissed.

**Finding of the Id. CIT(A) in respect of the addition of Rs. 3.20 crore made based on surrender made by Shri Trilok Chand Jain**

9.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The findings of the Ld. Assessing Officer on the issue are as under:

(i) The assessee firm has furnished an excel sheet along with its reply dated 20-11-2017, in which it has submitted that Exhibits 7,9,10,11,12,14,16,21,22,24,26 have been considered in the case of M/s RT Industries who has filed an application u/s 245C(1) before the Hon'ble ITSC, New Delhi. On this pretext, the assessee firm did not produce any books of accounts or documentary evidence for the purpose of verification of the seized records on which the surrender of unaccounted profits had been made in its hands. However, the application of M/s RT Industries has been rejected by the Hon'ble ITSC, New Delhi vicle order u/s 245D(1) dated 08-05-2017. M/s RT Industries had filed a Writ Petition before the Hon'ble Delhi High Court against this order. However, the Writ Petition is still pending and no directions have been issued by the Hon'ble Delhi High Court to Hon'ble ITSC, New Delhi in this regard.

(ii) It is clarified that the above exhibits contain the entries related to Mis Rajesh Products also, apart from those related to M/s RT Industries. For instance, the following page nos. of exhibits mention the name of "RP" and "RT" separately:

- a. Page No. 26 of Exhibit-18, Party No. 1
- b. Page No. 6 & 8, Exhibit-8, Party No. 1
- c. Page No. 15, Exhibit - 25, Party No. 1
- d. Page No. 18, Exhibit-7, Party No. 1
- e. Page No. 20, Exhibit-12, Party No. 1
- f. Page No. 4 & 6, Exhibit-11, Party No. 1

The above instances clearly establish the fact that the entries related to both M/s Rajesh Products and M/s RT Industries are recorded in the said seized records. Therefore, purely on the basis of the facts, it cannot be accepted that the entries in the said exhibits pertain to only M/s RT Industries. The assessee firm has not verified the seized records with its books of accounts to substantiate its contention that all the said seized records pertain to M/s RT Industries only. The entries in the seized records clearly show that they pertain to both M/s Rajesh Products and M/s RT Industries.

(iii) The assessee has stated in point no. 2 of its reply dated 20-11-2017, that the surrender has been made by only Shri Trilok Chand Jain and no statement of the instant assessee was recorded. However, as explained above, Shri Ashok Kumar Jain, who is one of the partners of the assessee firm has given his consent to the surrender made by Shri Trilok Chand Jain and has duly signed the statement of Shri Trilok Chand Jain.

(iv) The assessee has stated in his reply that "Even if any surrender is made by the some related person in case of the assessee, and the entries are duly verifiable from the books of the assessee, no adverse view can be taken against the assessee". However, during the assessment proceedings, the assessee has not verified any entries from any books of accounts for the purpose of explaining the income surrendered during the search.

(v) The assessee has stated in his reply that "no addition can be made merely on the basis of surrender without the existence of any corroborative evidence found or seized during the search operation". However, it is clarified that the surrender has been made by the assessee on the basis of Exhibits 7, 9, 10, 11, 12, 14, 16, 21, 22, 24 & 26, seized during, the search at residential premises of partners of the firm. Therefore, the assessee has completely ignored the evidence found during the search

(vi) In this regard, it is pertinent to mention CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Rajasthan High Court, in which it was held that, "Once a statement is recorded u/s 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an

assessee at the earliest point of time.... such a so-called retraction in our view is no retraction in law and is simply a self-serving statement without any material".

Further number of notices were issued during the assessment proceedings on the seized documents however the appellant did not produce the books of accounts and supporting documents.

### 9.3 Acceptance of Retraction of Sh. Trilok Chand Jain in order of Hon'ble ITSC

The main argument of appellant are the case of the appellant is that retraction of statements by Sh. Trilok Chand Jain is covered by decision of Hon'ble ITSC. The appellant has referred to para 78 of the order of Hon'ble ITSC.

It is observed that the appellant was not a party before the Hon'ble ITSC and it can be safely concluded that the specific facts of the case of the appellant and the arguments of the revenue vis-a-vis the information and findings in the material gathered from search & seizure as pertaining to and for relevant to the appellant were not before the Hon'ble ITSC. As per principles of natural justice, only the case of parties to the litigation can be decided by the adjudicating authorities. This fact that out of total 16 entities, 11 of out of these were not even applicants before the Hon'ble ITSC is recorded in the order itself. The statement in present case is not only confirmed by other family members but also linked to and supported by the information gathered during search/survey as far as the case of the appellant is concerned. Further the appellant has placed reliance on the order of the Hon'ble ITSC without matching facts with the complete facts of the entities who filed an application before Hon'ble TSC and such facts have not been placed by the appellant before the undersigned.

9.4 Further the scope and jurisdiction of Hon'ble ITSC is different and there is an approach a settlement whereas the undersigned is to only adjudicate the appeal following the relevant law and procedure applicable to appeal. The fact that the appellant did not file application before Hon'ble ITSC also indicates that the facts of the case of the appellant are different from the other family entities

Qua the appellant, while the statement has been retracted by Sh. Trilok Chand Jain only, the statement was also counter affirmed and reiterated by the partners of appellant Shri Rajesh Jain and Sh. Ashok Jain by counter signing the statement of Sh. Trilok Chand Jain. It is crucial to note that Sh. Trilok Chand Jain retracted his statement (dated 10.12.2015 and 05.01.2016) vide letter dated 18.11.2016 which is after 11 months of the date of search/survey/seizure As per the submissions the statement has not been retracted by Shri Ashok Kumar Jain and Shri Rajesh Jain partners of the appellant firm.

9.5 The appellant has not claimed that Shri Rajesh Jain has also retracted the statement/confirmation and thus the retraction by Sh. Trilok Chand Jain qua the appellant lacks sufficient and equal authority vis-à-vis the authority while giving the statement as in the statement Sh. Trilok Chand Jain has specially stated that he has confirmed the amount and surrender with the family member qua in-

charge/legal signatory of the respective legal entities including the appellant and that further statement of Sh. Trilok Chand Jain has also been affirmed by the partners of the appellant. Shri Ashok Kumar Jain and Shri Rajesh Kumar Jain, the partners of the appellant firm duly confirmed and affirmed the surrender of undisclosed income made by Shri Trilok Chand Jain on their behalf and signed the statement. The statement in present case is not only confirmed by other family members but also linked to and supported by the information gathered during search/survey as far as the case of the appellant is concerned. This aspect apparently has not been placed before Hon'ble ITSC as did not discuss the issue in the para 78.

9.6 The Hon'ble ITSC w.r.t. the retraction w.r.t. the additions of parties who filed applications has given relief on the main premise that there was no linkage between the information found/gathered and the amount of surrender. Whereas in case of the present issue the surrender/accepted amount is linked with seized material.

9.7 Further, the Hon'ble ITSC has not considered the judgements of Hon'ble Jurisdictional High Court in the cases of:-

Pr. CIT v. Shri Roshan Lal Sancheti [IT Appeal No 47 of 2018, dated 30-10-2018), Hon'ble Rajasthan High Court CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002, Hon'ble Rajasthan High Court

9.8 Owning up of transactions by RT Industries in whose case the matter has been settled by Hon'ble ITSC

It is also important to note that appellant has claimed that RT Industries has owned up all the entries of the seized material. The inference from the same is that the entries are actual even though the fact of owning up and the entries pertaining to appellant remains unverified because of the non-production of documents by the appellant as referred by the Ld. AO in the assessment order.

9.9 Further the appellant claimed during the assessment proceedings that the transactions recorded in the seized documents as referred by the Ld. AO on page no. 15, 20 & 21 etc. are identified and recorded in the books of accounts (submissions of the appellant on page 19 of assessment order), however despite of number of specific opportunities the appellant did not furnish books of accounts and documentary evidences for the purpose of verification of seized records on which the surrender of unaccounted profits had been made as noted in the assessment order on page no. 20, 21, 23, 26 & 27.

9.10 The appellant has at one place claimed that the information in the documents pertain only to RT Industries and also claimed elsewhere that information contained in the documents is recorded in books of appellant. The Ld. AO has given factual findings that the seized documents and information which part pertains to RT Industries and which part pertains to the appellant.

9.11 The appellant has claimed that all the entries pertain to RT Industries and that RT Industries has owned up all these entries before Hon'ble ITSC. The appellant has not produced those exhibits and the entries wise analysis in the appeal proceedings as well. The appellant has made statements without supporting evidences. It is not as per legal provisions whereby it is claimed that income of one assessee is owned up by another assessee before Hon'ble ITSC. If this argument of appellant is accepted then it will vitiate the entire scheme of settlement. Further an entry may have different implication in case of appellant vis à vis the implication it may have for a different assessee if it is owned up by different assessee before Hon'ble ITSC

In view of the above, this contention of the appellant is rejected.

9.12 Order of Hon'ble ITAT in case of individuals Sh. Trilok Chand Jain & Shri Ashok Kumar Jain:

The appellant has also relied upon the order of Hon'ble ITAT in case of individuals Sh. Trilok Chand Jain & Shri Ashok Kumar Jain. These orders are in context of different set off of facts and circumstances in view of the following unique facts of the case of the appellant

a) The seized documents relied upon and referred by the Ld. AO pertaining to exhibits 7, 9, 10, 11, 12, 14, 16, 21, 22, 24, 26 contain the entries related to RT Industries and Rajesh Products (appellant). (page no. 20 & other pages of assessment order). The appellant has not shown that these seized documents also contain similar entries pertaining to individuals Sh. Trilok Chand Jain and Shri Ashok Kumar Jain. When the crucial evidence was missing/there was different paper the two cases of individual are clearly distinguishable. The Ld. AO in para (ii) on page 20 of assessment order has highlighted the pages where entries of the appellant are recorded. The appellant in the appeal also not filed the supporting books of accounts and also not disputed specifically the pages referred in para (ii) on page 20 of assessment order.

b) In the case of the appellant specific queries were raised for verification of the seized material with the books of accounts maintained by the appellant in view of the fact that appellant had claimed that the entries are duly recorded in books of accounts. Whereas in the case of individuals Sh. Trilok Chand Jain and Sh. Ashok Kumar Jain the appellant has not claimed that the books of accounts are regularly maintained and thus there was nothing like books of accounts for the Ld. AO to call from those respective parties and hence the assessment was to be made on the basis of different nature of documentation and different nature of enquiries.

In view of the above, this contention of the appellant is rejected.

9.13 At one place the appellant has claimed the referred orized materials are dumb papers and contradictorily has alas claimed that the entries such documents are recorded in books of accounts. It is noticed that in the tyly

11.09.2017 the assessing authority the appellant has filed that the some of information pertains the appellant and he has filed analysis of the same. Sur les in 200 gr (page 177 to 236 of the paper bool) and on each page averagely 20 entries pertaining to appellant are described thereby average number of entries pertaining to the appellant are more than 1000. Since the appellant did not show so it cannot be said that tise details completely match with the seized documents referred to in the assessment order

9.14 The appellant in this letter (reply dt. 11.09.2017 filed before the assessing authority) has also stated that books of accounts are being produced whereas thom page 1 of this letter it is seen that the letter has been given in Tappal/Dak as there is stamp of the office of the Id. AD acknowledging the receipt of letter ie. the question of producing the books for the verification of the Ld. Assessing Officer does not arter Thin coupled with the fact that the Ld. AO issued repeated notices calling for books of accounts and supporting documents and also considering the replies of the assessee to such a notices whereby appellant has not complied with the notices, it can he concluded that books of accounts in an appropriate manner and the supporting documents were not produced by the appellant.

9.15 It is appellant who is to explain the transaction with supporting documents However the appellant has been shying away and not coming forward with the supporting documents in support of his explanation adverse inference is to withdrawn against appellant in this regard. The appellant has not complied with the legal/statutory binding notices issue by the AO and has willfully denied giving the information and documents. As per section 68/69/69A/69B/69C/69D the onus is on the assessee to furnish an explanation which is satisfactory and supported by evidences, whereas the appellant has made self-serving statements that the transactions are disclosed and verifiable without producing supporting books of accounts and documents and thus the explanation of the appellant is not satisfactory.

9.16 In view of the above considering the totality of the facts and law. I am of the opinion that the reliance placed by the appellant on the order of Hon'ble ITSC and order of Hon'ble ITAT referred above, is not of help to the appellant vis-à-vis the present ground of appeal as discussed above. Further that the retracton of statement of sh Trilok Chand Jain is not a completely valid retraction qua the appellant. The adverse inference is to drawn against the appellant for not producing the books of accounts and documents specifically called for the by the Ld. AO as the assesseees are not to sit in judgment on whether to comply with a statutory notice or not. The addition as referred in the ground of appeal is jointly and severely based on (i) the statement of Sh. Trilok Chand Jain, (ii) the affirmation and confirmation of the surrender by partners of the appellant by counter signing the statement, (iii) the seized material as referred in the assessment order and (iv) the enquiries carried out during the assessment and replies of the appellant on the notices. Further in view of the judgements of Hon'ble Jurisdictional High Court in the cases of (i) Pr. CIT v. Shri Roshan Lal

Sancheti (II Appeal No 47 of 2018, dated 30-10-2018), Hon'ble Rajasthan High Court, and (1) CIT. Bikaner us. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Hon'ble Rajasthan High Court, the addition to income can be made on the basis of the statement. The appellant has not discharged the onus cast on him and also not produced cogent explanation with supporting evidences to counter the findings in the assessment order.

Accordingly, this ground of appeal is dismissed.”

5. Feeling dissatisfied from the finding so recorded in the order of the Id. CIT(A) the assessee has preferred the present appeal on the grounds as reproduced herein above in para 2 above. To support the various grounds so raised by the assessee, the Id. AR of the assessee, has filed a detailed written submissions before the date of hearing and after the date of hearing the summary of arguments were also filed both that submission reads as under :

Submission dated 12.06.2024

#### A. MATERIAL FACTS

1. The Appellant is a Firm engaged in the business of manufacturing and trading of Mustard and production of Mustard oil.
2. That search operation (hereinafter referred to as “the search”) was undertaken on 10.12.2015 against the RT Group, Tonk at G-31, 37, 38, 39, RIICO Industrial Area, Distt. Tonk, Tonk, Rajasthan and the present Appellant u/s. 132(1) of the *Income-tax Act, 1961* (hereinafter referred to as "the Act").
3. In consequence of the search, the impugned (search) assessment order dated 29.12.2017 was passed u/s. 153A of the Act by the Ld. Assessing Officer (“AO”), whereby the total income of the Appellant for the subject Assessment Year (AY) 2016-17 was re-assessed at Rs. 3,81,94,640/- u/s 143(3) r.w.s. 153B(1)(b) of the Act, on the basis of the following two impugned additions:

- (i) Addition of Rs. 56,20,268/- on account of alleged excess stock found during the survey proceedings u/s. 133A of the Act; and
  - (ii) Addition of Rs. 3.2 Crores on account of alleged surrender made by Sh. Trilok Chand Jain during the search as unaccounted profits of the firm.
- (i) ADDITION OF RS. 56,20,268/- ON ACCOUNT OF ALLEGED EXCESS STOCK (UNDISCLOSED INVESTMENT)
4. That *vide* para 5.4.1 and 5.4.5 of the impugned assessment order, the above addition has been made by the Ld.AO *solely* on the basis of the (retracted) statement of Sh. Trilok Chand Jain (hereinafter referred to as "Sh.TCJ") recorded u/s. 132(4) of the Act on the date of search and statement of Sh. Ashok Kumar Jain (hereinafter referred to as "Sh.AKJ") during survey on the Appellant u/s. 133A of the Act on the said date i.e. not on the basis of any "incriminating material" seized during search and pertaining to the said stock.
  5. The assessee produces the bills and books of account before the AO *vide* letter dated 11.12.2017 (See page 383, 384, 385 & 386 of Paperbook) Which were duly checked by AO and confirming the same in her assessment order (See page 14, Para 2 of assessment order). These bills are duly entered in the book of accounts and trading results were accepted by AO. These bills are part & parcel of final accounts which are not in dispute. AO by making an addition on this count is actually making a double addition because the assessee has already shown the corresponding sales of these bills and hence had already offered the sales as revenue. The AO is only making the addition on the basis of the statement of Sh. Ashok Jain and holding him responsible for not mentioning to survey team that some bills were pending to be recorded in the books of accounts, The AO has not made any adverse remark on the audited accounts of assessee, nor it has disputed the genuity of purchases and nor doubted the payments made against these bills through proper banking channels.
  6. Thus, AO has made additions only on the basis of standalone statement of Sh.AKJ which is contrary to law. The case of assessee is squarely covered by the decision of Hon'ble ITAT Jaipur in the case of *DCIT vs. MOJIKA REALESTATE & DEVELOPERS PVT LTD.* ITA NO. 1236/JP/2018. The judgement of is annexed in compilation. (See page 28 of Judgement) where it is held:

*".....We therefor find that it is case where the statement of director of the assessee company is not corroborated by any evidence which demonstrated that there are any other transactions pertaining to the year under consideration which remain undisclosed and not recorded in the books of accounts*

*and therefore, the statement recorded u/s. 133A on a standalone basis cannot form the basis for making the addition in the hands of the assessee company.”*

(emphasis in bold supplied)

(ii) ADDITION OF Rs. 3.2 CRORES ON ACCOUNT OF ALLEGED SURRENDER BY SH. TRILOK CHAND JAIN

7. This addition is purely basis on the statement of Sh. Trilok Chand Jain, who is not even a partner of assessee firm and also on the certain exhibits AS 7, 9, 10, 11, 12, 13, 14, 16, 21, 22, 24, & 26.
8. The statement was retracted by Sh. Trilok Chand Jain on 18.11.2016 and he along with M/s. R. T. Industries filed a settlement application before Hon'ble ITSC and ITSC passed an order on 20.03.2020 (See page 469 to 532 of Paperbook). The AO during the course of assessment was informed vide letter dated 20.11.2017 (Page 365 to 373 of Paperbook). That the documents/ exhibits referred above do not belong to assessee and these exhibits are owned by M/s R.T. Industries, but AO rejected, the stand of assessee by holding that no order of ITSC has been passed. Ld. CIT(A)'s attention was drawn on ITSC order but the Ld. CIT(A) did not appreciate the fact. That the order of ITSC has attained finality and as per section 245I of the Income Tax Act.

“Every order of settlement passed u/s. 245D(4) shall be conclusive as to the matters stated therein and no matter covered by such order shall save otherwise provided in this chapter be re-opened in any proceeding under this act or under any other law for the time being in force.”

The same cannot be interfered. The Hon'ble ITSC in their order page 526 of Paperbook Para 80-82, Also, held that the exhibits referred above have been considered and no adverse inference can be drawn from such exhibits.

Hence, once the exhibits referred above have been owned by M/s. R.T. Industries and Hon'ble ITSC has passed an order u/s. 245D(4) taking them into account. These same exhibits cannot be taxed again in the case of assessee.

It is further stated that the statement of Sh.TCJ which was retracted on 18.11.2016 (157-161 of Paperbook) has been found as valid retraction by Hon'ble ITSC (page 525 Para 78). Relying on these facts the Hon'ble ITAT Jaipur in the case of group assessee's in ITA No. 96, 97, 98, 99, 100, 101, &

102. In its order dated 15.06.2022 has held that :

*“Therefore, the conclusiveness is “matter specific” and just not limited to applicants before ITSC.”*

(Page 14 of ITAT Order)

This means that Hon'ble bench of ITAT Jaipur endorsed that “Retraction was valid” as held by Hon'ble ITSC.

9. It is further brought to your honour's notice that neither the AO nor the CIT(A) has mentioned under which section the addition is made. If no section is mention than the addition is held to be bad in law and is to be deleted. Our view is supported by the decisions of the Hon'ble Delhi ITAT in case of *Sudha Loyalka Vs. ITO*, ITA No. 399/DEL/2017, Para 6(i) of order and also by ITAT Bangalore in ITA No. 2027/BANG/2016, Para 6 of order in the case of *Shree Ramareddy Ramesh vs. The ITO Ward 2 (2)(4), Bengaluru*.

It is Further submitted that a detailed submission dated 26.10.2023 has already been filed during the course of hearing and the copy of same is also enclosed.”

Submission dated 26.10.2023

#### A. MATERIAL FACTS

1. The Appellant is a Firm engaged in the business of manufacturing and trading of Mustard and production of Mustard oil.
2. That search operation (hereinafter referred to as “the search”) was undertaken on 10.12.2015 against the RT Group, Tonk at G-31, 37, 38, 39, RIICO Industrial Area, Distt. Tonk, Tonk, Rajasthan and the present Appellant u/s. 132(1) of the *Income-tax Act, 1961* (hereinafter referred to as "the Act").
3. In consequence of the search, the impugned (search) assessment order dated 29.12.2017 was passed u/s. 153A of the Act by the Ld.Assessing Officer (“AO”), whereby the total income of the Appellant for the subject Assessment Year (AY) 2016-17 was re-assessed at Rs. 3,81,94,640/- u/s 143(3) r.w.s. 153B(1)(b) of the Act, on the basis of the following two impugned additions:
  - (i) Addition of Rs. 56,20,268/- on account of alleged excess stock found during the survey proceedings u/s. 133A of the Act; and
  - (ii) Addition of Rs. 3.2 Crores on account of alleged surrender made by Sh.Trilok Chand Jain during the search as unaccounted profits of the firm.

(a) ADDITION OF RS. 56,20,268/- ON ACCOUNT OF ALLEGED EXCESS STOCK (UNDISCLOSED INVESTMENT)

4. That *vide* para 5.3.1 and 5.4 of the impugned assessment order, the above addition has been made by the Ld.AO *solely* on the basis of the (retracted) statement of Sh.Trilok Chand Jain (hereinafter referred to as “Sh.TCJ”) recorded u/s. 132(4) of the Act on the date of search and statement of Sh.Ashok Kumar Jain (hereinafter referred to as “Sh.AKJ”) during survey on the Appellant u/s. 133A of the Act on the said date i.e. not on the basis of any “incriminating material” seized during search and pertaining to the said stock.
5. Further, *vide* para 5.4.4 of the impugned assessment order, the Ld.AO admittedly ignored the documentary evidence (bills etc.) produced by the Appellant to correct and explain Sh.AKJ’s statement and substantiate that the stock in question was previously recorded and disclosed as part of the Appellant’s books of accounts.
6. The submission of the above mentioned documentary evidence (bills etc.) was also duly acknowledged by the Ld. AO (please see page 14 of the impugned assessment order). Furthermore, *vide* page 2 of the said order, the Ld. AO has admitted that the books of accounts were produced and examined, with no dispute that the Appellant was in the trading of mustard and was maintaining regular books of accounts.
7. That the Ld. AO as well as the Ld. CIT(A) *vide* impugned appellate order (*infra*) are only relying on the fact that while questioning the Sh.AKJ, it was never categorically explained by him that certain bills pertaining to the alleged “excess stock” were yet to be accounted for in the books of accounts, despite the subsequent production of unchallenged documentary evidence (including bills etc.) to provide such explanation and settled law that “*view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter*” *vide* Hon’ble Supreme Court’s decision in *Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income-tax (Central), Calcutta* 82 ITR SC 363.
8. Furthermore, the Ld.AO and Ld.CIT(A), as quasi-judicial authorities are relying solely on the purported omission/error/mistake in the statement recorded when Sh.AKJ was under tremendous mental pressure and suffering from extreme physical as well mental fatigue due to ongoing search/survey action, and seek to take advantage of the same, contrary to the following decision of the co-ordinate Bench “A”, Jaipur of this Hon’ble Tribunal *vide M/S. Trust Marketing , Jaipur v. Assistant Commissioner of Income, Circle-6, Jaipur* in ITA No. 742/JP/2019

decided on 03.10.2019 after applying the *ratio* of *Kedarnath Jute Mfg. Co. Ltd.* (supra):

*“5. .... The entries and treatment in the books of account is not a conclusive basis for holding the income arises and liable to tax. The AO is under duty and obligation to assess the actual and correct income as per provisions of the Act while acting as a quasi judicial authority and not to take advantage of any mistake or the entries made in the books of account. The Id. CIT (A) has confirmed the addition by citing the provisions of section 41(1) which in our view not applicable in this case as discussed in earlier part of this order. Accordingly, in view of the above facts and circumstances of the case as well as the binding precedents as cited above, we hold that the addition made by the AO on account of claim of refund of Countervailing Duty without appreciating the fact that the said claim was already rejected and the chances of refund are very bleak is not justified, therefore, the addition made by the AO and confirmed by the Id. CIT (A) is deleted.*

*6. In the result, appeal of the assessee is allowed.*

*Order pronounced in the open court on 03/10/2019.”*

(underlining and emphasis in bold supplied)

9. Without prejudice to the above submissions, even if the erroneous theory of the Ld.AO is considered i.e. there was shortage of stock of Rs. 56,20,268/-, even then this entire amount cannot be added, as it will only be Gross Profit (“GP”) that may be added.
10. Further, once the above said bills are entered into the Appellant’s books of accounts, then they form the part and parcel of either sales or closing stock. Hence, what the Ld. AO has done, as duly confirmed by the Ld. CIT(A), is the addition of this entire amount in the Appellant’s income tantamounting to double taxation, because the books of accounts are prepared for the financial year ending 31st March 2016 and as on that date the books were prepared by making entries of these bills, which could not be produced during the course of search.
11. That the Ld. CIT(A) has only relied upon the fact that no books of accounts were produced before the Ld. AO, whereas the Ld.AO has admitted and mentioned in the impugned assessment order itself that these books of accounts were produced and examined by her *vide* page no. 384 of the Paperbook (wherein the Appellant has categorically stated that the books of accounts are being produced).

12. Your honours kind attention is also invited to page no. 175 of the Paperbook wherein *vide* letter dated 11.09.2017 the entire seized material pertaining to the Appellant was analyzed and submitted to the Ld. AO together with the books of accounts and no discrepancies were found therein and no additions were made.
13. The Ld. CIT(A) *vide* page 30 of the impugned appellate order is also floating a new theory of “accommodation bills” without bringing anything on record to substantiate the same, instead merely relying on the guess work and suspicion, which are not tenable in the eyes of law. The whole case of the department is that the assessee never told that some bills were pending as on the date of survey is of absolutely no consequence as it is a routine practice that writing of the books of accounts and adjustments is a continuous process duly recognized by the Act, which is why the Act provides a period of six months from the end of the financial year for finalizing the returns. Hence by just stating that the partner did not intimate the department that some bills are still pending, addition cannot be sustained.
14. What the Ld. CIT(A) and Ld. AO have perversely ignored is that there were genuine bills produced by the Appellant which are entered in its books of accounts and the payments to these bills have been made by proper banking channels and there is no contrary finding to that effect.
15. That the Ld.AO also ignored the fact that Sh.TCJ was not a partner in the Appellant Firm, therefore, an unrelated third party with respect to the Appellant, who could not lawfully make surrender of any alleged undisclosed income on behalf of the Appellant.
- (b) ADDITION OF Rs. 3.2 CRORES ON ACCOUNT OF ALLEGED SURRENDER BY SH.TRILOK CHAND JAIN
16. That *vide* para 5.3.2, 5.5 and 5.5.2 of the impugned assessment order, the Ld.AO made the above addition on the following two basis:
- (i) Surrender of Rs.3.2 Crores as alleged “unaccounted profits” of the Appellant *vide* (retracted) statement of Sh.TCJ during search;
  - (ii) Reliance on Exhibits 7, 9, 10, 11, 12, 13, 14, 16, 21, 22, 24, 26 (hereinafter collectively referred to as “the exhibits”), solely on account of the prior rejection of settlement application filed by M/s. RT Industries, Sh.TCJ and other applicants by the Hon’ble Income Tax Settlement Commission (“ITSC”) *vide* order dated 08.05.2017 u/s. 245D(1) of the Act, despite the exhibits not being seized from the possession of the Appellant

(but seized from the partners of the Appellant and Sh.TCJ) and belonging to a third party i.e. RT Industries.

17. That the Ld.AO again ignored the fact that Sh.TCJ was not a partner in the Appellant Firm, therefore, an unrelated third party with respect to the Appellant, who could not lawfully make surrender of such alleged undisclosed income on behalf of the Appellant.
18. The Ld.AO has made the above addition also in the absence of any "incriminating material" seized during search as the statutory presumption u/s. 132(4A)/292C of the Act only applied against the Appellant's partners and Sh.TCJ, and the same stood unrebutted thereunder, with respect to the exhibits, which could not be used against the Appellant.
19. The Ld. Assessing Officer ("AO") further stated *vide* para 8 of the impugned assessment order that the same was passed after obtaining the approval of the Addl. Commissioner of Income Tax, Central Range, Jaipur *vide* letter no. 2749 dated 28-12-2017, without reproducing the same for verification.

(c) FINALITY OF FACTUAL FINDINGS *VIDE* BINDING ITSC ORDER AND ITAT ORDER

20. The above mentioned settlement application, initially rejected by the Hon'ble ITSC, was subsequently allowed to be proceeded with pursuant to the order dated 08.05.2017 of the Hon'ble High Court of Delhi.
21. The *vide* order dated 20.03.2020 passed u/s.245D(4) of the Act, the Hon'ble ITSC made the following factual findings that are both binding and have attained finality u/s. 245-I of the Act and *via* non-filing of appeal thereagainst by the Respondent authority:
  - (i) The above exhibits were owned up by the applicants and pertained to them as well as found in their control and possession;
  - (ii) That the said exhibits, part of the seized documents, had not been able to reveal anything (i.e. dumb documents) and the Respondent authority's views thereon were mere conjecture *vide* para 77 of the ITSC order;
  - (iii) The retraction of Sh.TCJ's statement *vide* letter dated 18.11.2016 was found valid and no link was found between the admitted amounts therein (refer to serial no.1 and 9 to para 3 of ITSC order) and the seized documents, including the exhibits *vide* para 78 of the ITSC order;

- (i) That *vide* para 54 and 79 of the ITSC order the (retracted) statement of Sh.TCJ statement could not be given effect to on account of the Respondent authority's failure to bring substantive evidence on record to corroborate the same i.e. incriminating material *via* search;

22. That *vide* order dated 15.06.2022 in ITA No.96-102/JP/2022, ITA No.103-109/JP/2022 and ITA No.110-115/JP/2022, a co-ordinate Bench of this Hon'ble ITAT accepted and applied the above findings of the Hon'ble ITSC in the following manner:

*"19. After hearing both the parties and perusing the materials available on record, we find that the Ld. CIT(A)'s dismissal of the objections raised on the above ground against additions made by the AO by relying on seized material (Exhibit 2, 32 to 40) is therefore unsustainable in law as:*

...

- *That with regards to Exhibits 1 to 40, the Hon'ble ITSC has made a clear finding that the same are "dumb documents" as the same are not corroborated or substantiated by the Revenue;*

- *That with regards to Exhibit 2 pp.30 to 32, apart from the fact that the said material is covered by the ITSC order in the case of RKJ (HUF), the assessee has provided detailed information/facts which cogently establishes that the said Exhibits do not belong to the assessee nor have any link to the assessee, and finding of such non- existent link is blatant conjecture and surmise of the Ld.AO/CIT(A) which is legally unsustainable;*

- *The above said documents also cannot be used against the Appellant via operation of the statutory bar u/s 245-I of the Act vide ITSC order and findings therein with respect to the said documents and matters therein, including owning of the documents and purported transactions recorded therein via registries by TCJ, Ashok Kumar Jain (HUF) and Rakesh Kumar Jain (HUF);*

- *The conclusion of the Ld. CIT(A) that additions can be made for the block of AY 2010-11 to AY 2016-17 even if there is no incriminating material qua each assessment year, is perverse and blatantly erroneous as binding precedent of Meeta Gutgutia (supra) and other authorities make it patently clear that assessment has to be made u/s 153A of the Act only on the basis of seized incriminating material qua each assessment*

*only, where the assessments have concluded and/or time limit for issue of notice u/s.143(2) of the Act has expired.*

*• Additions have been made merely on surmises and conjectures without resorting to the provisions of section 131(1) and 133A, despite being specifically asked for. It is trite law that if the authority rejects such request and proceeds to complete the assessment or finalise the proceeding, such action shall be not in accordance with the law. Reliance in this regard is placed on the following decisions [E.M.C (Works) P. Ltd. v. ITO, (1963) 49 ITR 650,654 (All); MunnalalMurlidhar v. CIT, (1971) 79 ITR 540 (All); Addl. CIT v. RadheyShyamJagdish Prasad, (1979) 117 ITR 186 (All). Cf. NathuramWeljibhaiVyas v. Mrs. LaxmibaiLunkaranjiChandak, (1983) 139 ITR 948 (Bom). The authority empowered under section 131 should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of such authority. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person [Cf. Food Corporation of India v. Provident Fund Commissioner, (1990) 1 SCC 68,71(SC)]. The Assessee should not to be blamed or penalized if the Assessing Officer does not, on prayer, take action.- [Nathu Ram Premcand v. CIT, (1963) 49 ITR 561 (All)]. In this regard, the Appellant is also referring to the judgment of Hon'ble High Court in the case of CIT v. N. P. Garodia [2009] 310 ITR62 (Punjab and Haryana); CIT v. Brij Pal Sharma [2009] 179 Taxman 467; ITO v. M/s Rakam Money Matters P. Ltd. In this view of the matter, the assessment order passed, is bad in law.*

*• Reliance is also placed on the recent decision of the Hon'ble Delhi High Court in the case of CIT v. Pinaki Misra and Sangeeta Misra reported in (2017) 392 ITR 347 (Del) dated 3.3.2017, wherein it was held that, no addition could be made on the basis of evidence gathered from extraneous source and on the basis of statement or document received subsequent to search. In this case, the AO has made many additions which are extraneous and is not based on the incriminating material.*

*Based on the registries seized during the course of the search proceedings, the AO has made additions on account of "undisclosed investment in properties". In doing so, the AO/Ld. CIT(A) have grossly failed to consider that there is a difference between "seized document" and "incriminating document". It is not necessary that the documents which is found in Search and seized by the Department is always*

*incriminating. Where the assessee has the valid explanation for the same, it is not an "incriminating" material. In this case, the assessee has valid explanation of the registries and the same was offered before the AO. The seized documents mainly pertain to the registered sale/purchase deed(s) of immovable properties which the assessee has purchased from cash funds available to them. In this regard, the kind attention is invited to the decision of ITAT Pune Bench in the case of M/s Bharati Vidyapeeth Medical Foundation Vs. Asstt. CIT Cir.2(2), Pune dated 28th April, 2011, wherein the Hon'ble ITAT has allowed the appeal of the assessee and has quashed the proceedings u/s 153C initiated in the case of the assessee. The ITAT has appreciated the arguments of the assessee that the materials (which in this case is a copy of ledger account) was merely a "seized document" and not a "incriminating document" and hence proceedings U/s 153C cannot be initiated in the case of the assessee. The ratio of the said decision shall be squarely applicable in case of the assessee." The Ld. DR has placed reliance on case laws that are either distinguishable on facts and/or pre-date the decision of the Hon'ble Supreme Court in Meeta Gutgutia supra. The decisions of the Hon'ble High Court of Delhi's in CIT v. Kabul Chawla (2016) 380 ITR 573 (Del) and Pr. CIT vs. Meeta Gutgutia [2017] 395 ITR 526, echo the decision of the jurisdictional Hon'ble Rajasthan High court in the case of Jai Steel limited vs. ACIT (88 DTR 1) and these have settled the law i.e., presence of incriminating material is sine qua non for passing a valid search assessment order u/s 153A and that completed/non-abated assessments cannot be reopened thereunder in the absence of incriminating material pertaining to the AY in question. These decisions have been confirmed as good law by the Hon'ble Supreme Court by dismissing the SLP filed by the Income Tax Department against the said orders of the Hon'ble High Court of Delhi. The case laws cited by the Ld. DR do not help revenue's case as they are unable to establish to the contrary and are therefore inapplicable to the present facts of the appellants where no incriminating material qua appellants or AYs in question has been seized. The additions made u/s 153A without such incriminating material cannot therefore be legally sustained, as has been consistently held by this Tribunal, recently by the "A" Bench vide Deputy Commissioner of Income Tax v. M/S Ksheer Sagar Developers Pvt. in ITA Nos. 1158 to 1162/JP/2019 and other co-ordinate Benches, recently by Hon'ble Tribunal Delhi Bench "F" Bench at New Delhi vide Shri Vijay Pal Gag v. ACIT in ITA. Nos. 4985-4988/Del/2018 and Hon'ble Tribunal Lucknow Bench "B" Bench at Lucknow vide Manoj Kumar Agarwal v. Dy.CIT in I.T.(SS)A. No. 411/Lkw/2019. In view of the*

*above discussions, we find that impugned orders do not also meet the settled law criteria regarding assessments u/s.153A of the Act. Considering the totality of the facts and circumstances of the case, we find that the additions made and sustained by the AO/CIT(A) concerning alleged "on-money" on property transactions are conjectures based on unsubstantiated dumb documents. This has also been the finding of and held so by the Hon'ble ITSC in the case of the applicants who have owned up to the same and were in any case not found in the control & possession of the appellants before us. ..."*

The above findings and order passed by the co-ordinate Bench of the Hon'ble ITAT has also achieved finality *via* non-filing of appeal thereagainst by the Respondent authority.

(d) IMPUGNED APPELLATE ORDER PASSED BY LD.CIT(A)

23. That the present Appellant's appeal against the impugned assessment order and above mentioned impugned additions made therein was dismissed and said order/additions upheld by the Ld.Commissioner of Income Tax (Appeals)-4, Jaipur ("CIT(A)") *vide* impugned appellate order dated 10.10.2023, on the basis of the following perverse findings on facts and binding law applicable thereto:

- (i) That *vide* paras 6, 6.2, 6.5 to 6.8 of the impugned appellate order the (retracted) statement of Sh.TCJ and *dumb* exhibits belonging to RT Industries and other applicants before the Hon'ble ITSC, which were also recovered from their possession *vide* Section 132(4A) of the Act, constituted "incriminating material" against the Appellant;
- (ii) Ld.AO's citing the approval letter number and date and claim that prior approval had been received *vide* para 8 of the impugned assessment order, satisfied the mandatory provision of Section 153D of the Act and did not require production of the same for verification by the Ld.CIT(A) *vide* para 7.4 of the impugned appellate order;
- (iii) After acknowledging *vide* para 8.6 of the impugned appellate order that the present Appellant's claim of non-verification by the Ld.AO of the documentary evidence provided against the impugned addition of Rs. 56,20,268/- for alleged "excess stock" found, *vide* para 8.8 to 8.12 of the impugned appellate order, upheld the addition thereon solely on the (retracted) statement of Sh.TCJ, Sh.AKJ's inability to prove to the contrary during survey and inapplicability of Hon'ble ITSC's order/findings, without perusing the Appellant's said documentary evidence on record and

contrary to the final and binding findings of the Hon'ble ITSC and co-ordinate bench of this Hon'ble ITAT;

- (iv) That *vide* para 9.16 of the impugned appellate order, the impugned addition of Rs. 3.2 Crores as alleged "unaccounted profits" of the Appellant was upheld solely on the basis of the (retracted) statement of Sh.TCJ and its purported affirmation by the Appellant's partners, non-binding nature of order/findings of the Hon'ble ITSC and co-ordinate Bench of this Hon'ble ITAT and seized exhibits representing "incriminating material" against the Appellant.

## B. SUBMISSIONS ON LAW

- (a) Impugned search assessment order/additions legally unsustainable in the absence of "incriminating material" seized during search *vide Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell P. Ltd.* in Civil Appeal No. 6580 of 2021 decided on 24.04.2023:

*"14. In view of the above and for the reasons stated above, it is concluded as under:*

...

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. ..."*

- (b) Statement of Sh.TCJ/Sh.AKJ u/s. 132(4) or 133A of the Act is not "incriminating material" and no addition solely on basis of such statement *vide Micro Marbles Private Limited v. ITO* (Rajasthan High Court) in D.B. Civil Writ Petition No. 13719/2021 decided on 04.01.2023:

*"32. It may be noted that the statement recorded under Section 132 (4) of the Act can be used in evidence for making the assessment only if such statement is made in context with other evidence, or material discovered during search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger the assessment."*

- (c) Third party statement of Sh.TCJ/Sh.AKJ etc. u/s. 132(4)/133A of the Act cannot be used against Appellant *vide DCIT, Jaipur v. Prakash Chand Sharma & Smt. Kalawati Sharma* in ITA No. 780-781/JP/2019 decided on 18.11.2020 by the Hon'ble ITAT, Jaipur Bench:

*"7.7 Further, in the detailed submission made by the Ld. A/R it has vehemently argued that the settled position of law is that addition cannot be made simply on the basis of statement, in this case the statement of 3rd person. The same has to be substantiated and corroborated either by enquiries or by linking it with tangible material/ evidence.*

*8. I am in agreement with the Ld. A/R that it is a settled law that statement alone cannot be treated as incriminating material for the purposes of making addition for assessment completed u/s 143(3). It has been held in many judgments that mere statement u/s 132(4) or u/s 131 is not sufficient to make an addition. A statement made must be relatable to some incriminating material or the statement must be made relatable to material by subsequent inquiry/investigations.*

*Hon'ble high Court of Rajasthan in the case of Mantri Share Brokers Pvt. Ltd. (96 taxmann.com 279) have held as under:*

*Section 69B of the Income-tax Act, 1961 - Undisclosed investments (Burden of proof) - Whether where except statement of director of assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence, said sum could not be added in hands of assessee as undisclosed investments - Held, yes [Paras 10-11] [In favour of assessee] Para 10 & 11 of the order is as under*

...

*It would not be out of place to mention that this order of Hon'ble Rajasthan High Court has been confirmed by Hon'ble Supreme Court also.*

*Further, Hon'ble Delhi High court in case of Harjeev Agarwal (70 Taxmann.com 95) held thus:*

*"...A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is*

*found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act.*

*However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB (1) read with Section 158B (b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded...."*

*Though the above principle is laid down in relation to assessment of block period u/s 158 BC of the Act, the same was also applied in respect of assessment u/s 153A by Delhi High Court in case of Best Infrastructure (84 Taxmann.com 287) when it was held thus:*

*38. Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra)."*

- (d) Ld.AO/CIT(A)'s failure to rebut statutory presumption u/s. 132(4A)/292C of the Act with respect to exhibits seized from possession of settlement applicants cannot be used against Appellant *vide Pepsi Foods Pvt. Ltd. v. Assistant Commissioner of Income Tax* (2014) 367 ITR 112 (Del):

*“6. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be 'satisfied' that, inter alia, any document seized or requisitioned 'belongs to' a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of section 153A. Therefore, before a notice under section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is-after such satisfaction is arrived at-that the document is handed over to the Assessing Officer of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when, inter alia, any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'.”*

(underlining and emphasis in bold supplied)

Similarly, a co-ordinate Bench of this Hon'ble ITAT *vide DCIT v. M/s Bhola Nath Radha Krishan* in ITA No.5149/Del/2012 decided on 05.04.2013 has held as follows:

*"6. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that learned CIT(A) has discussed the issue at length and held as under:-*

*"6.1 I have considered the rival arguments. The whole addition hinges on evidence gathered from third party document or statement. Now the issue is can third party statement or entry in absence of any corroborative evidence despite using ultimate action of search, can result in justified addition. The legal provision relating to 4 ITA-5149/Del/2012 presumption u/s 132(4A) is applicable to the person from whose possession or control the incriminating material is found and seized. Based on the incriminating material found from third party search but not belonging to the appellant, this presumption will not be applicable unless corroborated by other evidence. Presumption available under section 132(4A) can be drawn against the person in whose case search is authorized and from whose possession or control books of account, diary or documents are found in the course of search. Presumptions regarding correctness of contents of books of account etc. cannot be raised against the third party.*

*Presumption under section 132(4A) is only against the person in whose possession the search material is found and not against any other person. It is further held that the presumption is rebuttable and not conclusive and it cannot be applied in the absence of corroborative evidence. Straptex India P.Ltd. vs. Dy.CIT [2003] 84 ITR 320 (Mum).*

*In the case of Rama Traders vs. First ITO [1998] 25 ITD 599 (Pat.) (TM) it was held that no addition could be made, on the basis of presumption raised by section 132(4A), in the hands of the assessee where in the books of another firm, certain figures were found showing the purchase made by the assessee.*

*In Asst. CIT v. Kishore Lal Balwani Rai [2007] 17 SOT 380 (Chd.), it has been held that though the diary seized enable the revenue to presume that its contents are true, such presumptions is available only against the person to whom it belongs and this is a rebuttable presumption.*

*Presumption u/s 132(4A) is not available, when the seized papers is recovered from third party and not from the assessee. Sheth Akshay Pushpavadan v. Dy.CIT [2010] 130 TTJ 42 (Ahd.UO).*

*6.2 The provisions of section 132(4A) provide a legal presumption that it is incumbent on the person to explain the documents, albeit loose papers in*

*this case, seized from his possession and control. This presumption squarely applies to the persons concerned and addition can certainly be made in his case. However, based upon the incriminating material found at the premises of a third party but not belonging or signed by the appellant the presumption provided u/s 132(4A) will not be applicable 5 ITA-5149/Del/2012 until and unless corroborated by other evidence. In other words it is now a well settled law that presumptions regarding the correctness of paper, documents or books of accounts cannot be raised against a third party in the absence of corroborative evidence. The provisions of section 132(4A) provide that presumption can certainly be drawn against the person in whose case search is authorized and from whose possession or control the books of accounts, loose papers, slips or any other incriminating material or documents are found in the course of search but not against a THIRD PARTY.*

*It has been observed from the statements recorded under oath u/s 132(4)/131 by the Income Tax officials on 09.10.2009, 15.10.2009, 07.11.2009 and 10.08.2011 that Sh. Sohan Raj Mehta has not mentioned the name of the appellant. No specific queries have been raised in the statement about the alleged payments having been made to the appellant. No corroborative evidence was found while conducting a consequential search on the appellant's premises.*

*6.3 The alleged transactions noted on the loose slips were not handwritten by the appellant nor have his initials or signatures so as to suggest his involvement in the same. Moreover, the A.O. while using the statements of the third party should have allowed the appellant to cross examine such third party in order to use the same as evidence. This was not done despite request from appellant for cross examination. As has been held in the case of Kishin Chand Chela Ram (supra) by the Hon'ble Apex Court that any addition made on the basis of statement by a Third Party without affording an opportunity for rebuttal or cross examination to the assessee is perverse. It was therefore the obligation of the A.O. to allow the appellant to cross examine Sh. Sohan Raj Mehta and head of RMD Group in the interest of natural justice before embarking on a final view in this matter.*

*In Elite Developers Vs. DCIT (2000) 73 ITR 379 (Nag) it was held that where the seized documents evidencing receipt of money by the assessee were not speaking documents as they were ambiguous and did not contain any narration or description about different figures noted thereon*

*and the department having failed to bring on record any material or evidence to corroborate allegations regarding receipt of money, then the presumption on the basis of the documents could not be raised.*

*In ACIT v/s Prabhat Oil Mills (1995) 52 TTJ (Ahd) it has been held that mere entries in the account to third parties were not sufficient to prove that the assessee indulged in such transactions.*

*...”*

*7. After considering the arguments of both the sides and the facts of the case, we do not find any infirmity in the above order of learned 7 ITA-5149/Del/2012 CIT(A)....”*

- (e) Ignorance/failure to consider the documentary evidence provided by the Appellant vitiates the impugned assessment/appellate order *vide CIT v. Orissa Corporation Pvt. Ltd.* 159 ITR 78:

*“To what extent the assessee has obligation to discharge the burden of proving that these were genuine incomes has been considered by this Court in Lalchand Bhagat Ambica Ram v. Commissioner of Income-tax, Bihar and Orissa, 37 ITR 288. This Court was concerned there with the encashment of high denomination notes. In that case some unexplained high denomination notes were treated as the undisclosed income of the assessee. This Court held that when a court of fact arrives at its decision by considering material which is irrelevant to the enquiry, or act on material, partly relevant and partly irrelevant, and it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its decision, a question of law arises, whether the finding of the court is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon inadmissible material. On no account whatever should the Tribunal base its findings on H suspicions, conjectures or surmises, nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises. In that case the so-called hundi racket in which the assessee was alleged to have been involved was not proved. That was only a suspicion of the Revenue.*

*The question was again considered by this Court in Homi Jehangir Gheesta v. Commissioner Income-tax, Bombay City, 41 ITR 135, when this Court reiterated that it was not in all cases that by mere reject on of*

*the explanation of the assessee, the character of a particular receipt as income could be said to have been established; but where the circumstances of the rejection were such that the only proper inference was that the receipt must be treated as income in the hands of the assessee, there was no reason why the assessing authority should not draw such an inference. Such an inference was an inference of fact and not of law. It was further observed that in determining whether an order of the Appellate Tribunal would give rise to a question of law the court must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, had been considered fairly and with due care; ; whether the evidence pro and con had been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal had been coloured by irrelevant considerations or matters of prejudice. It was further reiterated that the previous decisions of this Court did not require that the order of the Tribunal must be examined sentence by sentence through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law. In considering probabilities properly arising from the facts alleged or proved, the Tribunal did not indulge in conjectures, surmises or suspicions.*

*In Sreelekha Banerjee and others v. Commissioner of Income-tax, Bihar and Orissa, 49 ITR 112, this Court held that if there was an entry in the account books of the assessee which showed the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself. it is necessary for the assessee to establish, if asked, what the source of that money was and to prove that it A was not income. The department was not at that stage required to prove anything. It could ask the assessee to produce any books of account or other documents or evidence pertinent to the explanation if one was furnished, and examine the evidence and the explanation. If the explanation showed that the receipt was not of an income nature, the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.*

*In Commissioner of Income-tax (Central), Calcutta v. Daulatram Rawatmull, 53 ITR 574, the principles governing reference under section 66 of 1922 Act similar to section 256 of 1961 Act were discussed and it was held that the High Court has no power under section 66(2) of the*

*Indian Income- tax Act, 1922 which is in pari-materia with section 256(2) of the Act, to call upon the Appellate Tribunal to state a case if there was some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on a re-appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal.*

*In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”*

- (f) Hon'ble ITSC order and findings binding and final with regards to matters covered i.e. impugned additions and underlying facts u/s. 245-I of the Act and *vide Commissioner of Income-Tax (C) -III v. Gopal Gupta [2014] 46 Taxmann.com 312 (Delhi):*

*“9. In this backdrop, the question that arises is as to what degree, if at all, can this Court interfere when two possible interpretations are placed before it with regard to a document which is of vital importance and when one of the interpretations has been accepted by the Settlement Commission. In this context, Mr. Tripathi, the learned senior counsel appearing on behalf of respondent No.1 placed reliance on the following four decisions of the Supreme Court:-*

*1. R.B. Shreeram Durga Prasad v. Settlement Commission & Another: (1989) 1 SCC 628;*

*2. Jyotendrasinhji v. S.I. Tripathi & Ors.: 1993 Supp (3) SCC 38;*

*3. Shriyans Prasad Jain v. Income Tax Officer & Ors.: 1993 Supp (4) SCC 727; and*

4. *Union of India & Others v. Ind-Swift Laboratories: (2011) 4 SCC 635.*

10. *In R.B. Shreeram Durga Prasad (supra) the Supreme Court observed that in the exercise of power of judicial review of a decision of the Settlement Commission, the Court is concerned with the legality of procedure followed and not with the validity of the order. The Supreme Court also placed reliance on the English decision in the case of Chief Constable of the North Wales Police v. Evans: (1982) 1 WLR 1155. The Supreme Court observed that judicial review is not concerned with the decision but with the decision making process.*

11. *In Jyotendrasinhji (supra) the Supreme Court placed reliance on its decision in the case of R.B. Shreeram Durga Prasad (supra) and observed that the scope of enquiry, whether by the High Court under Article 226 or by the Supreme Court under Article 136 remains the same and the question to be examined is whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from the ground of bias, fraud and malice, which of course, constitute a separate and independent category. The Supreme Court was concerned with the question of interpretation which had been placed by the Commission in respect of trust deeds which were the subject matter before the Settlement Commission. The Supreme Court observed that the Commission had interpreted the trust deeds in a particular manner and even if the interpretation placed by the Commission on the said deeds was not correct, it would not be a ground for interference since a wrong interpretation cannot be regarded as a violation of the provisions of the Income Tax Act. The exact words used by the Supreme Court were as under:*

*"16. It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this Court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this Court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this Court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this Court imposes on itself having regard to the nature of the function*

*performed by the Commission and keeping in view the principles of judicial review. Maybe, there is also some force in what Dr Gauri Shankar says viz., that the order of the Commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless of course the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (audi alteram partem) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same -- whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT) [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169] which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is "concerned with the legality of procedure followed and not with the validity of the order". The learned Judge added "judicial review is concerned not with the decision but with the decision-making process". Reliance was placed upon the decision of the House of Lords in Chief Constable of the N.W. Police v. Evans [(1982) 1 WLR 1155 :*

*(1982) 3 All ER 141] . Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds*

*-- though it is true, some contentions of law are also raised. The Commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the Commission on the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be a violation of the provisions of the Income Tax Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years.*

*17. In view of the above, though it is not necessary, strictly speaking, to go into the correctness of the interpretation placed upon the said deeds by the Commission, and it is enough if we confine ourselves to the question whether the order of the Commission is contrary to the provisions of the Act, we propose to, for the sake of completeness, examine also whether the order of the Commission is vitiated by any such wrong interpretation?"*

*(underlining added)*

*12. The next decision which was relied upon by Mr. Tripathi was that of Shriyans Prasad Jain (supra) wherein the Supreme Court again placed reliance on R.B. Shreeram Durga Prasad (supra) and Jyotendrasinhji (supra) and observed as under:-*

*"19. Mr Poti, learned counsel for the Revenue, is right in submitting that in this appeal this Court would not go into questions of the fact or review the findings of fact recorded by the Commission. As pointed out by this Court in Jyotendrasinhji v. S.I. Tripathi [1993 Supp (3) SCC 389: (1993) 201 ITR 611] this Court can interfere with the Commission's order only if it is found to be "contrary to any*

*of the provisions of the Act". To the same effect is the earlier decision of this Court in R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169]."*

*(underlining added)*

13. *It is apparent that the power of interference under Article 226 is limited. It is evident that this Court under Article 226 can only interfere with the Settlement Commission if it is found to be contrary to the provisions of the Act and that even if the Court disagrees with an interpretation placed by the Settlement Commission on a document, it cannot substitute its view in place of that of the Settlement Commission unless and until the interpretation given by the Settlement Commission is clearly arbitrary and perverse.*

14. *The last decision relied upon by Mr. Tripathi was that of Union of India & Others v. Ind-Swift Laboratories Limited (supra) in which the Supreme Court observed as under:-*

*"22. An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @ 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding. So far as the second issue with respect to interest on Rs. 50 lakhs is concerned, the same being a factual issue should not have been gone into by the High Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion against the opinion of the Settlement Commission when the same was not challenged on merits."*

*(underlining added)*

15. *From the above it is evident that the Supreme Court observed that the High Court ought not to go into a factual issue while exercising writ jurisdiction and should not have substituted its opinion against the opinion*

*of the Settlement Commission. From all these decisions it is abundantly clear that the scope of review under Article 226 of the Constitution insofar as an order passed by the Settlement Commission under Section 245 D (4) of the Income Tax Act is concerned, is a very limited one. This Court certainly cannot substitute its view in place of the Settlement Commission particularly on point of interpretation of a particular document. Interference can only be made if there is a fault in the decision making process and not with the decision itself. Even if this Court feels that it would have arrived at a different decision, it cannot interfere with the conclusion arrived at by the Settlement Commission because this Court does not sit in appeal over the decision of the Settlement Commission.*

*16. In this context, it is to be seen that the only point urged by the learned counsel for the Revenue is that the interpretation placed on the receipts was erroneous. The interpretation which has been placed by the Settlement Commission on the documents in question, first of all, results in a finding of fact which, as we have seen, cannot be interfered with. And, secondly, the interpretation is not so outlandish to be categorized as arbitrary or perverse so as to call for interference. We make it clear that the interpretation sought to be placed by the Revenue may be a possible interpretation but, so, too, would be the interpretation placed by the Settlement Commission which has also been espoused by the learned counsel for respondent No.1. In such a situation no interference with the Settlement Commission's order is warranted.”*

- (g) Finality for failure to appeal the appellate order passed by co-ordinate Bench and findings on present facts in issue binding on Ld.AO/CIT(A) *vide Union of India v. Kamlakshi Finance Corporation Limited* 1992 Supp (1) SCC 443:

*“6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy.*

*It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.*

(emphasis in bold and underlining supplied)

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

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S.No.	Description of Documents	Page No.
1.	(A) Copies of Panchnamas dated 10/11.12.2015 drawn in the case of the Appellant	1-72
	(B) Copy of the Statement of Shri Trilok Chand Jain dated 10.12.2015 u/s. 132(4) of the Income Tax Act, 1961 ("Act"), alongwith its typed copy	73-135
	(C) Copy of the Statement of Shri Trilok Chand Jain dated 5.1.2016 recorded u/s. 132(4) of the Income Tax Act, 1961 along with its typed copy	136-156
	(D) Copy of the Retraction dated 18.11.2016 of Statement of Shri	157-161

	Trilok Chand Jain	
2.	Copies of ITR Acknowledgement and Computation of Income for A.Ys. 2014-15 & 2016-17	162-167
3.	Copy of Show Cause Notice dated 09.08.2017 u/s.142(1) of the Act issued by the DCIT, CC-1, Jaipur and Submission dated 24.08.2017 of the appellant before the A.O.	168-172
4.	Copy of Show Cause Notice dated 04.09.2017 u/s.144 of the Act issued by the DCIT, CC-1, Jaipur and Submission of appellant dated 11.09.2017 before the A.O. ( <i>containing analysis of seized documents and audited financials from A.Ys. 2010-11 to 2016-17</i> )	173-353
5.	Appellants application u/s. 144A to Additional CIT, Central Range, Jaipur dated 09.11.2017 for A.Ys. 2010-11 to 2016-17	354-361
6.	Copy of Show Cause Notice dated 10.11.2017 u/s.142(1) of the Act issued by the DCIT, CC-1, Jaipur and Submission of appellant dated 20.11.2017 filed before the A.O.	362-373
7.	Copy of Show Cause Notice dated 29.11.2017 u/s. 142(1) issued by the DCIT, CC-1, Jaipur and Submission of appellant dated 04.12.2017 filed before the A.O.	374-380
8.	Appellants application u/s. 144A to Additional CIT, Central Range, Jaipur dated 11.12.2017 for A.Ys. 2010-11 to 2016-17 and Submissions of the appellant filed before the DCIT, CC-1, Jaipur dated 11.12.2017 in reference to the aforesaid application filed u/s. 144A	381-387
9.	Submission in respect of application filed u/s. 144A of the Act, dated 11.12.2017 filed before the Additional CIT, Central Range, Jaipur	388-391
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11.	Submissions filed before the Hon'ble CIT(A)-4, Jaipur enclosing:	399-468
	(i) Dated 04.10.2018	
	(ii) Dated 16.08.2021	399-417
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	(vii) Dated 20.09.2023	431-449 450-468
12.	Copy of the order dated 20.03.2020 passed u/s. 245D(4) of the Hon'ble Income Tax Settlement Commission in RJ/JP-51/17-18/01-IT to 05-IT	469-532

COMPILATION OF JUDGMENTS

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1.	<i>Commission of Income-tax (C)-III v. Gopal Gupta</i> [2014] 46 taxmann.com 312 (Delhi)	1 to 8
2.	<i>Anita Jain v. ACIT Central Circle-1, Jaipur</i> ITAT Jaipur, ITA No. 96 to 102/JP/2022	9 to 62
3.	<i>Sudha Loyalka v. ITO</i> ITAT Delhi 2018 SSC Online ITAT 24316	63 to 69
4.	<i>Shree Ramareddy Ramesh v. The ITO Ward 2 (2) (4), Bengaluru.</i> (ITAT Bangalore, ITA No.2027/Bang/2016)	70 to 74

7. The Id. AR of the in addition to the written submission so filed vehemently argued that revenue merely relied on the statement of Shri Trilok Chand Jain while making the disputed additions of Rs. 3.20 crore. He is not authorized partner in the assessee firm and therefore, the addition is not sustainable. The second addition made is in respect of the alleged excess stock of Rs. 56,20,268/- found at the time of survey proceeding conducted at the business premises of the assessee. The Id. AR of the assessee submitted relying on page 529 of the paper book wherein the income to the extent of Rs. 3.20 crore disclosed by M/s. R. T. Industries,

wherein Shri Trilok Chand Jain and Shri Gyan Chand Jain were partners. He vehemently argued that once that income has already been considered by that firm M/s. R.T. Industries there cannot be a duplicate addition in the case of the assessee. Even Shri Trilok Chand Jain has retracted from the statement so recorded so when that person has no relationship with the affairs of the firm that statement cannot be relied upon and to drive home to this contention the Id. AR of the assessee invited our attention to the finding of the Id. ITSC.

The Id. AR of the assessee invited our attention to the detailed submission made on 20.11.2017 before the assessing officer [ paper book page 365 to 373 ] where in it was contended by filling an Annexure A all the transaction of the alleged exhibits explained to have been incorporated in the books of M/s. R. T. Industries. The Id. AR of the assessee also submitted that once those documents were considered before ITSC in the case of M/s. R. T. Industries the same cannot be added in the hands of the assessee. Thus, when the transaction is no way related to the assessee and the discourse by a person is not partner of the firm the addition made has no basis and is required to be deleted. The Id. AR of the assessee also relied upon the decision of the ITAT Jaipur in the case of Smt. Anita Jain

and others in ITA no. 96 to 102/JP/2022 wherein ITAT considering the finding of the ITSC taken a view that the documents relied upon by the revenue are dump documents. The Id. AR of the assessee also relied upon the decision of Delhi High Court in the case of CIT Vs. Gopal Gupta [ 46 taxmann.com 312 (Delhi) ] wherein the court held that scope of review under Article 226 in so far as an order passed by Settlement Commission u/s. 245D is limited one, therefore, interference can only be made if there is a falut in decision making process and not with the decision itself. In that decision it has been held that High Court certainly cannot substitute its view in place of settlement commission particularly on point of interpretation of a particular document. Thus, the retraction of the statement and facts of the case of the of income of RT Industries has been considered by the ITSC. The Id. CIT(A) not accepted this fact and merely based on the statement of Shri Trilok Chand Jain and confirmed the addition made by the Id. AO

The Id. AR of the assessee as regards the excess stock found submitted that the disclosure was made by the Shri Trilok Chand Jain and countersigned by the partner. They were not aware about the fact the goods were received but the invoices of that goods were not updated in the accounts. The same was incorporated after the survey at the premises of the assessee and incorporated that purchase bills. Consequent to that

purchase the sales have also been accepted and the books of accounts produced were audited and maintained in the regular course of business has not been rejected. The assessee vide submission dated 11.12.2017 stated that there is no discrepancy in the stock and for substantiating the same, the assessee submitted bills ( page 385, 386 & 387) along with the books of accounts. The alleged difference was on account of the fact that on the date of survey mustard goods arrived, but the bills had remained to be entered in the book stock [ all bills are before the date of survey ] and therefore, the alleged difference is in fact not the difference. The payment of the bills was made by an account payee cheque. Knowing that fact the Id. AO has not made any independent inquiry to confirm the averments made by the assessee. Thus, the purchase resulted in the difference since accounted there cannot be again addition of those purchases as excess stock. Thus, merely based on the surmises and conjectures additions cannot be made in support of this contention the Id. AR of the assessee relied upon the decision in the case of Sudha Loyalka Vs. ITO (Delhi ITAT) in ITA no. 399/Del/2017. The Id. AR of the assessee placed also reliance on the decision of Shree Ramareddy Ramesh Vs. ITO in ITA no. 2027/Bang/2016 where in the tribunal deleted the addition because there is no reference as to under which section the addition was made. Without

prejudice to that when those purchase bills after recording the books if the addition is sustained it tantamount to double addition of the same amount. The Id. CIT(A) even though aware of this fact has not considered the plea of the assessee and confirmed the addition.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and Id. CIT(A). The Id. DR vehemently argued that the excess stock was found at the time of survey and Shri Trilok Chand Jain accepted that excess stock and the assessee thereafter contended that the bills remained to be accounted which is nothing but the afterthought. The Id. AO considering the contention of the assessee in para 5.4.4. Even before the Id. CIT(A) the assessee has not supported the contention by filling the Goods receipt note, Details of entry in stock register and transport receipt. Thus, in the absence of evidence the contention raised by the assessee is not acceptable. As regards the retraction of the statement of Mr. Trilok Chand Jain the Id. CIT(A) noted that the assessee has not made any compliant to higher official stating that content of the statement is incorrect and there is no evidence as such of any coercion while recording of that statement. Therefore, Id. CIT(A) considered the arguments of the assessee

but not found convincing. As regards the contention of the assessee for addition based on the loose paper the same is duly considered but in the absence of any supporting evidence the addition was confirmed in the hands of the assessee as it is supported by the document and supported by the statement recorded.

9. In the rejoinder the Id. AR of the assessee submitted that since the bills were of the local no other records are required to be maintained. The Id. AO has not verified by making necessary enquiries. The bills produced for which credit was asked and the same were not disputed, the separate addition cannot be made. The purchase since not disputed by rejecting the book results no separate addition can be made. To drive home to this contention Id. AR of the assessee relied upon the written submission and compilation of case laws.

10. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee disputed two additions made by the Id. AO and sustained by the Id. CIT(A).

10.1 Ground no. 2 relates to the addition of Rs. 56,20,268/- attributable to the alleged excess stock found at the premises of the assessee. The brief

facts related to the disputes as emerges from the records is that the assessee is partnership firm engaged in the business of manufacturing and trading of Mustard and production of Mustard Oil. During survey conducted at the business premises of the assessee statement of partner of the firm Shri Ashok Kumar Jain was recorded on 10.12.2015. In that statement vide question no. 11 he was confronted about the excess stock worked out wherein he replied that

7011 ✓ कृपया बताएँ कि आपने द्वारा लेखा बहियों के अनुसार बतलाए गए सरसों का तेल, खल इत्यादि के अंतिम स्टॉक तथा भौतिक सत्यापन के दौरान धारे कर्मचारियों द्वारा आपके कर्मचारियों द्वारा बतलाए अनुसार स्टॉक किन्ही Inventory बनाई गई उनमें निम्न प्रकार है अन्त पाया गया है तथा उससे मूल्य में भी अन्तर पाया गया है इस सम्बन्ध में अपना सहायक प्रस्ताव करें।

S.No	Item Name	भौतिक सत्यापन अनुसार (अंतिम मूल्य)	लेखा बहियों अनुसार (अंतिम मूल्य)	अन्तर (कम)	कुल राशि (अन्तरधर्म)
1.	सरसों	5832.98 (₹₹)	5631.50 (₹₹)	201.48 (₹₹)	8,05,920/-
2.	सरसों तेल	500 (₹₹)	6134 (₹₹)	438.66 (₹₹)	46,79,538/-
3.	Unbattered तेल	40 (₹₹)	—	40 (₹₹)	2,40,000/-
4.	खल	210.60 (₹₹)	—	210.60 (₹₹)	4,74,910/-

56,20,268/-

उपर्युक्त हमारे व्यवसायिक परिवार श्रेष्ठ प्रोडक्ट्स पर सर्वे की कार्यवाही के दौरान भौतिक सत्यापन पर जो स्टॉक की Inventory बनाई गई है वह धारे में कार्य करते कर्मचारी तमर भतीजी (मोहित सिंह) के द्वारा अनुसार आपके कर्मचारियों ने काईई इस Inventory व ऊपर लंगरे गए मूल्य से भी पूर्ण रूप से सहमत हैं।

*ओपी नं. 11/12/2015*  
11/12/2015

*अन्त*  
11/12/2015

-Contd- 5-

तथा सरसों के तेल, unbattered तेल व खल के लेखा बहियों में दर्शाए गए स्टॉक व भौतिक सत्यापन के दौरान पाए गए स्टॉक के अन्तर जो अन्त 56,20,268/- रूप का आया है उसे मैंने मार्च में श्रेष्ठ प्रोडक्ट्स की चालू वित्तिय वर्ष की आयुक्ति स्ट्रेट ऑफ गान का निरक्षित करिषण (Taxation) के लिए संग्रहित करवा है। इस सम्बन्ध में मैंने मार्च में ही मागीसारी है समाप्त आप कर ली है।

-5-

As is evident from the reply the partner of the firm was confronted with the working and based on that working he accepted the facts of excess amount. The statement of Shri Ashok Kumar Jain was confronted to his Brother Shri Trilok Chand Jain, who is not partner but has confirmed the disclosure made by his brother. Shri Trilok Chand Jain retracted his statement. In the assessment proceeding the assessee submitted that since there books of account were not updated and survey conducted on 10.12.2015 wherein the stock taken was found excess then book stock because three purchase bills dated 09.12.2015 for which stock found in physical but the related bills being dated 09.12.2015 remained to be entered into the books and there is a difference. Out of the stock found excess assessee submitted bill of Rs. 51,13,450/- which the Id. AO has not considered even though the bills contain the name of the party and the vehicle number used for the transportation of goods. The bills are dated just one day before the date of survey. The Id. AO was given these three bills for which the goods were considered in the physical stock but the bills were not entered into the books and therefore, there exists an excess stock found that of the book stock. The bench noted from the statement recorded at the time of survey wherein the stock quantity of physical stock as well as books stock were mentioned [ AO page 6 ]. If the bill dated 09.12.2015

considered then in that case the stock of Mustard found in physical comes to 5832.98 and books quantity if that bill is considered comes to 5881.5 which results shortage of 48.52. Same way in the case of Muster Oil stock found physically 500 and books stock including purchase comes to 511.34 and thereby it also shortage of 11.34. This being the minor difference on account of the error and omission at the time of survey can be considered and therefore the addition on those two items cannot be sustained. As regards the by produce in the form of unfiltered oil and oil cake there is no books stock considered and that aspect of the matter being the by product the same is required to be given credit as these are not purchases of the assessee but considered to be by product from the manufacturing activity and therefore, that stock cannot be considered as unaccounted purchase to be added as income of the assessee. The bench noted that lower authority has merely relied on the statement and has not considered the tangible material placed on record. The statement recorded is required to be read with the tangible material not only that there is no incriminating material related to activity of unrecorded purchase is found. The fact that bills 09.12.2015 is not recorded on the date of survey but recorded thereafter is not controverted by the revenue. These books of accounts produced by the assessee have not been rejected by the Id.AO as well as

that of the Id. CIT(A). Since these books of account were not rejected and the assessment is duly completed u/s. 143(3) of the act r.w.s. 153B(1)(b) of the Act there cannot be any separate addition of the goods which are already included in the books of accounts. The bench only that when the provision of section 145(3) is not invoked and the assessment is completed as per section 143(3) of the Act no separate addition is required to be made. We get strength to support our view based on the provision of the Act and decision of the Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [99 taxmann.com 422 (Rajasthan) ]. In that case the Hon'ble High court held that;

7. The counsel for the respondent contended that the Tribunal while considering the objection of section 145(3) of the Income-tax Act has rightly observed as under :

"(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

8. Taking into considerations, the overall facts and circumstances of the case, we are of the opinion that the Tribunal while confirming the order passed by the Commissioner of Income-tax (Appeals) has not committed any error, therefore, the issue is answered in favour of the assessee and against the Department.

Thus, when the purchases are already recorded in the books of accounts and the difference if that purchase included in the book stock the difference

is very negligible the separate addition without rejecting the books of account is not sustainable and even the basis for making that addition was merely on the statement which was retracted. Based on these observations ground no. 2 raised by the assessee is allowed.

11. In ground no. 3 the assessee has challenged the addition of Rs. 3,20,00,000/- made by the Id. AO and sustained by the Id. CIT(A). The brief facts as emerges related to the disputes are that Shri Trilok Chand Jain, in his statement u/s. 132(4) recorded on 10.12.2015 at his residential premises, in reply to question no. 26 surrendered of Rs. 3.20 cores on account of undisclosed income from unaccounted profits on the sale and purchase of material in the firm. This surrender was made based on records seized as Annexure-AS Exhibit- 7, 9, 10, 11, 12, 13, 14, 16, 21, 22, 24, 26. Further, on the last page of statement of Shri Trilok Chand Jain recorded on 10.12.2015 u/s. 132(4) of the Act, Shri Ashok Kumar Jain and Shri Rajesh Kumar Jain, the partner of the assessee firm duly accepted the surrender of undisclosed income made by Shri Trilok Chand Jain on their behalf and signed the statement. In the assessment proceeding the Id. AO noted that the assessee has not included that surrendered income in its return of income, a show cause notice was issued to the assessee asking to show cause as to why the amount of Rs. 3.20 crores should not be

added to its income on account of unaccounted profits as recorded in the seized documents. The assessee submitted the reply on 20.11.2017, wherein it was contended that the entries stated in the aforesaid exhibit are duly reconciled with the books of accounts. The statement of Shri Trilok Chand Jain was a solitary statement without confronting of the fact with the other partners of the firm. Shri Trilok Chand Jain since filed the retraction statement that statement cannot further be relied upon by the revenue. As regards the contention that the disclosure was made in connection with the seized material, the assessee submitted that material is not at all incriminating as the same duly forms part and parcel of the regular books of account and are duly considered / explainable and verifiable. The assessee contended that once the retraction from the statement is made no addition can be made merely based on surrender made without the existence of any corroborative evidence found or seized. In reply dated 11.12.2017 the assessee contended before the Id. AO that exhibits are owned up or considered by M/s R. T. Industries in the application filed before the Income Tax Settlement Commission (ITSC). Thus, once that seized material is already considered by one assessee the same cannot be again considered in the case of the assessee. The contention so raised by the assessee was not found acceptable by the Id. AO on the reasons that the application us/.

245C(1) of M/s. R. T. Industries has already been rejected by the ITSC against which it has filed a write petition before the Hon'ble Delhi High Court and in the absence of any direction the document seized pertains to the assessee the explanation cannot be considered. Further the assessee preferred an application before the Addl. CIT for direction as per provision of section 144A of the Act wherein the Addl. CIT considered that application filed before the ITSC is rejected and direction from the Delhi High Court that material owned by M/s. R. T. Industries cannot be accepted. Therefore, Id. AO noted that it is solely related to M/s. RT Industries cannot be accepted and made an addition of Rs. 3,20,00,000/- as income of the assessee arising out of the transaction recorded in Exhibits – 7,9,10,11,12,14,16,21,22,24 & 25 seized at the residential premises of the partner of the assessee firm added as income of the assessee. The Id. CIT(A) while dealing with the grounds of appeal of the assessee noted that *“The Hon'ble ITSC w.r.t. the retraction w.r.t. the additions of parties who filed applications has given relief on the main premise that there was no linkage between the information found/gathered and the amount of surrender. Whereas in case of the present issue the surrender/accepted amount is linked with and based on the excess amount of stock found at the premises as per physical inspection and verification.”*

Before us revenue merely relied on the statement of Shri Trilok Chand Jain while prying to sustain the disputed additions of Rs. 3.20 crore. The bench noted that Shri Trilok Chand Jain is not an authorized partner in the assessee firm. During the assessment proceeding the assessee submitted before the Id. AO that the transaction in question has been disclosed by M/s. R. T. Industries, wherein Shri Trilok Chand Jain and Shri Gyan Chand Jain were partners. Thus, once that income already considered by that firm M/s. R.T. Industries there cannot be a duplicate addition in the case of the assessee for the same amount because there is a statement recorded wherein Shri Trilok Chand Jain admitted that disclosure. Subsequently Shri Trilok Chand Jain has retracted from the statement so recorded. The Id. AR of the assessee invited our attention to the detailed submission made on 20.11.2017 before the assessing officer [ paper book page 365 to 373 ] where in it was contended by filling an Annexure A all the transaction of the alleged exhibits explained to have been incorporated in the books of M/s. R. T. Industries. The Id. AR of the assessee also submitted that once those documents were considered before ITSC in the case of M/s. R. T. Industries the same cannot be added in the hands of the assessee. Thus, when the transaction is no way related to the assessee and the discourse by a person who is not a partner of the firm the addition made has no basis.

The Id. AR of the assessee also relied upon the decision of the ITAT Jaipur in the case of Smt. Anita Jain and others in ITA no. 96 to 102/JP/2022 wherein ITAT considering the finding of the ITSC taken a view that the documents relied upon by the revenue are dump documents. That decision of the tribunal has not been challenged by the revenue.

11.1 Even the Id. CIT(A) differentiated the fact that Id. ITSC as regards the retraction stating that there is no linkage between the information found / gathered and the amount of surrender. Whereas in case of the present issue the surrender accepted is linked with the excess stock. As regards the amount of Rs. 3.20 which is in dispute in the earlier round the same was rejected by an order dated 08.05.2017. The assessee challenged that finding before the Hon'ble Delhi High Court and the based on that direction Id. ITSC again admitted the application and decided on merits in this order of Id. ITSC all these facts are evidently clear and the same is extracted herein below for the sake of clarity:

<b>ORDER UNDER SECTION 245D(4) OF THE I.T. ACT, 1961</b>		
1.	Settlement Application No.	: 1. RJ/JP-51/17-18/01-IT 2. RJ/JP-51/17-18/02-IT 3. RJ/JP-51/17-18/03-IT 4. RJ/JP-51/17-18/04-IT 5. RJ/JP-51/17-18/05-IT
2.	Date of filling application	: <b>28.04.2017</b> (Original Date of filling of the Application)  <b>20.09.2018</b> (Admitted again after the Hon'ble High Court, New Delhi quashed the impugned order of the Settlement Commission dated 08.05.2017)
3.	Date of Order u/s 245D(1) of the Act	: <b>08.05.2017</b> (Rejected)  <b>28.09.2018</b> ('Allowed to be proceeded with' during the hearing conducted u/s 245D(1) of the Act.
4.	Date of Order u/s 245D(2C) of the Act	: <b>27.11.2019</b>
5.	Name & Address of the Applicants	: 1. <b>M/s R. T. Industries</b> , F-1, F-1A Tonk Road, RIICO Industrial Area, Tonk, Rajasthan-304001 2. <b>Sh. Trilok Chand Jain</b> , RIICO Industrial Area, Tonk, Rajasthan-304001. 3. <b>Sh. Gyan Chand Jain</b> , Shastri Nagar, Kidvai Park, Hemukalani, Circle, Tonk, Rajasthan-304001. 4. <b>Rajesh Kumar Jain (HUF)</b> , Shastri Nagar, Tonk, Rajasthan-304001. 5. <b>Ashok Kumar Jain (HUF)</b> , 07, Shastri Nagar, Tonk, Rajasthan-304001.
6.	Permanent Account No.	: 1. AAEFR2027A 2. ABHPJ4913F

11.2 Thus, it is clear from the latest order made available in the paper book of the assessee that the Id. ITSC has considered the application of M/s R. T. Industries. The bench noted from the order that the contention raised by the assessee that once that disclosure amount of Rs. 3.20 accepted in the case of M/s. R. T. Industries again it cannot be added in the hands of the assessee merely on the statement of Shri Trilok Chand Jain which was subsequently retracted. The Id. DR did not brought any

thing on record that the revenue has not accepted the order of the Id. ITSC dated 27.11.2019. To verify the contention raised by the assessee the bench upon going the order of the ITSC noted that the contention raised by the assessee is correct to the disclosure of Rs. 3.20 made by the M/s. R. T. Industries. The relevant observation from the order of the Id. ITSC which confirm facts presented by the Id. AR of the assessee are reproduced here in below:

“14. This Applicant has disclosed the largest chunk of the total amount offered for Settlement for the present Group of 5 Applicants: Rs. 3.20 crore out of the total amount of Rs. 4.98 crore, R.T. Industries is engaged in the business of manufacturing and trading of mustard oil. The Applicant also sells seeds and mustard cake. The Applicant admittedly had indulged in the years under consideration, in the inflation of purchases of mustard seeds from the farmers and by adopting this modus operandi, a lower GP had been artificially arrived at in the books which had the ultimate consequence of showing a lesser amount of net profit that had been offered for taxation.”

XXXX

“22. It was vehemently argued by the learned AR that in the course of the recording of the statement during the course of search, Shri Trilok Chand Jain, in answer to question no. 26, had stated that, based on some documents referred to therein, he was making a surrender of Rs. 3.35 crore in the case of the instant Applicant. Although the statement had been retracted after a time, the fact that had remained to be appreciated that even such a prima facie and off the cuff disclosure with regard to the present Applicant was not very much away from the ultimate figure of offer in the Settlement Application, of Rs. 3.20 crore after going through the material documents seized on this issue. Thus, it was contended, that the offer was almost closer to the said figure admitted off-hand while giving a statement under mental pressure during the Search operation. It was also contended that the figure of Rs.3.35 crore also had been rather extracted from him by the Department, than it had been voluntarily offered from his side, based on any inferable or legally sustainable computation of any kind.

23. Further, it was argued before us, that the applicant as though had allegedly agreed to surrender an amount of Rs. 32.74 lacs worth of excess stock in the hands of the present Applicant, which indeed was not the case. It was contended that during the search, Shri Trilok Chand Jain had been misled into believing that Shri Ashok Kumar Jain had separately admitted in his statement that there was excess stock also in the case of the present Applicant. Thus, Shri Trilok Chand Jain had merely admitted under the immediate pressure of the situation on a figure which had been brought to his notice. Besides, it was reconciled and the Department had no strong argument to rebut the claim. The said surrender, on account of excess stock, it was claimed, was factually incorrect. It was strongly contended that such had never been the case. The deponent had merely pushed into a misleading and pressurized admission, which had been done on the spur of the moment whereas the facts had clearly remained to the contrary.”

11.3 The Id. DR did not controvert the findings so recorded in the order of the Id. ITSC. As M/s. R. T. Industries before the Id. ITSC accepted the figure of 3.20 crores and the same is considered by the Id. ITSC, there cannot be another addition of the same amount based on the same set of evidence. We get support of our view from the decision of Delhi High Court in the case of CIT Vs. Gopal Gupta [ 46 taxmann.com 312 (Delhi) ] wherein the court held that scope of review under Article 226 in so far as an order passed by Settlement Commission u/s. 245D is limited one, therefore, interference can only be made if there is a fault in decision making process and not with the decision itself. In that decision it was held that High Court certainly cannot substitute its view in place of settlement commission particularly on point of interpretation of a particular document. Thus, the

retraction of the statement and facts of the case of the of income of M/s. R. T. Industries has been considered by Id. ITSC. The Id. CIT(A) not accepted this fact and merely based on the statement of Shri Trilok Chand Jain and confirmed the addition made by the Id. AO that all aspect is already covered in the order of the Id. ITSC we do not find any reason to sustain the addition of Rs. 3,20,00,000/- in the hands of the assessee. Based on this observation ground no. 3 raised by the assessee is allowed.

12. Ground no. 1 being general challenging the order on both the addition since we have deal with both the addition separately in ground no. 2 & 3, the ground no. 1 becomes educative in nature. Ground no. 4 raised by the assessee being technical and the appeal of the assessee is allowed on merits of the case this technical ground raised by the assessee becomes educative in nature. Ground no. 5 being general in nature does not require any adjudication.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18/07/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/07/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- M/s Rajesh Products, Tonk
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 626/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar