

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 111/Chd/2020
निर्धारण वर्ष / Assessment Year : 2014-15

M/s Headmaster Saloon Pvt. Ltd. SCO 16-17, Sector 8C, Chandigarh	बनाम	The DCIT Circle 1(1), Chandigarh
स्थायी लेखा सं./PAN NO: AABCH2736C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shri Manpreet Duggal, JCIT, Sr. DR
सुनवाई की तारीख/Date of Hearing : 26/06/2024
उदघोषणा की तारीख/Date of Pronouncement : 21/08/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the assessee Headmasters Saloon Pvt. Ltd. who are aggrieved by an order dt. 19/12/2019 (passed in Appeal No. 10577/16-17) of Ld. CIT(A) in terms of Section 250(6) of the Income Tax Act, 1961 which is hereinafter referred to as the "**impugned order**". The present second appeal is filed in terms of Section 253 of the Act. The relevant Assessment Year is 2014-15 corresponding to previous year 01/04/2013 to 31/03/2014.

FACTUAL MATRIX

2. The assessee company is in the **business of Saloon**. They operate with Brand Name "**HEADMASTERS WELLNESS ZONE**".
3. The assessee filed return of income for the A.Y. 2014-15 declaring a taxable income of Rs. 34,27,130/-.
4. The return was processed under section 143(1) and subsequently the case was selected for **scrutiny**.

5. Statutory notice **under section 143(2)** was issued on 07/09/2015 which was duly served on the assessee.
6. Subsequently, questionnaire alongwith statutory notices under section 142(1) and 143(2) was issued on 06/06/2016. In response to the said notices Shri Kapil Khanna, Advocate attended the assessment proceedings from time to time and furnished the requisite details.
7. The brief facts prior to the aforesaid are that **a survey operation under section 133A of the Income Tax Act**, was carried out at the business premises of the assessee on **04/03/2014**.
8. During the course of survey operation an amount of Rs. 45.00 lakhs was **voluntarily surrendered as and by way of additional tax liability, by the assessee.**
9. The relevant extract of the **surrender letter** is reproduced below as under:

“ March 5 2014

*The Commissioner of Income Tax
Chandigarh,*

Dear Sir,

Subject: Advance Income Tax

*There was a survey carried at out premises u/s 133A of Income Tax Act, 1961 on
4th and 5th March 2014”*

*While carrying at the survey, there were certain looses documents were found at our premises. **While scrutinizing those documents, we observed that certain Income needs to be booked over and above, already capture in the books of accounts.** Considering the additional Income, which needs to be booked we worked out tax liability of **Rs. 45 lacs**, which need to be deposited.*

We are pleased to deposit the same as per the following details:

<i>Cheque No.</i>	<i>Date</i>	<i>Amount(Rs.)</i>
<i>066991</i>	<i>15.02.2014</i>	<i>Rs. 10,00,000</i>
<i>066692</i>	<i>20.03.2014</i>	<i>Rs. 10,00,000</i>
<i>066693</i>	<i>25.03.2014</i>	<i>Rs. 10,00,000</i>
<i>066694</i>	<i>31.03.2014</i>	<i>Rs. 15,00,000</i>

Thanking You

*For Headmaster Saloon Private Limited
Veer Kaul
(Director)*

The copy of surrender letter dt. 05/03/2014 not in the paper book filed.

10. On a perusal of the aforesaid surrender letter it is seen that the surrender of income of **Rs. 1,35,00,000/-** (45,00,000/- x 3) was made in the hands of the assessee **on account of discrepancies found.**

11. Since the surrender was made voluntarily and it was made for the assessment year 2014-15 relevant to the Financial Year 2013-14, therefore the assessee was required to file his income tax return and voluntarily declare the surrendered income of **Rs. 1,35,00,000/-** **alongwith the normal income and accordingly pay the due taxes thereon.**

12. However, on the perusal of the income tax return of the assessee, it was seen that the assessee had declared an income of **Rs. 34,27,131/- only.** **Thus the surrendered income of Rs. 1,35,00,000/- on the account of “the discrepancies in the books of accounts” was not declared by the assessee in the Income Tax Return independently. Thus it was seen that the assessee had failed to honour the voluntary surrender that was made by him vide surrender letter dt. 05/03/2014.**

13. That in view of the above stated facts, a questionnaire dt. 21/11/2016, the assessee was asked to provide the **details** of surrendered income and to **explain as to why no declaration had been made on account of the surrendered income of Rs. 1.35 Crores.**

14. That in reply and response the counsel of the assessee submitted a written reply on **30/11/2016** which is annexed at page 7 of paper book. **We** have perused the said reply letter of the assessee while perusing the same we notice that there **is no date on it or rather it is not dated**. On page 8 it is averred as follows:

" 3. During the year under consideration, a survey was conducted on your premises on 04.03.2014. Please intimate the details of surrendered income if any, & how the same has been incorporated / declared in the return of income.

A survey u/s 133A of the Income Tax Act, 1961 was conducted at the business premises of the assessee on 04.03.14. Noting incriminating was found. The assessee gave the letter on 05.03.14 stating that while scrutinizing certain loose documents some income needed to be booked which was not shown in the books of accounts. Hence additional liability of tax arising out of the income on the bases of loose documents was to be included.

However while scrutinizing the documents no tax liability arose out of those documents. Hence normal tax has been deposited on the returned income. Copy of letter dated 05.03.2014 is enclosed for ready reference."

We notice that there are four annexures in the reply letter of the assessee which are not placed in the paper book.

15. The Ld. AO in the assessment order dt. 27/12/2016 under section 143(3) of the Income Tax Act, 1961 on page 3 para 6 has observed as follows:

" 6. On perusal of the above reply, it was seen that the assessee had not declared the voluntary disclosure / surrender of income that was made by him during the course of survey operation."

16. During the course of the assessment proceedings the Ld. AO on page 3 para 7 records as under:

"7. Accordingly, the issue was discussed with the counsel of the assessee and vide order sheet entry dt. 30/11/2016 he was asked to show cause as to why an addition of Rs. 1,35,00,000/- be not made in this case on the basis of surrender letter dt. 05/03/2014 vide which a voluntary surrender of income amounting to rs. 1,35,00,000/- was made by the assessee on account of discrepancies found in accounts".

17. Further in response to what transpired on **30.11.2016**, the assessee submitted a reply **dt. 27.12.2016** which is reproduced as below by Ld. AO in para 8 page 3 of AO's order 27/12/2016.

"8. In response, the assessee submitted a reply dated 27/12/2016 which is as under:

" Reasons for decrease in profitability in FY 2013-14 versus FY 2012-13

Income	F.Y. 2013-14	2012-13	Growth
Services	77406509	72371758	7%
Services DHI	2400000	0	
Services Asian Roots	3175630	0	
Retails	7694211	4799737	60%
Other	1474	9292475	-100%
Total Income	90677824	86463970	5%

Expenses	FY 2013-14	FY 2012-13	Growth
Material consumed	9054868	11346209	20%
Other direct expenses	17572938	16765132	5%
Stock in trade	6669112	2621019	154%
Changes in stock in trade	-154806	1249482	-112%
Total material + other direct	33142112	31981842	-112%

Employee Benefit Expenses	33121278	30524564	9%
Finance Cost	5270554	4396559	20%
Depreciation	7432860	6383927	16%
Admin Exp	11420167	9805464	16%
Sub Total	57244859	51110514	12%
Expenses Total	90386971	83092356	9%
PBT	290853	3371614	-91%

1. Sales growth at 5% has yielded only increase in absolute terms by approx Rs. 42 lacs only. Expenses growth for the year is of 9%, resulting in absolute increase by Rs. 73 lacs. Thereby leaving only Rs. 2.90 lacs on the PBT a decrease by 91%.

2. Highest increase in expenses was in there heads employee expenses, Finance costs, admin expenses with increase between 9% to 20%. In absolute terms, the increase in these heads was to the tune of approx Rs. 60 lacs. Borrowing in the year to meet the cash flow gap increased resulting in higher interest costs.

3. During the F.Y 2013-14, at the time of survey, we were actually having a small profit of Rs. 127131/- in our books, but we have now show our returned income of Rs. 3427131/- after declaring Rs. 3300000/- as additional income. Hence request to consider it the context itself."

18. That Ld. AO in his assessment order dt. 27/12/2016 after considering the reply of the assessee dt. 30/11/2016 and 27/12/2016 which was in response to

the show cause notice and after analysing the submission of the counsel of the assessee has observed as follows in the assessment order as follows:-

(a) The assessee has primarily stated that nothing incriminating was found during the survey and that the additional liability of tax arising out the income was to be on the bases of loose documents.

(b) The assessee has filed reasons for low profit during the year. In this regard, the assessee has contended that during the year, the assessee had infact incurred a very low profit i.e. Rs. 1,27,131/-, and the surrendered income of Rs. 33,00,000/- was declared over and above this amount, making the total profit Rs. 34,27,131/-. Thus the income declared is a part of the surrendered income i.e; Rs. 33,00,000/- the assessee also filed supporting documents for the same.

19. The Ld. AO while making the assessment order has observed as follows:

(i) The reply / replies of the assessee company is considered on merits.

(ii) The issues raised by the assessee vis a vis the facts of the case were discussed in details too as under:

(a) The contention of the assessee that no incriminating documents were found during the survey does not hold water. During the course of survey operation, a number of incriminating documents were found which were impounded. **The contents of these documents were confronted to the assessee during the course of survey operation while recording the statement of Shri Vir Kaul and Parmod Dewan, the Directors of the company.**

Following are recorded in respect of **incriminating document** in the statement of Shri Vir Kaul

Q. On page 24 of the Green Diary labelled Environmental Etiquettes amount with date have been mentioned. Please explain the nature of these entries.?

Ans. As for I concern this is purely, all these transaction has been recorded by the east while Director / Shares holders have we may not be able to comment upon this.

Q. On page 85 of Black diary labeled Executive Diary 2011 certain entries related to "FJ Account Statement" amouting to Rs. 12914688/- have been mentioned please explained?

Ans. Mr F.J Singh is the Product Distributions for Pevonia and also a SPA operator. These transaction relates to his commission entailment and product supplies that he was giving to us.

Q. Please give detail of your family members and house hold expenditure monthly expenditure?

Ans. My family, my wife and son. My current out flow expenditure is about Rs. 85000/- EMI for the home loan and car loan. Son's education takes another Rs. 45,000/- pm another 20,000-25,000 are house hold expenditure.

Q. On page 54 of Red Diary Labeled 13/Rita with 77 written pages, mentioned certain amounts as renewals for August Please explain these entries ?

Ans. This is the lead chart for membership, ready of renewal during the month of August

Q. I am showing the copy of spiral bored book-let labeled item beauty SPA and Nails academy. In this booklet name of course with duration and price have been mentioned. Please explain? How Income of the academy is recorded in the books?

Ans. The document being referred to is merely a guideline of prices. We however we do not operate a full scale academy till date due to lack of infrastructure. We in the last 3 year must have only taken in no mere than 20-25 students. The income from these, have been recorded appropriately.

Q. As per the trial balance taken out from your tally date base cashier hand of the company is Rs.16,90,253/- whereas the physical cash inventory preferred of the survey comes to Rs. 1,67,790/- Please explain this difference & also stated where the excess cash as per book is?

Ans. Some of the entries have not updated in the Books of the & also for safety reason same cash was carrying with orators.

Q. As per the trial balance taking from tally data base closing stock of the company as on date is Rs. 1,40,10,134/- whereas total stock of survey with the help of accountant & other staff comets to Rs. 1,08,47,498/- please explain the difference & where the excess stock lying?

Ans. Some of the stock with moved out the company challan to over perspective business partner was not enter in Books of the & is the difference. Some of the stock was also lying approximately Rs. 30 Lacs was lying at Panchkula main store.

Q. Your Billing software i.e matrix is difference from recording software while a backup of data base has been taken would be able to provide the application software to provide the application software for the data files to be read ?

Ans. Yes.

Q. Do you have any to else to state?

Ans. As communicated to vide reports letter we confirm that there are addition tax liability payable based on certain documents found at the time of Survey. We will deposit Rs. 45 lacs as advance tax during the month of March 14. We will pay addition tax liability which will arise upon the company."

(b) Be it noted that we have not found the statement of Parmod Dewan and same is not on record anywhere i.e before us, with assesse, in the AO order, CIT(A) order.

20. The Ld. AO in assessment order dt. 27/12/2016 has observed in Para 10.2, 10.3 and 11 as follows:

10.2 A perusal of the above statement clearly reveals that the assessee was explicitly asked about certain incriminating documents. The assessee was also informed regarding the difference of stock found during the survey i.e. Rs. 1,40,10,134/- as per books whereas the physical was Rs. 1,08,47,498/- only. Further, the fact that there was a difference in cash was also confronted to the assessee i.e. Rs. 16,90,253/- as per books and Rs. 1,67,790/- in the form of physical cash found. However, the assessee could not offer any plausible explanation for the above referred discrepancies found.

Thus the assessee voluntarily offered to surrender an additional income of Rs. 1,35,00,000/- (Rs.45,00,000/- X 3) on account of the discrepancies found.

10.3 However, instead of complying with the same by declaring the said surrender income in his ITR and paying the due taxes, the assessee is now trying to escape his liability of paying taxes. In fact, in trying to do so, the assessee has ignored all the documentary evidences in possession of this office (on which the surrender was made) and has simply concocted a version which suits the assessee's case at this junction.

11. Further, it is also a settled matter that a statement in the nature of a disclosure made by the assessee is intended to stop the investigating agency from proceeding further.

21. The Ld. AO in the assessment order dt. 27/12/2016 has placed reliance on ITAT Pune Bench order in Hotel Kiran Vs. Asst., CIT(2002) 82 ITD 453 (Pune) and jurisdictional High Court judgment in case of Bachittar Singh Vs. CIT(2010) 328 ITR 400 (P&H) wherein statement under section 132(4) and under section 133A have been placed at an equal footing. **Quote**

“.....We are of the view that even if the statement under section 133A was not at par with the statement under section 132(4) and did not have that evidentiary value such statement cannot be held to be irrelevant material. So as to be ruled out of consideration in totality of facts.”

22. The Ld. AO in the assessment order has also gone by surrender letter of the assessee company by placing reliance on judgement of Apex Court in case of Avadh Kishore Das Vs. Ram Gopal AIR 1979 SC 861 wherein it is held as under:

“ It was held that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them. The Supreme Court further held that unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.”

23. That AO in his assessment order dt. 27/12/2016 has observed that “thus, the burden to prove that the ‘Admission’ is incorrect is on its assessee. In case he fails to prove that the admission made by him was factually incorrect, it would sufficient to conclude a matter. In this case, as discussed in detail in para above, the assessee has failed to prove that the admission made by him was incorrect.”

24. That Ld. AO in assessment order dt. 27/12/2016 has in para 16, 17, 18, 19 has further observed as under:

16. In the case of Asstt. CIT V. Rameshchandra R. Patel [2004] 89 ITD 203 (Ahd.)(TM) it was held as under:

“ It was accepted that the assessee had a right to retract but that has to be based on evidence on record to the contrary and there must be justifiable reason and material accepting retraction i.e; cogent and sufficient material have to be placed on record for acceptance or retraction. All that has to be done by the assessee if he is to retract the statement which was recorded in the presence of witnesses unless there is evidence of pressure or coercion. The facts of each case have to be considered to reach the conclusion whether retraction was possible or not as there can be no universal rule.”

17. Thus, where an assessee retracts from his earlier statement / admission, he has to prove the same beyond all reasonable doubt. A bald retraction of his earlier admission will not be enough and it can in no way annul the admission made. For any retraction to be successful in the eyes of law, the maker has to show as to how earlier admission / statement does not state the true facts or that there was coercion, inducement or threat while getting his earlier statement / admission.

18. In view of the above discussed facts and case laws, it is well settled that although an admission is not a conclusion/final proof of the fact admitted, yet it is binding on its maker as long as he is not able to prove beyond reasonable doubt that the same happens to be false. In other words, if a person retracts / repudiates from his earlier submission / averment, the burden of proof to prove the same shifts on him.

19. However in this case, as far as the facts are concerned, the assessee was not able to establish that the facts admitted by him vide Surrender Letter dated 05/03/2014 were false. Thus the case of the assessee can be recapitulated as under:

i. The incriminating documents / difference in cash and stock etc were found from the business premises of the assessee.

ii. These facts were duly confronted to the assessee during the survey proceedings.

iii. These discrepancies were admitted by the assessee in the statement as well as vide surrender letter dated 05.03.2014, a voluntary disclosure of Rs. 1,35,00,000/- was made in the hands of the assessee.

25. The Ld. AO held that assessee company ought to have honoured the facts admitted by him vide surrender letter and further ought to have paid due taxes by declaring the same in ITR. Accordingly **addition of Rs. 1,02,00,000/- was made. (Rs. 1350000 – Rs. 3300000/-).**

26. Another interesting facet of the present case is addition under section 40A(3). While making the assessment in course of assessment the impounded documents were verified vis a vis the books of account. On perusal of Annexure 35 (Neelgagan Day Book) it was seen that the assessee had made following payments in cash during the year under consideration.

Date	Name of Party	Cash Paid
02/04/2013	Dynamic Interior	Rs. 1,20,000/-
19/04/2013	Dynamic Interior	Rs. 25,000/-
	Total	Rs. 145000/-

Thus total Rs. 1,45,000/- was paid by the assessee company to Dynamic Interior in cash whereas provision of Section 40A(3) of the Income Tax Act, 1961 stipulate that any payment made by the assessee for any expenditure otherwise than by way of an account payee cheque or bank draft exceeding Rs. 20,000/- has to be disallowed. Accordingly the assessee was /asked vide **order sheet entry dt. 17/10/2016** to explain as to why these payments be not allowed as these payments have been made in the contravention of the provisions of Section 40A(3). **In response the Counsel**

submitted that although the surrendered income was to cover up for all discrepancies, however the amount of Rs. 1,45,000/- is offered to buy peace. (emphasis supplied by us)

27. In final analysis the Ld. AO has added the above amount to the income of the assessee company which is computed as follows:

Returned Income		Rs. 34,27,131/-
Add: As discussed in above paras		
1.	Add: As discussed in para 20 above	Rs. 1,02,00,000/-
2.	Add: As discussed in para 21.4 above	Rs. 1,45,000/-
	Total Assessed Income	Rs. 1,37,72,131/-

28. The Ld. AO order dt. 27/12/2016 was challenged by the assessee before Ld. CIT(A) who vide impugned order has sustained the same. The Ld. CIT(A) has observed and held as under in the impugned order:

" 5.2 HELD: I have perused the order of the Assessing Officer, Survey record and examined the reply of the assessee. Brief facts of the case are that a Survey operation u/s 133A of the Income Tax Act, 1961 was carried out at the business premises of the assessee on 04.03.2014 and concluded on 05.03.2014. On perusal of survey record, it is seen that during the course of Survey operation, the AO confronted the assessee with various documents while recording the statements of Sh.Vir Kaul & Sh.Parmod Dewan, Directors of the company which are reproduced below:

Q. On page 24 of the Green Diary labeled Environment Etiquettes amount with date have been mentioned. Please explain the nature of these entries?

Ans As far I concern this is purely, all these transaction has been recorded by the east while Director/ Share holders have we may not be able to comment upon this.

Q. On page 85 of Black Diary labeled Executive Diary 2011 certain entries related to 'F J Account Statement' amounting to Rs.12914688/- have been mentioned please explained?

Ans. Mr. F.J. Singh is the Product Distribution for Pevonia and also a SPA operator. These transaction relates to his commission entailment and product supplies that he was giving to us.

Q. Please give detail of your family members and household expenditure monthly expenditure?

Ans. My family, my wife and son. My current out flow expenditure is about Rs. 85000/- EMI for the home loan and car loan. Son's education takes another Rs. 45,000/- pm another 20,000-25,000 are house hold expenditure.

Q. On page 54 of Red Diary Labeled 13/Rita with 77 written pages, mentioned certain amounts as renewals for August. Please explain these entries?

Ans. this is the lead chart for membership, ready of renewal during the month of August.

Q. I am showing the copy of spiral bored book-let labeled item beauty SPA and Nailis academy. In this booklet name of course with duration and price have been mentioned. Please explain? Howe income of the academy is recorded in the books?

Ans. The document being referred to is merely a guideline of prices. We however do not operate a full scale academy till date due to lack of infrastructure. We in the last 3 year must have only taken in no mere than 20-25 students. The income from these have been recorded appropriately.

Q. As per the trial balance taken out from your tally data base cash in hand of the company is Rs. 16,90,253/- whereas the physical cash inventory prepared at the survey comes to Rs.1,67,790/- Please explain this difference & also state where the excess cash as per book is lying?

Ans. Some of the entries have not updated in the Books of accounts & also for safety reason some cash was lying with Directors.

Q As per the trial balance taken out from your tally data base closing stock of the company as on date is Rs. 1,40,10,134/- whereas total stock of survey with the help of accountant & other staff comes to Rs. 1,08,47,498/-. Please explain the difference & where the excess stock lying?

Ans. Some of the stock with moved out the company challan to over perspective business partner was not entered in books of accounts & is the difference. Some of the stock was also lying approximately Rs. 30 lacs was lying at Panchkula main store.

Q. Your billing software i.e. matrix is difference from recording software while a backup of data base has been taken would be able to provide the application software to provide the application software for the data files to be read?

Ans. Yes.

Q. Do you have any to else to state?

Ans As communicated to vide reports letter we confirm that there are addition tax liability payable based on certain documents found at the time of Survey. We will deposit Rs.45 lacs as advance tax during the month of March 14. We will pay addition tax liability which will arise upon the company.'

5.2.1. It is observed that during the statement recorded u/s 131 of the "Act" there were various issues confronted upon the assessee whom he was failed to explain along-with documentary evidences. Moreover, as per surrender letter dated 05.03.2014, assessee clearly admitted its TAX LIABILITY OF RS. 45 LACS for the year under consideration. To substantiate the fact, relevant extract of surrender letter is reproduced below:

"While carrying at the survey, there were certain looses documents were found at our premises. While scrutinizing those documents, we observed that certain income needs to be booked over and above, already captured in the books of Accounts. Considering the additional income, which needs to

be booked we worked out tax liability of Rs. 45 lacs, which need to be deposited We are pleased to deposit the same as per the following detail"

5.2.2. During the appellate proceedings, the assessee relied upon the case law of CIT v. Khader Khan Son [2008]300ITR 157 (Mad.) wherein it was held that "Assessing Officer cannot make additions to income of assessee-company only on basis of sworn statement of its director recorded under section 131 during course of survey." However, this judgment is not applicable in the present case as the AO made the addition on the basis of incriminating documents confronted to the assessee and subsequently surrender of income was made by the assessee which was worked out with tax liability of 45 lacs for the year under consideration. Similarly, judgment of the Hon'ble Supreme Court in the case of K.T.M.S. Mohd. V. Union of India [1992] 197 ITR 196 is also not applicable in the case of the assessee as it is not plausible that the retraction made by the assessee after the surrender was bonafide. Moreover, there was no satisfactory explanation for not including the respective amount in the return of income filed by the Assessee on 29.12.2014. Further, the Assessing Officer relied upon the judgment of the Hon'ble Apex Court in the case of Avadh Kishore Das v. Ram Gopal AIR 1979 SC 861 wherein it was held that:

"It was held that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to" be wrong, but they do raise an estoppels and shift the burden of proof on to the person making them. The Supreme Court further held that unless shown or explained to be wrong, they are an efficacious proof of the facts admitted."

5.2.3. Accordingly, the onus lies upon the assessee to prove that his admission of additional income during the survey operation is incorrect. In case, he fails to prove the same, it would be sufficient to conclude the matter. Further, it is pertinent to mention here that during the appellate proceedings, the assessee has never contested his letter dated 05.03.2014 vide which he voluntarily surrendered his additional tax liability meaning thereby additional income for the year under consideration. Therefore, in view of above discussed facts and circumstances of the case, addition made by the AO of Rs.1,02,00,000/- is hereby confirmed and Ground of Appeal Nos. 1 to 3 are Dismissed.

6. In the result, the appeal is Dismissed.

29. Being aggrieved by the aforesaid impugned order the assessee company is before us and has raised following ground of appeal in Form No. 36 before us.

"1. That the Learned CIT(A) has failed to appreciate the facts and circumstances of the case and has thereby erred in upholding addition of Rs. 10200000/- on account of difference in amount surrendered and offered for taxation at the time of survey. The action of the CIT(A) is baseless as no surrender was made by the appellant company and only deposit of advance tax of Rs. 45,00,000/- for the A-Y under consideration on account of any additional income which could arise. The addition being arbitrary deserves to be deleted.

In view of the above, it is prayed that the additions made may kindly be deleted or such other relief be granted as is deemed fit."

Record of Hearing

30. The physical hearing (Hybrid Mode) took place before us on 26/06/2024 when both the parties were heard at length. The Ld. AR has tendered a paper book containing pages from Serial No. 1 to 11. At bottom of the first page it is certified by Counsel that 3 documents in total from pages 1 to 11 were placed before authorities. The copy of ITR and computation of total income for A.Y. 2014-15 are from pages 1 to 4. Copy of reply filed before AO dt. NIL is at page 5-6; and copy of reply filed before AO dt. NIL is at page 7-11. These documents were placed before AO/CIT(A). Second paper book contains pages from 1 to 95 which has two orders of ITAT one of Chandigarh Bench and another of Cochin Bench. The Ld. AR then contended before us that assessee **is a company registered under the Companies Act 1956/ 2013** and interalia carries on business of saloon in Chandigarh City. The Saloon is modern one. He then contended that a survey took place in the business premises on 04/03/2014 in terms of Section 133A of the Income Tax Act, 1961. During the course of survey Shri Veer Kaul who was the Director of the assessee company made a surrender by giving a surrender letter dated which is dated 05th March 2014. According to Ld. AR the language used in the letter is not in the nature of admission of any tax liability. The surrender letter dt. 05th March 2014 (supra) was read out by him patiently. He very humbly submitted that during the course of the survey which is an exercise of surprise it is but natural for any one, be it assessee or tax officials to undergo a situation / circumstances which one can describe it as panic mode. By panic

mode we mean enthusiasm on part of survey team and scare on part of the assessee. It is indeed a difficult situation. When survey team of Income Tax officials came there was an element of surprise, they carried out the survey and found certain documents including loose documents both Department and assessee observed that while scrutinizing those documents, particularly the assessee noticed that certain income which were required to be booked over and above which was already booked and / or captured in books of accounts were infact not booked and / or captured. The assessee thought that these documents including loose documents perhaps could lead to more income to be accounted for and consequently they would be required to be pay more advance tax or tax. Hence they worked out a tax liability of Rs. 45 lacs and thought it prudent to pay the same and accordingly gave post dated cheques four in Nos. from the dates 15/03/2014 to 31/03/2014; aggregating to said Rs. 45 lacs, under a covering letter dated 05/03/2014/(supra) the surrender letter. Be it noted that this surrender letter dt. 05/03/2014 is not filed in the paper book but it does appears in Ld AO order. The letter was read out by Ld. AR from order of Ld. AO. The Ld. AR then vehemently contended that the surrender letter cannot be construed as an confession /admission of liability to pay Rs. 45 lakhs as tax corresponding to income of Rs. 1,35,00,000/- as at that stage computation of income was done on basis of approximation and a definite income was not determined. An exercise in approximation at that stage on part of the assessee was in nature of estimation and Department of income tax cannot take such exercise or letter of surrender dt. 05/03/2014 as confession / admission of

liability to account for Rs. 1.35 crores and pay tax on it over and above normal income of the business.

The Ld. AR very lucidly submitted that the Department of Income Tax has taken surrender letter dt. 05/03/2014 as if assessee has signed an confession or admission or has given a confession or an admission that income has escaped assessment and taxes are not paid. The letter of surrender perse even assuming it to be true and correct and made voluntarily cannot be used as a sole basis to compute the income and determine tax liability based thereon. In order to compute an income first of all there should be an income from the business, then that income must be duly reflected in the books of account; corresponding to income; there are expenses incurred and expenditure made and then after a detailed exercise final figure on basis which tax must be paid is arrived at. It is thus an empirical exercise a hard one indeed. In brief Ld. AR contended that on 04/05-03-2014 that stage had not come. He thereafter took us to the order of Ld. AO and Ld. CIT & Finally concluded that the assessment is solely made on surrender letter dt. 05/03/2014 and all other material factors (**though not pointed out specifically at Bar**) have been ignored completely, therefore the order of CIT(A) is bad in law and not proper. The Ld. AR requested us to go through the orders of Tribunal which are relied upon and placed on Record in Paper Book II; in the form of compilation.

31. Per contra the Ld. DR strongly supported both the orders of Ld. AO and Ld. CIT(A) and relied upon it for all the purposes as all issues arising in the case are very well covered including addition of Rs. 1,45,000/- besides surrender income. The Ld. DR laid much emphasis on the words "Application of Mind"

by both lower authorities below and contended that both the orders are sufficiently well within the overall purview of law, they are speaking and reasoned orders and ought not to be set aside by this Hon'ble Tribunal under any circumstances as relevant material and evidences are well weighed. On the issue of language used in the surrender letter dt. 05/03/2014; it was stated by him that the said letter of surrender is too with the application of mind made by company's officials. They were aware what they were writing to the Department. The said letter is on account of their own volition and that there are no allegation of any undue influence, force, threat, coercion is made out by the assessee company's officials. **There is no retraction on record.** There is no material on record that assessee company officials have retracted the contents of the said surrender letter **even in their replies which are on paper book filed.** The Ld. DR therefore contended that it is not open for the assessee to contend otherwise. They cannot now go back on their promise. They have made an admission by applying their mind; they believed firmly that monies were certainly not accounted for in the books of account and when the Department officials reached on site they gave surrender letter so that officials go into slow mode / slow motion on investigating the things much deeper. They thus prevented a deeper probe so that nothing more is revealed to the Department. They are behaving dishonestly now and are contending otherwise. **They put fetters into the Department officials foot's by giving surrender letter.** Survey is soft exercise in law and there are other serious option which Department officials could have utilised in accordance with law but they did not at the time of survey. Department officials have

followed CBDT Instructions on survey strictly. He finally left the issue on this Tribunal to decide this crucial issue based on law.

32. In rejoinder the Ld. AR once again repeated and reiterated the submissions which he had already made. Upon a query by Bench why copy of surrender letter dated 05/03/2014 is not placed in paper book he said that he does not have it. Upon a further query by the Bench as to why statements of Shri Vir Kaul and Parmod Dewan are not filed in the paper book he stated that he has only the copy of the statement of Shri Vir Kaul and does not have copy of statement of Parmod Dewan. He however tendered copy of the statement of Shri Vir Kaul across Bar. Upon a further query by the Bench as to whether he has with him copies of impounded documents by the Department during the course of survey he flatly said no. Hearing was then concluded as heard.

Findings and Conclusions

33. We now have to examine the legality, validity, and propriety of the impugned order on the basis of above facts, on basis of papers and proceedings filed as per paper book including case law relied upon by both the parties. No case law was recited by either of the parties though we find them in compilation filed by Ld. AR and in the orders of Ld. AO and Ld. CIT(A).

34. We first reproduce the relevant provisions of law before we give our findings and conclusions as we have to decide the legality and validity of the order of Ld. CIT(A) on basis of reasons given by him/her in the impugned order. We have to simultaneously see on what grounds it is challenged before us and what is the material placed before us by both the parties. Be it

noted we have treated both the parties equally and have given equal opportunity. We have heard them patiently at length during hearing in physical mode.

35. Power of survey:- Part portion of Section 133A (3) is reproduced below:

".....Provided that such Income Tax Authority shall not-

(a) impound any books of account or other documents except after recording his reason for so doing or

(b) retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director therefor, as the case may be)]

(ii) make an inventory of any cash, stock or other valuable articles or thing checked or verified by him.

(iii) Record the statement of any person which may be useful for or relevant to any proceedings under this Act....."

35(1) Part portion of Section 132 which deals with search and seizure are reproduced below:

" 132(4) the authorised officer 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, documents, money, bullion, jewellery or other valuable article or thing and **any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Income Tax Act, 1922 as under this Act.**

35(2) **We also reproduce below section 136 of the Income Tax Act, 1961**

which reads as under:

Proceedings before income-tax authorities to be judicial proceedings.

136. Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

36. We having laid down few section that too partly supra now moves forward to the facts of the case in hand for purpose of adjudgement and adjudication of this second appeal before us.

37. We hold at the outset and threshold that statement under section 132(4) are binding on the assessee as the language used therein is **express**. We further hold that statement under Section 133A3(iii) are **relevant**. We further hold that **any proceedings (emphasis supplied) under the Income Tax shall be deemed to be a judicial proceedings**. We hold that assessment is a quasi judicial process. The AO and CIT(A) is expected to give a well reasoned speaking order in totality of facts and circumstances of the case and in accordance with law, by following **due process**.

38. The letter of surrender dt. 05/03/2014 if not having attributes of Section 132(4) of the Income Tax is relevant particularly so when it was given voluntary by Shri Vir Kaul Director of Assessee Company. The letter of surrender is not retracted instead of that a meaning is given to it by the assessee company in a manner **which suits them**. It is this meaning which is centre heart of the dispute according to both parties. We hold that surrender letter dt. 05/03/2014 **by itself cannot** be made sole basis of present assessment, adversial to the assessee even assuming it that it is a voluntary

and not made under force, coercion threats, undue influence etc. We observe and hold that both the lower authorities have given undue importance to the letter of surrender dt. 05/03/2014 and in the process have ignored other vital issues of material found in course of survey. Both statements which are on record and its cumulative analysis are missing. Only one statement of Shri Kaul is discussed as if other statement does not exist at all. **We also notice that the financial statement under Companies Act for F.Y. 01/03/2013 to 31/03/2014 are not on record or discussed anywhere the assessee is body corporate herein.** By virtue of Section 134 of the Income Tax Act, 1961 power is conferred upon the Income Tax Authorities to inspect registers of companies. In addition they have other powers too which a Civil Court has. These powers though conferred have not been exercised either post survey or during the course of the assessment under section 143.

39. Be that as it may we have been given copy of statements of Shri Vir Kaul, Director of assessee company recorded on 04/03/2014 which statement is not readable at all. Copy of the statement of Parmod Dewan is not provided to us as the same is not with the Counsel of the Assessee. The loose paper's which were impounded during the course of survey alongwith other documents **basis** which addition is made or surrender is made does not find even a mention of it in the core assessment proceedings. Needless to state before assessment the inspection of documents impounded during the course of survey is essential exercise both on part of the Department as well as by assessee. Consequently description of documents, it's material particulars, its analysis both by the Department and the Assessee company are not reflected any where in so far as income determination on merits of Rs.

1,35,00,000/- (One Crore Thirty Five Lakhs) is concerned). There is difference in stock on day of survey of **Rs. 1,40,10,134/-** as per books whereas physical was **Rs. 1,08,47,498/-** this difference from point of view of Income is not explained on merits. Difference in cash of Rs. 16,90,253/- as per books and Rs. 1,67,790/- in the form of physical cash found. No plausible explanation is given. Replies filed in paper book are without enclosures. In brief we record that from the point of view of merits there is no analysis of income vis a vis difference between Rs. 1,35,00,000/- minus Rs. 33,00,000/- aggregating to Rs. 1,02,00,000/- or of any other income which would be revealed after going through the impounded papers both by the Department and the assessee. Since in depth analysis of these impounded documents including loose papers coupled with statement of both the Directors are not done in a manner known to law the real income the determination of which is essential on merits apart for the surrender letter and statement which we have already held to be relevant would always remain in realm of hypothesis. Needless to state income for purpose assessment cannot be determined on assumption, and presumption. Assessment besides being quasi judicial in nature is also an empirical exercise. Further Tribunal being final fact finding authority is not an original fact finding authority.

40. In so far as addition of Rs. 1,45,000/- is concerned which is disallowed and added back to the income of the assessee company the observation of Ld. AO in para 21.3 is reproduced below.

“21.3 Accordingly, the assessee was asked vide order sheet entry dated 17.10.2016 to explain as to why these payments be not disallowed as these payments have been made in contravention of the provisions of Section 40A(3). In response, the counsel submitted that although the surrendered income was to cover up for all discrepancies, however the amount of Rs. 1,45,000/- is offered to buy peace of mind.”

41. In so far applicability of provisions of **Section 44AB** is concerned what is placed before us is computation of total income in paper book on page 2, 3, & 4. Nothing more is placed on record.

42. We also hold that merely stating in the grounds of appeal that action of the CIT(A) is baseless as no surrender was made by the appellant company and only deposit of advance tax of Rs. 45,00,000/- (Forty Five Lakhs) for A.Y. under consideration was paid on account of any additional income which could arise is not perse sufficient to disallow addition of whopping sum of Rs. 1,02,00,000/-. There is no material on record that immediately after the surrender letter dt. 04/03/2014 the assessee company retracted and / or withdrew the said letter. The Department did not put any obstacle on their path. Since it was a voluntary Act on their part. Since it was a voluntary Act on their part suomoto similarly they ought to have voluntarily withdrawn their said surrender letter or could have given a simple letter or could have given a simple letter to the Department immediately thereafter withdrawing the surrender no such exercise was done so, by the assessee company. Further Department also did not resort to any coercive action. Be that as it may all went in silent mode immediately after the survey. All came to switch on mode much later as per facts stated above (supra). It is not that there are no instances Pan India where the assessee have retracted surrender letter forth with or little later. In some cases affidavits of retraction are also filed which fact is also well known.

Assuming without conceding that when the assessee realised that the income worth Rs. 1,02,00,000/- is not arising or have occurred at that point of

time also they did not withdraw the surrender letter. Therefore, for their said inaction and/ or failure the Department of Income Tax cannot be blamed in any manner whatsoever. The assessee at any stage has also not blamed Department for anything.

43. We hold that in so far as merits of the case is concerned which is remainder income of Rs. 1,02,00,000/- which was not declared in the return of income out of income of Rs. 1.35 Crores surrendered the Ld. CIT(A) has sustained the finding of Ld. AO on the basis of statement of Shri Vir Kaul, Director of Assessee Company only. Statement of Parmod Dewan, Director o Assessee Company is missing both before the Ld. AO and Ld. CIT(A). We have perused very minutely the statement of Shri Vir Kaul as reproduced in para 5.2 of the impugned order of Ld. CIT(A) and we notice that Shri Vir Kaul was confronted with few questions while recording the statement vis a vis impounded documents and lose papers which were found during the course of survey on 04/03/2014 few of questions and answers which has a bearing on income are as under:

*“ Que: On page 85 of Black Diary labelled Executive Diary 2011 certain entries related to FJ 'Account Statement' amounting to **Rs. 1,29,14,688/-** have been mentioned please explain ?*

*Ans: Mr. F J Singh is the product distributor for pevohia and also a SPA operator. These transactions relates **to his commission entailment and product supplies that he was giving to us**”*

“Que: As per the trial balance taken out from your tally data base cash in hand of the company is Rs. 16,90,253/- whereas the physical cash inventory prepared at the survey comes to Rs.1,67,790/- Please explain this difference & alsol state where the excess cash as per book is lying?

*Ans: Some of the entries **have not updated in the Books of accounts & also for safety reason some cash was lying with Directors.***

Que: As per the trial balance taken out from your tally data base closing stock of the company as on date is Rs. 1,40,10,1341- whereas total stock of survey with the help of accountant & other staff comes to Rs. 1,08,47,498/-. Please explain the difference & where the excess stock lying?

Ans: Some of the stock with moved out the company challan to over perspective business partner was not entered in books of accounts & is the difference. Some of the stock was also lying approximately Rs. 30 lacs was lying at Panchkula main store."

Noticing above we hold that even the impounded material and loose sheets were confronted to Director of the Assessee Company and statement coupled with Material so found perse shows, non accounting of income. It is for this reason we hold that proper reconciliation of impounded materials and lose sheets vis a vis business income for the year under consideration ought to have been done first by assessee empirically and they ought to have given suitable explanations before the AO. The AO then ought to analysed the explanation alogwith books of accounts and thereafter ought to have given finding on merits. This exercise has not happened in a manner known to law.

44. In so far as Reliance on judgment of Hon'ble Madras High Court in case of CIT Vs. Khandar Khan reported in (2008) 300 ITR 157 (Madras) is concerned we notice that same is upheld by Hon'ble Supreme Court in CIT Vs. S Khader Khan reported in (2012) 25 taxmann.com 413/210 Taxman 248. In this regard we would like to say that in the present case statement is recorded of Shri Vir Kaul during the course of survey u/s 133A and whether it is recorded on oath or not does not make any difference. **It is not a statement under section 132(4) of the Income Tax Act, 1961.** We hold that in this case in addition to statement of Shri Vir Kaul , there are impounded material with lose sheets, statement of Pramod Dewan another Director of Assessee Corporation, surrender letter dt. 04/03/2014. We hold that based on statement perse supra

the assessment is not made. We hold that said statement however is relevant, along with other material on record (supra).

45. We hold that during the course of survey under section 133A of the Income Tax Act, 1961, the tax authorities are mainly concerned in unearthing unaccounted assets specially in the form of cash, stock, receivables and other discrepancies or otherwise. And whenever tax authorities come across such unaccounted assets, the assessee comes under pressure to surrender income on account of discrepancies. Tax authorities as well as assessee both wants the matter to **subside as early as possible without understanding the true picture** of books of account. This sometimes results in assessee surrendering a higher income in panic and sometimes even though the surrendered income is correct but head under which it has been surrendered is not correct. In both such situations consequential effects may be very dangerous.

46. The statement containing surrender of income recorded by the assessee during the course of survey is a very important document and is a base for determination of tax liabilities on the surrendered income.

47. Section 133A(3)(iii) empowers income tax authorities to record the statement of any person at the time of survey which may be useful for, or relevant to any proceeding under the Act. What is 'statement' has not been defined anywhere in the Income Tax Act and Evidence Act. So, we have to go by the dictionary definition. Cambridge dictionary defines 'statement' as 'something that is said formally and officially'. Statement may be for denial of fact or for admission of fact. Section 133A(3)(iii) does not specify whether the statement should be recorded on oath or not.

48. Many a time a question arises that the statement recorded at the time of survey has no evidentiary value. This is a wrong conception. This is a settled position of law that the statement obtained under section 133A would not automatically bind upon the assessee. However, an admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made the admission to show that it is incorrect. **The burden lies on the assessee to establish that the admission made in the statement at the time of survey was wrong and that there was no additional income.**

49. The statement recorded under section 133A(3)(iii) during the survey proceedings many a times inter alia contains admission of surrender of income. Income tax authorities under section 133A have no jurisdiction to ask for a surrender of income in the statement. The relevance of disclosure or surrender of income during the survey proceedings has not been given place in the Income Tax Act. No where under the Income Tax Act this issue has been touched upon.

50. We therefore hold that statement recorded at the time of survey has a locus standi and by virtue of power conferred on Income Tax Authority by virtue of Section 133A(3) (iii) they have power. The statement **is relevant** but it has no characteristic as statement u/s 132(4). Where assessee retracts from disclosure made during the survey he / she will be under obligation to **establish contrary which has not happened in this case expressly**. The burden lies on the assessee to establish that the admission made in the statement at the time of survey **was wrong and that there was no additional income.**

51. The impounded material be disclosed to the assessee for such purposes as assessee deems fit and proper, including the second statement of Parmond Dewan which is not with the assessee for which a grievance was made during the hearing before us. Needless to state that Department should not expect that each and every statement would be inculpatory in nature as there are statements which at times are expulcatory in nature too, and may be useful to assessee to set up his /her defence. Similar is the situation with regard to the nature of documents including loose papers. It is preposterous to assume & presume all the impounded material are in favour of the Department as at times inspection of documents / impounded material helps the assessee to setup a defence or update his /her accounts as per law which often gets hinderances due to search / survey, operations. In brief this Tribunal desires assessment on all issues on merits including surrender / surrender letter. This Tribunal feels that basis impounded material the corresponding income stands undisclosed for which there should be a determination of income in accordance with law by following the due process (para 44 and 19 supra).The facts and circumstances of this case is very peculiar in a sense that assessee on one hand had offered a surrender of whopping sum of Rs. 1.35 Cr. during survey on 05/03/2014 (Rs. 45,00,000/- deposited as tax); the assessee company does not write a retraction letter by stating that the surrender was not voluntary / involuntarily made and it was on involuntary surrender. While filing return they do not add income of Rs. 1.35 crore to their return of income meaning thereby that they take a **'U' turn around** or Volte faces without informing the Department expressly by way of a letter at any time after survey or much before (prior to) filing ROI. The

Department finds this volte faces mysterious and conducts proceedings under section 143(3) by making reliance on surrender letter dt. 05/03/2014 and statement of Shri Vir Kaul dt. 04/03/2014 which too is not retracted by him even though in **stricto sensu** it is not a statement within the meaning of Section 132(4) as proceedings were "survey" in nature u/s 133A.

51.1 We notice that statement of Shri Vir Kaul dt. 04/03/2014 though u/s 133A was on oath but nevertheless we hold same **as not having** attributes of Section 132(4) but we hold **it as relevant** and can be taken into consideration in the Remand proceedings along with surrender letter dt. 05/03/2014 and other material issues which are deeply embedded in survey folder i.e "Impounded Material". The survey impounded material be disclosed to assessee for such purposes as deem fit & proper and further also to set up a defence that only the Returned income arose in the financial year 2013-14 and not the surrendered income of Rs. 1.35 Crores / 1.02 Cr (Remainder income) consequently ROI is justified. Upon failure law of the land will prevail or to take course. Thus we want a meritorious disposal of at least the first appeal of the assessee before Ld. CIT(A). The CIT(A) has all powers at his disposal for effective disposal in just and fair manner. He is at liberty to seek such assistance as he deems fit and proper of Ld. AO.

51.2 Basis our observation (supra) it is expected that the assessee would correlate its income on concrete basis and upon correlation the true picture of income alone would be determined which would be subject to tax. The Ld. CIT(A) to examine the defence of the assessee meritoriously and charge tax on the basis of correct determination of income which should legitimately be computed.

51.3 We also say that it is required to be **noted and appreciated** that any proceedings under this Act before the Income Tax Authorities shall be deemed to be a judicial proceedings within the meaning of Section 193 and 228 and for purpose of Section 196 of IPC and every Income Tax Authority shall be deemed to be a Civil Court for purposes of Section 195 but not for purposes of Chapter XXVI of CRPC 1973. Be that as it may be the assessment of income and its correct computation can be determined by exercising quasi judicial power as assessment is quasi judicial function. Principles of natural justice apply to it. By virtue of Section 136 truth should triumph; in our considered opinion.

51.4 We also gainfully refer to the provision of Section 292C which is reproduced below:

Presumption as to assets, books of account, etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132⁸¹[or survey under section 133A], it may, in any proceeding under this Act, be presumed⁸²

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]

⁸³[(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of [section 132A](#), then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of [section 132A](#), had been found in the possession or control of that person in the course of a search under [section 132](#).]

We are therefore of the considered view that assessee is mandated by law to rebut the presumption as section 292C is applicable to survey proceedings /

powers of survey too under section 133A and therefore if on basis of material found during the course of survey are not relatable to balance income of Rs. 1.02 Cr it should be pointed out by the assessee expressly and **upon complete failure** the Ld. CIT(A) can adjudge and adjudicate the “remainder income” on basis of surrender letter, material and loose papers, stock register, books, diaries entries etc. found on day of survey. However before that principles of natural justice be strictly adhered to.

51.5 We notice that Chapter XIII Section 133A deals with power of survey and that there is nothing known as survey assessment in law. The survey material; statements, alongwith computation of income are all required together for an assessment under section 143(3). For that purpose and meaning a proper assessment on cumulative basis is required in law and not mere material found in survey, surrender letter etc. Survey is not a short cut assessment proceedings or summary assessment. Due process and rigours are required on part of both the parties i.e; Department and Assessee. Survey is a unique provision as it simply gives power of survey to Income Tax Authorities.

51.6 In para 26 supra vide order sheet dt. 17/10/2016, the reply of the counsel for the assessee shows intent of assessee of surrendered amount was for purpose of buying peace. We restrain ourselves to observe further and leave it for CIT(A) to take appropriate call in remand as we do not intend to prejudice anyone.

51.7 In return of income we observe that payment of Rs. 45,00,000/- made vide surrender letter are not reflected.

52. In the premises set out hereinabove we set aside the impugned order and remit the matter back to the file of Ld. CIT(A) to adjudge and adjudicate

first appeal on merits and on other issues too as soon as possible preferably within 3 months from date of receipt of this order.

53. The impugned order of CIT(A) is set aside as and by way of remand.

54. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/08/2024.

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar