

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 7445/Del/2018  
(Assessment Year- 2010-11)**

Sarvo Technologies Ltd., New Delhi.	Vs.	DCIT, Central Circle 25, Jhandewalan Extension.
<b>PAN No: AABCS8661D</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No:- 7446/Del/2018  
(Assessment Year- 2011-12)**

Sarvo Technologies Ltd., New Delhi.	Vs.	DCIT, Central Circle 25, New Delhi.
<b>PAN No: AABCS8661D</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Kapil Goel, Adv.  
**Revenue by** : Ms. Harpreet Kaur, Sr.DR

**Date of Hearing** : 29.11.2024  
**Date of Pronouncement** : 27.02.2025

## **ORDER**

### **PER SUDHIR PAREEK, JM:**

Aforetitled two appeals are preferred by the Assessee against the order dated 22.10.2018 passed by the Commissioner of Income Tax (Appeals)-29, New Delhi, (hereinafter referred to as 'Ld. CIT(A)'), for the Assessment Years ('AY') 2010-11 and 2011-12 . Since both these appeals are heard together and are being disposed of through this consolidated order for the sake of convenience and brevity.

1.2 The assessee has also raised the revised (abridged) Grounds in both appeals, which are read as under:

*"1. Jurisdictional ground. That both the assessment orders of Ld AO and first appellate order of Id CIT-A are bad in law as entire asst, is framed without authority of law and ultra vires to provisions of the 1961 Act (income tax act, 1961) being without jurisdiction as it is mainly/chiefly based on stated material as emanating from search action w/s 132 on "other person", so it is framed in violation of mandate of special and specific provision of section 153C of 1961 Act,*

*2. No incriminating material unearthed from assessee's own search action u/s 132: That both the assessment orders of Ld AO and first appellate order of Id CIT-A are bad in law as entire asst. is framed u/s 153A, without any requisite "incriminating material" being unearthed from assessee's own search u/s 132 of 1961 Act for subject unabated year without which entire assessment order is invalid;*

*3. Total Violation of principle natural justice: That both the assessment orders of Ld AO and first appellate order of Id CIT-A are*

*bad in law as entire asst. is framed in total violation of principle of natural justice for non-confrontation of relied upon material (statements etc) and lack of cross examination being offered to assessee as pleaded at asst. and first appeal stage.*

*4. Wrongful sustenance by Id CIT-A of impugned additions as made in impugned asst.: That both the assessment orders of Ld AO and first appellate order of Id CIT-A are bad in law in so far as impugned additions made /sustained are concerned same being based on invalid and perverse reasoning and without considering the detailed submissions and evidences placed from side of assessee;*

*5. Invalid approval u/s 153D: That both the assessment orders of Ld AO and first appellate order of Id CIT-A are bad in law being based on invalid approval u/s 153D of 1961 Act.*

*6. Non application of mind: That both the assessment orders of Ld AO and first appellate order of Id CIT-A are bad in law being passed without application of mind to material available on record.”*

2. Brief facts of the case are that the assessee filed original return of income u/s 139(1) of the IT Act, 1961, on 14.09.2011 declaring income of Rs. 18,93,140/- and the same was processed u/s 143(1) of the IT Act, 1961. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on Sh. Sajan Kumar Jain & Sh. Pradeep Kumar Jindal Group of cases including the assessee on 18.11.2015. Consequently notice u/s 153A of the Act was issued on 22.09.2017 asking assessee to file return within 15 days of receipt of the notice. The assessee filed return of Income U/s 153A of the Act on 09.10.2017 declaring income of Rs.

18,93,140/-. Thereafter notice u/s 143(2) and 142(1) along with questionnaire were also issued on 16.10.2017.

2.1 The director of the assessee company, Sh. Sajan Kumar Jain including his family members & Sajan Kumar Jain group of companies were show caused as to why their share premium/share capital/share forfeiture/ Long Term Capital Gain/Loss should not be treated as bogus as these entries were obtained through front companies which are controlled managed and run by Sh. Pradeep Kumar Jindal. On completion of said assessment proceedings, the Ld. AO computed the total income of assessee computed for AY 2010-11 Rs. 2,41,24,893/- and for the AY 2011-12 Rs. 2,41,31,432/- vide order dated 29.12.2017.

3. Aggrieved by the above order, assessee /appellant filed appeal, which was partly allowed by the Ld. CIT(A) vide impugned orders.

2. Heard rival submissions and carefully perused the material available on record.

3. Reiterating the grounds of appeal, the Ld. AR expressed the grievances by stating that the both the lower authorities passed the

erroneous order and entire assessment order without jurisdiction as it is mainly based on stated material as emanating from search action u/s 132 of the Act on other person and by this reason only it is in violation of provisions of section 153C of the Act. He further submitted that no incriminating material unearthed from assessee's own search action u/s 132 and entire assessment order framed u/s 153A of the Act without requisite incriminating material for unabated year in questioned. The Ld. AR also submitted that non-confrontation of relied upon materials and lack of cross examination being offered to assessee / appellant was also raised before CIT(A).

3. Per contra, the Ld. DR contended that Revenue is relying upon statement on oath of Shri Sajan Kumar Jain, Chairman of M/s Sarvo Technologies Ltd, recorded u/s 132(4) of the Act during the course of search proceedings conducted on 18.11.2015 at his residence. It is also submitted that on dated 18.11.2015 search action in the case of Shri Sajan Kumar Jain, their other group concerns / family members and Shri Pradeep Kumar Jindal, who is an accommodation entry provider and it is evident from the copy of

punchnama and during search proceedings statements recorded on oath of both Pradeep Kumar Jindal and Sajan Kumar Jain. The Ld. DR argued that in his statement Pradeep Kumar Jindal admitted that he has been engaged in providing accommodation entries to various concerns Sajan Kumar Jain group including M/s Sarvo Technologies Pvt. Ltd. by way of creating many papers/ bogus concerns, by explaining detailed modus operandi for the same. As per submissions of the Ld. DR, the statement of Pradeep Kumar Jindal was shown to Sajan Kumar Jain during search / proceedings and Sajan Kumar Jain admitted that he knew Pradeep Kumar Jindal and made share transactions with Pradeep Kumar Jindal and companies run by Pradeep Kumar Jindal have made investments in form of share premium in Sarvo Technologies Ltd. and Indo Autotech Limited.

4. The Ld. DR submitted that Sajan Kumar Jain gave evasive reply and expressed no comment regarding accommodation entries to various concerns run by him including Sarvo Technologies Ltd., and expressed reluctance to be confronted with Pradeep Kuamr Jindal.

5. The Ld. DR argued that an incriminating material cannot be necessarily be in form of conclusive evidence of tax evasion or some wrong doings but it should be treated as a material sufficient engaged to warrant deeper scrutiny of affairs of the assessee with corroboration of other material available. He further vehemently argued that the statement recorded on oath on dated 18.11.2015 u/s 132(4) of the Act, an incriminating material once he was confronted with the statement of Sh. Pradeep Kumar Jindal.

6. In this regard, the Ld. AR pleaded that return of income filed u/s 139(1) of the Act, on dated 17.09.2010 (AY 2010-11) and on dated 14.09.2011 (AY 2011-12) and limitation period u/s 143(2) for above assessment years expired on 30.09.2011 and 30.09.2012 respectively and both years are unabated u/s 153A of the Act. He also submitted that as per Panchnama, dated 18.11.2015, no incriminating material unearthed from assessee / appellant's own search action u/s 132 of the Act.

7. The Ld. CIT(A) observed in impugned order that the statement of Sh. Pradeep Kuamr Jindal stands established that the assessee / appellant was one of the beneficiaries and had received share

application / premium money from the front of Pradeep Kumar Jindal, solely used for providing accommodation entries. The Ld. AR submitted that during first appellate proceedings, he specifically raised that so called excel sheet referred by the Ld. AO having no relevance with the assessee / appellant company as these excels sheets are inadmissible and these documents / statements were seized / recorded during the course of proceedings of Pradeep Kumar Jindal, but in no case of assessee / appellant company. The Ld. AO used these documents against assessee means the Ld. AO was under belief that these documents belongs to the assessee and hence no ground for assessment u/s 153A of the Act, which should have been u/s 153C of the Act. The Ld. AR expressed grievances that the Ld. CIT(A) while deciding appeal not discussed the issue as raised by assessee / appellant. The Ld. CIT(A) observed that assessee / appellant was allowed cross examination of person concerned but he did not avail the opportunity and found that statements / documents relied upon by the Ld. AO same are not only belongs to but pertains to the assessee / appellant.

8. The Ld. AR further submitted that in this case sole question to be adjudicated that whether unabated years i.e. FY 2010-11 and F.Y. 2011-12, in the search proceedings dated 18.11.2015 no any incriminating material unearthed from assessee's own search action can addition u/s 68/69C of the Act be sustained on the basis of so called statement u/s 132(4) of the act recorded during search of third party and too without recourse to Section 153C / 148 of the Act.

9. In support of arguments advanced on behalf of the assessee / appellant relied upon orders/ judgements, as under:

- a) ITA No. 7442/Del/2018 Divya Exim Pvt. Ltd. vs. DCIT New Delhi.
- b) ITA No. 6794-96/Del/2018 M/s Indo Autotech Ltd. vs. The Dy CIT, Faridabad
- c) ITA 23/26-31 PCIT vs/ Anand Kumar Jain
- d) 2024 SCC online Del 4012 PCIT vs. Pavitra Realcon Pvt. Ltd.
- e) 459 ITR 212 CIT vs. Abhisar Buildwell.

10. In Divya Exim (supra) co-ordinate Bench held that no cross examination of the witness provided to the assessee either and consequently, such statement is unworthy of reliance. The relevant para 8 and 9 of the order, read as under:

*“8. As pointed out on behalf of the assessee, there is a total absence of reference to any incriminating material which may have any bearing to the impugned additions/disallowances except some statement of witness Mr. Pradeep Kumar Jindal adverse to assessee in an all together different search proceedings. The Hon’ble Delhi High Court has observed in identical fact situation that statement of Pradeep Kumar Jindal extracted in his search cannot be construed to be incriminating material in the case of assessee herein. As a corollary, it is manifest that additions/disallowances have been made without reference to any specific incriminating material/document found as a result of search and seizure action under section 132 of the Act and such additions are solely based on deposition made by a witness against the assessee in the course of search in that case. Besides, the integrity of confession obtained is unknown. No cross examination of the witness was provided to the assessee either and consequently, such statement is unworthy of reliance*

*9. Guided by the principles laid down in Abhisar Buildwell (P.) Ltd. (SC) (supra) and Ananad Kumar Jain (HUF) (Delhi High Court), we find force in the legal plea raised on behalf of the assessee. Hence, in the absence of any incriminating material in an unabated assessment additions/disallowances made by AO in all captioned appeals requires to be quashed. In this view of the matter, we do not consider it necessary to adjudicate other legal and factual aspects concerning additions/disallowances.”*

In this regard, the Ld. DR submitted that above relied orders distinguishable as having different fact because in instant case Sajan Kumar Jain was confronted with incriminating statement on oath and declined opportunity given by the authorised officer to

cross examination. The Ld. DR admitted this fact that while controverting with the statements of Pradeep Kumar Jindal, Sajan Kumar Jain gave either vague reply or decline to answer but only giving vague reply or decline to answer does not make ground to form adverse inference against him, unless corroborated with other cogent & strong documentary evidences. From perusal of assessment order dated 29.12.2017, it reveals that on the hearing day, 15.12.2017, Sajan Kumar Jain sought adjournment for a week by filing application to that effect but request was rejected by stating that assessment is going to be time barred. Facts mentioned as above clearly indicates that there was no any denial of cross examination by assessee rather assessee pleaded for some time which was declined. There is difference between denial and sought some time. In our humble opinion application was rejected on 18.12.2017 and thereafter impugned assessment order passed on 29.12.2017, after almost 14 days from fixed date for this purpose i.e. 15.12.2017 and Ld. AO was in position to grant one week time to conduct cross examination but he declined and proceeded further to complete assessment proceedings. If Ld. AO, granted time for three days or one week and still assessee further

and again sought adjournment, then could say that assessee was deliberating avoided the cross examination. Mere requested to time for cross examination is not synonym to declining it. Even it is up to revenue to state that why the Ld. AO was prevented to grant some time as prayed. It is true fact that no any cross examination took place in the course of entire assessment proceedings and the Ld. AO proceeded himself to made addition in question merely on the basis of untested testimony and it is held in the order of Co-ordinate Bench in Divya Exim (supra) that such a statement stands unworthy of reliance.

11. In the case of M/s Indo Autotech Ltd. (supra) co-ordinate Bench observed that case of M/s Indo Autotech Ltd. similar with the case of Anand Kumar Jain (supra) and quashed the captioned assessment orders. Relevant paras 11 to 13 are reproduced here as under:

*“11. Similar was the fate of members of the family, namely Shri Anand Kumar Jain, HUF, Individual, Shri Satish Dev Jain. In their respective cases also, under similar circumstances, assessment was framed u/s 153A r.w.s 143(3) of the Act. In their cases also, basis of the addition was a statement of Shri Pradeep Kumar Jindal recorded on oath u/s 132(4) of the Act wherein he admitted to providing accommodation entries to Shri Anand Kumar Jain, HUF and his family members and the entries found in the incriminating material.*

12. The quarrel travelled upto the Hon'ble High Court of Delhi and vide order dated 12.02.2021 in ITA No. 23, 26 to 31/2021, the Hon'ble High Court, inter alia, held as under:

*"10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as on incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 1534), then the only legal recourse available to the department was to proceed in terms of Section 1530 of the Act by handing over the same to the AO who has jurisdiction over Such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration."*

*13. Facts being identical, basis of addition are also similar and the assessee considered by the Hon'ble High Court are members of same group. Therefore, respectfully following the aforementioned judgment of the Hon'ble Jurisdictional High Court of Delhi, we have no hesitation in quashing the captioned assessment orders and decide the appeals in favour of the assesseees."*

12. In the case of Anand Kumar Jain (supra), it is relevant to mention here that in that case Revenue preferred appeal against Sajjan Kumar Jain also (ITA No. 28/2021 & CM APPL 5524/2021) and hence in above cases,. Sajjan Kumar Jain was also respondent. In this regard, the Ld. AR raised the question that whether

statement of Sajan Kumar Jain can be treated as “incriminating “for the purpose of assessment u/s 153A of the Act in hands of present assessee, especially when said statement has not been pleaded in such manner in other similar cases of same group, even in the case of the same person Sajan Kumar Jain said statement is no where relied as such. In above relied case Anand Kumar Jain (supra), Hon’ble jurisdictional High Court held that the statement above cannot justify the additions made by the Ld. AO. Relevant para 10 of the judgment as follows:

*“10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.”*

13. The Ld. DR specifically pleaded that the statement of Sajan Kumar Jain recorded U/s 132(4) of the Act, during the course of search on 18.11.2015 constitute an incriminating material and revenue relied the statement of Sajan Kumar Jain as incriminating material. In the case of Pavitra Realcon (supra), Hon'ble Delhi High Court held that such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the Ld. AO the authority to make an assessment. Relevant paras 20, 21, 22, and 23 are hereby reproduced as under:

*“20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.*

*21. In the case of Kailashben Manharlal Chokshi v. CIT, the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow:-*

*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 section 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 from the statement recorded at*

*such odd hours cannot be considered to be a voluntary state ment, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the Assessing Officer 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 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.*

*[Emphasis supplied]*

*22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of CIT v. Harjeev Aggarwal, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:-*

*"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act.*

*However, such statements on a stand alone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.*

*[Emphasis supplied]*

*23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material*

*discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.”*

14. In the case of Andaman Timber Industries vs. CCE 2015 SCC online SC 1051, Hon'ble Apex Court held that not providing the opportunity of cross –examination to the assessee amounts to gross violation of the principles of natural justice and the same will render the order passed null and void. In the case of state of Kerala vs. K.T. Shaduli Grocery Dealer (1977) 2 SC 777, Hon'ble Supreme Court held that tax authorities being quasi-judicial authorities are bound by the principles of natural justice.

15. In the case of Abhisar Buildwell (supra), Hon'be Supreme Court held that in case no incriminating material is found during the search conducted u/s 132 of the Act, the Ld. AO will have no jurisdiction to make an assessment. Relevant para 14 (iv) is reproduced as under:

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

*the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

16. Ld. AR specifically submitted that, from the records available ,it is evident that in the same search, same assessment order, and same Assessing Officer and also same impugned CIT(A)'s order on same basis additions were deleted by Co-ordinate Bench, and which further approved by the Hon'ble jurisdictional High Court. It is established principle of law that the principle consistency must adopted.

17. In conclusion, it is established that and on the basis of the foregoing binding judicial precedents, there is no any such incriminating material was found during the search operation which may persuade or authorized to the Ld. AO to proceed with the assessment u/s 153A of the Act, and by following judicial precedents mentioned hereinbefore, assessment proceedings invalid and not authorized by law and hereby quashed and set aside.

18. In the result, both the appeals of assessee are allowed. Consequently, the assessment proceedings are set aside and quashed.

Order pronounced in the Open Court on 27.02.2025

**Sd/-**  
**(S RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

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

Dated: 27/02/2025.  
Pooja/-

Copy forwarded to:

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

1.	Date of dictation of Tribunal order	21.2.25 24.02.25, 25.2.25
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	21.2.25, 24.2.25,25.2.25
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9	Date of killing off the disposed of files on the judisis Portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
12.	Date of Despatch of the order	