आयकर अपीलीय अधिकरण, **'सी'** न्यायपीठ**,** चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'C' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** **श्री मनोज कुमार अग्रवाल,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.130/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2013-14**		
The DCIT, Central Circle-2, Madurai.	**v.**	Shri Chelladhurai Rajasingh, No.84, Railway Feeder Road, Kamarajar Road, Sivakasi-626 123.
		[**PAN: AAQPR 9845 L**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Department by	:	Shri R. Clement Ramesh-Kumar, CIT
Assessee by	:	Shri I. Dinesh, Advocate
सुनवाईकीतारीख/Date of Hearing	:	31.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	28.08.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This appeal has been preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter in short "the Ld.CIT(A)"), Chennai-19, dated 21.11.2023 for the Assessment Year (hereinafter in short "AY") 2013-14.

2. Ground No. 1 of the Revenue's appeal is found to be general in nature and therefore does not call for any specific adjudication.

3. Ground No. 2 of the Revenue's appeal reads as under:-

> "2. The Ld.CIT(A) erred in deleting the addition of Rs.1.25 crores made toward excess jewellery found during the course of search over and above the value of jewellery admitted in wealth tax returns of assessee and family members.
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> 2.1. The CIT(A) erred in holding that the value of excess jewellery is attributable to unaccounted income during the year of search 2015-16, without appreciating that the assessee himself admitted in his sworn statement dated 14/11/2014 that investment in additional jewellery found was made out of his unaccounted Income for the AY 2013-14.
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> 2.2 The CIT(A) erred in not adjudicating the issue of addition made toward excess jewellery found on merits, though the assessee has not properly explained the source for acquisition of jewellery found but deleted on the ground of legality (i.e.) assessable in the AY 2015-16 (year of search), though the assessee himself admitted that the source for acquisition of excess jewellery was out of unaccounted income for the AY 2013-14."

3.1 In this ground, the Revenue has objected to the Ld. CIT(A)'s action of deleting the addition of Rs.1.25 crs. made by way of excess jewellery found during the course of search. Briefly stated, the facts as noted are that, the assessee is a Director of M/s. Jumbo Fireworks (India) (Pvt.) Ltd., (hereinafter in short "M/s.JFIPL") and partner in the group concerns. Search and seizure operations u/s.132 of the Income Tax Act, 1961 (hereinafter in short "the Act") were conducted in the case of Jumbo Fireworks Group on 16.10.2014 (AY 2015-16) and the residential premises of the assessee was also covered by the search. According to the Investigating Authorities, the assessee was found to be in possession of excess gold jewellery of 3321.510 grams, excess silver of 10.920 KGs and excess diamond jewellery of 64.260 cts. When confronted with the same, the assessee in his statement recorded u/s 132(4) of the Act, is

noted to have admitted the same by way of unexplained investment made out of his undisclosed income. Further, to avoid seizure of this excess jewellery, the assessee submitted equivalent value of demand draft of Rs.1.25 crs. which was deposited in the P.D. Account of the DIT (Investigation), Chennai.

3.2 Subsequent thereto, assessment proceedings in the matters of the assessee were initiated by issuing notice u/s.153C r.w.s.153A(a) of the Act on 17.11.2016 calling for the return of income. Pursuant to the same, the assessee e-filed his return of income for AY 2013-14 on 10.12.2016 admitting total income of Rs.12,39,000/-. The AO observed that, although the assessee had admitted to unexplained jewellery in course of search, the same had not been offered to tax by him in the return of income filed u/s 153C of the Act. The AO is accordingly noted to have show-caused the assessee to explain as to why the impugned sum of Rs.1.25 crores should not be added by way of his unexplained income in AY 2013-14. In response, the assessee is noted to have, in substance, explained that, the excess jewellery found on him belonged to his different members of the family, including his daughter, son, daughter-in-law and grandchildren. The assessee furnished a reconciliation for the same and showed that, after deducting the value of jewellery which belonged to other family members, the purported excess jewellery remaining was only Rs.25 lakhs. The assessee further submitted that, he had retracted his original

statement before the concerned DDIT(Inv) vide letter dated 13.01.2015 and, at that material time, he had also filed affidavits of the family members in support of his claim. The assessee submitted that he had again filed another retraction on 10.03.2015 accompanied by his affidavit as well. The assessee accordingly contended that his original statement didn't carry any evidentiary value as he had retracted the same and supported the retraction with contemporaneous evidence. The AO however didn't agree with this contention put forth by the assessee. According to the AO, the retraction was an after-thought and hence, had to be discarded. The AO further discussed the submissions on merits and observed that the assessee's family members weren't able to sufficiently justify that the jewellery belonged to them and that they were acquired out of their own regular income. The AO also denied to extend the benefit of the jewellery limits set out in CBDT Instruction No. 1916 dated 11.05.1994. The AO accordingly held that the impugned jewellery in question remained unexplained and added the same in the hands of the assessee u/s 69A of the Act in the relevant AY 2013-14.

3.3 Being aggrieved by the aforesaid addition, the assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee is noted to have *inter alia* contended that, the addition on account of unexplained jewellery could have only been made in the year in which the assessee was found to be its owner i.e. the year of search (16.10.2014), viz., AY

2015-16 and not in AY 2013-14. The assessee accordingly contented that the impugned addition having been made in an incorrect AY ought to be deleted. Apart from the foregoing, the assessee is also noted to have objected to the merits of impugned addition on merits and claimed that the excess jewellery so found was not unexplained. The Ld. CIT(A) is noted to have deleted the impugned addition made in AY 2013-14, upholding the preliminary plea of the assessee that, the impugned addition could have only been made in the year of search i.e. AY 2015-16 and not the relevant AY 2013-14. Aggrieved by the Ld. CIT(A)'s order, the Revenue is now in appeal before us.

3.4 Assailing the action of the Ld. CIT(A), the Ld. CIT, DR argued that the assessee himself, in his sworn statement dated 14.11.2014, had offered the excess jewellery by way of his income in AY 2013-14 and therefore he urged that the AO's action in assessing the same to tax in the relevant AY 2013-14 was justified. Per contra, the Ld. AR supported the order of the Ld. CIT(A).

3.5 Heard both the parties. Before adverting to the facts of the case, it is first relevant to take note of the relevant provisions governing the taxability of unexplained jewellery. The relevant Section 69A of the Act reads as under:

> *"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such*

money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

3.6 The above provision may be broken down into the following essential parts:

(a) The assessee must be found to be the owner;

(b) He must be the owner of any money, bullion, jewellery or other valuable articles;

(c) The said articles are not recorded in the books of account, if any maintained;

(d) The assessee is unable to offer an explanation regarding the nature and the source of acquiring the articles in question; or the explanation offered is found to be not satisfactory in the opinion of the Assessing Officer;

(e) <u>If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable articles may be deemed to be the income of the financial year in which the assessee is found to be the owner</u>;

(f) In the case of money, the money can be deemed to be the income of the financial year.

3.7 From the above, it is seen that, the value of unexplained jewellery shall be **deemed to be the income of that financial year in which the assessee is found to be the owner**. Now, under the express terms of the charging provisions contained in Sections 3 & 4 of the Act, the subject of charge is the income of the 'previous year'. Each 'previous year' is a distinct unit of time for the purposes of assessment and the

profits made or the liabilities or losses incurred before or after the previous year is immaterial in assessing the income in a particular previous year. Useful reference in this regard may be made to the following observations of the Hon'ble Delhi High Court in the case of **Vipin Kumar Khanna Vs CIT (251 ITR 782)**, which are as follows:-

> "Assessment on the total income of each assessment year has to be made separately and on the basis of fact situation prevailing in the year in question. The Explanation refers to the computation of total income of the individual referred to in clause (i), of section 64(1). It is clearly stipulated in the Explanation that for the purpose of inclusion in terms of clause (i) the total income of the husband or wife whose total income after excluding the income referred to in clause (i) is greater shall be included. Total income of each year has to be assessed separately. It is total income of an assessment year which is to be assessed.
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> 5. The expression 'total income' is defined in section 2(45) of the Act in the following manner:
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> "'total income' means the total amount of income referred to in section 5, computed in the manner laid down in this Act;"
>
> Section 5 brings within its fold all income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India to the assessee in any particular previous year."

3.8 In light of the above and having regard to the express language used in Section 69A of the Act, we find that the AO can legally bring to tax unexplained jewellery in the hands of the assessee in that financial year in which the assessee is found to be the owner. Having taken note of the position of law, we now revert back to the facts of the case. In the present case, the question before us is whether the assessee was found to be the owner of the impugned excess jewellery in the relevant AY 2013-14 or in AY 2015-16.

3.9 The admitted facts on record are that, search action was conducted upon the assessee on 16.10.2014 and on the said date, the Investigating authorities had found him to the owner of the impugned excess jewellery. It is also not in dispute that the excess jewellery so found was valued at the rate prevailing on the date of search, at Rs.1.25 crores. Hence, ordinarily, assuming that the excess jewellery found was unexplained, it ought to have been taxed as and by way of income of the assessee u/s 69A of the Act in the year in which he was found to be its owner i.e. year of search viz., FY 2014-15 relevant to AY 2015-16 and at the value prevailing in that year.

3.10 It is however the Revenue's case that the assessee was found to be the owner in AY 2013-14. For this, the Revenue has relied upon the statement of the assessee wherein he has purportedly admitted to have acquired the impugned excess jewellery in the relevant AY 2013-14. Having perused the material placed before us, it is noted that there is no such explicit statement given by the assessee. The AO is noted to have taken cognizance of the answer given by the assessee in response to Q No. 27 of his sworn statement dated 16.10.2014, which reads as follows:-

> "I submit that these jewellery items and others belong to my wife, my daughter, daughter-in-law, son and myself and to the best of my knowledge/memory, these are accounted for. However, I offer Rs.1,25,00,000/- as additional unaccounted income. In this connection, I would like to make a request that the above additional unaccounted income offered by me in my hand may kindly be valued correctly after due verification of the income/wealth declared in my hand in my family members' returns and based on the Valuer's report to be prepared."

3.11 From the above, we note that, there was no such admission by the assessee that the impugned jewellery was acquired in FY 2012-13 relevant to AY 2013-14. The Ld. AR, instead, invited our attention to Q No. 12 of the sworn statement dated 14.11.2014 wherein the assessee had *inter alia* stated as below: -

> "..... I have not purchased any jewellery or sold out or disposed of any of my jewellery with effect from 01.04.2012 to till date. In this connection I have discussed with all of my family members and thereby I confirm that any of my family members also did not purchase any jewellery or sold out or disposed of any jewellery with effect from 01.04.2012 to till date."

3.12 Reading of the above shows that the assessee had averred that he had neither acquired nor sold any jewellery on or after 01.04.2012. Hence, going by Revenue's analogy and taking the statement of the assessee at its face value, then according to the assessee, he didn't acquire the impugned excess jewellery in the period 01.04.2012 to 31.03.2013 relevant to AY 2013-14 as well. Be that as it may, the fact remains that, the assessee had subsequently retracted his statements on 13.01.2015 & 10.03.2015. As rightly noted by the Ld. CIT(A), neither the Investigating Officer nor the AO had come across any evidence which would show that the assessee had become the owner of the impugned jewellery in AY 2013-14. There is no finding recorded by the AO in the impugned assessment order citing corroborative evidence to show that the investment in excess value of jewellery was made in the AY 2013-14.

On these given facts, we are therefore unable to countenance the Revenue's contention that the assessee had been found to be the owner of jewellery in the relevant AY 2013-14. Before us also, the Revenue was unable to bring any evidence or material which was found in the course of search or post search proceedings that would indicate that the assessee became the owner of the jewellery in the relevant AY 2013-14. For the aforesaid reasons, we do not see any reason to interfere with the findings of the Ld. CIT(A) deleting the impugned addition. Accordingly Ground No. 2 of this appeal stands dismissed.

4. Ground No. 3 of the Revenue's appeal is as follows: -

> "3 The CIT(A) erred in deleting the addition of Rs.5.20 Crore made towards unexplained loan repayment with interest in respect of loan obtained from Nandagopal observing that the AO had not brought out any corroborative evidence to substantiate the addition.
>
> 3.1 The Ld CTT(A) failed to appreciate that the assessee himself admitted in his sworn statement that he has borrowed Rs.4,00,00,000/- for purchase of vacant land measuring 100 acres and returned the same along with interest amount of Rs.1,20,00,000/-. He also admitted that the amount was paid out of sale of scrap, waste materials and agreed to offer the same for the AY 2013-14. It is clear that the assessee made unaccounted investment (on money) on lands purchases by obtaining loan, which was repaid along with Interest from his unaccounted Income.
>
> 3.2 The Ld.CIT(A) erred in failing to appreciate that the retraction of statement by the assessee in only an afterthought and not substantiated by any evidence. The assessee has given facts categorically in his statements recorded during search based on which the additions were made."

4.1 The facts relating to this ground are that, in the course of search, a loose sheet ID marked ANN/HRV/RS/F/G/L was found which contained jottings *"unAC-4Cr-15%-Rs.5,00,000 per month"*. The Investigating

Officer is noted to have required the assessee to explain the meaning of these jottings in the course of search and recorded the following statement u/s 132(4) of the Act, :-

> "I submit that I have received Rs.4,00,00,000/- from one Mr. Nandagopal (Mobile No. 8220047506) (Native of Sivakasi), Mumbai in 2011 in the form of cash and invested the same in land. I have utilized the said money towards purchase of vacant land measuring 100 acres (approx.) for the purpose of my business. The above said properties are located at Ayar Dharmam and Peraiyur in Virudhunagar and Madurai Districts respectively. The relevant copy of documents are located in our office and the originals are mortgaged to BANK OF INDIA, Sivakasi Branch. I have borrowed the sum of Rs.4,00,00,000/- at an interest rate of 15% per annum which amounts to Rs.5,00,000/- per month (totaling to Rs.60,00,000/- per month). Thus, I totally paid interest for two years amounting to Rs.1,20,00,000/- and the principal of Rs.4,00,00,000/- out of my unaccounted income on sale of scrap machineries/waste paper boards which I am ready to offer for taxation for the financial year 2012-13. Thus my total unaccounted income works to Rs.5.2 crores for the financial year 2012-13 for which I will be paying the corresponding taxes at the earliest."

4.2 The assessee is noted to have explained that he had borrowed cash monies from Mr. Nandgopal in 2011 to acquire land parcels and that he had repaid the loan along with interest aggregating to Rs.5.20 crores in the FY 2012-13 out of unaccounted income derived from sale of scrap and therefore offered the impugned sum to tax in the relevant AY 2013-14. The assessee however is noted to have retracted the above statement vide letters dated 13.01.2015 & 10.03.2015. Accordingly, the assessee did not disclose the above offered sum in the return of income filed for AY 2013-14. In the course of assessment, the AO required the assessee to explain as to why the income of Rs.5.2 crores which had been admitted and offered to tax in the course of search, should not be assessed to tax.

To this, the assessee is noted to have explained that, he had already retracted his original statement, which according to him, was given under stress and pressure and therefore pleaded that no addition ought to be made by solely relying on such unsubstantiated statement. The assessee further supported his retraction with the statement of Mr. Nandagopal. The assessee showed that, Mr. Nandagopal was his employee and he had clearly denied the said transaction. Mr. Nandgopal had also stated that he did not have the means to lend such a huge loan to the assessee. The assessee further showed that, the details of lands mentioned in his statement were actually acquired by M/s. Jumbo Fireworks (India) Pvt. Ltd. and not him and that too in earlier years. According to assessee therefore the original statement which had been retracted ought to be ignored. The AO however didn't agree with these submissions of the assessee and held that the admission made at the time of the search can't be ignored, especially in view of its coherence. The AO noted that, the assessee had admitted to earning undisclosed income in other years by way of sale of scrap and therefore according to him, he would have earned undisclosed income from sale of scrap in the relevant year as well, out of which he made repayment of loan of Rs.5.2 crores in question. The AO accordingly brought the impugned sum to tax by way of undisclosed income of the assessee. Being aggrieved by the order of the AO, the

assessee carried the matter in appeal and the impugned addition was deleted by the Ld. CIT(A) by holding as under: -

> "6.9 Issue No. (ii) Addition towards unexplained loan repayment of Rs. 5.20 Crore
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> 6.9.1 During the course of the search, a loose sheet was found and seized as per annexure ANN/HRV/RS/F/G/I. The seized loose sheet contained noting as "unAC- 4Cr-15%=Rs.5,00,000/- per month". The AO in the order treated the noting as "jotting". The manner in which the AO treated the noting as "jotting" is surprising. The noting are made regularly and can be relied upon along with corroborative evidence whereas "jotting" are casual scribblings without any date and year and in the absence of such basic details the same cannot be relied upon.
>
> 6.9.2 The Appellant in the statement recorded u/s 132(4) of the act has averred that he has obtained a loan of Rs. 4 Crores from one Mr. Nandagopal and repaid the same along with interest of Rs. 1.20 Crores. This statement was subsequently retracted, the AO based upon the above termed "jotting" and statement recorded u/s 132(4) of the Act proceeded to made the addition of Rs. 5.20 Crores as unexplained loan repayment u/s 69 A of the Act. The AO has not brought out any corroborative evidence to prove that the Appellant has actually obtained loan of Rs. 4 Crores and the same was repaid along with interest of Rs 1.20 Crores. The Hon'ble Chennai Tribunal in the case of ACIT v. Saveeta Institute of Medical and Technical Sciences [2012] 25 taxmann.com 138 (Chennai-Trib) has held that addition made on the basis of the sworn statement recorded u/s 132(4) of the Act cannot be sustainable and further held that the admission made u/s 132(4) by the Special Officer of the College could not even be treated as a valid piece of evidence.
>
> 6.9.3 In the case of Shri. Ganesh Trading Company v CIT [2013] 30taxmann.com170/214 Taxmann 262 (Jharkhand), the Court has held that a statement made u/s 132(4) of the Act is a piece of evidence but the same is not conclusive particularly because it is self-incriminating. Accordingly it was concluded that no liability could be fastened solely on the basis of sworn statement. In arriving at this decision, the Court followed the judgment in the case of Kailashben Manharfal Choski v. CIT [2010] 174 Taxmann 466(Guj). Further the Apex Court in the case of Pullangode Rubber Produce Co Ltd v State of Kerala [1973] ITR 18 (SC) has held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive and further

observed that it is open to the person who makes the admission to show that it is incorrect.

6.9.4 At the outset it can be stated that where the admission is tied up with incriminating evidence found in the course of search, the principle laid down by the Apex Court will no longer hold good. Obviously, in the absence of evidence an admission can no longer be an evidence to support any addition.

6.9.5 Further, the Apex Court in the case of Kasmira Singh v. State of Madhya Pradesh AIR 1952 SC 159, has observed that the correct way to approach a case of confession is to marshal evidence against the accused excluding the confession altogether from consideration Where the case can be decided independent of confession, then, it is not necessary to take help of confession.

6.9.6 Applying this test in the case of the Appellant, it can be stated that an admission should not be the foundation of the assessment but independent evidence should form the basis of assessment, while admission supplements it.

6.9.7 While going through the assessment order it can be seen that the AO relied upon the noting in the loose sheet and the statement recorded. No attempt was made to bring any corroborative evidence to establish the fact that the Appellant has actually borrowed a sum of Rs. 4 Crores and repaid the same along with a interest of Rs. 1.20 Crores. In the absence of any corroborative evidence the loose sheet relied upon by the AO can only be a "dumb document" and on the basis of such "dumb document" addition cannot be made.

6.9.8 At this juncture it is significant to bring it on record the decision of the Hon'ble ITAT, Jabalpur Bench in the case of ACIT V. Satyapal Wassan [2007]295ITR(AT)352/[2008] 5DTR 202 (Jab) (Trib.) where in the Hon'ble Tribunal has made a significant observation in the matter of utilization of noting on loose sheet as evidence in assessment proceedings. The following are the observations viz

(i) A document found during the course of search must be a speaking one. Without any second interpretation, the noting must reflect all the details about a transaction.

(ii) It is the duty of the AO to carry out necessary investigation for coordinating the noting on the document with other documents seized and finally draw any inference from the statement recorded from concerned persons to bring the amount to charge.

> 1. As a Quasi-judicial Authority, the AO has to satisfy himself on the basis of cogent material either found in course of search or during post enquiries, that the transactions recorded in a document is real and not imaginary and it has actually been taken place.
>
> 2. The document should speak either out of itself or in the company of other materials found during the course of search.
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> 6.9.9 Further the Hon'ble Ahmadabad Tribunal in the case of Amar Natwarlal Shah V. ACIT [1997]60ITD560 (Ahmedabad-Trib) has held that where the seized papers only mentioned the date and moth and not the year, there could be no basis for the addition on the basis of those sheets as relating to a particular year.
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> 6.9.10 It may be appreciated that in the case of the appellant the seized material relied upon by the AO does not contain even the date, month, and year. Further as observed by the Hon'ble ITAT, Jabalpur Bench cited supra, the AO has not at all made any attempt to bring the co-relate the loose sheet seized with any other evidences but has only relied upon the statement recorded.
>
> 6.9.10 In view of the above discussion and the various judicial precedence relied, the undersigned is of the considered view that the AO has not brought any cogent, corroborative and conclusive evidence to substantiate the addition contemplated. In this background the grounds raised by the Appellant upon this issues are treated as allowed consequently the AO is here by directed to delete the addition of Rs.5,20,00,000/- made as unexplained loan repayment with interest u/s 69C of the Act."

4.3 Aggrieved, the Revenue is in appeal before us.

4.4 We have heard both the parties and perused the relevant statements and retraction affidavits and also the other material placed on our record. The main thrust of the Revenue's argument was that the impugned addition made by the AO was justified as it was made on the basis of statement given by the assessee in the course of search u/s 132(4) of the Act, which is an important piece of evidence in itself and

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

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

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

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

would negate such retraction and prove that the facts admitted originally is correct and thus retraction can be discarded. Otherwise, an addition made solely on the basis of a statement which has been subsequently retracted, and is not backed by corroborative evidence, may not be sustainable. For this, we may gainfully refer to the **Instruction F.No.286/2/2003-IT (Inv. II), dated 10-3-2003** issued by the CBDT to the Assessing Officers:

> "Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of search and seizure and survey operations. Such confession, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, such confessions during the course of search and seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income . Any action on the contrary shall be viewed adversely.
>
> Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidences/materials gathered during the course of search/survey operations of thereafter while framing the relevant assessment orders."

4.6 This view was again reiterated by the CBDT in their **Circular No. F.NO.286/98/2013-IT (INV.II)], dtd 18-12-2014** which read as follows:

> "Instances/complaints of undue influence /coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent

proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe /oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, CBDT .

4.7 In view of the above position of law, we now proceed to examine the facts on the present case. It is noted that the impugned addition emanated from the statement given by assessee u/s 132(4) of the Act. The Investigating Officer is noted to have impounded a loose sheet ID marked *ANN/HRV/RS/F/G/L* which contained a stray noting which read as, *"unAC-4Cr-15%-Rs.5,00,000 per month"*. In relation to this stray noting, the assessee is noted to have admitted to undisclosed income of Rs.5.2 crores in the statement recorded u/s 132(4) of the Act. The assessee had explained that, he had earlier borrowed Rs.4 crores from Mr. Nandagopal

and during the year he had repaid the principal along with interest amounting to Rs.5.2 crores to Mr. Nandagopal. The assessee had also explained that, this alleged borrowing was used for acquisition of land parcels. Later on, the Investigating Authorities are noted to have enquired into the veracity of this admission from Mr. Nandagopal named by the assessee. We observe that, upon enquiry, Mr. Nandagopal had categorically denied having lent any monies to the assessee and also explained that he was not a person of such means who could lend such a huge sum to the assessee. Hence, the testimony of the assessee is noted to have come into doubt. The assessee had further shown that, he had not acquired any such land parcels during the said period in his personal capacity and that the admission made in original statement was false and obtained under stress and pressure. The assessee, instead showed that, the details of land mentioned in his statement related to M/s JFIPL which were acquired in earlier years and not the relevant AY 2013-14. We thus find merit in the assessee's contention that, the statement relied upon by the AO to justify the addition impugned, was neither backed by any cogent evidence nor was corroborated, and also suffered from factual-inconsistency.

4.8 It was brought to our notice that, the assessee had also furnished his retraction letter to this effect within a month before the authorities on 13.01.2015, copy of which has been placed at Pages 28 to 38 of Paper

Book. We find that, another retraction letter along with affidavit was submitted on 10.03.2015 which is found placed at Pages 39 to 46 of paper Book. It is noted that, neither the Investigating Officer nor the Assessing Officer re-examined the assessee upon submission of such retraction to ascertain the correct facts. Moreover, the Revenue was also unable to bring on record any material or evidence, found in the course of search, which would reveal details of any on-monies/unrecorded sales or bogus purchases or unrecorded cash etc. to justify or correlate with the alleged loan repayment being made by the assessee during the year. We thus find ourselves in agreement with the Ld. CIT(A) that, there was no incriminating documents or papers found from the assessee's premises, which indicated re-payment of any cash loan or would corroborate the original statement of the assessee, as the purported noting found in Annexure - *ANN/HRV/RS/F/G/L* is ex-facie dumb in nature. We also find force in the Ld. AR's contention that the AO has advocated an impossible proposition that large scale generation & payment of unaccounted monies took place without there being any corroborative evidence to support the same. In the light of the infirmities discussed in the foregoing, we are of the view that some kind of material corroboration was required. Otherwise, such statement alone cannot be sufficient to fasten the assessee with any liability. Even though, on first blush, the original statement appeared relevant, but as noted in the foregoing on account of

the infirmities and failure of the Revenue to corroborate the same with some independent evidence; coupled with the denial of the impugned transaction by Mr. Nandagopal and retraction made by the assessee, it is not prudent to rely on the same to draw adverse inference against the assessee. Hence, the Revenue's plea that the impugned addition be upheld on the basis of the original statement of the assessee cannot be countenanced.

4.9 In this context, we gainfully refer to the decision of Hon'ble Gujarat High Court in the case of **Pr.CIT Vs Nageshwar Enterprises (277 Taxman 86)**. In the decided case, on the basis of information received from Department of Revenue Intelligence (DRI), search action u/s 132 of the Act was conducted upon the residential premises of the partners of the assessee firm in which one of the partners admitted to importing goods from China/Japan at undervalued figures and stated that the differential was paid in cash to the sellers. The said statement was later on retracted by the partner stating that it was obtained under duress. The AO, however, by placing reliance on this statement made addition in the hands of the assessee firm. On appeal both the Ld. CIT(A) and this Tribunal deleted the addition as it was made merely on the basis of the statement which had been retracted and there was no corroborative material or evidence brought on record by the AO to justify the addition.

The Hon'ble High Court is noted to have upheld the orders of the lower appellate authorities by observing as follows:

> "11. The ratio of this decision is that there is a statement recorded in the course of the search proceedings and such statement is retracted and the burden is on the maker of the statement to establish that the admission in his statement was wrong and that such statement was recorded under duress and coercion. It is further brought to our notice that the decision of the Rajasthan High Court was carried in appeal by the assessee before the Supreme Court and the Supreme Court has dismissed the SLP. There need not be any debate with the proposition of law as laid down in the decision of the Rajasthan High Court, but a close look at the decision of the Rajasthan High Court would indicate that the confessional statement was not the only piece of evidence. There was no material to corroborate the statement made by the assessee in the form of confession. In the case on hand, as noted above, there is no material except the confessional statement of the assessee recorded under section 108 of the Customs Act.
>
> 12. In view of the concurrent findings recorded by both, the CIT (A) as well as the Appellate Tribunal, we are of the view that we should not disturb the finding of facts . None of the questions as proposed by the Revenue could be termed as substantial question of law."

4.10 We find that similar issue was also involved in the decision rendered by Hon'ble Gujarat High Court in the case of **Chetnaben J Shah Vs ITO (288 CTR 579)**. In this case, it is noted that in the course of search, the assessee had admitted in the statement u/s 132(4) of the Act that it was regularly purchasing and selling shares which were not forming part of the regular books and disclosed a sum of Rs.10,50,000/- to have been earned over the years. In the course of assessment, the assessee retracted his statement and contended that it was taken under pressure. The assessee also stated that although during the course of search, books of accounts and loose papers were found and seized, but there was no

evidence unearthed which showed that the assessee was involved in the purchase and sale of shares which yielded income of Rs. 10,50,000/-. The AO however did not agree with the objections put forth by the assessee and added the impugned sum as undisclosed income of the assessee. On appeal the appellate authorities noted that there was no evidence to support the very existence of this income except the so called statement u/s 132(4) of the Act. The appellate authorities accordingly deleted the addition. On appeal, the Hon'ble High Court answered the question in favour of the assessee by holding as follows:

> "6. We have heard learned Counsel for the respective parties and perused the records of the case. We are of the view that the CIT (Appeals) has rightly appreciated the case based on the sound principles of law and has also considered the statement made by the assessee at the relevant point of time. We are of the view that in light of the observations made by this Court in the case of Kailashben Manharlal Chokshi (supra), mere speculation cannot be a ground for addition of income . There must be a some material substance either in the form of documents or the like to arrive at a ground for addition of income. Considering the ratio laid down in the above decision and in the facts of the present case, we are of the view that the issue raised in this Appeal is required to be answered in favour of the assessee and against the Department."

4.11 Somewhat similar issue was also considered by Hon’ble Punjab & Haryana High Court in the case of **CIT Vs S.S.R.D Somany Sikshan Sansthan (201 Taxman 313)**. In the decided case, an employee of the assessee had admitted in his statemen t u/s 132(4) of the Act that the salary expenses of assessee were inflated as the employees were required to refund portion of their salaries back to the assessee in cash. The said

employee also later on retracted his statement by filing an affidavit. The AO however went by the original statement of the employee and disallowed salary expenses holding that assessee had inflated the same. On appeal the Ld. CIT(A) deleted the addition which was affirmed by the Hon'ble High Court by holding as follows:

> "7. The Tribunal while affirming the findings of CIT (A), after elaborate discussion had concluded that the Assessing Officer was not right in holding that the assessee had inflated the expenses under the head "salary to staff". The relevant findings recorded by the Tribunal in paras 13 and 14 of its order are as under :--
>
> > "13. We have heard the rival submissions and have gone through the material available on record . We find that the ld. CIT(A) has decided this issue after discussing all the facts in proper perspective and hence we reproduce below the finding of ld. CIT(A) from page Nos. 13 to 15 of his order :--
> >
> > > I have carefully considered the contention of the ld . counsel for the appellant and perused the relevant record. The Assessing Officer has made this addition mainly on the basis of statements of Mr. Surinder Miglani S/o Mr. Om Prakash Miglani, who was a lecturer of MBA with SSRD since August, 2005. This statement was recorded during the course of search. Though Mr. Miglani has retracted from his statement by filing affidavit before the Assessing Officer, this affidavit has not been accepted by the Assessing Officer on the ground that Mr . Surinder Miglani was not an assessee, who facing search action when his statement on oath was recorded . However, the Assessing Officer cannot be said to be justified in rejecting the sworn affidavit of Mr. Miglani on the above ground. Though I agree with the Assessing Officer that none can be allowed to retract from the statement made during the course of search, unless there was evidence to establish that such statement was recorded under duress etc ., in the case of appellant, though there is apparently no evidence of such duress etc ., this aspect is to be seen keeping in view the totality of the facts and circumstances. As brought out in the assessment order also, the statements of other 11 employees was also recorded during the course of search. Even the names of these persons are mentioned in para 10.2 of the assessment order. The Assessing Officer admits in the assessment order itself that all these

statements were in favour of the appellant. However, he has rejected such evidence on the ground that the employees would speak in conformity with interest of their employees . However, again the Assessing Officer cannot be held to be justified in rejecting the evidence as above on this ground. Whereas he has based his entire assessment order on the basis of statement of one such employee, he has ignored the statement of other 11 similar employees . If the statements of all these 11 persons are considered, the adverse inference drawn by the Assessing Officer against the appellant is not sustainable.

In addition to the above evidence, the Assessing Officer has himself mentioned that he was making addition on the basis of certain circumstantial evidence . Circumstantial evidence may be important for deciding an issue in the assessment proceedings in a normal case . However, in my opinion, when an assessee is subjected to search and all the important premises are covered, there could not be any scope for making such huge additions on the basis of circumstantial evidence. Finding of blank signed cheques books of the employees have been considered for adverse inference by the Assessing Officer. However, as brought out in para 10.2 of the assessment order itself, in the statement recorded during the course of search itself, Mr. Anil Sharma Accountant of SITM has duly explained the reasons for the same. What has been stated by Mr. Anil Sharma is the consistent stand on the appellant right from the date of search. Therefore, the conclusion drawn by the Assessing Officer that the amount from the respective bank accounts of the employees is first withdrawn by the appellant and then part of it is handed over to the employees after pocketing the balance is without evidence. Not even single seized document has been discussed which showed that the appellant did not retain part of cash withdrawn from the respective bank accounts of the employees. If the version of the Assessing Officer was correct, there should have been least some evidence found during the course of search in this regard. The increase in salary from assessment years 2005-06 to 2006-07, in itself would further not constitute conclusive evidence that the appellant claimed certain in genuine expenses under the head . Keeping in view the above discussion, I am not inclined to agree with the Assessing Officer that the appellant inflated expenses under the head "Salary". Though on the basis of statement of Mr. Surinder Miglani recorded during the course of search, adverse inference could be drawn against the appellant, as far as payment of salary to him alone is concerned, keeping in view the entirely of the facts and circumstances i.e., statement of 11 other employees recorded during the course of search and the subsequent affidavit of Mr.

> Miglani which has been rejected by the Assessing Officer not for some good and valid reasons, it would not be appropriate even to sustain addition even in respect of salary paid to Mr. Miglani. In view of the above, addition of Rs.14,33,132 made by the Assessing Officer is, therefore, deleted.
>
> 14. From the above, we find that ld. CIT(A) has decided this issue in proper perspective because the Assessing Officer has based his conclusion on the statement of one employee whereas 11 other employees have stated in the statements that they were getting full salary as debited by the assessee in its books. We also find that the statement of one employee of Shri Miglani was also retracted by him by filing an affidavit. Under these facts we find no good reason to interfere in the order of the ld. CIT(A) on this issue and hence we uphold the same. This ground of the revenue is dismissed."
>
> 8. No perversity or illegality could be pointed out by the learned counsel for the appellant in the aforesaid findings recorded by the Tribunal. The only endeavour of the learned counsel was to reappreciate the evidence so as to pursuade this Court to take a different view, which is not permissible."

4.12 Therefore, following the decisions and the Board Instructions (supra), we find ourselves in agreement with the findings of the Ld. CIT(A), that it was improper for the AO to make the impugned addition on the basis of the retracted testimony of the assessee. For the various reasons set out above, we therefore do not see any reason to interfere with order of the Ld. CIT(A) and accordingly dismiss this ground.

5. Ground No. 4 of this appeal is as follows:-

> "4. The Ld.CIT(A) erred in deleting the addition of Rs.1.21 Crores made towards repayment of loan along with interest to G.Subburaj accepting the assessee's explanation that the source for repayment of loan was made out of Income from sale of scrap admitted in the return of income for the AY 2014-15.
>
> 4.1 The Ld.CIT(A) failed to appreciate that the assessee admitted in his sworn statement that the source for loan repayment was made out of unaccounted income for the FY 2012-13 (AY 2013-14). Further, the

assessee has not proved that the repayment of loan was made only in the financial year 2013-14 (AY 2014-15)."

5.1 This ground relates to the Ld. CIT(A)'s action of deleting the addition of Rs.1.21 Crs. made by the AO on account of undisclosed income earned by the assessee for making re-payment of cash loan along with interest to Shri G. Subbaraj. Briefly stated, the facts relating to this issue as noted from the impugned assessment order are that, the Investigating authorities had seized a document in the course of search wherein the assessee had acknowledged the receipt of loan of Rs.1,00,00,000/- on 14.06.2012 and it was to be repaid along with interest at the rate of 21% in a year. The assessee in his original statement dated 16.10.2014 is noted to have admitted to have repaid the said loan along with interest and accordingly offered the loan of Rs 1 crores along with interest of Rs.21 lacs to tax in AYs 2013-14 & 2014-15. The AO in the course of assessment noted that, the assessee didn't offer the impugned sum to tax in the return of income filed for AY 2013-14 and therefore added the same by way of unexplained payment u/s 69 of the Act in the hands of the assessee. Aggrieved by the order of AO, the assessee carried the matter in appeal before the Ld. CIT(A). It is noted that the Ld. CIT(A) upon examining the facts noted that the assessee had already offered the impugned repayment of loan along with interest in the return of income filed u/s 153C of the Act for AY 2014-15 which had been assessed to tax as well and accordingly deleted the impugned addition

holding it to be double addition of the same amount. Being aggrieved by the order of Ld. CIT(A), the Revenue is now in appeal before us.

5.2 Heard both the parties. The sole contention raised by the Revenue before us is that viz., when the assessee had admitted in his sworn statement that the repayment of loan was made in AYs 2013-14 & 2014-15, then the burden was on the assessee to show that it was entirely repaid out of the unaccounted income offered to tax in AY 2014-15 and that no portion thereof was repaid in AY 2013-14. In this regard, the Ld. AR showed us that, the seized material i.e. the promissory note itself stated that the loan shall be repaid in a year. Accordingly, we find force in the assessee's submission that, when the loan was taken only on 14.06.2012, the due date for repayment, as per the seized document, would be 13.06.2013 (FY 2013-14). Accordingly, the loan would have been repaid only in FY 2013-14 [AY 2014-25]. Moreover, we also note that, the Revenue themselves have computed interest on such loan for one-year period i.e. 14.06.2012 to 13.06.2013 at Rs.21,00,000/-, and thus, as a natural corollary, the principal loan along with interest would have been repaid only after the end of one-year period i.e., on or after 13.06.2013. This further fortifies the assessee's case that the impugned loan had been repaid only in FY 2013-14 relevant to AY 2014-15. It is also not in dispute that, the assessee had offered the income corresponding to the impugned loan repayment in the return of income

for AY 2014-15 and we note that the AO had assessed the same to tax as well. Accordingly, we find it to be improper for the Revenue to now contend that the impugned sum ought to be taxed in AY 2013-14, when they have accepted the offer of the assessee and assessed the same sum to tax in AY 2014-15. For the aforementioned reasons, we find ourselves in agreement with the following findings of the Ld. CIT(A) deleting the impugned addition, :-

> "6.11 Issue No. (iii) Addition towards unexplained loan repayment of Rs. 1.21 Crores
>
> 6.11.1 While going through the assessment order it can be seen that the AO has relied upon the sworn statement recorded on 16.10.2014 wherein the Appellant admitted about the repayment of loan of Rs. 1 Crores along with a interest of Rs. 21 lakhs to one Mr. C Subbaraj and claimed that the repayment was made out of his undisclosed income. As the Appellant has not retracted this admission, the AO has made the addition of Rs.1.21 Crores in the hands of the Appellant as unexplained repayment.
>
> 6.11.2 The Appellant in his written submission has claimed that as per the seized material namely letter acknowledging the receipt of loan clearly states that the loan was received on 14.06.2012 and interest to be paid every month at the rate of 21% and was to be paid in a year. The Appellant claimed that he has borrowed a loan of Rs. 1 Crore on June 2012 and the same was repaid in June 2013 i.e. during the FY 2013-14 relevant to AY 2014-15.
>
> 6.11.3 The Appellant has claimed that as the loan was repaid out of income earned from the sale of scrap which was rightly offered in the return of income filed for the AY 2014-15 in response to the notice(s) issued u/s 153A of the act and 148 of the Act. The undersigned verified the relevant return of income and the order passed u/s 148 of the Act where the retuned income was accepted in total
>
> 6.11.4 It may be appreciated that as the loan was taken during the F.Y 2012-13 and the same was paid during the F.Y 2013-14 relevant to the A.Y 2014-15. Obviously, the F.Y in which the loan was repaid along with the interest can be taken as his undisclosed income. In any event this income cannot be the income for the A.Y 2013- 14. In the return of the income filed for the A.Y 2014-15 the Appellant admitted an amount of Rs. 113.95 lakhs as income from sale of scrap and claimed this as his source for repayment of loan.

> 6.11.5 As this income was accepted by the AO, making addition on the same amount for the AY 2013-14 would tantamount to taxing the same income twice which is against the basic principles of taxation. In view of this, the grounds raised by the Appellant upon this issue are treated as allowed and the AO is hereby directed to delete the addition of Rs. 1.21 Crores made as unexplained loan repayment to Shri C Subburaj."

5.3 In view of the above findings therefore, this ground of appeal is also dismissed.

6. In the result, the appeal filed by the Revenue stands **dismissed**.

Order pronounced on the 28th day of August, 2024, in Chennai.

Sd/-	**Sd/-**
(मनोज कुमार अग्रवाल)	**(एबी टी. वर्की)**
(MANOJ KUMAR AGGARWAL)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 28th August, 2024.
TLN, Sr.PS

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF