IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 2229 to 2233/Bang/2024 and CO No.1 to 3/Bang/2025 (in ITA Nos. 2229, 2230 & 2231/Bang/2024)
Assessment Years : 2014-15 to 2018-19

The Dy. Commissioner of Income Tax, Central Circle – 1(3), Bengaluru.	Vs.	Kanva Diagnostic Services Pvt. Ltd., No.2/10, Dr. Rajkumar Road, Rajajinagar, Bangalore. . PAN – AABCK 7403 M
APPELLANT		RESPONDENT

ITA No.2182/Bang/2024
Assessment Years : 2018-19

Kanva Diagnostic Services Pvt. Ltd., No.2/10, Dr. Rajkumar Road, Rajajinagar, Bangalore. . **PAN – AABCK 7403 M**	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(3), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shri RE Balasubramanyam, CA
Revenue by	:	Smt. Srinandini Das, CIT and Shri Pranay Nahar, DCIT (DRs)

Date of hearing	:	15.04.2025
Date of Pronouncement	:	03.06.2025

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are the set of 9 appeals and cross objections filed at the instance of the revenue and the assessee for A.Ys. 2014-15 to 2018-19 arising from the common order of the learned Commissioner of Income Tax (Appeal)-11, Bengaluru, dated 18th September 2024.

2. The revenue is in appeal in ITA Nos. 2229 to 2233/Bang/2024 pertaining to A.Y. 2014-15 to 2018 whereas the assessee filed cross objections in revenue's appeal for A.Ys. 2014-15 to 2016-17 bearing Nos. 1 to 3/Bang/2025. The assessee also filed a cross appeal for A.Y. 2018-19 in ITA No. 2182/Bang/2024.

3. At the outset, we note that there is a single issue being the allegation of unaccounted sales involved in all the appeals, cross-appeal and cross-objections. Therefore, we for the sake of brevity combined all the appeals for the purpose of adjudication. The observation and finding given hereunder shall be the applied to all the appeals and cross objections.

4. The relevant facts are that the assessee, a private limited company, is engaged in the business of providing medical and diagnostic services. The assessee was subject to search proceedings under section 132 of the Act, carried out on 8th November 2017. In consequence of the search proceedings, various materials and information were collected, from which it was revealed that the assessee uses customized software namely "Power Lab" for billing purposes. A total of nine staff members

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are involved in the billing process, and one Smt. Latha Chandran is in charge of the billing section. The sales bills are recorded in different series such as H, S, G, A, J, R, Y, K, and V etc. The different series represent patients referred by different hospitals, except for the K and V series. The "K" series represents regular billing for walk-in patients, whereas the "V" series represents billing as per the instructions of the Managing Director of the assessee company, namely Dr. H.M. Venkatappa. Billing access under the 'V' series was given only to three out of the nine employees involved in billing, whose names are as follows:

1. Smt. Latha Chandran
2. Smt. Bindu Mohan
3. Smt. R. Shobha

5. The statements of these three employees were recorded during the search, and they admitted that the billing under the "V" series was booked only in cash, even when payment was received through card. They explained that, at the end of the day, a summary of billing under each series was prepared, receipts were reconciled, and thereafter, the printout of the summary sheet along with the cash collected was handed over either to the MD, Dr. H.M. Venkatappa, or the center head, Shri M.S.C. Rajeevalochan, where the account manager, Shri Mallikarjun, was usually also present. However, the cash receipts representing the V-series were bundled separately.

6. It was further revealed that the MD, Dr. H.M. Venkatappa, or the center head, Shri Rajeevalochan, after receiving the daily billing summary sheet under the different series, would forward the same to the accounts section for accounting. The accounts team, after receiving

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the bill summaries of the different series, accounted for them as sales—except for the "V" series. As such, "V" series bills were never accounted for in the regular books of accounts.

7. The statement of one Mrs. Anitha Manjunath, working in the accounts section, was also recorded, wherein she stated that on a daily basis she collects the hard copy of the billing statement under the "V" series from the MD. Once she has the data of the "V" series for the entire month, she prepares a statement in an Excel sheet showing, doctor-wise (referring to the doctors who referred the patients), the amount of billing under the "V" series and their monthly commission at 20% of the billing. After computing the commission doctor-wise, a printout of the same is taken without saving the soft copy in the system. The said printout for each doctor, along with the cash, is packed in a sealed cover and handed over to the center head, Shri M.S.C. Rajeevalochan.

8. The statement of Mrs. Anitha Manjunath was confronted with that of the account manager, Shri Mallikarjun (who has been working with the assessee company for more than 15 years), and he confirmed the same. It was also admitted that once the doctors' commission was computed, the daily summary statement of the V-series was handed over to the MD, Dr. H.M. Venkatappa, who later destroyed the same.

9. It was found that Shri Rajeevalochan, after receiving the commission statements of doctors and the cash in sealed covers from the accounts team, handed over the same to the marketing team for distribution to the respective doctors. Accordingly, the statements of

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marketing executives Shri Arvind B.R. and Shri Shyam Sunder were recorded, wherein they confirmed that around the 1st or 2nd day of each month, they received commission statements and cash in sealed covers, which they delivered to the respective doctors. They stated that they were not aware of how the commission was computed or how much cash was contained in the covers.

10. Further, during the search, in the software "Power Lab," only the bill generated on 8th November 2017 under the "V" series was found. In other words, no details of bills generated under the "V" series for the earlier period were found in the said software. This fact was confronted to the centre head, Shri M.S.C. Rajeevalochan, who stated that the software "Power Lab" is designed in such a way that once the server is switched off, the bills generated under the "V" series get automatically deleted. As the search team had locked the server room, the server was not switched off, and therefore, the data for 8th November 2017 remained undeleted and was found by the search team.

11. Upon further questioning, Shri Rajeevalochan provided a list of doctors to whom commission was paid during the period from April 2017 to October 2017 and confirmed that the cash receipts under the "V" series were unaccounted receipts.

12. Furthermore, during the search conducted at the residence of the MD, Shri H.M. Venkatappa, and at the office of the assessee company on 9th November 2017, summary sheets of the "V" series for the months of September, October, and November (up to the 8th) were found.

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According to these sheets, total billings of ₹42,53,298/-, ₹47,12,598/-, and ₹9,35,660/-, respectively, were made during the said period.

13. While recording the statement of Shri H.M. Venkatappa on 9th November 2017, he was questioned about the practice of unaccounted receipts under the "V" series. He admitted that this practice had been adopted since May 2013. Accordingly, he was asked to provide the details of unaccounted "V" series sales from May 2013 to 8th November 2017, to which he admitted a total unaccounted sale of ₹19,97,73,086/- during the aforesaid period.

14. Shri H.M. Venkatappa further confirmed his above statement in subsequent statements recorded on 13th November 2017 and 2nd January 2018. As per his statement, the above unaccounted receipts over the period from May 2013 to November 2017 are admitted as under:

S. No.	A.Y.	Amount (in Rs.)
1	2014-15	2,00,00,000/-
2	2015-16	3,30,00,000/-
3	2016-17	5,50,00,000/-
4	2017-18	6,20,00,000/-
6	2018-19	2,97,73,086/-
	Total	19,97,73,086/-

15. However, the above-admitted amount was not offered to tax by the assessee in the return filed under section 153A of the Act. Accordingly, a show cause notice was issued to the assessee.

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16. In response, the assessee explained that the "V" series billing started only in May 2017 and was introduced to meet cash needs for a new project. He claimed that this practice of unaccounted cash receipts was not followed before this time or after the project was completed.

17. The assessee further said that during the search, cash of ₹1.62 crores was found at the office of H.B. Sunil & Co., and ₹67 lakhs was found at the home of Shri H.M. Venkatappa. They stated this cash came from the "V" series billing. Based on this, they offered ₹2,28,98,208/- as income from "V" series receipts for the period from May 2017 to November 2017 in the AY 2018-19.

18. To support the claim, he pointed out that the cash found was in new ₹2000 notes, which proves that the "V" series billing started only after demonetization. They also argued that just because unaccounted receipts were found for one month, it is not fair to assume the same for other months. Lastly, the assessee said that Shri H.M. Venkatappa made the earlier admission when he was not in the right state of mind, and therefore, those statements were later withdrawn.

19. The AO rejected the assessee's claim that the "V" series billing started only from May 2017. The AO found that, after the search proceedings in the assessee's case, a survey under section 133A of the Act was conducted at the premises of the developer of the billing software "Power Lab," namely M/s I Plantina Systems. In the statement recorded, the partner of the firm, Shri Suresh Babu, admitted that the "Power Lab" software does not have a delete feature as a standard product function. However, he stated that deleting certain billing series

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could be done directly through the SQL Server database, and this feature might have been added by one of his employees at the time of installation, upon request from Kanva Diagnostic (the assessee).

20. The AO further found that members of the billing team, accounts team, and marketing executives had all consistently admitted that unaccounted cash was generated through the "V" series billing and that unaccounted cash commissions were paid to doctors. The centre head, Shri Rajeevalochan, clearly admitted that "V" series bills were generated through the front-end data base of the software and were deleted daily from the database. It was also confirmed by the accounts team and the MD, Shri H.M. Venkatappa, that the printed copies of the "V" series billing summaries were regularly destroyed.

21. Shri H.M. Venkatappa admitted that this practice had been followed since 2013 and acknowledged the unaccounted income. He also confirmed his earlier statement during subsequent recordings on 13th November 2017 and 2nd January 2018.

22. Accordingly, the AO applied the ratio of unaccounted income offered by the assessee for the period from May 2017 to November 2017 in comparison to the accounted sales during that period which was worked out at 17%. Using this ratio, the AO estimated the "V" series sales for the all the relevant assessment years i.e. A.Y. 2014-15 to 2018-19 which detailed as year under:

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AY	Turnover	Suppressed income as per seized material (SR 17.08%)
2014-15	20,82,64,892	3,26,39,283.19
2015-16	22,85,74,488	3,90,30,162.55
2016-17	26,63,45,057	4,54,79,663.81
2017-18	26,94,87,634	4,60,16,273.52
2018-19	31,41,69,338	3,19,39,724.70
		Rs 19,51,05,107.77

23. Thus, the AO added the same to the total income of the assessee in the respective assessment years.

24. The aggrieved assessee filed an appeal before the learned CIT(A) raising legal ground as well as challenging the addition made on the merit.

25. Before the learned CIT(A), the assessee regarding the legal ground submitted that there was no material of whatsoever found during the course of search in relation to A.Ys. 2014-15 to 2017-18. The assessee claimed these assessments years falls under the category of unabated/completed assessments as the last date to issue scrutiny notice under section 143(2) of the Act was already expired for these assessment years on the date of issuance of notice under section 153A of the Act. Therefore, considering the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. Abhishar Buidlwell Pvt Ltd reported in 149 taxmann.com 399, the proceedings initiated under section 153A of the Act for A.Y. 2014-15 to 2017-18 in the absence of incriminating materials and consequence assessment orders are invalid.

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26. Before the ld. CIT(A), the assessee on merit of the case submitted that during the search at various premises related to the company, cash amounting to ₹67 lakhs was found at the residence of the Managing Director and ₹1,61,98,000/- was found at the office of the auditor. In addition, some loose sheets related to diagnostic receipts for the month of September 2017, which were unaccounted for on the day of the search, were also found. The assessee claimed that, apart from these items, no other incriminating documents or evidence of unaccounted transactions, income, or assets were discovered during the search.

27. Following the search, the statement of Managing Director Shri H.M. Venkatappa was recorded during the night and continued into the early morning hours. He was repeatedly questioned about the payment of referral commissions to doctors. Being a senior citizen and diabetic, he was not in a proper frame of mind and admitted to unaccounted income of ₹19.97 crores related to "V" series billing for the period from May 2013 to November 2017. At the same time, he also admitted to income in his personal and HUF capacities, even though it pertained to his children.

28. Later, upon realizing that the admission was factually incorrect and made when he was unwell and mentally stressed, he retracted the statement. However, the Assessing Officer (AO), relying on his original statement and uncorroborated statements from employees, presumed that the assessee had been paying referral commissions to doctors and had suppressed sales to fund these payments since May 2013.

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29. The assessee argued that no material was found during the search suggesting any suppression of sales starting from May 2013. Therefore, additions could not be made merely based on statements and without there being any supporting evidence. In support of this, the assessee relied on the judgment of the Hon'ble Supreme Court in the case of *CIT vs. Jeet Construction Company* reported in 124 taxmann.com 527.

30. The assessee also referred to the CBDT Instruction in F. No. 286/98/2013-IT(Inv.II), which discourages its income tax authorities in obtaining confessions without the presence of incriminating materials and advise against making additions based solely on such statements. Further, the assessee submitted that its books of account were duly audited, and the Assessing Officer (AO), without rejecting these books, proceeded to estimate income on the basis of alleged suppressed sales. The assessee argued that this approach was not valid, as income cannot be estimated without first rejecting the books of accounts. In this regard, reliance was placed on the judgment of the Hon'ble Karnataka High Court in *CIT-Belgaum vs. Anil Kumar & Co.*, reported in 67 taxmann.com 278, as well as on decisions of the coordinate bench of the Jodhpur Tribunal in *ACIT vs. Ercon Composites* (49 taxmann.com 489), and the Delhi Tribunal in *Vijay Kumar Jain vs. ITO*, ITA No. 1730/Delhi/2024. Accordingly, the assessee requested the learned CIT(A) to delete the addition made by the AO.

31. The ld. CIT-A after considering the submission of the assessee and assessment order dismissed the assessee legal ground for A.Y. 2014-15 to 2017-18 but allowed the assessee's grounds of appeal on the

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merit of the addition for A.Ys. 2014-15 to 2017-18. For A.Y. 2018-19, the learned CIT(A) deleted the addition on account of suppression of sale, however confirmed addition of Rs. 2,28,98,000/- on account of cash found as unexplained money under section 69A of the Act. The relevant findings of the learned CIT(A) on legal grounds as well as on merit of the case are extracted as under:

The ld. CIT(A) finding on legal grounds for AY. 2014-15 to 2017-18:

> ***5.2*** *The questions raised on the validity of the Assessment are disposed off first. The primary contention of the AR was that the Assessments stood unabated/completed since the due date for issuance of notice u/s 143(2) had expired as on the date of issuance of notice u/s 153A of the Act. Further, it is also contended that there was no incriminating material found during the search pertaining to the year under appeal and if at all anything was found, was only in relation to the year of search. The AO in his remand report has examined the contentions of the AR in detail and submitted his comments on the same. The AO has rightly contended that the relevant cut-off date for applying the ruling in case of Abhisar Buildwell (P) Ltd. (supra) should be the date of initiation of search action u/s 132 as against the date of issuance of notice u/s 153A. The AO has also contended that the Assessment could not be considered as unabated/completed in view of the fact that the Appellant had only filed its returns for AY 2017-18 and the due date for issuance of notice u/s 143(2) had not yet expired. In view of this, the contention that the Assessment stood abated cannot be accepted. The view of the AO appears to be correct in this matter. Insofar as the other Assessment years are concerned, it is an admitted fact that the Appellant was suppressing its sales by way of "series billing" at least during the period May 2017 to November 2017. As such, this would itself provide prima facie reasons for the AO to initiate assessment proceedings and to assess the income of the Appellant for the earlier AYs as well. Accordingly, it is held that the initiation of assessment proceedings u/s 153A are valid and the ground raised by the appellant on this issue is accordingly dismissed.*

The ld. CIT(A) finding on the merit of the addition for A.Y. 2014-15 to 2017-18:

> ***7.1*** *It is a fact that the Appellant had admitted to suppression of sales during the period May 2017 to November 2017 to meet certain requirements for its ongoing expansion project at Nagarbhavi. The AO has taken this as the sole basis for arriving at the conclusion that this was conclusive evidence that the Appellant* ***must*** *have been suppressing its sales during the earlier years also. As rightly pointed out by the AR, it is a well settled principle of law that where the AO alleges the existence of alleged unaccounted sales in the books of accounts, it is incumbent upon him to bring on record concrete evidence to buttress his argument. Thereafter he may exercise the powers conferred under*

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section 145(3) of the Act which mandates the AO to make an assessment in the manner provided under Section 144 of the Act. For doing so, the books of accounts ordinarily would require to be rejected. It is seen that this exercise has not been done. This proposition finds support in the judgments rendered by the Delhi High Court in the case of PCIT vs. Forum Sales Pvt. Ltd. ITA No.862/2019 which dwells upon rejection of books in such circumstances. Further the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. the CIT (1959) 37 ITR 288 (SC) observed that where the books of accounts of the assessee were not challenged per se, the explanation offered by the assessee requires to be construed as reasonable and the decision of an authority based on misplaced suspicion, conjecture and surmises is not sustainable. The Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax (1954) 26 ITR 775 (SC) has observed that powers given to the Revenue authority, howsoever wide, do not entitle him to make the assessment on pure guess without reference to any evidence or material. The assessment cannot be framed only on bare suspicion. The assessment should rest on principles of law and one should avoid presumption of evasion in every matter.

7.2 In the instant case, the AO has not brought anything on record that the Appellant was in receipt of sales which were not accounted for whatever reasons. If the Appellant has indeed been indulging in suppression of sales for the purpose of making referral fee payments to doctors, then the onus would lie on the AO to provide instances where such payments have been made. The AO has referred to a long list of doctors to whom alleged referral fee payments were made. However, it is seen that the AO has not summoned or examined any of the doctors to gather conclusive evidence that the Appellant was indeed making referral fee payments to doctors. In the absence of any evidence that the Appellant was making the impugned payments, the view of the AO that there were suppressed sales would be guesswork and untenable.

7.3 The AO in his remand report has also claimed that suppressed sales were used to purchase property in the name of the Managing Director Dr. H M Venkatappa. Towards this, he relies on the answer given by the Dr. H M Venkatappa to Question No. 13 in his deposition u/s 131(1A) dated 20/11/2017, an extract of which is given below.

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7.4 *A perusal of this statement which has been taken after the completion of the search shows that the Deponent has nowhere said that the property in question was purchased out of cash generated from sales suppressed by the Appellant. A copy of the sale deed which is also provided by the AO clearly shows that the said property was in fact purchased by the HUF of Dr. H M Venkatappa and the Appellant company appears to be nowhere in the picture. Even if that property was purchased by making payment by way of cash, the onus of explaining the sources would lie on Dr. H M Venkatappa in his individual capacity or the HUF of which he is the Karta. The AO has also completed the Assessment and accepted the returned income in the case of Dr. H M Venkatappa u/s 153C in connection with the same search, wherein this issue has not been brought up. Therefore, he is now precluded from making fresh allegations in any case. The value of a statement recorded after the completion of the search itself is questionable. The observations of the Hon'ble Bangalore Bench of the Income Tax Appellate Tribunal in the sets of*

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Rameshchandra Sothy & Sons (2021) 163 taxmann.com 666 (Bangalore - Trib.) are relevant to the matter in hand (reproduced below):

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7.5 *Accordingly, the argument put forward by the AO in his remand report is devoid of merit and unacceptable.*

7.6 *The AO has also relied on statements u/s 132(4) made by certain employees of the Appellant company regarding payment of referral fee. However, the Managing Director, Dr. H M Venkatappa, in his deposition u/s 132(4) has repeatedly refuted the payment of referral fee. There is no record of the AO having summoned or examined any doctor to whom the alleged referral fees were purportedly paid. The Appellant company is obviously a very closely held company and as such the Managing Director is the person in charge of all of the company's affairs. It is unlikely that the employees concerned would be enjoying the confidence of the MD so as to be aware of the ultimate application of funds. Furthermore, it is also noticed that one employee by name Mr. Aravind B R, has contradicted his own statement by initially saying that referral fee of 20% on bill amount would be paid and immediately thereafter stating that he is unaware of the basis of computation of the alleged referral fee. As such, it is found that even these statements do not support the contentions of the AO as they are too vague and unreliable. Under these circumstances, the statement given by the MD, whether in the statement u/s 132(4) or by way of retraction would carry more weight as he is in charge entire affaires of the company, than the statements of employees who may not be privy to all the matters pertaining to the Appellant company.* `

7.7 *A close examination of the records and the evidence available would show that the AO has not brought any tangible evidence in support of his contention that the Appellant was suppressing its sales in the years under appeal. There is absence of sufficient evidence to prove that the cash found during the search represented a continuous, long-term suppression of income dating back to May 2013. The assessment of suppressed sales for the AYs 2014-15 to 2017-18 is based on data found for only three months (September–November 2017). The Appellant has rightly contended that extrapolating the suppressed sales for periods prior to September 2017 is speculative and lacks evidentiary support. In the absence of corresponding records which prove that suppression of sales took place for these AYs, there would be no scientific or concrete basis for assuming that similar suppression took place for the earlier AYs. The AO's reliance on the suppression ratio (17.08%) calculated from seized data for a short period cannot be considered a valid representation of the Appellant's overall business practices for prior years. As the Appellant has pointed out, extrapolating based on a single month's data is untenable, especially in the absence of any corroborating evidence.*

7.8 The AO has also not cross-examined the software provider to obtain evidence as to when the utilisation of the V-series facility in the software had commenced. Instead, the AO's sole basis for the addition was a statement recorded during search proceedings under section 132(4) of the Income Tax Act. However, as established by the Supreme Court in CIT v. S. Khader Khan & Sons [2012] 25 taxmann.com 413/210 Taxman 248, statements made during search proceedings, without credible evidence, do not hold much evidentiary value. This principle is further supported by CBDT Instruction F. No. 286/98/2013-IT (Inv. II) dated 18th December 2014, discouraging officers

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from making addition solely based on statements without tangible materials. The words 'evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make an assessment merely because an admission was made by the assessee during search operation.

7.9 It is well established that no additions can be made in the absence of any incriminating materials found during the course of search by relying solely on the statements or surrender made by the appellant especially when the same has been retracted. Reliance is placed on the following judicial pronouncements where this aspect of the matter has been examined in detail:
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7.10 It is evident from the discussions above that there is no conclusive evidence that the Appellant company was suppressing its sales at any time during the years under appeal and the entire additions are made purely on the basis of conjectures and estimates. The AO has approached the case with a foregone conclusion that the Appellant has been suppressing its sales without bringing on record any cogent evidence of such suppression. Hence, the addition made is liable to be deleted.

The ld. CIT(A) finding on the merit of the addition for A.Y. 2018-19:

***8.5** A perusal of the detailed submissions made by the AR of the Appellant would show that the facts and the issue involved are identical to the issue involved in the previous Assessment years which has already been disposed off above. Even for the year under appeal, the AO has not brought anything on record to show that the Appellant continued to use the V-series billing to suppress its sales for periods other than May 2017 to November 2017. With regards to the period between May 2017 to November 2017, the Appellant itself has voluntarily admitted to suppression of sales amounting to Rs. 2,28,98,208/- and has included the same as part of its turnover for the year ended March 2018. The AO has however added a sum of Rs. 3,19,39,725/-, arrived at by applying the suppression ratio computed by him on the entire turnover of the Appellant without considering the amount already declared by the Appellant. Thus, it can be seen that the AO has estimated the suppressed sales for the entire year based on the formula devised by him earlier on the assumption that the suppression continued for the entire year. It is also seen that the AO has not brought any cogent material on record to show that the Appellant has suppressed its sales in excess of Rs. 2,28,98,208/- already declared by it. The assessment order does not provide any evidence of suppressed sales before May 2017. The appellant has also pointed out that no unaccounted investments or assets were found during the search, which would have indicated the use of suppressed income. Therefore, the addition made by the AO is in the nature of only an estimate which cannot be sustained on the elaborate reasoning already given in the earlier paras (7.1 to 7.9) with respect to the AYs 2014-15 to 2017-18. The decision of the Hon'ble Supreme Court relied upon by the AR of the Appellant in the case of **K.P. Varghese v ITO [131 ITR 597]** also supports the case of the Appellant. Accordingly, it is held*

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that the addition made by the AO amounting to Rs. 3,19,39,725/- deserves to be deleted.

8.6 *Vide ground of appeal no 3 it is stated that the Assessing Officer made an error by adding Rs. 2.28 Crores as income from unexplained sources without considering that the Appellant had already included this amount in its turnover. As a result, this addition leads to the same income being taxed twice.*

8.7 *Regarding the addition of Rs. 2,28,98,000/- as unexplained money u/s 69A, the AO's reasoning in the assessment order has been extracted hereunder for reference:*

> *"25. It has been established clearly that, the assessee has been generating unaccounted cash for paying illegal referral commission to the doctors. As claimed by the assessee, if the entire suppressed turnover of V-series bills was just accumulated (without a single rupee spent therefrom) resulting in the discovery of such cash of Rs. 2.28 crores exactly by the search team, what is the source for the payment of referral fees to the doctors. Conversely, if it can be concluded that the cash generated by suppression of sales have been utilised for payment of referral fees, then the cash found and seized is unexplained and therefore is assessable u/s. 69A separately. In view of the same, the amount of Rs. 2,28,98,000/- is considered as unexplained money u/s. 69A and assessed substantially in the hands of M/s. Kanva Diagnostics Services Pvt Ltd and protectively assessed in the hands of Dr. H.M Venkatappa in the A.Y. 2018-19."*

8.8 *The AR of the Appellant argued that the cash found during the search has been admitted as the cash from suppressed sales which has since been declared by the Appellant and therefore, there is no justification in adding the same amount again as unexplained money u/s 69A of the Act. He claimed that the MD of the Appellant, Dr. H M Venkatappa, has repeatedly affirmed that this cash was being accumulated for certain contingencies in connection with the new project of the Appellant company at Nagarbhavi. The AR of the Appellant has given detailed arguments on this issue, the relevant portion (Paras 20 and 21 of the written submissions) of which is extracted hereunder:*

> *"20) Without prejudice to the above submissions, the Ld. AO has alleged that the Appellant was making payments to doctors on account of referral fees from the cash generated from V-series bills and consequently held that the cash seized must be generated from unknown sources since the cash generated from V-series bills would have already been used to make payments to doctors. It is humbly submitted that the Ld. AO has relied upon the statements u/s 132(4) of the employees of the Appellant company in concluding that payment on account of referral fees was being made to doctors. The Ld. AO has rejected the retraction statement submitted by the Managing Director and placed reliance upon his statement in making addition on account of suppressed sales. However, the Ld. AO has ignored the fact that even in the statement u/s 132(4) of the Appellant's Managing Director, he has made it clear that the employees were not aware of the end use for the cash generated from V-series bills and categorically refuted the payment of referral fees to the doctors. It is therefore submitted that it is not up to the Ld. AO to selectively consider the statement u/s 132(4) only to the extent it is favourable to him. The statement of the*

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Managing Director has to be considered in its entirety from which it would be clearly forthcoming that the Appellant company is denying payment of referral fees to its doctors. The Appellant cannot be expected to prove the negative and therefore, the onus for proof would fall on the Ld. AO to show that the Appellant was in fact making such payments to its doctors.

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"21) Without prejudice to all the above submissions and as an alternate thereto, it is submitted that the Appellant Company does not have any other source of income except its business income. This fact is also not disputed by the Ld. AO in the impugned order. Despite this, the Ld. AO has proceeded to treat the cash seized as unexplained money u/s 69A of the Act on the grounds that the income generated from suppressing V-series bills would have been spent on payment of referral fees to the doctors. Assuming without admitting that an addition is warranted on account of the cash seized during the search, it is humbly submitted that the source for the same could only be from business and therefore, it would be chargeable to tax under the head Business and not u/s 69A r.w.s 115BBE."

8.9 *The submissions of the AR and the reasoning of the AO have been considered in detail. Even if the explanation of the Appellant that it was generating cash for its expansion project at Nagarbhavi is accepted, it is difficult to accept that the Appellant was only accumulating this cash in its entirety only to spend it in one go at a future date. Such an ongoing project would definitely involve periodic cash payouts which is why the Appellant would have been suppressing its sales. Therefore, the argument of the AO that the Appellant would not have been in possession of the cash generated from suppressed sales is reasonable and the cash that was actually found at the time of search can only be from sources that are unexplained. Therefore, the Appellant's claim that the cash found represents the suppressed sales which should be given the benefit of telescoping cannot be accepted.*

8.10 *Having come to the conclusion that the cash found at the time of search remains unexplained, the action of the AO in treating the same as unexplained money u/s 69A of the Act, also cannot be faulted with. Accordingly, the addition made by the AO u/s 69A and the tax levied u/s 115BBE are upheld and the grounds raised by the Appellant in this regard stand dismissed.*

32. Being aggrieved by the order of the learned CIT(A), both the revenue and the assessee are in appeal before us. The revenue is in appeal challenging the deletion of addition made on account of suppressed/unaccounted sales in A.Y. 2014-15 to 2018-19. The assessee in cross objection challenging the validity of initiation of proceeding under section 153A of the Act in the absence of incriminating material found in respect of unabated assessment years being A.Ys. 2014-15 to

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2016-17. The assessee is also in appeal challenging the addition of Rs. 2,28,98,000/- in the A.Y. 2018-19 by treating the cash found as unexplained money under section 69A of the Act.

33. The learned DR before us argued that the learned CIT(A) had erred both in law and in fact by disregarding extensive and credible corroborative evidence brought on record during the course of the search and assessment proceedings. The learned DR submitted that the learned CIT(A) failed to give due weight to a series of incriminating findings that clearly established a pattern of deliberate suppression of sales by the appellant. These findings included the seizure of unaccounted cash, sale deeds indicating the acquisition of immovable properties by the MD using funds derived from undisclosed income, and several copies of MoUs with hospitals dating back to 2013, which were never reflected in the appellant's books of accounts. Furthermore, sworn statements from third party (software developer), along with seized evidence showing deletion of vouchers related to suppressed sales, reinforced the Revenue's case that the appellant was engaged in systematic tax evasion.

33.1 The learned DR further emphasized that statements from employees who were given access to "V" series bills confirmed the manipulation of records and suppression of cash sales. More significantly, the Power Labs Software used by the appellant was found to be configured in such a way that it allowed selective deletion of sales records in this case those in the "V" series whenever the server was turned off. This technical manipulation of data indicated a premeditated effort to suppress income and evade taxes. The learned DR highlighted

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that such actions were not accidental or due to oversight, but were part of an intentional strategy devised by the appellant and executed by key personnel.

33.2 The learned DR also pointed out that the appellant himself had admitted to suppression of sales during the period from May 2017 until the date of the search, and acknowledged that records for prior years were periodically deleted by key persons in the company. This admission directly substantiated the Revenue's case and further discredited the appellant's claim that the books of accounts were accurate.

33.3 Regarding the learned CIT(A) view that addition of estimated supressed sales cannot be made without rejecting the books of account. The learned DR contended that V- series of sale not recorded in the books of account therefore rejection of books of account in given fact is not relevant and AO rightly made independent addition of suppressed sales.

33.4 The learned DR justified the AO's estimation-based addition to income, noting that such estimation was not arbitrary but backed by concrete evidence uncovered during the search. Given the deletion of key records and the inability to reconstruct exact figures due to the appellant's own actions, the AO was left with no alternative but to adopt a reasonable estimate based on the available data. The ld. DR argued that ignoring this evidence, as done by the CIT(A), would amount to rewarding the appellant for destroying evidence and suppressing facts. In view of the totality of facts and the overwhelming evidence on record,

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the DR prayed to us to set aside the order of the learned CIT(A) and restore the additions made by the AO in full.

34. On the other hand, the learned AR before us filed a paper book running from pages 1 to 182 and compilation of case law running from pages 1 to 164 along with documents/ details and relied on the judgment of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt Ltd (supra). It was contended that proceedings initiated under section 153A of the Act and consequent assessment order for A.Ys. 2014- 15 to A.Y. 2016-17 are invalid. The learned AR claimed that there was no material incriminating in nature found which may pertain to these unabated/completed assessment years.

34.1 The Learned AR on the merit of addition deleted by the learned CIT(A) on account of supressed sale submitted that the assessment framed by the AO is arbitrary, conjectural, and legally untenable. The Revenue has attempted to estimate unaccounted sales by applying an ad-hoc percentage to the accounted turnover without any evidentiary support or substantive reasoning, particularly for the period from May 2017 to November 2017. The entire assessment is premised on an unproven and speculative allegation that the assessee paid referral fees to medical professionals, thereby allegedly suppressing actual sales. In support of this claim, the Department relied solely on statements recorded from employees during search operations, which is directly contrary to the binding instruction issued by the Central Board of Direct Taxes vide Instruction No. F.No. 286/98/2013-IT(Inv.II) dated 18 December 2014. This instruction clearly states that no admission or concession extracted under coercion or duress during a search can form

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the sole basis for an assessment unless corroborated by independent evidence.

34.2 The AR emphasized that the AO blatantly ignored the retraction and detailed affidavit submitted by the company's Managing Director, who categorically denied the allegations and provided a reasoned explanation addressing all concerns. The MD, being in the best position to speak on the financial and operational matters of the company, should have been accorded greater evidentiary weight. Instead, the AO selectively relied on the statements of employees who were not privy to the financial workings of the company and were in no position to provide accurate insight into any alleged suppression of sales. This selective approach, which aligned with the Department's narrative while disregarding consistent denials by the MD, reflects a biased and unsustainable method of assessment.

34.3 Furthermore, the ld. AR pointed out that the AO failed to bring on record any independent or tangible evidence to substantiate that referral fees were paid to doctors. There was no effort made to summon or examine the alleged recipients of such payments, as is permitted under the Income Tax Act. This fundamental lapse in inquiry severely undermines the credibility of the Department's claim. The Revenue also attempted to rely on documents allegedly seized during the search, such as Memoranda of Understanding with hospitals and property sale deeds, claiming that these indicated the use of suppressed income. However, the learned AR noted that these documents were neither referenced nor discussed in the final assessment order, making any reliance on them completely unsubstantiated and frivolous.

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34.4 The learned AR additionally contended that admitted facts are that all cash seized was in the form of ₹2,000 denomination notes, which were introduced only after the demonetization event in November 2016. This crucial fact indicates that any alleged unaccounted sales could only have occurred post-demonetization. If the Department's contention were that unaccounted sales occurred prior to this period, it would have resulted in the accumulation of disproportionate or undeclared assets. Yet, no such evidence was brought on record. This failure compelled the Revenue to fall back on the referral fee narrative, which remains unsupported by corroborative evidence.

34.5 In conclusion, the AR asserted that the Revenue's case is built entirely on an unfounded and speculative proposition that the assessee clandestinely paid referral fees to doctors, which in turn necessitated the suppression of sales. The Department presumed the disbursement of referral fees and constructed an elaborate but unverified chain of allegations to reach a predetermined conclusion. In doing so, it placed an unreasonable and legally impermissible burden on the assessee to disprove conjectures that were conjured solely from the Department's own assumptions. The assessment, as framed by the AO, is not only procedurally flawed but also substantively devoid of merit. It rests on conjecture, selective reliance on statements, and an absence of independent verification or inquiry. Accordingly, the findings of the ld. CIT(A) in deleting the additions are entirely in accordance with law and the evidentiary record, and hence, deserve to be upheld.

34.6 The learned AR regarding the treatment of cash found as unexplained money under section 69A of the Act submitted that the

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entire addition is based on an erroneous presumption that the seized cash represents unexplained income, whereas the amount was voluntarily disclosed and duly declared in the tax return. The cash in question was generated from regular business receipts, as evident from V-series billing, and has been properly recorded in the appellant's books of accounts. Therefore, the two preconditions for invoking Section 69A of the Act, namely, that the money is not recorded in the books and the sources of such money was not explained or the explanation furnished by the assessee are not satisfactory. In the given case, the sources of such cash are duly explained which was not unsatisfactory. As such, the addition under section 69A of the Act and its harsh taxation under section 115BBE are both factually and legally untenable.

34.7 The learned AR further emphasized that the Department failed to discharge its onus of proving the existence of any undisclosed income that could justify such addition. No independent evidence was brought on record to support the conclusion that the seized cash was any other unaccounted sources. Moreover, the lower authorities themselves have acknowledged that the only source of income for the appellant is its business activities, and hence, any cash or expenditure, if at all, could only be attributable to such business. Accordingly, even on an alternate basis and without prejudice to the main argument, it was contended that any such amount, if considered taxable, should be assessed as business income under the regular provisions of the Act and not under section 69A read with section 115BBE of the Act.

35. We have carefully examined the facts, materials seized, and statements recorded during the search and subsequent proceedings. The

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sole issue in dispute across these years is whether the assessee suppressed sales through the "V" series billing. The entire basis for the addition by the Assessing Officer is on the statements recorded and on extrapolating the unaccounted sales for three months (Sept–Nov 2017) to earlier years.

35.1 However, this approach cannot be sustained. Firstly, the evidence found pertains only to the three-month period. There is no material on record proving that similar suppression existed in the earlier years. Estimating past unaccounted sales based on such limited data is speculative. No documents or material conclusively show that the assessee followed the same practice before May 2017 except the statement.

35.2 Secondly, the addition is based solely on statements. These statements, particularly that of the Managing Director, were later retracted. Statements without corroborative evidence cannot form the basis of addition. This principle is well supported by settled judicial precedents. It is equally important to note that the search team also seized hard drive containing the data but yet nothing was brought on record suggesting the suppressed sale under V series.

35.3 Further, if such unaccounted income was generated, one would expect some unaccounted investment, unexplained asset, or expenditure. But in this case, there is no evidence of the assessee investing in property, gold, or other assets using this income. Nothing was found during the search that establishes the flow or utilization of this alleged suppressed income.

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35.4 Lastly, the books of account were not rejected by the AO. In the absence of rejection of books, any estimation of income is not valid. Therefore, we find that the ld. CIT(A) has correctly deleted the addition on merit for A.Y. 2014-15 to 2017-18, and we uphold that decision. Similarly, for A.Y. 2018-19, the AO's attempt to estimate suppression beyond what the assessee has already admitted (₹2.28 crores) lacks supporting material. We find no justification to disturb the CIT(A)'s conclusion on this point. Accordingly, the Revenue's appeals on merit for A.Y. 2014-15 to 2018-19 are dismissed.

FINDING ON LEGAL GROUND – ASSESSEE'S CROSS OBJECTION FOR A.Y. 2014-15 TO 2016-17

36. The assessee has raised a legal challenge regarding the validity of assessments for A.Ys. 2014-15 to 2016-17. In this regard, we note that the search took place on 8th November 2017. On that date, the time limit for issuing notices under section 143(2) had already expired for these years. Therefore, these assessments stood completed and are classified as 'unabated'.

37. As per the judgment of the Hon'ble Supreme Court in *PCIT vs. Abhishar Buildwell Pvt Ltd(supra)*, completed assessments cannot be disturbed under section 153A of the Act unless incriminating material is found during the search pertaining to those years.

38. In the present case, no incriminating material was found for A.Ys. 2014-15 to 2016-17. The materials pertain only to a limited period in 2017. The revenue has not brought anything specific suggesting that

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such suppression existed in these earlier years. Thus, the addition made in these unabated years is not legally sustainable.

39. Accordingly, we hold that the assessments made under section 153A for A.Y. 2014-15 to 2016-17 are invalid and accordingly, the same are quashed. Hence the assessee's cross objections for A.Y. 2014-15 to 2016-17 are allowed.

FINDING ON MERIT – ASSESSEE'S APPEAL FOR A.Y. 2018-19 (ADDITION UNDER SECTION 69A)

40. The assessee admitted income of ₹2.28 crores from suppressed sales and included it in the return. The same amount was found as cash during the search and has been explained as arising from that unaccounted turnover. Still, the AO/learned CIT(A) made a separate addition under section 69A treating the same amount as unexplained money.

41. We find this approach flawed. The assessee has explained the source as suppressed turnover, which is already included in the return. No evidence was found suggesting that this cash came from another unexplained source. The cash was also not linked to any investment or asset not accounted for.

42. Once the income has been taxed, the same cannot be taxed again in a different manner. There is no material on record to support the view that this cash had a separate unexplained source. The learned CIT(A) reasoning is purely presumptive.

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43. Therefore, we find that the ld. CIT(A) was not justified in upholding the addition under section 69A of the Act. The addition leads to double taxation of the same amount. Hence, we delete the addition of ₹2,28,98,000/- made under section 69A of the Act for the A.Y. 2018-19. The assessee's appeal on this ground is allowed.

In the result,

- Revenue's appeals on merit (A.Y. 2014-15 to 2018-19) are **dismissed**.
- Assessee's cross objections on legal grounds (A.Y. 2014-15 to 2016-17) are **allowed**.
- Assessee's appeal for A.Y. 2018-19 on the merit of the addition under section 69A is **allowed**.

Order pronounced in court on 3rd day of June, 2025

Sd/-	Sd/-
(KESHAV DUBEY)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 3rd June, 2025
/ vms /
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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