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

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

आयकर अपील सं./ITA. No. 389, 624 to 626/JPR/2024
निर्धारण वर्ष/Assessment Years : 2012-13, 2014-15 to 2016-17

Sh. Harish Jain 2-PA-8, Vigyan Nagar, Kota -324005.	बनाम Vs.	The ACIT, Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEHPJ 4764 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya, Adv. &
Shri Hemang Gargieya, Adv.
राजस्व की ओर से/ Revenue by : Shri Arvind Kumar, CIT

सुनवाई की तारीख/ Date of Hearing : 16/10/2024 & 17/10/2024
उदघोषणा की तारीख/Date of Pronouncement : 26/12/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of separate four appeals filed by the assessee, the assessee challenges the separate orders of the Learned Commissioner of Income Tax (Appeal), Udaipur-2 [for short CIT(A)] passed on dates and assessment year as mentioned here in below. That order of the ld. CIT(A) arises because the assessee challenged the separate orders passed by the ACIT, Central Circle, Kota under the provisions of Income tax Act, 1961 (in short

'Act') on the dates referred here in below for each of the assessment year mentioned against it:

Asstt. Year	Appeal No.	Reference to the dated of order of the ld. CIT(A)	Reference to the order of the ld. AO date and section under which the order is passed	
2012-13	389/JPR/2024	28.02.2024	22.12.2019	143(3) r.w.s. 153A
2014-15	624/JPR/2024	30.03.2024	22.12.2019	143(3) r.w.s. 153A
2015-16	625/JPR/2024	30.03.2024	22.12.2019	143(3) r.w.s. 153A
2016-17	626/JPR/2024	30.03.2024	22.12.2019	143(3) r.w.s. 153A

2. All these appeals of the assessee were listed for hearing on 16.10.2024 on that date Appeal no. 389/JP/2024 & 626/JP/2024 were argued and heard. Appeals in ITA no. 624/JP/2024 & 625/JP/2024 argued on 17.10.2024. Since the issues raised by the assessee are interconnected on the grounds and on facts, therefore, were heard together all these four appeals with the agreement of the parties and are being disposed of by this common order.

3. First, we take up the appeal of the assessee in ITA no. 389/JPR/2024 for assessment year 2012-13 wherein the assessee has raised following grounds: -

> "1. The impugned additions and disallowances made in the order u/s 143(3) r.w.s 153A of the Act dated 22.12.2019 are bad in law and on

facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. Rs.55,00,000/-: The ld. CIT(A) erred in law as well as on the facts of the case in confirming the impugned addition of Rs.55,00,000/- made by the ld. AO on account of undisclosed income being cash amount allegedly paid for purchase of property situated at 2-PA- 8, Vigyan Nagar, Kota by Smt. Prabha Jain w/o Shri Harish Jain out of total purchase amount of Rs.90,00,000/- to the seller Shri Lal Chand Aswani as per agreement found and marked as Annexure-AS, Exhibit-8, Pg. 21 to 25. The impugned addition has been made on merely surmises and conjectures, without correctly appreciating the facts and seized documents and seriously suffers from various deficiencies. The addition so made and confirmed is contrary to the provisions of law and facts of the case. Hence, the same may kindly be deleted in full.

3. The ld. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

4. The appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

3.1 In this appeal, the assessee has also raised following additional ground:-

"5. The impugned order dated 22.12.2019 is a nullity being non-est and must be considered as never passed in as much as no DIN number has been generated as per the prescribed procedure, which is in violation of the binding instructions of CBDT and hence, the impugned assessment order make kindly be held as non-est and may kindly be quashed.
6. The impugned assessment order passed u/s 153A r.w.s. 153B/143(3) dated 30.12.2019 is nullity being without jurisdiction in as much as no prior approval as mandate by S.153D was obtained or the approval obtained u/s 153D was not obtained from the specified authority, as prescribed in law or else the approval obtained u/s 153D was accorded mechanically without any application of mind. Hence,

there is no approval as such, as contemplated by law hence, the impugned assessment order may kindly be quashed."

4. Succinctly, the fact as culled out from the records are that a search & seizure operation under section 132(1) of the Act was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota" to which the assessee belongs. A number of persons / premises covered u/s 132 of the I.T. Act, 1961. The case of the assessee was also covered under search proceedings. The search action was carried out on the assessee on 07.09.2017. Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota on 12.10.2017. Assessee is an individual and derives income from salary, house property and other sources etc.

Pursuant to the search action notice u/s 153A of the Act was issued to the assessee on 05.07.2018 which was duly served. In response to notice issued u/s 153A, the assessee furnished his return of income on 18.07.2018, declaring total income of Rs. 15,67,000/-. Earlier the assessee had filed his return of income u/s 139 of the Act on 30.03.2013 at the total income of Rs. 14,91,460/-.

Notice u/s 143(2) of Act was issued on 11.09.2018 which was duly served. Further, notice under sub section (1) of Section 142 of

the Act was issued on 30.11.2018 along with questionnaire / Annexure-A requiring certain details/information, which was served upon the assessee. In response to that he furnished the desired details / information / documents / which were examined with respect to claims made in the return of income.

Upon examination of search records ld. AO noted unaccounted investment in immovable property. The fact related to the issue are that during the search action dated 07.09.2017 u/s 132 of the IT Act, a sale agreement made between Smt. Prabha Jain and Shri Lal Chand Aswani regarding sale of Plot No. 2-PA-8, Vigyan Nagar, Kota was found from the premise of the assessee, Shri Harish Jain at 2-PA-8, Vigyan Nagar, Kota, and the same was seized as page No. 16 to 19 of Annexure AS, Exhibit-8, in which total sale consideration was mentioned of Rs. 40 lacs. Another agreement was also found and annexed as page No. 21 to 25 of Annexure AS, Exhibit-8, for the same property which had been purchased by Shri Lal Chand Aswani in F.Y. 2008. In this agreement total sale consideration (at page No. 21 to 25 of Annexure AS, Exhibit-8) is mentioned as Rs. 90 lacs. The assessee, Shri Harish Jain was questioned that it was not acceptable that Shri Lal Chand Aswani had sold the above referred

plot to Smt. Prabha Jain w/o Shri Harish Jain for a consideration of Rs 40 lac bearing a huge loss of Rs. 50 lacs since the same property was purchased by him for a purchase consideration Rs. 90 lacs. In response to that *Shri Harish Jain admitted in his statement in Question No. 17 that, Smt. Prabha Jain has purchased this property for Rs. 95 lakh.* Vide reply of question No. 18 wherein that statement recorded during the search action, Shri Harish Jain admitted that an amount of Rs. 40 lacs was paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs. 55 lacs were paid by cash. It has also been admitted by Shri Harish Jain that the amount of Rs. 55 lacs were paid by him out of undisclosed sources and had never been offered for taxation. Shri Harish Jain admitted Rs. 55 lacs as his undisclosed income for F.Y. 2011-12 i.e. A.Y. 2012-13. In the light of the above fact and admission of un-accounted income assessee was given an opportunity to explain the same vide notice u/s 142(1) dated 28.11.2019 asking him as to why the amount of Rs. 55 lac should not be added to his total income as unaccounted investment for the AY 2012-13. In response the assessee replied on 11.12.2019 stating that the statement recorded u/s 132(4) during the search action was given under pressure, threat, physical

fatigue and mental confusion. The assessee retracted from his statement recorded u/s 132(4) vide his submission filed before AO. Further, the assessee submitted that the agreement is not related to him and the acceptance / surrender of Rs. 55 lacs made by the assessee was under pressure and therefore not to be added to his total income. Ld. AO considered the reply but not found convincing as the assessee is Chief Finance Officer in Resonance group, Kota and it is assumed that he knows very well the rules and various sections of the Act and proceeding of search and surveys. Therefore, the contention of the assessee that the statements recorded during the search were under pressure/ threat is not found convincing. Further, the assessee retracted from his statements vide his submission dated 11.12.2019 when the assessment proceeding is at its ending period. The assessee has not filed any application for retraction after search nor submitted any supporting evidence during post search enquiry and not submitted anything in this regard till 11.12.2019. The retraction made by the assessee was considered as an afterthought to escape from taxation. Therefore, the retraction of the assessee was not considered. The immovable property in question was purchased by his wife Smt. Prabha Jain therefore the contention

that he has nothing to do with the agreement was also baseless. Thus, ld. AO relying on the decision of apex court in the case of ABCAUS 2871 (2019) (04) SC, dismissed the SLP of the assessee against the order of the High Court in dismissing his appeal holding that the statement recorded during search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.

The assessee during search proceeding accepted that the immovable property was purchased by her wife Smt Prabha Jain at consideration of Rs. 95 Lac and Rs. 40 Lacs was paid by her out of her saving and loan and the remaining amount of Rs. 55 Lacs was paid by him, out of undisclosed sources and but not offered for taxation. Hence, the cash payment of Rs. 55 Lacs made by the assessee was considered as his undisclosed income and added to his total income for AY 2012-13.

5. Aggrieved, from the said order of assessment, assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings:-

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

The AO recorded that during the search action dated 07.09.2017 u/s 132 of the IT Act, a sale agreement made between Smt. Prabha Jain and Shri Lal Chand Aswani regarding sale of Plot No. 2-PA-8, Vigyan Nagar, Kota was found from the premise of the assessee, Shri Harish Jain at 2-PA-8, Vigyan Nagar, Kota, and the same was seized as page No. 16 to 19 of Annexure AS, Exhibit - 8, in which total sale consideration was mentioned of Rs. 40 lacs.

Another agreement was also found and annexed as page No. 21 to 25 of Annexure AS, Exhibit - 8, for the same property which had been purchased by Shri Lal Chand Aswani in F.Y. 2008. In this agreement total sale consideration (at page No. 21 to 25 of Annexure - AS, Exhibit-8) is mentioned as Rs. 90 lacs.

The assessee, Shri Harish Jain was questioned that it was not acceptable that Shri Lal Chand Aswani had sold the above referred plot to Smt. Prabha Jain w/o Shri Harish Jain for a consideration of Rs 40 lac bearing a huge loss of Rs. 50 lacs since the same property was purchased by him for a purchase consideration Rs. 90 lacs. In response to that Shri Harish Jain admitted in his statement in Question No. 17 that actually, Smt. Prabha Jain has purchased this property for Rs. 95 lakh. Vide reply of question No. 18 in his statement recorded during the search action, Shri Harish Jain admitted that an amount of Rs. 40 lacs was paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs.55 lacs was paid by cash. It has also been admitted by Shri Harish Jain that the amount of Rs. 55 lacs was paid by him out of undisclosed sources and had never been offered for taxation. Shri Harish Jain admitted Rs.55 lacs as his undisclosed income for F.Y. 2011-12 i.e. A.Y. 2012-13.

In the light of above fact and admission of un-accounted income it is crystal clear that an un-accounted sum of Rs. 55 lacs was paid in cash by Shri Harish Jain for purchasing of plot at 2-PA-8, Vigyan Nagar, Kota during the financial year 2011- 12.

In response the assessee replied on 11.12.2019 stating that the statement recorded u/s 132(4) during the search action was given under pressure, threat, physical fatigue and mental confusion. The assessee retracted from his statement recorded u/s 132(4) vide this submission. Further, the assessee submitted that the agreement is not related to him and the acceptance/surrender of Rs. 55 lacs made by the assessee was under pressure and therefore not to be added to his total income.

The reply of the assessee is considered but not found convincing as the assessee is Chief Finance Officer in Resonance group, Kota and it is assumed that he knows very well the rules and sections of IT Act and proceeding of search and surveys. Therefore, contention of the assessee that the statements recorded during the search were under pressure/ threat is not found convincing. Further, the assessee retracted from his statements vide his submission dated 11.12.2019 when the assessment proceeding is at its ending period. The assessee has not filed any application for retraction after search nor submitted any supporting evidences during post search enquiry and not submitted anything in this regard till 11.12.2019. The retraction made by the assessee is afterthought to escape from taxation; therefore the retraction of the assessee is not considered. The immovable property in question was purchased by his wife Smt Prabha Jain therefore the contention that he has nothing to do with the agreement is baseless.

The Supreme Court in ABCAUS Case ABCAUS 2871 (2019) (04) SC. dismissed the SLP of the assessee against the order of the High Court in dismissing his appeal holding that the statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.

The assessee during search proceeding accepted that the immovable property was purchased by her wife Smt Prabha Jain at consideration of Rs.95 Lac and Rs.40 Lacs was paid by her out of her saving and loan and remaining amount of Rs. 55 Lacs was paid by him in Cash out of undisclosed sources and had never been offered for taxation. Therefore the assessee has offered Rs. 55 Lacs for taxation in FY 2011-12 i.e. AY 2012-13. Hence, the cash payment of Rs. 55 Lacs made by the assessee is considered his undisclosed income and added to his total income for AY 2012-13.

Against the addition made by the AO, the appellant has furnished reply which is dealt as under-

5.3.1 Involvement of Cash in transaction of Property

The appellant stated that originally this property was sold by Smt. Pushpa Devi w/o Sh. Nand Kumar (seller), sometime in the year 2008. for Rs.90 lakhs as appears from the unregistered agreement found and seized during the course of Search conducted on 16.09.2008 being marked as Annexure AS, Exhibit 8 Pg-21 to 25. However thereafter, the assessee purchased the same property in year 2011 at the declared purchase consideration of Rs. 40 lakhs but since this unregistered agreement entered between those third parties was found from the possession of Sh Hanish Jain(the appellant) during search, merely based there on the impugned additions has been made. No doubt Sh. Harish Jain was asked and he stated having purchased by the wife the

property for Rs. 95 lakhs and also allegedly agreed for the undisclosed income of Rs. 55 lakhs however, the totality of facts and circumstances creates a lot of doubts and strongly indicates, that it was a case of tufored statement recorded under pressure, lension and confusion as emerges from the various facts discussed herein after.

The claim of the appellant with regard to statement recorded under pressure, tension and confusion is not found to be acceptable as no evidence in the support of the same is furnished by the appellant. The addition has been made considering seized documents, the admission made by the appellant and also the test of human probability suggests that the addition made is correct. Hon'ble Supreme Court in the case of Sumati Dayal Vs CIT [1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/([1995] 125 CTR 124 (SC)[28-03-1995) held as under-

"It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.

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It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

As per the guidelines of the above case as held by the Hon'ble Supreme Court, the matter is to be considered in the light of human probabilities.

Taking on money on transaction of lands is not an unusual practice but was very much of a usual practice. The transaction of cash takes place in secret and direct evidence about such transaction would be rarely available. In this case the investigation team could gather an indirect evidence suggesting transaction in cash undertaken by the appellant. The appellant admitted the cash transaction in the statement recorded u/s 132(4) of the Income Tax Act. An inference about cash

transaction is to be drawn on the basis of the circumstances available on the record. The AO has clearly brought out these facts in the assessment order. The appellant has failed to prove that the transaction as per the sworn in statement are not true with evidence. In the absence of not furnishing any credible evidence in support of the argument the arguments are not found to be acceptable.

In view of the above discussion, the argument of the appellant are not found to be acceptable.

5.3.2 The incriminating Document is directly connected with the transaction of Property.

"It is argued that the so called "agreement" was entered into by the totally unconnected & unrelated third parties, viz. Smt. Pushpa Devi w/o Sh. Nand Kumar (first seller) and the Aswani Couple (first buyer) The agreement nowhere shows any connection or signature or handwriting of the appellant thereon even remotely. nor is it so claimed by the department."

The relevance of the document is evident from the fact that the document was found from the possession of the assessee during the search proceedings. The property is purchased wife of the applicant. The document is as such chain document of the previous owner of the property for record purposes. In these circumstances, the admission made by the assessee during the search proceedings was as per actual facts. Therefore, the document is relevant and connected to the assessee. The signature and handwriting of the assessee do not have any relevance on such document. Recording of facts is material substance in such cases.

5.3.3 The registered agreement value is not relevant when transaction of on money is proved.

The appellant stated that the DLC value in FY. 2011-12 when the assesse purchased the property. was Rs. 40 lakhs only which is an admitted fact. Such DLC value represents the true and fair market value of property particularly of the land, impliedly supported by the statute vide S.50C (although introduced from AY 2013-14 onwards but in principal support the assessee). The AO did not make any enquiry from the Sub Registrar, if during F.Y. 2011-12 such plot could really be sold/purchased at/around Rs 90 lakhs as alleged by the Department.

The appellant argued that the AD did not bring any comparable case in the surrounding area to show that the real/fair market value of the said property in FY 2011-12 was at or around Rs.90 lakh nor they made inquiry from the residents of nearby area in this regard.

The appellant argued that Aswani Couple must have been inquired, if they really agreed of purchasing the property at Rs 90 lakhs and also selffing the same to the appellant at Rs.95 lakhs in F.Y. 2011-12. Simply because a third party (seller) purchased the property in FY 2007-08 for Rs. 90 lakhs, it cannot be concluded that he must have sold the property to the buyer/appellant in F.Y. 2011-12 at Rs. 95 lakhs (of course after the lapse of some years) and is nothing more than a wild presumption, surmises & conjectures made by AO, which is absolutely without any corroboration.

Admittedly there is no iota of direct evidence found or referred or relied upan by AO except "Ikramama dated 16.09 2008 between strangers, showing that the appellant (Shn Harish Jain), in fact, purchased the property for Rs. 90/95 lakh.

The appellant argued that On the contrary, there is a registered Agreement entered by the Appellant Buyer which declares sale consideration of Rs 40 laktis only through the seized Arinexure AS, Exhibit 8 Pg-16 to 19 (PB 40-43). The transaction was completed before the Sub-Registrar in the presence of the witnesses.

The Id. AO also alleges that why Sh. Lal Chand Aswani would have sold the property at Rs. 40 lakhs only by bearing a huge loss of Rs.50 lakhs Firstly, it was a mere suspicion unless, Shri Aswani would have confirmed the AO of having sold the property at Rs. 90/95 lakhs, which was not done.

The admission made by the appellant and the document seized during the search clearly show that the real value of the plot. The DLC value is not relevant in the case of 'On Money transaction which is paid in cash. The appellant duly accepted payment of cash in the statement recorded u/s 132(4) of the Income Tax Act. The statement was supported by the corroborative documents. The corroborative document established real value of land. The evidence itself proved the real transaction. Hence, there was no requirement of making enquiry from the Aswani Couple as argued by the appellant. Admission of cash transaction is difficult unless clinching evidences are found. In this case, the appellant accepted the cash transaction only because there was evidence found during the search. In these circumstances, the claim of the appellant that the addition is made on mere suspicion is not found to be acceptable. In view of peculiar facts of the case, the decision relied upon by the appellant are not found to be applicable on the facts of the case of the appellant.

5.3.4 The understatement is proved with incriminating document and Statement u/s 132(4)

The appellant argued that the law is well settled that if there was any understatement the onus was upon the AO. Prior to introduction of S.

50C, there were several decisions to this effect that the onus always lays on AO to prove that there was an understatement of consideration between the seller and buyer.

The AO has established that the actual transaction took place in Rs. 95 laks which is admitted by the appellant in the statement recorded during the search proceedings. The admission was made by the assessee when he was confronted with the incriminating material which proves that the real value of the property was more than the value recorded in the registered agreement. Therefore, the argument is found to be without any merit.

The appellant relied upon the decision in the case of K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 (SC). This decision is not found to be applicable on the facts of the case because the AO has passed order u/s 153A of the Act and not u/s 148 of the Act.

The appellant relied upon the decision in the case of CIT v. K.K. Enterprises [2009] 178 Taxman 187 (Raj.) In that case it was held that in absence of evidence on record, sale of land cannot be presumed at higher price than consideration shown in registered sale deeds. However, in the present case there are evidence on record. The first evidence is the statement recorded u/s 132(4) and the second evidence is the purchase agreement of previous owner who also purchased in the value which is more than consideration shown in registered sale deeds. In these facts, the decision relied upon by the appellant is not found to be applicable on the facts of the case.

5.3.5 Incriminating Material is found during the search

The appellant argued that assessments for AY 2012-13 to 2016-17 were not pending on the date of search ie 07.09.2017, could be completed uls 153A, only based on the incriminating material/information as 153A of the Act.

The argument of the appellant is considered. There is clear findings in the assessment order about incriminating material as under-

"During the search action dated 07.09.2017 u/s 132 of the IT Act, a sale agreement made between Smt. Prabha Jain and Shri Lal Chand Aswani regarding sale of Plot No. 2-PA- 8. Vigyan Nagar, Kota was found from the premise of the assessee, Shri Harish Jain at 2-PA-8, Vigyan Nagar, Kota, and the same was seized as page No. 16 to 19 of Annexure - AS, Exhibit-8, in which total sale consideration was mentioned of Rs. 40 lacs.

Another agreement was also found and annexurised as page No. 21 to 25 of Annexure- AS, Exhibit-8, for the same property which had been purchased by Shri Lal Chand Aswani in F.Y. 2008. In this agreement

total sale consideration (at page No. 21 to 25 of Annexure - AS, Exhibit-8) is mentioned as Rs. 90 lacs."

The AO has further noted that in the statement recorded u/s 132(4) Shri Harish Jain admitted that an amount of Rs. 40 lacs was paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs.55 lacs was paid by cash. The findings of the AO are reproduced as under-

"In response to that Shri Harish Jain admitted in his statement in Question No. 17 that actually. Smt. Prabha Jain has purchased this property for Rs. 95 lakh. Vide reply of question No. 18 in his statement recorded during the search action, Shri Harish Jain admitted that an amount of Rs. 40 lacs was paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs.55 lacs was paid by cash. It has also been admitted by Shri Harish Jain that the amount of Rs. 55 lacs was paid by him out of undisclosed sources and had never been offered for taxation. Shri Harish Jain admitted Rs.55 lacs as his undisclosed income for F.Y. 2011-12 ie. A.Y. 2012-13."

In view of the above facts, the documents seized during the search and clear admission by the assessee in the statement recorded u/s 132(4) constitute incriminating material because these evidences establish that there was cash payment of Rs. 55 lakhs in purchase of land by wife of the assessee in which cash was paid by the assessee. In view of the above facts, it is established that incriminating material found during the search clearly proved that the real value of transaction was more than the value recorded in the registered agreement. The decisions relied upon by the appellant are not found to be applicable on the facts of the case.

5.3.6 Statement as valid piece of Evidence, supported with corroborative Evidence and the retraction from statement is not Valid.

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It is argued that the AD has mainly emphasized on the statement of the assessee, however, ignored the settled legal position that a person making a statement is legally entitled to retract from, what it had stated earlier It has been held that an admission, though a best evidence against such person, if shown to be out of ambiguity under tension or was against the facts or misconception of law, can be validly refracted. Admission once retracted not binding Reliance wrongly placed. The AD has ignored the settled legal position that a person making a statement is legally entitled to retract from, what it had stated earlier It has been held that an admission, though a best evidence against such person, if shown to be out of ambiguity, under tension or was against the facts or misconception of law, can be validly retracted. Pertinently the appellant retracted from such admission in as much as he did not declare this

income in the ROI file for AY 2012-13 us 1534. In addition during the course of the assessment proceedings a reply letter dt. 04.12.2019 was uploaded/Submitted before AD on 11.12.2019 (PB 14-19) to this effect

The statement recorded during search and survey under oath is an important piece of evidence and it is an incriminating material. The Kerala High Court on this issue held in the case of Commissioner of Income-tax, Thichur Vs St. Francis Clay Decor Tiles [2016] 70 taxmann.com 234 (Kerala)/[2016] 240 Taxman 168 (Kerala)/[2016] 385 ITR 624 (Kerala)/[2016] 287 CTR 187 (Kerala)[22-03-2016] as under-

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

In this case also, statement recorded under oath of the assessee in which he admitted payment of cash for purchasing of land are incriminating material and these are valuable piece of evidence in order to invoke section 153A of the Income Tax Act, 1961.

In view of these facts, it is concluded that there was incriminating material available with the AO and therefore, the provisions of section 153A are rightly invoked by the AO. The decisions relied upon by the appellant are not found to be applicable on the facts of this case as there was incriminating material found during search.

With regard to retraction of the statement, it is evident that no valid retraction was furnished by the assessee before the AO. The retraction letter furnished on 11.12.2019 was furnished after a long period after search which was conducted on 07.09.2017. Hence there is delay of 2 years and 3 months. The findings of the AO are reproduced as under-

"The reply of the assessee is considered but not found convincing as the assessee is Chief Finance Officer in Resonance group, Kota and it is assumed that he knows very well the rules and sections of IT Act and proceeding of search and surveys. Therefore, contention of the assessee that the statements recorded during the search were under pressure/ threat is not found convincing. Further, the assessee retracted from his statements vide his submission dated 11.12.2019 when the assessment proceeding is at its ending period. The assessee has not filed any application for retraction after search nor submitted any supporting evidences during post search enquiry and not submitted anything in this regard till 11.12.2019. The retraction made by the assessee is afterthought to escape from taxation: therefore the retraction of the assessee is not considered. The immovable property in question

was purchased by his wife Smt Prabha Jain therefore the contention that he has nothing to do with the agreement is baseless.

The Supreme Court in ABCAUS Case ABCAUS 2871 (2019) (04) SC, dismissed the SLP of the assessee against the order of the High Court in dismissing his appeal holding that the statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction."

The argument of the appellant are found to be only assertions without any supporting evidence. There is no evidence of pressure or threat. The search is conducted in the presence of two independent witnesses. The appellant has not furnished any evidence with regard to claim of pressure by the search tearn during the search proceedings. In these circumstances, the AO was found to be justified in relying on the statement recorded under oath which is an important piece of evidence. The statements recorded under section 132(4).

On the issue of retraction of statement recorded during search Hon'ble High Court Of Madras in the case of Thiru. A.J. Ramesh Kumar v. Deputy Commissioner of Income-tax [2022] 139 taxmann.com 190 (Madras) noted as under -

"8. Pertinently, the Tribunal after recording the explanationa, affidavit and other documents filed by the appellant in support of his case, found that the same were not acceptable as the retraction was in the form of mere assertion and also belated. It was further pointed out by the Tribunal that there was no material evidence let in by the appellant to retract the statement made under section 132(4) and the affidavits of his mother-in-law were unreliable as they were interested arst self-serving testimonies. We are of the view that any retraction by the appellant should he made at the earliest point of time with sufficient, credible and corroborative evidence to support his claim and not by mere assertion as done in this case. Therefore, we do not find any reason to differ with the findings so rendered by the Tribunal."

In this case also, the retraction letter is not found to be acceptable as the retraction was in the form of mere assertion and also belated. There was no material evidence let in by the appellant to retract the statement made under during the search and survey proceedings. It has been held that any retraction by the appellant should be made at the earliest point of time with sufficient, credible and corroborative evidence to support his claim and not by mere assertion as done in this case. Therefore, I do not find any reason to differ with the findings so recorded by the AO.

It is noticed that various judicial authorities have held that a statement u/s 132(4)/131 is an important piece of evidence and though it

is open to the assessee to show that the statement under oath was erroneous. Such retraction must be made soon after the recording of the statements on oath and further such retraction should be backed with suitable and sufficient evidence.

There is no valid retraction filed in this case, hence the statement can be acted upon by the AO. The retraction letter furnished on 11.12.2019 was furnished after a long period after search which was conducted on 07.09.2017. Hence there is delay of 2 years and 3 months. A proper retraction requires evidences and explanation with regard to earlier statement. However, no such retraction is furnished by the appellant.

The so called retraction is not valid retraction as filing return of Income in compliance to notice u/s 153A is not retraction. The assessee has not included the income admitted as earned in the statement recorded under oath. However, a proper retraction requires evidences and explanation with regard to earlier statement. However, no such retraction is furnished by the appellant. The filing of return without any valid explanation after the recording of statements u/s 132(4) of the Income Tax Act, 1961 cannot be treated as valid retraction.

In this regard, in an important decision Hon'ble Gujrat High Court of in the case of Asstt. CIT v. Hukum chand Jain [2010] 191 Taxman 319 it was held that if an allegation of duress or coercion was made almost after two years, then such allegation has to be overruled. In this case also the allegation is made after two years. Hence, the retraction is not acceptable. Therefore, the allegations of coercion are not found to be acceptable.

The ITAT Ahmedabad Bench 'C' in the case of Kantilal C. Shah v. Assistant Commissioner of Income-tax, Circle-3, Ahmedabad [2011] 14 taxmann.com 108 (Ahmedabad) considered the similar issue. The head note of the decision is as under-

"Section 132, read with section 69, of the Income-tax Act, 1961-Search and seizure-Block penods 1-4-1985 to 31-3-1995 and 1-4-1995 to 12-12-1995-Whether section 13214) enables an authorized officer to examine a person on path and such a sworn statement made under section 132(4), thus can be used as an evidence under Act-Held, yes-A search operation was carried out at premises of assessee whereby cash, jewellery, books of account and certain documents were found and seized-Assessee on same day had given a statement under section 132(4) whereunder admissions with regard to unaccounted income of Rs. 6.20 lakhs were made-Sad unaccounted income consisted of mariage expenditure, unexplained household expenditure, etc. Assessing Officer, made additions in respect of unaccounted income of Rs 6.20 lakhs admitted under section 132/4)- However, after lapse of about nine months from date of admission, assessee through an affidavit

sought to retract from statement made under section 132(4) on ground that (a) when there was no evidence or incriminating material discovered at time of search no addition could have been made merely on basis of statement under section 132(4) and (b) that impugned disclosure under admission was obtained forcefully and, hence, not binding -Whether statement recorded under section 132(4) is an evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion - Held, yes Whether assessee retracted from his earlier statement without demonstrating any evidence to establish that statement recorded earlier was incorrect; an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated Held, yes - Whether, therefore, addition made on basis of statement recorded under section 132(4) was to be upheld-Held, yes [In favour of revenue]"

In this case also the Assessing Officer made additions in as admitted in the statement under oath. The assessee has not filed any valid retraction. Statement recorded under oath is evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion. Without demonstrating any evidence to establish that statement recorded earlier was incorrect; an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated. Therefore, addition made on basis of statement recorded under oath was to be upheld.

The AO also noted that during the search proceedings, various incriminating documents related to real value of the property has been found and seized. The appellant admitted that cash has been paid over and above the registered agreement. Therefore, the argument of the appellant that the addition is made on the basis of only statement recorded during search is not found to be acceptable.

The appellant has not furnished any evidence to support that it approached to higher authorities about the alleged coercion used during recording the statement. There is no evidence that the appellant filed any such complaint before higher authorities. Therefore, the allegations of the appellant are unfounded and therefore not found to be acceptable.

On the issue of retraction Hon'ble High Court Of Kerala in the case of Commissioner of Income-tax, Kozhikode v. O. Abdul Razak (2012] 20 taxmann.com 48 (Ker.) held as under -

"Section 132 of the Income-tax Act, 1961 Search and seizure - Block period 1988-89 to 1998-99 Whether any statement recorded under section 132(4), statutorily deemed to have evidentiary value, cannot be retracted at mere will of party Held, yes Whether a statement made under oath deemed and permitted to be used in evidence, by express statutory provision, has to be taken as true unless there is contra

evidence to dispel such assumption Held, yes Pursuant to a search conducted at residential premises of assessee, Assessing Officer computed undisclosed income on basis of clear admission made by assessee in sworn statement recorded under section 132(4) First addition was with regard to actual money paid by assessee for purchase of four properties - Assessee had voluntarily submitted before ITO that amount shown in document with regard to purchase of four properties were not actual amounts and he had paid more than that shown in documents - Second addition was with respect to personal expenses - Last additions was of amount of Rs. 3 lakh which assessee claimed as an NRI loan in his cash flow statement and later in a reply stated to be a loan from his elder brother - Later on, assessee retracted from his statement and contended that admissions were made under threat and coercion - Tribunal allowed appeal of assessee and held that no evidentiary value could be attributed to statement under section 132(4) especially in context of there being a retraction and that for making additions, Assessing Officer should necessarily unearth materials during search Whether on retraction being filed by assessee, there was a burden cast on assessee to prove detraction or rather disprove admissions made - Held, yes Whether since assessee failed to prove any threat or coercion and had voluntarily disclosed his income by making statement under section 132(4), it could be said that retraction made by assessee was a self-serving after thought and no reliance could be placed on same to disbelieve clear admissions made in statement recorded under section 132(4) Held, yes Whether therefore, additions made on account of admissions made under section 132(4) and statement corroborated by documents recovered in search and attendant circumstances was to be sustained - Held, yes [In favour of revenue]"

In this case also if the assessee wanted to retract, there was a burden cast on assessee to prove retraction or rather disprove admissions made. The assessee failed to prove any threat or coercion and had voluntarily disclosed his income by making statement under oath, it could be said that retraction made by assessee was a self-serving after thought and no reliance could be placed on same to disbelieve clear admissions made in statement recorded under oath. Therefore, additions made on account of admissions made under oath and statement corroborated by documents recovered in search and attendant circumstances is found to be justified.

Without prejudice to the above, there is another angle to the admission during the search and retraction during assessment proceedings. By admitting the appellant during search and survey proceedings the assessee stopped further investigation by the investigation wing. The assessee prevented department to cause further enquiry in his case. Since, the appellant admitted that unaccounted cash

payment the department officers stopped further enquiry. As such law of estoppels applies in this case.

It is not the case that the admission made by assessee was incorrect or there is mistake or the admission was made on wrong facts. In fact, when there is a clear admission, voluntarily made, by the assessee, that would constitute a good piece of evidence.

5.3.7 The appellant admitted earning of undisclosed income and payment of cash

The appellant argued that the appellant not the legally correct assessee. The property was admittedly purchased by Smt. Prabha Jain who is a separate Assessee and a separate person. However, addition was made in the hands of the appellant Sh. Harish Jain (Husband). There is nothing on record which shows that statement of Smt. Prabha Devi (Wife of Shri Harish Jain) who stated that the undisclosed money, if any, belong to her husband Sh. Harish Jain only, nor in the statement of Sh. Harish Jain recorded during Search a specific question was raised that despite the property having being purchased by his wife Smt. Prabha Devi whether Harish Jain was agreeable to own the responsibility and to explain the source. The Search team straight forward got the income surrendered by Sh. Harish Jain.

In the statement recorded u/s 132(4) the appellant admitted that though the property is purchased in the name of wife of the assessee, the assessee is joint borrower for arranging the loan as source of the funds. Hence, the assessee is de facto co-owner of the property. Hence, the assessee is not completely unrelated to the transaction. Further, the assessee admitted in the statement recorded u/s 132(4) of the Income Tax Act that the payment of cash was made from the income earned out of undisclosed sources. In the statement the appellant mentioned name of the person Sh. Lalchand Aswani to whom payment of Rs. 55 lakh was made and also mentioned the date 2-12-2011. In these circumstances, the argument of the appellant are not found to be acceptable.

5.3.8 No Evidence furnished for claim of telescoping benefit

The appellant further argued that benefit of telescoping/set-off deserves to be allowed. If any addition of income as also on account of expenditure is sustained, the benefit of the availability of the income/funds towards the unexplained expenditure (as sustained) deserves to be allowed, based on the law which is well settled.

The argument of the appellant has not furnished any details of income for allowing benefit of telescoping. Therefore, the mention of telescoping benefit is not found to be relevant with regard to the facts of this case.

5.3.9 The Reliance Placed by the Appellant on decisions without Explaining Applicability on the facts of the case

While going through the reply furnished by the appellant, it is noticed that decisions of various Courts and ITAT have been relied upon without explaining as to how these decisions are applicable on the facts and circumstances of the case. These decisions are ignored while passing the order.

On the issue of placing reliance on a particular decision, Hon'ble High Court Of Gujarat in the case of Director of Income-tax (Exemption) V. Shia Dawoodi Bohra Jamat (2012) 25 taxmann.com 90 (Gujarat) observed as under.

"11. It is settled legal position, that the decisions of the courts are not to be applied in the abstract, but are to be applied to the facts of the case. Without recording any findings of fact, one fails to understand as to how the Tribunal has come to the conclusion that the decisions on which it has placed reliance are applicable to the facts of the present case. It has been often reiterated that the Tribunal is the final fact finding authority, hence, the order of the Tribunal should reflect findings of fact as well the reasons for arriving at its conclusions on the basis of the findings recorded by it. The impugned order of the Tribunal is totally lacking in all quarters.

12. In CCE v. Srikumar Agencies (2008) 232 ELT 577 (SC) the Supreme Court was dealing with a similar case wherein without detailed analysis of the factual position involved, the Customs, Excise and Gold (Control) Appellate Tribunal had merely referred to some judgments and submissions of the learned counsel for the assessees to hold that the assessees were entitled to relief, the court held that courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. That disposal of appeals by mere reference to decisions was not the proper way to deal with the appeals."

In this case also it is noticed that the appellant has merely referred to some judgments and argued that the assessee is entitled to relief, without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Therefore, such decisions relied upon by the appellant are not discussed in detail because the appellant has not explained that on what basis such reliance is placed by it on these decisions.

In view of the above discussion, the argument of the appellant are found to be without any merit and the decision of the AO is found to be justified. The addition made by the AO is upheld.

This ground of appeal is treated as dismissed.

6. Ground No. 3 of appeal is related with the charging of interest u/s 234A, 2348 and 234C of the Act.

6.1 The submissions of the A/R of the appellant during the appellate proceedings vide dated 14.12.2023 are reproduced as under:

"Charging of Interest u/s 2344 & 2348 is consequential and kindly be decided accordingly."

6.2 Charging of Interest under various sections of Income Tax Act is mandatory as held by Hon'ble Supreme Court in the case of CIT Vs. Anjum M. H. Ghaswala 252 ITR 1 (SC) and, therefore, the same has to be charged as per provisions of the Income Tax Act. The AO shall charge the interest as per provisions of the IT Act while giving effect to this order on the income assessed after taking into consideration of this order.

7. The last Ground of appeal is that the appellant prays to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

7.1 The appellant has not added, amended or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, no needing any specific adjudication and is accordingly treated as disposed of.

8. In the result, the appeal of the appellant is treated as dismissed."

6. Feeling dissatisfied with the above order of the ld. CIT(A), the assessee has preferred the present appeal on the ground as stated hereinabove. Apropos to the grounds so raised the ld. AR of the assessee relied on the written submissions which are reproduced here in below :-

"Brief General Facts: The assessee is an individual and derives income from salary, house property and other sources e-filed Return of Income on 30.03.2013 declaring total Income at Rs. 14,91,460/- u/s 139 of the Act (PB 01-03).

A Search & Seizure operation was carried out by the Investigation Wing of the Department on 07.09.2017 u/s 132 of the Income Tax Act, 1961 at

the residential and business premises connected with "Resonance Group, Kota". Cash, jewellery and other documents found and seized from some person's residence and business premise. The case of the assessee was also covered under Search proceeding. Consequent to Search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota vide order dt 12.10.2017. Thereafter, as part of Resonance Group, the case was taken up for block assessment, by issuing notice u/s 153A which is stated to be served upon the assessee on 04.07.2018 (PB 4) and in response to which the assessee furnished return of income on 18.07.2018 (PB 05-08), declaring Total Income of Rs.15,67,000/- u/s 153A. On examination the AO found difference of Rs. 75,540/- between ITR filed u/s 139 and 153A of the Act.

During search a sale agreement of a property Pg 21-25 of Annexure-AS, Exhibit-8 (PB 09-13) was found in which total consideration is mentioned as Rs.90 Lakhs situated at 2-PA-8, Vigyan Nagar, Kota. Accordingly, notices u/s 143(2) of the Act dated 11.09.2018 and u/s 142(1) of the Act were issued to which responses were filed by the assessee along with necessary details and documents. However, the ld. AO passed impugned Assessment Order u/s143(3) r/w S.153A of the Act dated 22.12.2019 making total impugned addition of Rs. 55,00,000/-.

Feeling aggrieved, the assessee preferred an appealbefore the ld. CIT(A), however did not find his favor.

Hence, this Appeal.

GOA-1 Is a general ground and may be considered while deciding other grounds of appeal.

GOA-2 Addition of Rs.55,00,000/-:(AO Pg.2-5) (CIT(A) Pg.21 Pr.5.3)

Facts: The AO has dealt with this issue at Pg. 2-5. The AO noted that :

"*During the search action dated 07.09.2017 u/s 132 of the IT Act, a sale agreement made between Smt. Prabha Jain and Shri Lal Chand Aswani regarding sale of Plot No. 2-PA-8, Vigyan Nagar, Kota was found from the premise of the assessee, Shri Harish Jain at 2-PA-8, Vigyan Nagar, Kota, and the same was seized as page No. 16 to 19 of Annexure AS, Exhibit - 8, in which total sale consideration was mentioned of Rs. 40 lacs.Another agreement was also found and annexurised as page No. 21 to 25 of Annexure - AS, Exhibit - 8, for the same property which had been purchased by Shri Lal Chand Aswani in F.Y. 2008. In this agreement total saleconsideration (at page No. 21 to 25 of Annexure AS, Exhibit-8) is mentioned as Rs. 90 lacs. The assessee, Shri Harish Jain was questioned that it was not acceptable that Shri Lal Chand Aswani had sold the above referred plot to Smt. Prabha Jain w/o Shri Harish*

Jain for a consideration of Rs 40 lac bearing a huge loss of Rs. 50 lacs since the same property was purchased by him for a purchase consideration Rs. 90 lacs. In response to that Shri Harish Jain admitted in his statement in Question No. 17 that actually, Smt. Prasha Jain has purchased this property for Rs. 95 lakh. Vide reply of question No. 18 in his statement recorded during the search action, Shri Harish Jain admitted that an amount of Rs. 40 lacs was paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs. 55 lacs was paid by cash. It has also been admitted by Shri Harish Jain that the amount of Rs. 55 lacs was paid by him out of undisclosed sources and had never been offered for taxation. Shri Harish Jain admitted Rs. 55 lacs as his undisclosed income for F.Y. 2011-12 ie. A.Y. 2012-13"

TheAO after referring to and relying upon the statement of the appellant (Q.no 17-19), again askedand in response to which a detailed reply letter dt. 04.12.2019 was uploaded/submitted before AO on 11.12.2019 (PB 14-19). The AO at pg 4 held that:

"In response the assessee replied on 11.12.2019 stating that the statement recorded u/s 132(4) during the search action was given under pressure, threat, physical fatigue and mental confusion. The assessee retracted from his statement recorded u/s 132(4) vide this submission. Further, the assessee submitted that the agreement is not related to him and the acceptance/surrender of Rs. 55 lacs made by the assessee was under pressure and therefore not to be added to his total income.

'The reply of the assessee is considered but not found convincing as the assessee is Chief Finance Officer in Resonance group, Kota and it is assumed that he knows very well the rules and sections of IT Act and proceeding of search and surveys. Therefore, contention of the assessee that the statements recorded during the search were under pressure/ threat is not found convincing. Further, the assessee retracted from his statements vide his submission dated 11.12.2019 when the assessment proceeding is at its ending period. The assessee has not filed any application for retraction after search nor submitted any supporting evidences during post search enquiry and not submitted anything in this regard till 11.12.2019. The retraction made by the assessee is after thought to escape from taxation; therefore the retraction of the assessee is not considered. The immovable property in question was purchased by his wife Sm Prabha Jain therefore the contention that he has nothing to do with the agreement is baseless."

The AO finally made the impugned addition of entire Rs.55,00,000/-as undisclosed income for AY 2012-13.

The ld. CIT(A) also confirmed the addition, holding as under:

"In this case also the Assessing Officer made additions in as admitted in the statement under oath. The assessee has not filed any valid retraction. Statement recorded under oath is evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion. Without demonstrating any evidence to establish that statement recorded earlier was incorrect; an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated. Therefore, addition made on basis of statement recorded under oath was to be upheld."

Hence this Ground.

Submissions:

1.1 No Addition legally possible:It appears that originally this property was sold by Smt. Pushpa Devi w/o Sh. Nand Kumar (seller), sometime in the year 2008, for Rs.90 lakhs as appears from the unregistered agreement found andseized during the course of Search conducted on 16.09.2008 marked as Annexure AS, Exhibit 8 Pg- 21 to 25 (PB 9-13). However thereafter, the assessee purchased the same propertyin year 2011 at the declared purchase consideration of Rs. 40 lakhs but since this unregistered agreement entered between third parties was found from the possession of Sh. Harish Jain(the appellant) during search, merely based thereon the impugned additions has been made. No doubt Sh. Harish Jain was asked and he stated having purchased by the wife the property for Rs.95 lakhs and also allegedly agreed for the undisclosed income of Rs.55 lakhs however, the totality of facts and circumstances creates a lot of doubts and strongly indicates, that it was a case of tutored statement recorded under pressure, tension and confusion as emerges from the various facts discussed herein after.

1.1.1 Seized Agreement – not relevant: The so called "agreement" was entered into by the totally unconnected& unrelated third parties, viz. Smt. Pushpa Devi w/o Sh. Nand Kumar (first seller) and the Aswani Couple (first buyer). The agreement nowhere shows any connection or signature or handwriting of the appellant thereon even remotely, nor it is so claimed by the department.

The ld. CIT(A) rejected the above contention without appreciating that, such unregistered agreement may be relevant for the purpose of making inquiry from the assessee, as it was found from his possession, but the AO could not consider this as a sole basis for making addition. He rightly accepted that it was a part of chain document and therefore it was found from possession of the appellant. Here the legal presumption u/s 132(4)/S. 292C will fully apply, which provides that the content of a seized documents (viz, the name of the buyer, the amount of consideration) are correct, unless rebutted which, implies that transition

had no connection and no adverse inference could have been drawn against the assessee.

1.1.2 Declared Consideration as per stamp duty valuation: Interestingly, the DLC value in F.Y. 2011-12 when the assessee purchased the property, was Rs.40 lakhs only which is an admitted fact. Such DLC value represents the true and fair market value of property particularly of the land, impliedly supported by the statute vide S.50C (although introduced from A.Y. 2013-14 onwards but in principal support the assessee).The AO did not make any enquiry from the Sub Registrar, if during F.Y. 2011-12 such plot could really be sold/purchased at/around Rs.90 lakhs as alleged by the Department.

1.1.3 No comparable case: The AO did not bring any comparable case in the surrounding area to show that the real/fair market value of the said property in F.Y. 2011-12 was at or around Rs.90 lakh nor they made inquiry from the residents of nearby area in this regard.

The Dept (or the Director General – Investigation) has not made out a case of under stamping, if the correct sale consideration, was Rs. 90/95 lakh, as against Rs.40 lakh declared. Hence there is no reason to disregard the declared consideration of 40 lakh and to assume the payment at Rs. 95 lakh, which is absolutely without any corroborative evidence. Therefore, the CIT(A) wrongly held that DLC value is not relevant.

1.1.4 No inquiry was madeeven from Smt. Puspa Devi or Aswani Couple: Particularly Aswani Couple must have been inquired, if they really agreed of purchasing the property at Rs.90 lakhs and also selling the same to the appellant at Rs.95 lakhs in F.Y. 2011-12. In this regard, *firstly,*what was found during the search was merely a Ikrarnama between Pushpa Devi and Aswani Couple, regarding which there is no whisper at all of the AO as to what was the future of the said Ikrarnama, whether it was proceeded on the same terms and conditions. Therefore,moving forward on a mere assumption that the Aswani Couple purchased the property in FY 2007-08 for Rs.90 lakhs, itcannot be concluded that hemust have sold the property to the buyer/appellant in F.Y. 2011-12 at Rs. 95 lakhs (of course after the lapse of some years) and is nothing more than a wild presumption, surmises & conjectures made by AO, which is absolutely without any corroboration. It is not the case of the AO that Aswani couple has declared sale consideration of Rs. 90 / 95 lakhs and assessment in his /their case has been completed considering these figures. In fact, the AO was completely silent on this aspect meaning thereby, the sellers have declared sale consideration of Rs. 40 lakhs only but not Rs. 90 lakhs or Rs. 95 lakhs as wrongly assumed by the AO.

1.1.5 Admittedly there is no iota of direct evidence found or referred or relied upon by AO except "Ikrarnama" dated 16.09.2008between strangers, showing that the appellant (Shri Harish Jain), in fact, purchased the property for Rs. 90 / 95 lakh.

The ld. CIT(A) has wrongly stated that statement of the assessee was supported by the corroborative documents,[Para 5.3.3Pg–26 of CIT(A)'s order],in as much as he has failed to bring on record any such corroborative documents (except the said statements). Further, he completely ignored the legal position that through the unregistered agreement, no property, no ownership is transferred and therefore, merely based on unregistered agreement, it cannot be concluded that the parties mentioned therein, really paid/completed the transaction. Hence, no valid inference could be drawn from such agreement.

1.1.6 On the contrary, there is a registered Agreement entered by the Appellant /Buyer which declares sale consideration of Rs.40 lakhs only through the seized Annexure AS, Exhibit 8 Pg- 16 to 19 (PB 40-43). The transaction was completed before the Sub-Registrar in the presence of the witnesses. No enquiry was made from any of the concerned parties therefore subjected transaction is duly supported by a registered document under the provisions of the Registration Act, 1907 r.w.s Transfer of Property Act ,1882. In absence of any direct cogent and contrary evidence, could not have been disbelieved. Otherwise, the law is settled that what is apparent is real. The person who alleges that apparent is not real has to prove. Kindly refer Commissioner of Income-tax *Vs.*Daulat Ram Rawatmull [1973] 87 ITR 349 (SC).

1.1.7 The ld. AO also alleges that why Sh. Lal Chand Aswani would have sold the property at Rs. 40 lakhs only by bearing a huge loss of Rs.50 lakhs. Firstly, it was a mere suspicion unless,Shri Aswani would have confirmed the AO of having sold the property at Rs. 90/95 lakhs, which was not done. Secondly, it is a matter of common knowledge that in the real estate market, the purchase/sale consideration has to be determined on the day when the transaction gets materialized as per the prevailing rates called the fair market value and one cannot go by AO's whims and fancies. The very fact that the stamp duty valuation also supported the declared consideration of Rs.40 lakhs, leaves no room of doubt.

1.1.8 Onus to prove understatement is on the AO: The law is well settled that if there was any understatement the onus was upon the AO. Prior to introduction of S. 50C, there were several decisions to this effect that the onus always lays on AO to prove that there was an understatement of consideration between the seller and buyer.

Reliance is placed on:

1.1.8.1K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 (SC) it was held by Hon'ble apex court:

"Since literal interpretation of section 52(2) leads to manifestly unreasonable and absurd consequences, the same should be construed having regard to the object and purpose for which it has been enacted and the setting in which it occurs. A fair and reasonable construction of section 52(2) would be to read into it a condition that it would apply only where the consideration for the transfer is understated or, in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. Accordingly, if the revenue seeks to bring a case within section 52(2), it must show not only that the fair market value of the capital asset as on the date of the transfer exceeds the full value of the consideration declared by the assessee by not less than 15 per cent of the value so declared, but also that the consideration has been understated and the assessee has actually received more than what is declared by him. There are two distinct conditions which have to be satisfied before sub-section (2) can be invoked by the revenue and the burden of showing that these two conditions are satisfied rests on the revenue. This burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is understatement of concealment of the consideration in respect of the transfer.

Therefore, section 52(2) had no application to the present case and the ITO could have no reason to believe that any part of the income of the assessee had escaped assessment so as to justify the issue of a notice under section 148."

1.1.8.2CIT v. K.K. Enterprises [2009] 178 Taxman 187 (Raj.) it was held as under

"The assessee sold his plots at an average rate of Rs. 18.66 per sq. ft. The Assessing Officer mainly relied on the rates taken by the Sub-Registrar, and adopted value of the plots at Rs. 40 per sq. ft. The Tribunal had mentioned in its order that one of the purchaser of two plots had also been examined by the Assessing Officer, who had purchased two plots worth Rs. 36,000 each, and on same consideration sale-deeds were registered. The Assessing Officer had not discussed the statement of that purchaser. Apparently, there was no other reliable material on record before the assessing authority to assume sale of plots at the rate of Rs. 40 per sq. ft. [Para 6]

In absence of evidence on record, sale of land cannot be presumed at higher price than consideration shown in registered sale deeds and rates of property fixed by stamp valuation authority for registration purposes cannot be taken to be the price for which property might have been sold. Thus, there was no justification for the Assessing Officer to estimate selling price of the land at Rs. 40 per sq. ft. instead of at Rs. 20 per sq. ft. and for the Commissioner (Appeals) to presume selling price at Rs. 22 per sq. ft. Thus, the Tribunal had not committed any error in allowing the appeal of the assessee.[Para 7]"

The ld. CIT(A) has wrongly placed reliance on the statement alone on a continuous &repeatedly basis, without any document. Moreover, he has wrongly distinguished the judgment of K.P. Varghese (supra.), in as much as it propounds a legal principal and rule of evidence, which is to be followed irrespective of it being a case of S.148 or S.153A or S.153C for that matter. Otherwise also, in principle, these are the reassessment provisions, where the AO certainly need much stronger evidence(s) before making any addition(s). Moreover, he has wrongly distinguished the judgment of KK Enterprises, (supra), by merely relying upon (1) the statements, which cannot be termed as incriminating material, and (2) by incorrectly placing reliance on the unregistered Ikrarnama, terming it as purchase agreement, without enquiring even enquiring whether the said agreement to sale was actually acted upon.

1.2 No Incriminating evidence found - Hence no Addition: The law is very well settled that in case of assessment of a search case u/s 153 A, any addition or disallowance can be made only and only if some incriminating material has been found during the course of search, where (or even if not) the related assessment stands completed(but not abated and not pending). In the instant case, undisputedly, some of the assessments of the subjected assessments years (i.e. 2012-13 to 2016-17) stands already completed and were not pending on the day of the search. Some of the assessments were completed under u/s 143(1) but the time limit to issue notice u/s 143(2) had already expired in those cases on the date of Search i.e. 07.09.2017 and hence such assessment even though made u/s 143(1) stand completed/attained finality. For better appreciation, kindly refer the following chart:

A.Y.	ROI Filed u/s 139 on dated:	Total Income Declared	Assessment Completed		Time limit for issuance of notice u/s 143(2) expired on dated:
			Under Section	On Dated	
2012-13	31.03.2013	Rs.14,91,460/-	143(1)	24.06.2013	30.09.2013
2013-14	29.07.2013	Rs.16,71,820/-	143(1)	23.11.2013	30.09.2014

2014-15	31.03.2015	Rs.16,60,400/-	143(1)	31.07.2016	30.09.2015
2015-16	30.03.2016	Rs.21,67,260/-	143(1)	12.02.2016	30.09.2016
2016-17	29.07.2016	Rs.29,19,380/-	143(1)	02.10.2016	30.09.2017

Accordingly, these assessments i.e. AY 2012-13 to 2015-16, which were not pending on the date of search i.e. 07.09.2017, could be completed u/s 153A, only based on the incriminating material/information u/s 153A of the Act, in accordance with the statutory procedure and pre conditions provided but not otherwise. In other words, all the five assessments were to be merely reiterated/reassessed in absence of any incriminating material. However, the other subjected assessments for AY 17-18 & 18-19 can be assessed a fresh comprising of disclosed and undisclosed income both, if any. In this case admittedly there was no incriminating material was found.

Supporting case laws:

1.2.1 Kindly refer CIT vs. Smt. Shaila Agarwal (2012) 246 CTR (All) 266 : (2012) / 346 ITR 130 / 204 Taxman 276 Held :

"A plain reading of s. 153A would show that where notice under this section is issued as a result of any search under s. 132, assessment or reassessment if any relating to any assessment year falling within the period of six assessment years referred to under s. 153A, pending on the date of initiation of search under s. 132 or requisition under s. 132A shall abate. The words, pending on the date of initiation of search under s. 132, or making of requisition under s. 132A, as the case may be, have to be assigned simple and plain meaning. Where the assessment or reassessment is finalised, there are no pending proceedings to be abated and restored to the file of the AO. To abate means to diminish or to take away. The word 'abatement' is referable to something, which is pending alive, or is subject to deduction. The abatement refers to suspension or termination of the proceedings either of the main action, or the proceedings ancillary or collateral to it. The word is commonly used in the legislations, which provide for abatement of action/suit; abatement of legacies; abatement of nuisance; and all actions of such nature, which have the pendency or continuance. The proceedings which have already terminated are not liable for abatement unless statute expressly provides for such consequence thereof. The word 'pending' occurring in the second proviso to s. 153A is also significant. It is qualified by the words 'on the date of initiation of the search', and makes it abundantly clear that only such assessment or reassessment proceedings are liable to abate. The pendency of an appeal in the Tribunal against the order of assessment against which an appeal has been decided by CIT(A) is not a continuation of the proceedings of assessment. An appeal under the IT Act lies to the Tribunal on a

question of law. Even if it is pending on the date of search, no such intention as indicated by the Tribunal arises out of the provisions of second proviso to s. 153A, to abate the proceedings, which have been completed, or concluded, and to restore assessment to the file of the AO. There is no force in the submission that where a notice under s. 153A has been given after the search operations under s. 132, for filing assessment for the block period of six years, and if such period includes any of the assessment years, the abatement of assessment and reassessment proceedings, to give way to reassessment considering the additions in the assessment under s. 153A, will also include the assessment or reassessment, which has been completed. If as a result of search, some undisclosed income is found to have escaped assessment, the AO may initiate steps for reassessment after sanction of competent authority, within the prescribed period of limitation. Circular No. 7 of 2003 dt. 5th Sept., 2003 [(2003) 184 CTR (St) 33] issued by the CBDT has clarified the position."

1.2.2 The law on this aspect is no more Res Integra in as much as very recently the Hon'ble Apex Court in the case of PCIT vs. Abhisar Builders (2023) 332 CTR (SC) 385 has held as under:

"13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

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

(i) that in case of search under S. 132 or requisition under S. 132A, the AO assumes the jurisdiction for block assessment under S. 153A;

(ii) all pending assessments/reassessments shall stand abated;

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

(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under S. 132 or requisition under S. 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under S.s 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under S.s 147/148 of the Act and those powers are saved."

1.2.3 In the case of Jai Steel (India) v. ACIT [2013] 36 Taxman 523 (Raj), it was held that,

"Section 153A bears the heading "Assessment in case of search or requisition". It is "well settled as held by the Supreme Court in a catena of decisions that the heading or the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the Legislature is clear, viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment In case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition, in other words, the assessment should (be) connected with something found during the search or requisition viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153 A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition' or disallowance can be made only on the basis of material collected during the search or requisition, in case no incriminating material is found."

1.2.4In the case of Gurinder Singh Bawa [2016] 386 ITR 483 (Bom), the Bombay High court held that:

"6…once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

1.2.5 In case of Jami Nirmala v. PRCIT [2021] 132 taxmann.com 267 (Orissa), it was held that:

"13…In the present case, the impugned assessment order does not refer to any document unearthed during the course of the search on 26th February, 2016. Therefore, the assumption of jurisdiction under section 153A of the Act for reopening the assessment for the AY 2015-16 was without legal basis. The impugned assessment order refers only to the cash book found during the survey purportedly conducted on 12th February, 2016 i.e. two weeks prior to the date of search. The Panchanama of the search proceedings unambiguously shows that nothing incriminating was recovered in the course of the search. Even in

the counter affidavit of the Opposite Parties does not dispute this position."

1.2.6 In case of PCIT v. Saumya Construction Pvt. Ltd. [2016] 387 ITR 529 (Guj), it was held that:

"16… any addition' or disallowance can be made only on the basis of material collected during the search or requisition, in case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated, in case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

1.2.7 In Kabul Chawla Case [2015] 61 taxmann.com 412/234 Taxman 300/380 ITR 573 (Delhi), it was held as:

"Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this Section only on the basis ofseized material."

1.2.8 In case of Pr. CIT v. Mita Gutgutia [2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526 (Delhi), it was held:

"Section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to Section 132 which deals with 'search and seizure'. Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to reopen at least six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under section132 incriminating material justifying the re-opening of the assessments for six previousyears is found that the invocation of section 153A qua each of the AYs would be justified."

1.3. Statement of assessee not an incriminating material: In this case the AO relied upon the agreement dated 06.09.2008 which is not at all relevant and related to the appellant. He also relied upon the statement

which already stands retracted and otherwise is not a case of incriminating material.In case of PCIT vs Best Infrastructure Pvt. Ltd. 397 ITR 82 (Del), it has been held that statement recorded u/s 132(iv) in the itself does not constitute incriminating material. The relevant finding of the Hon'ble court reads:

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

2. No legal presumption as provided u/s 132(4A) and/or u/s 292C could be drawn against the assessee, which otherwise is a rebuttable presumption and the moment the document itself mentions the name of unconnected third parties, no legal presumption could be validly raised against the appellant.

3.1 Sole Statement, not a good basis for Addition: At the outset we may submit that no addition can be made merely and solely on the basis of a statement of a party.

3.2 No addition permissible solely based on statements: The major addition made was solely based on the statement of the assessee without any corroborative evidence, as discussed in para 3.3 and elsewhere of this w/s, that too ignoring the retraction. It is settled that an admission cannot be made the sole basis of assessment. A CBDT Circular No. 286/2/2003 dt. 10.03.2003 and the Budget Speech, 2003 by the Finance Minister please be referred.

"Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstance, on confessions during the course of search & 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 Departments, Similarly, while recording statement during the course of search & seizures 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 or thereafter while framing the relevant assessment."

3.3 The AO has mainly emphasized on the statement of the assessee, however, ignored the settled legal position that a person making a statement is legally entitled to retract from, what it had stated earlier. It has been held that an admission, though best evidence against such person, if shown to be out of ambiguity, under tension or was against the facts or misconception of law, can be validly retracted.

3.4The Coordinate Jaipur Bench of ITAT has already been taking this view in the case of ITO vs. Suresh Chandra Koolwal (2004) 32 TW 23 (Jp). Various Benches of the ITAT have taken similar view such as in the cases of

- R. K. synthetics 30 TW 228 (Jd).
- Ashok Kumar Soni vs. DCIT (2001) 72 TTJ 323 (Jd),
- Karam Chand vs. ACIT (2000) 73 ITD 434 (Chd): (2000) 68 TTJ 789
- Rishab Kumar Jain vs. ACIT (1999) 63 TTJ 236 (Del).

In the case of Rajesh Jain v/s DCIT (2006) 100 TTJ 929 (Del), held that *"…computation of undisclosed income solely on the basis of confessional statement of the assessee was not justified."*

It has been held by the Hon'ble Supreme Court in PullangodeRubber Produce Co. Ltd. vs. State of Kerala & Others 91 ITR 18 (SC):

"Such admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of accounts do not disclose the correct state of facts".

4.1 Admission once retracted not binding – Reliance wrongly placed:

The AO has ignored the settled legal position that a person making a statement is legally entitled to retract from, what it had stated earlier. It has been held that an admission, though a best evidence against such person, if shown to be out of ambiguity, under tension or was against the facts or misconception of law, can be validly retracted. Pertinently the appellant retracted from such admission in as much as he did not declare this income in the ROI file for AY 2012-13 u/s 153A. In addition, during the course of the assessment proceedings a reply letter dt. 04.12.2019 was uploaded/submitted before AO on 11.12.2019 (PB 14-19) to this effect.

In case of Bharat Kumar Azad (2013) 50Tax World 33 (JP), retraction was made through ROI.It was held:

"15) .....After treading through this entire record we have found that only the basis of admissions made in the statements recorded us 132(4) of

the Act the A.O. has made huge addition. Now let us examine the value of a statement recorded u/s 132(4) of the Act. It would be apt to reproduce this provision which reads as under"132(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any 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.

16)….The very plain reading of the above provision makes it evidently clear that any statement recorded as above is a relevant piece of evidence and it has to be considered while making assessment. But, no where it is stated in this provision that a statement recorded under this section becomes a conclusive proof or sanctum sanatorium for making addition of the admitted income. This issue has been churned by numerous courts as this issue has arisen every now and then in similar litigations, and the courts have settled the legal position by holding that on the issue that any admission made de hors any incriminating evidence found during search cannot be made a basis for making any addition in the hands of the assessee. On some of the decisions the ld. A.R. has relied and they have been extracted along with their held portion, in the earlier part of our order. Moreover, the assessee has disproved his [their] admission with the help of proof as discussed above. In this regard, following decisions are relied…"

4.2 When the assessee had already denied in writing regarding having paid any such sum to Ashwani Couple, and no material was found during search which could have prompted the AO to interrogate the assessee, the so-called confession was extracted by the Search team only by coercion and duress – as claimed by the assessee in his letter of retraction dt. 04.12.2019/11.12.2019. Therefore, such statement deserves to be ignored fully.

4.3 The ld. AO ignored the retraction in the sense that he assumed the appellant to be conversant with the legal position being the CFO and because the appellant did not file any separate application during search hence, it was an afterthought. But just contrary thereto he himself agreed that the property was purchased by the wife Smt. Prabha Jain. Admittedly, there is no specific form of retraction whereas, in this case it was made through separate letter and the computation of the total income.

4.4 Legal Principles:

4.4.1 It is trite law that an admission, though a best evidence against such person, if shown to be out of ambiguity, under tension or was against the facts or misconception of law, can be validly retracted. It has

been held by the Hon'ble Supreme Court in Pullangode Rubber Produce Co. Ltd. vs. State of Kerala & Others 91 ITR 18 (SC):

"Such admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of accounts do not disclose the correct state of facts".

4.4.2 The Hon'ble Apex Court in Nagubai Ammal v/s B. Sharma Rao AIR 1956 SC 593:held as under
"An admission is not conclusive as to be truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue".

4.4.3 In Rajesh Jain v/s DCIT (2006) 100 TTJ 929 (Del), held that computation of undisclosed income solely on the basis of confessional statement of the assessee was not justified, inter alia, where the conduct of affairs by the Revenue Authorities showed that good amount of psychological pressure was built on the assessee to make the said statement and all material found during search was duly explained by assessee on which no adverse comments was made by the AO. This decision contains various references and relevant extract quoted from various case laws.

4.4.4 Krishan Lal Shiv Chand Rai v/s CIT (1973) 88 ITR 293 (P&H)

"It is an established principle of law that a party is entitled to show and prove that the admission made by him probably is in fact not correct and true…"

4.4.5 The Hon'ble Jaipur Bench of ITAT has already been taking this view in Ashok Kumar Soni vs. DCIT (2001) 72 TTJ 323 (Jd). Also, kindly refer Karam Chand vs. ACIT (2000) 73 ITD 434 (Chd): (2000) 68 TTJ 789 (Chd) & Rishab Kumar Jain vs. ACIT (1999) 63 TTJ 236 (Del).

4.4.6 Control Touch Electronics (Pune) (P) Ltd. VS. Asstt. CIT (2001) 72 TTJ (Pune) 65: (2001) 77 ITD 522 (Pune): At para 9 it was held as under

"…… At this stage, it is mentioned that it is a settled legal position that there cannot be any estoppel against the statute. If any income is not taxable by virtue of any provision of the Act, then it cannot be taxed merely because it was offered by the assessee in his return. Therefore, the contention of the learned Departmental Representative in this regard is hereby rejected. Accordingly the order of the AO is set aside on this

issue and is hereby deleted from the assessment of undisclosed income....."

4.4.7 Kasat Paper & Pulp Ltd. VS. Asstt. CIT (2000) 69 TTJ (Pune) 924: (2000) 74 ITD 455 (Pune): At p. 465 para 8

"….There cannot be estoppel against the legal principles and therefore, if the income does not accrue to the assessee, the same cannot be taxed merely on the ground that it was offered for taxation. The assessee can always retract if the amount offered cannot be taxed under the law....."

4.4.8 The Hon'ble Supreme Court in Vinod Solanki v/s Union of India (2009) 233 ELT 157 (SC) makes it abundantly clear that the issue of summons and obtaining statements from the persons summoned, cannot and should not be the only basis to make out a case by the Revenue against the assessee. The Hon'ble Supreme Court took into account the fact that the burden of the revenue cannot be dispensed with and the onus cannot be shifted by it to the assessee by obtaining confessional statement. After elaborate judicial analysis of the legal position, the Hon'ble Supreme Court allowed the appeal of the assessee and vacated the orders of all the lower authorities.

4.4.9 Also referHeris and LRs of Late Laxman Bhai S. Patel v/s CIT (2009) 222 CTR 138 (Guj). Further kindly refer Polat Marmo Agglomerates Ltd vs. Union of India (1994) 73 ELT 536 (Raj.) wherein it was held that the admission made in ignorance of correct position of law and facts are not binding upon a party. Similarly, in the case of Ambalal vs. Union of India (1983)13 ELT 1321 (SC) it was held that confessional statements recorded under threat, coercion, inducement or promise are not valid but person concerned should take care to retract such confessions without delay. Retraction would then be weighed in the light of other evidence available.

5.1 Justification and valid reasons behind retraction: The ld. AO heavily relied upon the statement of the appellant. However, the credibility of such statements is highly doubtful and not binding for various reasons. Of course, in the statement assessee accepted the undisclosed income but the way he immediately agreed creates a doubt of existence of pressure exerted upon him. It is proved that finding the base of the figure of 90 Lakhs the assessee was compelled to admit the figure of Rs. 95 lakhs, i.e. an upward revision of Rs. 5 lakhs, looking to the fact that the transaction at Rs. 90 lakhs in financial year 2008-09, after a lapse of 4 years since then. When asked Sh. Harish Jain admitted the transaction was of Rs.95 lakhs however, he was not asked whether he really paid this amount.

5.2 Further such statements were recorded under tensed moments and such circumstances which established that the appellant was not in a position to tender his free and fair voluntary statement, more detailed in letter of retraction dt.04.12.2019/11.12.2019(PB14-19). The possibility of existence of the surcharged atmosphere and tensed during the search action cannot be ruled out. Even the Courts and Tribunal have taken judicial notice of this fact time and again. Thus therefore, the retracted statement was otherwise not a valid piece of evidence to be based for an addition.

5.3 The existence of tension and surcharged atmosphere has been recognised even by the courts. Kindly refer Jagdish Narayan Ratan Kumar 22 TW 209 (JP). Such statements, therefore are bound to give a distorted picture and are not fully reliable as such.On this aspect it will be quite relevant to refer to decision of Hon'ble Gujarat High Court Kailashben Manharlal Chokshi vs. CIT(2008) 14 DTR 257/ (2010) 328 ITR 411 (Guj.) wherein, it was held as under:

"22. We have heard learned counsel appearing for the respective parties at great length and considered the submissions. We have also gone through the orders passed by the authorities below. It is true that in normal circumstances this Court would not interfere in the finding of fact arrived at by the authorities. It is, however, to be seen as to whether the explanation tendered by the assessee would be considered by the authorities below. It is also to be seen as to whether an addition made is merely based on the statement recorded by the AO under s. 132(4) of the Act and whether any cognizance may be taken of the retracted statement. So far as case on hand is concerned, the glaring fact required to be noted is that the statement of the assessee was recorded under s. 132(4) of the Act at midnight. In normal circumstances, it is too much to give any credit to the statement recorded at such odd hours. The person may not be in a position to make any correct or conscious disclosure in a statement if such statement is recorded at such odd hours. Moreover, this statement was retracted after two months.

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26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under s. 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted

and necessary evidence is led contrary to such admission. Hence there is no reason not (sic) to disbelieve the retraction made by the AO (sic-assessee) and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lacs on the basis of statement recorded by the AO under s. 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee."

6. On this aspect, the following submission were made before AO, reproduced here under:

"1. Unaccounted investment in house property Rs. 55,00,000/- (AY 2012-13)

This is with reference to your Notice u/s 142((1) 28.11.2019 as to why should not be added the amount of Rs. 55,00,000/- to the returned income for the year on account of unaccounted investment in purchase of house property u/s 69 of the IT Act,1961, but the same is not shown in the ITR. It is humbly submitted that your said proposal is unwarranted in the light of attendant facts and applicable law as explained below:-

A. *In notice that in all the queries raised by you , a reference and reliance has been made on the statement of the undersigned recorded u/s 132(4) during the course of search and seizure operation at the residence and other premises of the undersigned during 07.09.2017 to 10.09.2017. However, in that regard we would like to point out that the statement under consideration was recorded in absolutely extra ordinary circumstances not only of duress, threat and inducement but also physical fatigue and mental confusion, therefore I hereby rectract the entire statement recorded during the seach.*

It may be highlighted that the search team entered in my house after disconnecting the close circuit camera and overpowering the watchman of the house. They had not brought any witnesses with them much less independent witnesses. After the entry in our house- first floor and above, when the undersigned was asked to call some witness and I called Mr J K Jain to be witnesses, and when he asked for initial formality of showing the identity of the search officers, he was badly snubbed and insulted by the search team leader and was asked to get out. They called the witnesses of their choice, who were not knowledgeable at all as to procedure of such type of proceedings. They were not there during the entire search procedure and went out whenever their businesses needed their presence out. They were simply made to sign the Panchnama , statements annexures etc. subsequently. They were not independent witnesses in true sense. In case of doubt about above facts, those witnesses may be examined by your goodself.

In view of aforesaid extra ordinary circumstances, the alleged statement recorded under section 132(4) loses its credibility and cannot form the basis for making any additions to the declared income of the assesse if the proposal is based merely on such statement and not on any admissible evidence either in the form of a document or third party evidence. Your kind attention is invited to the judgement of T & AP High Court in the case of CIT Vs. Naresh Kumar Aggarwal (2014) 369 ITR 171(& AP) wherein the court observed as under:

11. The mandate under sub-section (4) gets honoured only when there is no other version from the assessee, vis-a-vis the statement. In such a case, the statement would constitute the basis for making block assessment even if the Department does not have any other material to buttress its case. However, if the statement is retracted by the person from whom it is said to have been recorded, it has to be subjected to the same test, as is done in matters of similar nature. This is particularly so, when the person, from whom it is recorded, is going to be visited with penal consequences. Sub- section (4) of section 132 of the Act cannot be taken as a provision laying down any new principle in the law of evidence.

12. For all practical purposes, the statement recorded under sub-section (4) of section 132 of the Act, partakes of the character of the one recorded by an investigating officer under section 162 of the Code of Criminal Procedure. Howsoever desirable, it may appear to be, it cannot be ascribed the status of a proven fact. At the most, it would constitute the basis for the prosecution to frame its case and correspondingly be a material for the defence to ensure that the prosecution sticks to its version. The question of a statement of that nature being treated as the clinching evidence, by itself, leading to any penal action does not arise.

Attention is also invited to the observations of the court:

15. The question of discharge of burden, arises in respect of a fact, to be proved. If the contents of the statement recorded from an assessee are to be proved, that very statement cannot be a proof, by itself. Such a course would bring about hypellage logic, which is illustrated by a well known example.

Question : who is a doctor ?

Answer : The one who administers medicine.

Question : What is medicine ?

Answer : The one that is administered by a doctor. Such discussion does not lead one, any further.

16. The discharge of burden must be in respect of the plea taken by the Department and the burden can be discharged only through material, which is over and above what was stated in their case. The statement assumes the character of proven fact, only when it is not denied by the assessee.

It will be useful to refer to observations of the Hon'ble High Court of T& AP , in the above decision itself:

19. At the cost of repetition, we observe that if the statement made during the course of search remains the same, it can constitute the basis for proceeding further under the Act even if there is no other material. If, on the other hand, the statement is retracted, the Assessing Officer has to establish his own case. The statement that too, which is retracted from the assessee cannot constitute the basis for an order under section 158BC of the Act.
20. This, in turn, is referable to a time-tested right of an individual which is recognised under article 20(3) of the Constitution of India which mandates no person, accused of any offence, shall be compelled to be a witness against himself. The citing of a statement of an individual as the only evidence, in the penal proceedings initiated against him, is never treated as part of a developed and mature legal system. Section 31 of the Evidence Act, 1872, also assumes significance in this regard. It reads:
"Admissions not conclusive proof, but, may estop: Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained."
21. Parliament never intended to place the proceedings under the Income- tax Act on a higher pedestal than those under the criminal enactments.

B. Hon'ble Allahabad High Court has also taken judicial notice of such circumstances in the case of CIT v. Radha Kishan Goel reported in [2005] 278 ITR 454, wherein it is observed that-

"It is a matter of common knowledge, which cannot be ignored that the search is being conducted with the complete team of the officers consisting of several officers with the police force. Usually telehone and all other connections are disconnected and all ingress and egress are blocked. During the course of search person is so tortured, harassed and put to a mental agony that he loses his normal mental state of mind and at that stage it cannot be expected from a person to pre-empt the statement required to be given in law as a part of his defence."

C. The above decision of Allahabad High Court was also taken note of, with approval, by Gujarat High Court in Kailashben Manharlal Chokshi Vs. Commissioner Of Income-Tax [2010] 328 ITR 411 (Guj)

D. The undersigned would also like to draw your kind attention to the circumstances under which the alleged statement of mine was recorded. In the morning of 7th Sept. 2017 itself the Income tax Search team with police force arrived and open the entry gate of residence, after removing the close circuit camera.

E. The extracted confession of the undersigned during the course of search without supporting evidences, runs counter to the assurance given by the then Finance Minister to the Parliament while presenting the

Annual Budget for the year 2003-04 , that hereafter "Second, no confession shall be obtained during search & seizure operations." ([2003] 260 ITR 29(St.). It is matter of regret that inspite of assurance to the Parliament, and issue of binding instructions by CBDT such confessions are extracted by duress and threat, and attempts are made to make additions to the returned income solely on the basis of such confessions, leading avoidable harassment to the assessees.

F. In the light of above submissions, we request your goodself to take not only a judicious approach in the matter but also follow the mandatory guidelines of the CBDT as reproduced above, and do justice to the undersigned.

G. The assessee' wife purchased house property for Rs. 40,00,000/- as per copy of agreement and deed of sale executed by Shri Lal Chand Aswani Vineeta Aswani. All payments have been made by cheques-Rs.39,50,000/-and Cash-Rs.50000/- only and source of payments are also appearing in books of account of Smt Prabha Jain and explained during the proceedings u/s 153A in her case for AY 2012-13. You may please refer her submission. Apart from such amount, the assessee has not paid any amount in cash to the seller and cash transaction of Rs.55.00 Lakhs is baseless and without supporting of any evidences/proof of payment. The agreement found is between Smt Pushpa Devi and Shri Lal Chand Aswani Vineeta Aswani and not related to the assessee. The assessee has no concern with such transaction. As already mentioned above that statement under consideration was recorded in absolutely extra ordinary circumstances not only of duress, threat and inducement but also physical fatigue and mental confusion as search was conducted continuously for three days. (Annexure-I)"

However, the ld AO failed to controvert/disprove the factual assertions made before him.

7.1 Appellant not the legally correct assessee:Another aspect is that the property was admittedly purchased by Smt. Prabha Jain who is a separate Assessee and a separate person as defined u/s 2(31) of the Act in her own right. However, addition was made in the hands of the appellant Sh. Harish Jain (Husband). There is nothing on record which shows that statement of Smt. Prabha Devi (Wife of Shri Harish Jain) who stated that the undisclosed money, if any, belong to her husband Sh. Harish Jain only. In the statement of Sh. Harish Jain recorded during Search.Though question was raised that despite the property having being purchased by his wife Smt. Prabha Devi whether Harish Jain was agreeable to own the responsibility and to explain the source, which he agreed but immediately retracted. The Search team straight forward got the income surrendered by Sh. Harish Jain.

7.2 Even an objection was raised before the AO wide letter dated 04.12.2019/11.12.2019(PB16)(at Pg3 - Para G)in the following words -

"G. The assessee' wife purchased house property for Rs. 40,00,000/- as per copy of agreement and deed of sale executed by Shri Lal Chand Aswani Vineeta Aswani. All payments have been made by cheques-Rs.39,50,000/-and Cash-Rs.50000/- only and source of payments are also appearing in books of account of Smt Prabha Jain and explained during the proceedings u/s 153A in her case for AY 2012-13. You may please refer her submission. Apart from such amount, the assessee has not paid any amount in cash to the seller and cash transaction of Rs.55.00 Lakhs is baseless and without supporting of any evidences/proof of payment. The agreement found is between Smt Pushpa Devi and Shri Lal Chand Aswani Vineeta Aswani and not related to the assessee. The assessee has no concern with such transaction. As already mentioned above that statement under consideration was recorded in absolutely extra ordinary circumstances not only of duress, threat and inducement but also physical fatigue and mental confusion as search was conducted continuously for three days. (Annexure-I)"

Therefore, such an addition in the hands of an altogether third person is absolutely without jurisdiction and deserves a complete deletion here itself.

7.3 The ld. AO however rejected the contention at Pg. 5 Para 5 of order merely saying that it was a purchase made by the wife of the assessee. However, he completely ignored the legal provision by which he was bound to comply with. Unless he could show an authority under the law to assess the husband who is a different person, how he could have made addition in income, if any (though not admitting), belonging to a different person but there is no clarification on this part from ld. AO.

8. Mere suspicion not sufficient:It is well settled that suspicion howsoever strong, cannot take place of reality. Kindly refer Dhakeshwari Cotton Mills v/s CIT (1954) 26 ITR 775 (SC).

9. Further S. 69/ 69A requires an explanation from the assessee and once given, it has to be objectively tested. A good proof cannot be converted into no proof. Moreover, discretion conferred upon the AO has to be exercised judiciously as held in CIT vs Smt. P.K. Noorjahan (1999) 237 ITR 0570 (SC):

"As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the

source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under s. 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. There is no error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. — CIT vs. Smt. P.K. Noorjehan (1980) 15 CTR (Ker) 138: (1980) 123 ITR 3 (Ker) :42R.1622, affirmed."

However, the ld. AO failed to controvert/disprove the factual assertions made before him. Thus, considering all the facts and judicial precedents the entire addition of Rs.55,00,000/- deserves to be deleted.

10.Common Submission: For All GOA

10.1 Benefit of telescoping/set-off deserves to be allowed:Alternatively, and without prejudice to our contentions that no addition can be made on account of the undisclosed income or unexplained expenditure yet however, if any addition of income as also on account of expenditure is sustained, the benefit of the availability of the income/funds towards the unexplained expenditure (as sustained) deserves to be allowed, based on the law which is well settled, as under:

10.2 Commissioner of Income-tax v. Tyaryamal Balchand [1987] 165 ITR 453 (Rajasthan)

"9.…It is clear from the law discussed above, that the ITO was within his right to tax the amount of Rs. 16,950 as income from undisclosed source, even though he had added the amount of Rs. 18,117 in addition to the profit shown by the respondent-firm in its account books. However, in the present case, the respondent was well within his rights to plead that this amount of Rs. 16,950 is covered by the intangible income assessed at Rs. 18,117 and added to the income of the firm and apart from this, since for the last preceding three years, substantial additions amounting to Rs. 32,797 have been made, the amount of Rs. 16,950 could be taken as having come out of such intangible additions.

In the case reported in (1980) 16 CTR (SC) 189:(1980) 123 ITR 457 (SC) (supra), their Lordships of the Supreme Court have held that the additions made to the book profits in earlier years are the real income and can be treated as available for use in subsequent years or even in the same year. In the case reported in (1967) 66 ITR 722 (SC) (supra), their Lordships of the Supreme Court have held that the Tribunal can permit the appellant to raise grounds not set forth even in the memorandum of appeal at the time of arguments and in this case, these grounds were taken before the AAC also.

10. We are, therefore, of the considered opinion that the question raised in this reference should be answered in favour of the respondent and against the Revenue and we hold that in the facts and in the circumstances of the case, the Tribunal was right in treating the unexplained cash credit entries to the extent of Rs. 16,950 as covered by added gross profit in the sum of Rs. 18,117 on the basis of the estimate."

10.2 In AnantharamVeerasinghaiah& Co. v. Commissioner of Income-tax [1980] 123 ITR 457 (SC) Hon'bleApex court held as under:

"It is now settled law that an order imposing a penalty is the result of quasi-criminal proceedings and that the burden lies on the revenue to establish that the disputed amount represents income and that the assessee has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars. It is for the revenue to prove those ingredients before a penalty can be imposed. Since the burden of proof in a penalty proceeding varies from that involved in an assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted as a finding to that effect in the penalty proceeding. In the penalty proceeding the taxing authority is bound to consider the matter afresh on the material before it and, in the light of the burden to prove resting on the revenue, to ascertain whether a particular amount is a revenue receipt. No doubt, the fact that the assessment order contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceeding but the finding in the assessment proceeding cannot be regarded as conclusive for the purposes of the penalty proceeding.

In the instant case, the Tribunal had relied entirely on the basis that an intangible addition of Rs. 2,00,000 had been made to the book profits of the assessee for the assessment year 1957-58 and it inferred that an amount of Rs. 90,000 was available for being put to use in the relevant assessment year. Now it can hardly be denied that when an 'intangible' addition is made to the book profits during anassessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee. That income, although commonly described as 'intangible', is as much a part of his real income

as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be.

There can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. But it is quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure incurred or of cash credits recorded during a subsequent assessment year. The mere availability of such a fund cannot, in all cases, imply that the assessee has not earned further secret profits during the relevant assessment year. Neither law nor human experience guarantees that an assessee who has been dishonest in one assessment year is bound to be honest in a subsequent assessment year. It is a matter for consideration by the taxing authority in each case whether the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or they are reasonably explained by reference to concealed income earned in that very year. In each case, the true nature of the cash deficit and the cash credit must be ascertained from an overall consideration of the particular facts and circumstances of the case. Evidence may exist to show that reliance cannot be placed completely on the availability of a previously earned undisclosed income. A number of circumstances of vital significance may point to the conclusion that the cash deficit or cash credit cannot reasonably be related to the amount covered by the intangible addition but must be regarded as pointing to the receipt of undisclosed income earned during the assessment year under consideration. It is open in to the revenue to rely on all the circumstances pointing to that conclusion.

The Tribunal erred in law in confining itself to the fact that an intangible addition had been added to the assessee's book profits two years before and that a part of that amount remained available to the assessee thereafter. The High Court was right in departing from that limited approach and in insisting on a consideration of all the relevant facts and circumstances of the case relied on by the revenue for the purpose of determining whether the revenue has succeeded in discharging its burden.

But while considering the legal principles involved in the application of section 271(1)(c) *the High Court, had erred in entering into the facts of the case and determining in point of fact that the assessee earned income during the relevant previous year and that he was guilty of concealing such income or furnishing inaccurate particulars of it. Having found that the legal basis underlying the order of the Tribunal was not sustainable, the High Court should have limited itself to answering the*

question raised by the reference in the negative, leaving it to the Tribunal to take up the appeal again and redetermine it in the light of the law laid down by the High Court. It was the Tribunal which has been entrusted with the authority to find facts. A High Court is confined to deciding the question of law referred to it on facts found by the Tribunal.

Because the finding of the Tribunal that no penalty was leviable rests on an erroneous legal basis, the opinion of the High Court was to be endorsed. But as the High Court should not have rendered findings of fact, the findings of fact reached by the High Court was to be vacated, without expressing any opinion on their correctness, leaving it to the Tribunal in exercise of its duty under section 260(1) to take up the appeal and to redetermine it conformably to the judgment of the Supreme Court and in the light of the principles laid down in it"

Therefore, the impugned addition of difference so made, kindly be deleted in full.

GOA-3 Charging of Interest u/s 234A & 234B: is consequential and kindly be decided accordingly.

The above submissions have been made based on the instructions and the information provided of/by the client.

7. As the assessee raised additional ground to support that contention the ld. AR of the assessee also filed on 16.10.2024 another written submission to support that additional ground raised. The same is also reproduced herein below :-

"Addl. GOA 6: Prior approval u/s S.153D – granted mechanically:
Submission:
1. As per the mandatory provisions of S.153D of the Act, the AO, who is below the rank of the Jt. Commissioner of Income Tax, has to mandatorily obtain prior approval from the Jt. Commissioner of Income Tax before finally passing of any assessment order u/s 153A r.w. S.143(3) in a search case. Accordingly, the Respondent AO in this case also duly sought approval of the Addl. Commissioner of Income Tax, Central Range, Udaipur u/s 153D of the Act.

2.1 In this regard, a bare perusal of the approval (PB II for A.Y. 2012-13 – Pg. 47) clearly shows that there is absolutely no application of mind much less independent application of mind as contemplated under law. Rather, the same appears to have been granted mechanically, in

absence of a single word even to show that the competent authority has really considered the proposal, put forth before him, for getting his approval. The ld. Addl. CIT has simply stated that approval is granted, followed by a table which is nothing but a simply showing basic details of the case. He is completely silent as to what made him to grant approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. The mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like ‘see’ or ‘approved’ will not satisfy the requirement of the law.

2.2 Moreover, it is contented that the provisions contained in S. 153D as enacted by the parliament cannot be treated as an empty formality. The provision has certain purpose. It is apparent that the purpose behind the enactment of the above provision in the statute by the parliament are two folds. Firstly, the approval of the senior authority will ensure that the assessee is not prejudiced by the undue or irrelevant addition or assessment. Secondly, the approval by senior authority will also ensure that proper enquiry or investigation are carried out by the assessing authority. Thus, the above provision provides for mental application of a senior officer of the Department, which in turn, provides safeguard to both i.e., Revenue as well as the assessee. Therefore, this important provision laid down by the legislature cannot be treated as a mere empty formality. Thus, the legislative intent behind getting prior approval u/s 153D is that the work done by the junior officer is properly check &analyzed and thereafter, approved by a superior officer before the AO finally pass the assessment order.

3. Supporting Case Laws:

3.1 In the case of ACIT vs. Serajuddin& Co. (2023) 333 CTR (Ori) 228 it was held that:

“The requirement of prior approval under s. 153D is comparable with a similar requirement under s. 158BG. The only difference being that the latter provision occurs in Chapter XIV-B relating to "special procedure for assessment of search cases" whereas s. 153D is part of Chapter XIV. A plain reading of s. 153D itself makes it abundantly clear that the legislative intent was to be obtaining of "prior approval" by the AO when he is below the rank of a Jt. CIT, before he passes an assessment order or reassessment order under s. 153A(1)(b) or 153B(2)(b). That such an approval of a superior officer cannot be a mechanical exercise has been emphasized in several decisions. It is therefore not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the approval is granted mechanically, it would vitiate the assessment order itself.—Sahara India (Firm) vs. CIT (2008) 216 CTR (SC) 303 :

(2008) 7 DTR (SC) 27 : (2008) 14 SCC 151 and Rajesh Kumar vs. Dy. CIT (2006) 206 CTR (SC) 175 : (2007) 2 SCC 181 applied.
There is not even a token mention of the draft orders having been perused by the Addl. CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. The mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure of CBDT becomes important. Although, it was in the context of s. 158BG, it would equally apply to s. 153D. It is an admitted position that the assessment orders are totally silent about the AO having written to the Addl. CIT seeking his approval or of the Addl. CIT having granted such approval. Interestingly, the assessment orders were passed on 30th Dec., 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.
For all of the aforementioned reasons, the Court finds that the Tribunal has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of s. 153D and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the Tribunal that in the present cases such approval was granted mechanically without application of mind by the Addl. CIT resulting in vitiating the assessment orders themselves

The initial assessment order as also the impugned assessment order without jurisdiction is void-ab-initio being a nullity and hence the same deserves to be quashed and set aside.".

Pertinently, the Dept. assailed this order of the Hon'ble High Court before the Hon'ble Supreme court in ACIT vs Serajuddin& Co. [SLP (Civil) Diary No(s). 44989/2023], wherein the Hon'ble court after hearing the Dept. dismissed the said petition.

3.2 Kindly refer Veena Singh vs. ACIT (2024) 38 NYPTTJ 519 (Del)

"Search and seizure—Assessment under s. 153A—Approval under s. 153D vis-a-vis non-application of mind—A common and consolidated approval has been granted for asst. yrs. 2011-12 to 2017-18—There is no year-wise reasoning in the said approval granted under s. 153D—After receiving the letter seeking approval under s. 153D, the Addl. CIT granted the approval on the very same date i.e., on 21st Jan., 2018 and

the impugned assessment order has also been passed on 21st Dec., 2018—Impugned approval was apparently issued in a mechanical and hurried manner without mentioning the reasons and the same has been issued without application of mind—Such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the five assessment years—Apparently, the approval has been granted on a dotted line without availability of reasonable time—Whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality—Approval granted under s. 153D should necessarily reflect due application of mind, and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending—In the instant case, approving authority did not mention anything in the approval memo towards his/her process of deriving satisfaction so as to exhibit his/her due application of mind—Plain reading of the letter of approval granted by the Addl. CIT clearly depicts that the Addl. CIT has routinely given approval to the AO to pass the order only on the basis of letter of the AO without any application of mind—Thus, the sanctioning authority has in effect abdicated its statutory functions and delightfully relegated its statutory duty to the subordinate AO, whose action the Addl. CIT was supposed to supervise—Said approach of the Addl. CIT has rendered the approval to be a mere formality and cannot be sustained in the eyes of law—Approval so granted under the shelter of s. 153D does not pass the test of legitimacy—Consequently, the impugned assessment orders are non est and nullity and hence, the same are quashed"

3.3 Other Supporting case laws: On this aspect, a useful reference can be made to the following case laws.

- PCIT V. Sapna Gupta (2023)147 taxman.com 288(All.)
- PCIT V. Shiv Kumar Nayyar (2024) 163 taxman.com 9 (Del.)

4.1 Pertinently, a bare perusal of the letter seeking approval by the AO (PB II for A.Y. 2012-13 – Pg. 46)addressed to the Addl. CIT, will show that the AO has supplied only the draft assessment order and no other record has been supplied.

4.2.1 Alternatively, for once assuming that the AO did sent the draft assessment order along with all the records to the Addl. CIT. In that regard, the said approval (PB II for A.Y. 2012-13 – Pg. 47) states that the approval was sought by the AO vide his letter dated 19.12.2019.

Interestingly, the same reached the ld. Addl. CIT on 19thof December itself. Thereafter, on the very same day he went through the entire

record, all the statements and the draft assessment orders for all the 6 years.

4.2.2 It is surely not humanely possible, rather impossible since assuming that the courier company almost instant supplied the record from Kota to Ajmer, which itself takes 10 hours by road, then a person i.e the Addl. CIT went through more than 500 pages (approx.) within no time and prepared his approval report.

4.2.3 Further, the recently the assessee filed an RIT application seeking the details regarding the approval granted u/s 153D. In response (PB II for A.Y. 2012-13 – Pg. 44-45), the Addl. CIT stated that on the every same day, he granted approval to 88 other cases.

With barely anytime to grant approval on 19.12.2019 in the case of assessee itself, it is impossible for the Addl. CIT to grant approval in 88 other cases, after going through their entire recorded, unless the entire approval was granted mechanically.

4.3 Kindly refer the judgment of Hon'ble High Court of Madhya Pradesh in the case of CIT vs S. Goyanka Lime & Chemicals Ltd.[2015] 56 taxmann.com 390 (MP), wherein the Hon'ble Court held as under:
"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:—
'The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'
8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration."
Pertinently, the Dept. assailed the said judgment of Hon'ble High Court of Madhya Pradesh before the Hon'ble Supreme Court in CIT vs S. Goyanka Lime & Chemical Ltd. [2015] 64 taxmann.com 313 (SC) [SLP (C) NO.11916 OF 2015], wherein the Division Bench of Hon'ble Supreme Court dismissed the said SLP, upholding the judgment of Hon'ble High Court."

8. To support the contentions raised in the written submission the ld. AR of the assessee has also filed a paper book containing the following evidences / judicial precedents :-

Sr. No.	Particulars	Page No.
1.	Copy of ROI along with Computation of Total Income u/s 139 for A.Y. 2012-13.	1-3
2.	Notice u/s 153A dated 05.07.2018 for AY 2012-13	4
3.	Copy of ROI e-filed along with Computation of Total Income u/s 153A for A.Y. 2012-13	5-8
4.	Seized Annexure of sale agreement dt-16.09.2008 w.r.t. PA-8, Vigyan Nagar, Kota seized during the course of search being marked as Annexure AS, Exhibit 8 Pg- 21 to 25 by Shri Lal Chand Aswani.	9-13
5.	Copy of reply dt. 04.12.2019 filed before the AO on 11.12.2019.	14-19
6.	Copy of statement of the assessee recorded on 08.09.2017 u/s 132.	20-39
7.	Seized Annexure of sale agreement dt. 05.10.2011 w.r.t. PA-8, Vigyan Nagar, Kota seized during the course of search being marked as Annexure AS, Exhibit 8 Pg- 16 to 19 between Smt. Prabha Jain and Shri Lal Chand Aswani	40-43
8.	Copy of order dated 07.10.2024 under RTI Act, 2005 containing information regarding approval u/s 153D	44-45
9.	Copy of letter for approval by ACIT(A) dated 19.12.2019 to Addl. CIT, Udaipur	46
10.	Copy of approval u/s 153 by Addl. CIT dated 24.12.2019	47-48
11.	Copy of purchase deed dated 30.01.2012 between pushpa Devi and lal Chand Ashwani	49-55
12.	Copy of sale dee dated 1609-2008 between purshpa Devi and Lal Chand Ashwani	56-75

- **Case laws relied upon:**

Sr. No.	particular	Page No.
1.	ACIT vs. Serajuddin & Co. (2023) 333 CTR (Ori) 228	1-10
2.	ACIT vs. Serajuddin & Co. (SC) SLP© No. 44989/2023	11
3.	CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 Taxmann.com 390 (MP)	12
4.	CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 64 Taxmann.com 313 (SC) (SLP © No. 11916 of 2015)	13-14

9. The ld. AR of the assessee in addition to the above written submission first started arguing the additional ground raised on technicality of the assessment done. He stated that there were 88 cases for which AO sent for approval from Kota to Udaipur as per provision of section 153D of the Act. In all 88 cases approval was granted on the very same day so the approval granted is mechanical and no application of mind was made in the case of the assessee [page 47 of the paper book]. To support this view, he relied upon the judgment of the Orissa High Court in the case of ACIT Vs. Serajudding & Co. 292 Taxman 566 (Ori), wherein the SLP filed by the revenue was also dismissed by the apex court. So, the ratio decided will squarely apply to the facts of the case. The ld. AR of the assessee also filed a decision of Madhya Pradesh High Court in the case of CIT Vs. S. Goyanka Lime & Chemicals Ltd. [56 taxmann.com 390 wherein also similar view is taken at para 7] .

Even this issue has been dealt with by the apex court in the recent decision in the case of Rajeev Bansal so filed vehemently argued that the approval is condition precedent.

Based on that arguments ld. AR of the assessee supported his arguments submitting that considering this fact available on record it is clear that no approval can be granted in a one day when the records go from Kota to Udaipur and that too of 88 cases got approved on the very same day.

Additional ground no 5 raised for not quoting the DIN has not been pressed by the ld. AR of the assessee.

8.1 So far as the merits of the issue is concerned search action was conducted on 07.09.2017 and notice u/s. 153A of the Act issued to the assessee. When the ld. AO was fully aware of the fact that the assets has been purchased by the wife and the addition has been sustained merely based on the statement in the hands of the assessee. As is evident from the record that for making the investment for Rs. 40 Lac she has obtained loan and saving acquired the property under question so when the transaction undertaken by the assessee's wife no addition can be made in the hands of the assessee. The ld. AR of the assessee also submitted that the addition is made only on the agreement to sale and not the

sale deed. The assessee also filed a retraction statement vide submission dated 11.12.2019 and on that retracted statement no addition can be made. Even the ld. CIT(A) vide para 5.3 has merely confirmed the addition merely based on the statement of the assessee and no corroborative evidence to prove the averments in the statement was placed on record. Therefore, ld. AR submitted that no addition of property acquired by wife can be made in the hands of the assessee in the absence of the proof not placed on record. Ld. AO has not examined the parties involved so as to bring the correct fact on record. When the property is not purchased by the assessee how can the addition of undisclosed income be added without any corresponding assets in the name of the assessee. The legal presumption to evidence be read as per provision of section 292C of the Act. The ld. AO has neither examined the wife of the assessee or that of Shri Lal Chand Aswani who sold the property to the wife of the assessee. Thus, without examining those interested parties how can the addition be made in the hands of the assessee. The contention so drawn by the revenue are against the evidence found without suggesting any contrary material. Ld. AO has not proved that what is apparent is not real. In the search proceedings no evidence of having been

found any recording of payment of on money by the assessee. So as such no addition can be made merely based on that agreement and the content of the that agreement are not incriminating in nature.

10. The ld DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the ld. CIT(A). Ld. DR vehemently opposed the ground for not quoting the DIN. As regards the approval of Addl. CIT the same being on going process it cannot be concluded that the approval was granted on the same day when Addl. CIT also regularly monitor the search assessment proceeding. As regards the merits of the case, the Panchanama was drawn in the name of the assessee and accordingly the addition was made based on the document found and the statement of the assessee recorded. When the assessee was confronted by the search team, the assessee categorically accepted that though the property purchased by his wife, but the on-money payment has been made by him out of his undisclosed income. Thus, when specific averments were made based on the evidence found the assessee should have considered that income while filling the ITR and since the same was not done the addition

was rightly made and sustained by the ld. CIT(A). As regards the retraction made which was at very later stage and cannot be accepted. Thus, even on merits the addition is required to be sustained.

11. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has raised as much as six grounds of appeal challenging the order of the assessment on technical grounds and that on the facts too. The only dispute that has been raised by the assessee is about the addition of Rs. 55,00,000/- made by the ld. AO and sustained by the ld. CIT(A). The brief facts related to the issue as emerges from the records are that a search & seizure operation under section 132(1) of the Act was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota" to which the assessee belongs.

Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota on 12.10.2017. Assessee is an individual and derives income from salary, house property and other sources etc.

Pursuant to the search action notice u/s 153A of the Act was issued to the assessee on 05.07.2018 which was duly served. In response to notice issued u/s 153A, the assessee furnished his

return of income on 18.07.2018, declaring total income of Rs. 15,67,000/-. Earlier the assessee had filed his return of income u/s 139 of the Act on 30.03.2013 at the total income of Rs. 14,91,460/-. Notices as required under the law were issued to the assessee.

In the assessment proceedings on examination of search records ld. AO noted that during the search action a sale agreement made between Smt. Prabha Jain and Shri Lal Chand Aswani regarding sale of Plot No. 2-PA-8, Vigyan Nagar, Kota was found from the premise of the assessee, Shri Harish Jain at 2-PA-8, Vigyan Nagar, Kota, and the same was seized as page No. 16 to 19 of Annexure AS, Exhibit-8, in which total sale consideration was mentioned of Rs. 40 lacs.

Another agreement was also found and annexed as page No. 21 to 25 of Annexure AS, Exhibit-8, for the same property which had been purchased by Shri Lal Chand Aswani in F.Y. 2008. In this agreement total sale consideration (at page No. 21 to 25 of Annexure AS, Exhibit-8) is mentioned as Rs. 90 lacs.

The assessee, Shri Harish Jain was questioned that it was not acceptable that Shri Lal Chand Aswani had sold the above referred plot to Smt. Prabha Jain w/o Shri Harish Jain for a consideration of Rs 40 lac bearing a huge loss of Rs. 50 lacs since

the same property was purchased by him for a purchase consideration Rs. 90 lacs. In response to that *Shri Harish Jain admitted in his statement in Question No. 17 that, Smt. Prabha Jain has purchased this property for Rs. 95 lakh.*

Vide reply of question No. 18 wherein that statement recorded during the search action, Shri Harish Jain admitted that an amount of Rs. 40 lacs were paid by cheque which was out of loan taken by Smt. Prabha Jain and her savings and remaining amount of Rs. 55 lacs were paid by cash. It has also been admitted by Shri Harish Jain that the amount of Rs. 55 lacs were paid by him out of undisclosed sources and had never been offered for taxation. Shri Harish Jain admitted Rs. 55 lacs as his undisclosed income for F.Y. 2011-12 i.e. A.Y. 2012-13.

In the light of the above fact and admission of un-accounted income assessee was given an opportunity to explain the same vide notice u/s 142(1) dated 28.11.2019 asking him as to why the amount of Rs. 55 lac should not be added to his total income as unaccounted investment for the AY 2012-13. In response the **assessee replied on 11.12.2019 stating that the statement recorded u/s 132(4) during the search action was given under pressure, threat, physical fatigue and mental confusion**. The

assessee retracted from his statement recorded u/s 132(4) vide his submission filed before AO. Further, the assessee submitted that the agreement is not related to him and the acceptance / surrender of Rs. 55 lacs made by the assessee was under pressure and therefore not to be added to his total income. Ld. AO considered the reply but not found convincing as the assessee is Chief Finance Officer in Resonance group, Kota and it is assumed that he knows very well the rules and various sections of the Act and proceeding of search and surveys. Therefore, the contention of the assessee that the statements recorded during the search were under pressure/ threat is not found convincing. ***Further, the assessee retracted from his statements vide his submission dated 11.12.2019 when the assessment proceeding is at its ending period***. The assessee has not filed any application for retraction after search nor submitted any supporting evidence during post search enquiry and not submitted anything in this regard till 11.12.2019. The retraction made by the assessee was considered as an afterthought to escape from taxation. Therefore, the retraction of the assessee was not considered. The immovable property in question was purchased by his wife Smt. Prabha Jain therefore the contention that he has nothing to do with the

agreement was also baseless. Thus, ld. AO relying on the decision of apex court in the case of ABCAUS 2871 (2019) (04) SC, dismissed the SLP of the assessee against the order of the High Court in dismissing his appeal holding that the statement recorded during search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.

The assessee during search proceeding accepted that the immovable property was purchased by her wife Smt Prabha Jain at consideration of Rs. 95 Lac and Rs. 40 Lacs was paid by her out of her saving and loan and the remaining amount of Rs. 55 Lacs was paid by him, out of undisclosed sources and but not offered for taxation. Hence, the cash payment of Rs. 55 Lacs made by the assessee was considered as his undisclosed income and added to his total income for AY 2012-13. When the matter carried to ld. CIT(A), he has confirmed the appeal of the assessee merely on the ground that “in the statement recorded u/s 132(4) the appellant admitted that though the property is purchased in the name of wife of the assessee, the assessee is joint borrower for arranging the loan as source of the funds. Hence, the assessee is de facto co-owner of the property. Hence, the assessee is not completely unrelated to the transaction. Further, the assessee admitted in the

statement recorded u/s 132(4) of the Income Tax Act that the payment of cash was made from the income earned out of undisclosed sources. In the statement the appellant mentioned name of the person Sh. Lalchand Aswani to whom payment of Rs. 55 lakh was made and also mentioned the date 2-12-2011. In these circumstances, the argument of the appellant are not found to be acceptable.

The bench noted that the apple of discord in this appeal about the two-agreement found wherein the consideration value of the same property found to be recorded at different price. In 2008 the same was between unrelated party with the assessee and family for an amount of Rs. 95,00,000/- and Rs. 40,00,000 in December 2011 i.e. after three years. The bench also noted that in the subsequent agreement there is clear reference to the first deed and thereafter Shri Lalchand Aswani was in need of money due to bank loan the assessee has directly paid Rs. 35,00,000 to the bank and Rs. 5,00,000 to the seller purchased that property. Thus, it is available on record that both the transaction are separate and independent transactions. One registered agreement dated 16.09.2008 for an amount of Rs. 95,00,000/- between **Smt. Pushpa Devi wife of late Shri Nandkumar [as purchaser] and**

Shri Lalchand Aswani [seller] . In that agreement Mrs. Pushpa Devi stated to have given Rs. 12,00,000/- to Shri Aswani and balance to be cleared by paying to the bank ICICI from where he has pending loan and original document of the property rest with that bank.

Another document (Ikrarnama) wherein Shri Lalchand Aswani has agreed to that property to Smt. Prabha Jain wife of Harish Jain for an amount of Rs. 40,00,000/-. Out of that 40 lac 35,00,000 demand draft drawn from Central Bank is drawn favouring the ICICI Bank account of Shri Lalchand Aswani.

What we observed is that first deed executed by Shri Lalchand Aswani for an amount of Rs. 95,00,000/- was also mentioned in the second agreement second para of the first page. Thereafter wife of the assessee has agreed to purchase that property as the same was having banking mortgaged to the ICICI Bank. There is no material that the assessee or that of his wife has paid any amount to Smt. Pushpa Devi or that to Shri Lalchand Aswani. Both the deeds are and independent deeds having been referred in the second agreement and as it emerges that the same forced sale is being made by Shri Lalachand Aswani on account of

bank loan for which he tried to sale in 2008 for Rs. 95,00,000 for which he could not, and he has ultimately agreed to sell to the wife of the assessee for an amount of Rs. 40,00,000/-, out of that Rs. 35,00,000 is directly paid to the bank loan account and Rs. 5,00,000 to Shri Aswani. So, there is no finding of the search team after search proceeding with that Smt. Prabha Devi or Shri Lalchand Aswani not only that even the ld. AO having been aware about all the facts not made any independent enquiry. The assessee, based on the circumstances agreed to have accepted the disclosure which he has already retracted. Thus, when there is no incriminating document found, and the assessment year is 2012-13 no addition can be made except that is supported by incriminating document. We get support this view from the recent judgment delivered by the apex court in the case of Principal Commissioner of Income Tax, Versus Abhisar Buildwell P. Ltd., in CIVIL APPEAL NO. 6580 OF 2021 wherein it has been held that;

> 13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.
>
> 14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated; CA No. 6580/2021 Etc. Page 55 of 59 www.taxmann.com

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

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

We also get support from our own Jurisdictional High Court judgment in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 [166 taxmann.com 722 (Rajasthan)] stating that the merely based on the retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

> **11.** Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.

> **12.** Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

Respectfully following the finding of apex court in the case of Abhisar Buildwell P. Ltd (Supra) and jurisdictional High Court judgment in the case of M/s. Esspal International P. Ltd. (Supra) we do not find any reason to sustain the addition and therefore, the same is directed to be deleted. Since we have decided the appeal of the assessee on merits the other technical grounds raised become educative in nature.

In the result the appeal of the assessee in ITA no. 389/JP/2024 stands allowed.

12. Now we take up the appeal of the assessee in ITA no. 624/JP/2024 for assessment year 2014-15. In this appeal the assessee has raised the following grounds of appeal;

To add GOA

13. Ground no. 2 raised by the assessee is related to the addition of Rs. 3,00,000/- made by the ld. AO and sustained by the ld. CIT(A). The brief facts related to the issue are that during the search action u/s. 132 of the Act at the premises of the assessee

document bearing page number 10 to 13 of exhibit 2 of Annexure AS of Party no. 3 was found and seized. This document was printed and clearly contains rent agreement of house No. 175 Rajiv Gandhi Nagar Kota between Shri Umesh Kumar and Shri Harish Jain. On being asked to clarify the nature of annexure vide question number 4 he clarified that it contained rent agreement made with Shri Umesh Kumar regarding residential hostel at Kota. As per this agreement the total rent decided for the period from 01.05.2014 to 30.4.2015 was Rs 9,50,000 out of which Rs. 2,50,000/- had been paid by Shri Umesh Kumar and rest of the amount was paid by January 2015 in 3 instalments. On overleaf of rent agreement at page number 10 of annexure AS, Exhibit-2, a calculation also found which shows that Rs. 13,00,000/- has been received. Whereas in the ITR assessee has shown Rs. 10,40,000/- since in the document found recorded over leaf state receipt of Rs. 13,00,000/-, Rs. 3,00,000/- was added in the Income of the assessee.

13.1 When the matter carried to CIT(A), he has confirmed the addition observing that the amount as noted in the incriminating document is not offered for taxation and hence the document being incriminating material he confirmed the addition.

13.2 Before us the ld. AR of the assessee contended that the document found to be read in full and not in part. The document itself speaks that the rent will start from 01.05.2014 to 30.04.2015 and what is coming to the proportionate amount is already offered in the ITR filed for an amount of Rs. 10,40,000/-. In any case the document half can be considered as incriminating, and half cannot be possible. Because the assessee has already offered in the income to the extent chargeable to tax and therefore, we direct to delete that addition of Rs. 3,00,000/- made in the hands of the assessee. In the light of the discussion so recorded ground no. 2 raised by the assessee is allowed. Ground no. 1 & 4 being general or technical does not require our adjudication and ground no. 3 being consequential in nature does not require to be adjudicated. In terms of this observation appeal of the assessee in ITA no. 624/JP/2024 stands allowed.

14. In ITA no. 625/JP/2024 the assessee has taken following grounds of appeal:-

> "1. The impugned additions made in the order u/s 143(3) r.w.s.153A of the Act dated 22.12.2019 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. Rs. 10,00,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming impugned addition of Rs. 10,00,000/- on account of alleged rental income received from Shri Umesh Kumar for residential hostel at House No. 175, Rajeev Gandhi Nagar, Kota as per rent agreement found and seized and marked as Annexure- AS, Exhibit-2, Pg10 to 13. The impugned addition has been made on merely surmises and conjectures, without correctly appreciating the facts and seized documents and seriously suffers from various deficiencies. The addition so made and confirmed, being contrary to the provisions of law and facts, kindly be deleted in full.
3. The Id. CIT(A) further erred in law as well as on the facts of the case in confirming interest charged u/s 234A, 234B and 234C of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged and confirmed, being contrary to the provisions of law and facts, kindly be deleted in full.
4. The appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on on before the date of hearing."

14.1 Apropos to the ground no. 2 raised by the assessee the brif facts related to the dispute are that during the search action u/s. 132 of the Act at the premises of the assessee document bearing page number 10 to 13 of exhibit 2 of Annexure AS of Party no. 3 was found and seized. This document was printed and clearly contains rent agreement of house No. 175 Rajiv Gandhi Nagar Kota between Shri Umesh Kumar and Shri Harish Jain. On being asked to clarify the nature of annexure vide question number 4 he clarified that it contained rent agreement made with Shri Umesh Kumar regarding residential hostel at Kota. As per this agreement the total rent decided for the period from 01.05.2014 to 30.4.2015

was Rs 9,50,000 out of which Rs. 2,50,000/- had been paid by Shri Umesh Kumar and rest of the amount was paid by January 2015 in 3 instalments. On overleaf of rent agreement at page number 10 of annexure AS, Exhibit-2, a calculation also found which shows that Rs. 13,00,000/- has been received. Rs. 3,00,000/- was added in previous and balance amount of Rs. 10,00,000/- was considered as income of the assessee for the year under consideration.

14.2 When the matter carried to before ld. CIT(A) he has confirmed the addition by observing as under :

> "No details were furnished about the actual rent received during the year and how much of the rent received is offered in the income tax return. In these circumstances, the claim of the appellant remains unsubstantiated and rejected. The addition made by the AO is found to be justified and confirmed."

14.3 Before us the ld. AR of the assessee submitted that the assessee already offered the income of Rs. 10,40,000/- in the preceding year and Rs. 9,50,000/- is offered in the year under consideration though the agreement was terminated in September. Therefore, the assessee has already offered the more income then what is recorded on the back side of the document. Ld. AO though ld. DR did not controvert this factual aspect of the matter and therefore, we found force in the argument made by the ld. AR of the assessee and accept the fact that when the assessee offer the

income more than what is recorded in the seized record in that situation no more addition is required to be made. In the light of the discussion so recorded ground no. 2 raised by the assessee is allowed. Ground no. 1 & 4 being general or technical does not require our adjudication and ground no. 3 being consequential in nature does not require to be adjudicated. In terms of this observation appeal of the assessee in ITA no. 625/JP/2024 stands allowed.

15. In this appeal the assessee has raised following grounds of appeal:-

> "1. The impugned additions made in the order u/s 143(3) r.w.s. 153A of the Act dated 25.12.2019 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.
> 2. Rs.15,00,000/-: The ld. CIT(A) erred in law as well as on the facts of the case in confirming impugned addition of Rs. 15,00,000/- on account of alleged unaccounted investment made in construction of house Plot No. 2-PA-8, Vigyan Nagar, Kota. The impugned addition has been made merely on the basis of statement but without there being any incriminating material found and even in absence of an expert opinion. The addition so made and confirmed, being contrary to the provisions of law and facts, the same may kindly be deleted in full.
> 3. The ld. CIT(A) further erred in law as well as on the facts of the case in confirming interest charged u/s 234B and 234C of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged and confirmed, being contrary to the provisions of law and facts, kindly be deleted in full.
> 4. The appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

15.1 As is evident from the above grounds of appeal that the assessee disputes the addition of Rs. 15,00,000/- made by the ld.

AO and sustained by the ld. CIT(A). Brief facts related to the issue on hand are that in the search statement so recorded the assessee admitted that he had paid Rs. 50 lac for the purpose of construction of building at Kota, source of which is unexplained. He offered this amount for taxation to the year under consideration. The assessee in his submission dated 11.12.2019 stated that he has admitted Rs. 35 lac on account of house construction and declared Rs 15 lac and Rs. 20 lac in A. Y. 2015-16 & 16-17 respectively. Since he has not offered the amount of Rs. 15 lac out of 50 lac that 15 lac was added as income of the assessee.

15.2 When the matter carried to CIT(A), assessee contended that he has retracted to the statement so recorded and therefore, the addition made cannot be sustained. The assessee also submitted that at the time of recording of statement the figures were taken based on the estimate and the assessee has no sanctity taking the figure of Rs. 2.60 being the cost of construction of house and it was pure estimate and even the statement made has been retracted and therefore, assessee prayed to delete the addition.

15.3 Ld. CIT(A) did not considered the submission so made by the assessee and confirmed the addition by observing as under :

> "There was no need to make reference to DVO when the assessee himself admitted the correct value of investment in construction of House. The assessee has not furnished any valuation report in search proceedings which could establish that the admission made by him was not based on correct facts milestone the appellant on the basis of his exclusive knowledge admitted undisclosed investment which is not disproved by any other material brought on record. In these facts, there was no need to make reference to the DVO. The assessee already accepted Rs 35,00,000/- investment out of undisclosed sources in the return of income filed in response to notice issued under section 153A out of the admitted amount of Rs. 50,00,000. Hence the argument of the appellant in this regard are not found to be acceptable."

15.4 The bench noted that in this case the addition so made for an amount of Rs. 15,00,000/- is purely based on the statement of the assessee recorded at the time of search. No supporting evidence or documents of having made the unaccounted investment was found by the search team. The addition is purely based on the statement so recorded. That statement the assessee already retracted. Thus, considering the decision of our jurisdictional Hon'ble Rajasthan High Court's decision in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 [166 taxmann.com 722 (Rajasthan)] wherein the Hon'ble High Court held that merely based on the retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

> **11.** Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a

> conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.
>
> **12.** Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

Respectfully following the finding of our jurisdictional High Court judgment in the case of M/s. Esspal International P. Ltd. (Supra) we do not find any reason to sustain the addition and therefore, the same is directed to be deleted. Since we have decided the appeal of the assessee on merits the other technical grounds raised become educative in nature.

In the result the appeal of the assessee in ITA no. 626/JP/2024 stands allowed.

In the result, all appeals filed by the assessee are allowed.

Order pronounced in the open Court on 26/12/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 26/12/2024
*Ganesh Kumar, Sr. PS/Santosh
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Harish Jain, Kota
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 389, 624 to 626/JPR/2024}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar