

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. DR B.R.R KUMAR, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1648/Del/2020  
Assessment Year: 2016-17

<b>DCIT Central Circle – 30 New Delhi</b>	<b>Vs</b>	<b>Dhruva Goel K-69, Hauz Khas Enclave, New Delhi PAN No. AAZPG0330Q</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.1604/Del/2020  
Assessment Year: 2016-17

<b>Dhruva Goel K-69, Hauz Khas Enclave, New Delhi PAN No. AAZPG0330Q</b>	<b>Vs</b>	<b>DCIT Central Circle – 30 New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellants by	<b>Smt Sapana Bhatia CIT-DR</b>
Respondent by	<b>Sh. Prateek Mittal CA</b>

Date of hearing:	23/07/2024
Date of Pronouncement:	28/08/2024

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal no ITA No 1648/Del/20 by the revenue and ITA no 1604/Del/20 by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-30,

Jhandewalan New Delhi, [hereinafter referred to as “CIT(A)”], vide order dated 13.07.2020 pertaining to A.Y. 2016-17 and arises out of the order passed by the Assessing Officer dated 31.12.2018 under Section 153A of the Income Tax Act, 1961 [hereinafter referred as ‘the Act’].

2. The revenue has raised the following grounds of appeal :-

*“1. Ld. CIT(A) has erred in law or facts in deleting addition by holding that there was no incriminating material in possession of the AO to substantiate the unaccounted investment of Rs.6.25 crore cash to acquire shares of the company M/s. Cruise Property Pvt. Ltd. Ld. CIT(A) has failed to appreciate the statements records u/s. 132 (4) of the Income Tax Act wherein Dhruva Goel has described how the whole transactions were done.*

*2. Ld. CIT(A) has erred in law and facts in holding the page 6 of Annexure-6 seized from the residence of Dhruva Goel as dumb despite the fact that it is a hand written documents and assessee has failed to bring any evidences on record to prove that these were mere estimation and not actual value.*

*3. That the order of the Ld. CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

*4. That the grounds of appeal are with prejudice to each other.”*

3. Brief fact of the case is that the assessee had filed his return of income u/s 139 of the Act declaring total income of Rs.16,14,830/- on 03.08.2016. Subsequently, search and

seizure action u/s 132 of the Act was carried out on 27-07-2016 and 23-08-2016 in the case of the assessee along with the other cases of Shri Kartar Singh, his family and associates group of cases at various residential and business premises. Notice u/s 153A of the Act was issued on 18-05-2018 and in the response of the notice the assessee has filed return of income declaring income at Rs.16,14,830/- on 19-07-2018. During the assessment proceedings the AO has found that the assessee along with his mother Smt. Urmila Goel had acquired a Company namely 'Cruise Properties Pvt Ltd' from Shri Devender Kumar & Shri Sumit Gupta through transfer of shares. This Company was in ownership of agriculture land measuring 13 bigha 18 biswas in village Pindwalakalan, Tehsil Najafgarh, New Delhi. During the search proceedings on 23-08-2016 the statement of Shri Dhruva Goel was recorded under Section 132(4) of the Act wherein Shri Dhruva Goel has admitted that he has invested the amount of Rs.8.50 crores for acquiring the company. The assessee had admitted in his statement that he along with his mother had paid total consideration of Rs.8.50 crores for acquiring the company consisting of Rs 2.25 crores was paid by cheque and rest of Rs.6.25 crores in cash. However, immediately after search and conclusion of operation of bank locker on 20-09-2016, the assessee had filed a retraction statement stating that he had

not paid any money in cash. The assessee had stated that investigation team had taken the statement forcibly against his will. The AO has rejected the submissions and documentary evidence placed before him and has made the addition of Rs.6.25 crores as unaccounted investment u/s 69 of the Act on substantive basis in the assessee's income.

4. The assessee has filed the appeal before the Ld CIT(A) who vide his order dated 13-07-2020 partly allowed the appeal. Aggrieved by the order of the Ld CIT(A) the revenue and assessee both are in appeal before us.

5. The DR vehemently supported the order of the Assessing-officer. He has submitted that Ld CIT(A) has erred in fact in accepting the retraction statement of Dhruva Goel and believed the concocted story of Dhruva Goel. He has further submitted that the assessee had paid Rs 6.25 crores in cash to acquire the shares of the company which was accepted by him in his statement. He has further submitted that Ld CIT(A) has wrongly relied the valuation of property as on 18-07-2006 whereas the property was purchased by the assessee by way of acquisition of shares in July 2015.

6. The AR of the assessee has submitted that no addition can be made on the basis of the statement recorded during the course of search without bringing any corroborating incriminating material. In this case no incriminating material was found during the search & seizure proceedings. He has further submitted that the statement of Dhruva Goel has no value because this is a retracted statement.

7. Reliance has placed on the following judgments :-

**1. Pullangode Rubber Produce Company Ltd. Vs. State of Kerala and Another (1973) 91 ITR 18 (SC)**

**2. Hon'ble Rajasthan High Court in case of CIT Vs. Ashok Kumar Soni (2007) 291 ITR 172 (Raj)**

**3. Asstt. CIT Vs. Jorawar Singh M. Rathod [2005] 94 TTJ (Ahd.) 867**

8. The Ld CIT(A) has observed in his order are as under :-

*10.5 I have carefully gone through the assessment order, the written submissions of the appellant and the relevant case laws. It is noticed from the assessment order that the AO has merely rejected the Retraction on the ground that the same was retracted on 30.09.2016 which as per the AO was after a period of one month of the search. It may be noted that locker of the family was put under restraint and was operated on 20.09.2016, thus the search was concluded on 20.09.2016, The Retraction Letter was filed on 30.09.2016. Thus the*

*Retraction Letter was filed within 10 days of conclusion of the search. The retraction letter enunciates the detailed reasoning for retracting the statements made during the course of search proceedings. Further, it is seen from the assessment order that no incriminating document pertaining to the said out of books investment of Rs 6.25 crores was found during the course of search. Also there is no mention of cash trail found during the course of search or established during the course of assessment proceedings.*

*10.6 Further, on the issue, I deem it relevant to refer to the relevant paras of the following judicial pronouncements which state that the statement recorded under section 132(4) of the Act, can form a basis for a search assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the basis for making an assessment.*

*(i) The Hon'ble High Court of Delhi has held in the case of Commissioner of Income-tax, Delhi-2 vs. Harjeev Aggarwal, reported as 70 taxmann.com. 95 (Delhi), the relevant portion are reproduced as under: "However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4). However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment*

*merely because any admission was made by the assessee during search operation.*

*A plain reading of section 132(4) indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of account, 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 with effect from 1-4-1989, further clarifies that a person may be examined not only in respect of the books of account 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 account, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of account, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. 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) 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.*

*The statement recorded under section 132(4) can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.*

*If the revenue's contention that the block assessment can be framed only on the basis of a statement recorded under section 132(4) is accepted, it would result in ignoring an important check on the power of the Assessing Officer and would expose assesseees to arbitrary assessments based only on the statements, sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee. [Para 24]*

*23. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found*

*during search, the statement recorded under Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment."*

*(ii) The Hon'ble High Court of Delhi has held in the case of Commissioner of Income-tax, vs. Sunil Aggarwal, reported as 64 taxmann.com 107 (Delhi), the relevant paras 14 and 15 are reproduced as under:*

*14. Therefore, although the counsel for the Revenue may be right in his submission that a statement under Section 132(4) of the Act carries much greater weight than the statement made under Section 133A of the Act, a retracted statement under Section 132(4) of the Act would require some corroborative material for the AO to proceed to make additions on the basis of such statement. Of course, where the retraction is not for any convincing reason, or where it is not shown by the Assessee that he was under some coercion to make the statement in the first place, or where the retraction is not followed by the Assessee producing material to substantiate his defence, the AO might be justified in make additions on the basis of the retracted statement.*

*15. In the present case, the Assessee had an explanation for not retracting the statement earlier. He also furnished an explanation for the cash that was found in the hands of his employee and this was verifiable from the books of accounts. In the circumstances, it was unsafe for the AO to proceed to make additions solely on the basis of the statement made*

*under Section 132(4) of the Act, which was subsequently retracted."*

*(iii) Vinod Solanki Vs. Union of India SLP (C) No. 3537 of 2008 Civil Appeal No. 7407 of 2008 (SC): It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded.*

*(iv) Pullangode Rubber Produce Co. v. State of Kerala (1973) 91 ITR 18 [SC] the Hon'ble Supreme Court has observed that "an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect."*

*10.7 The above judicial pronouncements enunciate that the statement recorded during the course of search on standalone basis, which were subsequently retracted without reference to any other material discovered during the search and seizure operation would not empower the Assessing Officer to such statement. Of course, where the retraction is not for any convincing reason, or where it is not shown by the Assessee that he was under some coercion to make the statement in the first place, or where the retraction is not followed by the*

*Assessee producing material to substantiate his defence, the AO might be justified in make additions on the basis of the retracted statement.*

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*cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect."*

*10.7 The above judicial pronouncements enunciate that the statement recorded during the course of search on standalone basis, which were subsequently retracted without reference to any other material discovered during the search and seizure operation would not empower the Assessing Officer to make the addition merely because any admission was made by the appellant during the search operation. The AO has alleged that the appellant has made a total of Rs 6.25 Crore of unaccounted investment in the form of cash paid to Mr Devender Kumar and Mr Sumit Gupta for acquiring the company M/s Cruise Property Pvt Ltd. In this connection, it is seen that the allegation is factually incorrect and not supported by any document. During the course of search on the Appellant, no document, agreement, paper, receipt or any other evidence with regard to alleged cash payment of Rs 6.25 Crores were found. Neither any money trail or any other document containing the detail of alleged payment made of Rs 6.25 Crores for this property were found. Thus, it is seen that there was no incriminating material in possession of the AO to substantiate that Rs 6.25 Crore of unaccounted investment in the form of cash paid to Mr Devender Kumar and Mr Sumit Gupta for acquiring the company M/s Cruise Property Pvt Ltd.*

*10.8 Therefore, in view to above, it can be concluded that no addition can be made on the basis of statements recorded*

*during the course of search without bringing any corroborating incriminating material to support the admissions made in the statement. Furthermore, in cases wherein the statements so recorded are retracted then such statements lose its evidentiary value. Therefore, I hold that the original statement relied upon by the AO, which was retracted immediately after conclusion of the search, without reference to any incriminating material cannot be the basis of the said addition. The appellant gets relief on this ground of appeal.*

9. We have heard the rival arguments and perused the material available on record.

10. On perusal of the order of the Ld. CIT(A) reveals that remand report was called out by the Ld CIT(A) but the AO has failed to provide any incriminating materials against the assessee. The valuation report made by the DVO was also filed during the pendency of appeal before the Ld CIT(A). There was no incriminating material on record to support the statement of the assessee. The AO has made the addition on the retracted statement of the assessee which was withdrawn within 10 days. Ld CIT(A) has rightly deleted the substantive addition of Rs 6.25 crores which was made by the AO without any corroborative incriminating material. We do not find any reasons to interfere with the findings of the Ld CIT(A). Grounds are decided accordingly. The appeal of the revenue is liable to be dismissed.

**ITA NO.1604/Del/2020 (A.Y. 2016-17)**

11. The assessee has raised following grounds of appeal :-

*“1. That the AO and the Ld. CIT(A) has grossly erred on facts and in law in making addition of Rs.9,00,000/- by rejecting cash in hand available with the appellant from past savings accumulated out of income already offered to tax in earlier years as unexplained cash credits u/s.68 of the Act. The Appellant earned agriculture income of Rs.6,00,000/-during the year and Rs.3,00,000/- was out of past savings. The action of Ld. AO as well as the Hon’ble CIT(A) are erroneous bad in law and liable to quashed.”*

12. The AR of the assessee has submitted that the AO has made the addition of Rs.9,00,000/- as unaccounted money without any materials. The Ld DR has submitted that assessee has cash deposited the Rs.6,00,000/- in his bank account.

13. The Ld CIT(A) has observed in the order observed as under

:-

*“11.3 I have carefully considered the assessment order, facts of the case and written submission of the appellant. I find that the appellant has offered Rs. 600/- income from agriculture in the ITR whereas he has submitted in the assessment proceedings that he has earned Rs.6,00,000/- as agricultural income and the same has also been reiterated in the appellate proceedings also. The appellant failed to produce any*

*explanation or receipt in support of his contention that the said amount earned from agriculture sources. In view of non-production of proper evidence, the AO has treated the same as income of the appellant. The appellant has not submitted satisfactory evidence regarding the amount of Rs. 6,00,000/- earned as agricultural income in the A.Y. 2016-17 during the course of appellate proceedings. As such, I find that the AO has rightly added Rs. 6,00,000/- as unaccounted income of the appellant.*

*Further, the AO has added amounting to Rs. 3,00,000/- on account of cash in hand of the appellant. The appellant submitted that the amount of Rs. 3,00,000/-, was past saving and gift received. The appellant was failed to furnish any details regarding the source from which the cash in hand has been accumulated through different sources or from gifts received during the appellate proceedings to controvert the findings of the AO. As such, I find that the AO has rightly added Rs.3,00,000/- as unaccounted income of the appellant u/s 68 of the Act. Accordingly, ground Nos. 9 to 11 are adjudicated against the appellant.”*

14. On perusal of the order of the Ld CIT(A) reveals that assessee has failed to give the satisfactory explanation of the cash deposit. The assessee has offered Rs 600/- income from agriculture in the ITR whereas he has stated that he has earned Rs 6,00,000/- as agriculture income. The assessee has failed to

prove that Rs.6,00,000/-was his agriculture income and Rs.3,00,000/- was past saving. The Ld. CIT(A) has rightly dismissed the grounds of the assessee. Grounds are decided accordingly.

15. From the above discussion we do not find any reason to interfere with the findings of the Ld CIT(A), the appeals of the revenue and assessee are liable to be dismissed.

16. In the result, the appeals of the revenue and assessee are dismissed.

Order pronounced in the open court on 28.08.2024.

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*

Date:- .08.2024

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI