

IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.

BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER

I.T.A. No. 376/Jodh/2023

Assessment Year: 2018-19

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| Manoj Kumar Khubani M/s Maa Ambey Electronics, Old Bus Stand, Barmer | Vs. | The DCIT Central Circle-2 Jodhpur |
| PAN No.: AGDPK6495N | | |
| Appellant | | Respondent |

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| Appellant by | Sh. Rajendra Sisodia, Adv. |
| Respondent by | Sh. Karni Dan, Addl. CIT(Sr. DR) |

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| Date of Hearing | 08/05/2025 |
| Date of Pronouncement | 24/06/2025 |

ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of ld. CIT (A), Jaipur dated 28.08.2023 passed under section 250 of the I.T. Act, 1961, for the assessment year 2018-19. The assessee has raised the following grounds of appeal :-

“1.The Ld.CIT(A) has erred in law and on facts in confirming the addition of Rs.1,25,00,000/- without considering the three submissions/evidence filed on 01.08.2023, 14.08.2023 and 22.08.2023 respectively and only discussing and relying on the initial submission filed on 28.07.2023.

2. The Ld.CIT(A) has erred in law and on facts in confirming the addition of Rs.1,25,00,000/- made by the AO solely on the basis of disclosure made during survey and not on the basis of evidence found during survey.

3. The Ld.CIT(A) has erred in law and on facts in confirming the addition without considering the fact that the incriminating documents impounded during survey pertained to various periods (FY 2015-16, 2016-17 & 2017-18) and addition on their basis could have validly been made in the relevant assessment years only.

4. The Ld.CIT(A) failed to appreciate that when assessments pertaining to AY 2016-17 & 2017-18 had been reopened on the basis of impounded papers pertaining to that period, addition in respect of those papers could have been validly made in those years only. “

2. Succinctly, the facts as culled out from the records are that the appellant is retailer/wholesaler of electric and electronic items, carrying on business as a proprietor of M/s MaaAmbey Electronics, from where he earns business income. Besides, he also enjoyed interest income. He had filed his ITR showing an income of Rs.10,04,120/- The case of the assessee was taken up for compulsory scrutiny on account of survey having been conducted on the business premises of the assessee on 08.02.2018. The Ld.AO completed the assessment u/s 143(3) and assessed the income at Rs.1,65,04,120/- The AO made addition of Rs.1,25,00,000/- relying on the surrender made during survey and a further addition of Rs.30,00,000/- on account of unexplained investment in house construction.

3. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the CIT(A) challenging the additions made by the AO. The Ld.CIT(A) partly allowed the appeal of the assessee deleting the addition of Rs.30,00,000/- made by the AO on account of unexplained investment in construction. He, however, upheld the addition of Rs.1,25,00,000/- made by the AO on account of income surrendered by the assessee during survey observing-

“6.4 It is clear from the statement that it was not recorded under undue pressure and coercion. Admission of a particular fact during the course of proceedings is strong evidence, which can be used against the person giving it. More so, when a person himself admits it to be true it may reasonable be presumed to be so, unless it is satisfactorily explained otherwise. Thus the effect of an admission is to shift the burden of proof to the person making the admission especially in a case when the statement so given was based upon incriminating documents impounded during survey.

6.14 As discussed above, the statement recorded during survey proceeding along with incriminating material is very much strong evidence in eye of law. Further the amount of transactions for unrecorded cash loan comes to total of Rs. 46,48,745/- unrecorded cash sales as admitted by appellant himself comes to total of Rs. 65,17,012/-. Therefore, the total unrecorded incomes for these 2 items comes at Rs. 1,11,65,757/-. Further there were other sale/ purchase details had also mentioned on page 21 to 37. In these pages details and name of debtors were mentioned. In some pages amount were also mentioned. This amount comes to Rs. 40,94,173/-. Although the appellant had claimed that these transactions, debtors list etc were recorded in books, but such claim was accepted considering his disclosure of Rs. 1,25,00,000/- as his unaccounted income. Considering in totality, I found that the appellant had rightly disclosed his unaccounted income for AY 2018-19 of Rs 1,25,00,000/- during survey proceeding after considering all such impounding papers. Later on he retracted such statement without any supporting evidences. Therefore, I hereby confirm the addition of Rs. 1,25,00,000/- and the ground no 1 to 3 is hereby dismissed.”

4. Now the assessee is in appeal before us. It is a contention of the assessee that

the Ld.CIT(A) failed to consider the explanation filed in respect of Annexure A/1, which formed part of reply filed on 14.08.2023. The attachment, viz. Exhibits (Appeal) contained a detailed description of each of the 37 pages comprised in Annexure A/1. The assessee pleaded that the income comprised in all the impounded material for the relevant year was duly offered for tax, but the AO as well as the CIT(A) were of the opinion that the surrendered income should have been offered for tax.

5. The assessee, in support of the grounds of appeal, made the following written submission:- -

1 Addition of Rs.1,25,00,000/- on account of surrender made during survey -

1.1 The appellant very humbly submits that during the survey proceedings on 08.02.2018, the assessee was grilled by the survey team and he was forced and coerced to surrender an amount of Rs.1,25,00,000/- mainly on the basis of seven diaries, in which he had recorded his undisclosed sales and certain loose papers on which amount advanced to certain parties was written. At that very moment he had stated that his sales are not to the extent to warrant such a huge disclosure and the amounts advanced do not exclusively pertain to the current year, but the Authorized officer insisted on to produce all the concerned parties instantly for cross verification or else to surrender an amount of Rs.2,00,00,000/-. After a long deliberation, the assessee was left with no choice but to unwillingly succumb to the illegitimate demand of the Department of surrendering of Rs.1,25,00,000/- forced on him.

1.2 The Authorized officer during the post survey proceedings, once again sought his clarification on loose papers/documents impounded during survey. In the statements recorded on 06.03.2018, the assessee in reply to Q.No.3, specifically stated that at the time of survey, he was under mental stress and did not understand the meaning of surrender of income and the surrender was made without properly perusing the impounded documents and understanding their implication. He also stated that he would work out the actual income, in consultation with his Accountant and CA, once copies of impounded documents are made available to him and would accordingly file the ITR and pay the due taxes and the tax paid post survey may be deemed to be advance tax for the year.

- 1.3 The assessee, after obtaining copies of impounded papers worked his undisclosed sales on the basis of impounded diaries and separately offered the income comprised there in u/s 44AD, in addition to his regular income. He also offered additional income under the head **Income from other sources** taking into account all the loose papers impounded during survey. During the course of assessment, he filed explanation on each and every document to the satisfaction of the Assessing officer. He got the difference in cash and stock found during survey, reconciled with the regular books post completion. This is the reason why no mention of difference in cash found or stock found has been made in the assessment order.
- 1.4 As stated *supra*, the surrender was made by the assessee under coercion and pressure of the Department. It may be mentioned that the assessee is not very educated (8th pass only) He had no idea of the word **SURRENDER**. It is submitted that the assessee was asked to call the persons named in the diaries/loose papers to prove the genuineness of the entries recorded therein, at the time of recording of the statement or else to surrender. It was impossible for him to explain the genuineness of credit of more than 1,500 entries instantly during the course of recording of the statement. Therefore, the assessee stated that he was unable to explain the genuineness of all the entries immediately and ultimately he was forced to make the surrender. After the survey, when the assessee contacted his CA and told him that the survey team had shown him the figures noted in the diaries and the loose papers and totaled them and made him to surrender the aggregate of these figures as his income, the CA advised him to first obtain the copies of all the papers impounded during survey and to calculate the income comprised there in. Therefore, accordingly the surrender was retracted during the statement recorded on 06.03.2018 and was not offered as income in the ITR filed. After getting the copies of impounded documents, page wise list of the same was prepared, giving the description of each page, the relevant assessment year and whether the amount written in it comprised income/receipts. Finally, after reconciliation of all the papers, the income comprised in the impounded diaries/loose papers was offered to tax as additional income.
- 1.5 Sir, the additions have been made by the AO solely on the strength of surrender in the statement recorded u/s 133A, without any supporting material/evidence gathered during survey. The Ld.CIT(A) in sustaining the addition again relied on the statements of the assessee. There is absolutely no incriminating material to support the impugned addition. It is a trite law that that a mere surrender without any supporting evidence cannot be a basis of making addition in the hands of the assessee. For the above proposition, the assessee relies on the decisions of the following Tribunals-
- ITAT Mumbai in **DCIT vs. Prem Sons** in ITA No.4698/Mum./2006 dated 15/01/2009
 - ITAT Ahmedabad in **Rajnikant Paragji Lad vs. ACIT** in ITA No.2507/Ahd./2006 dated 15/02/2011

- ITAT Delhi in **DCIT vs. Bansal Credits Ltd.** in ITA No.3918/Del/2013 dated 19/09/2016
- ITAT, Indore Bench in the case of **Ajit Singh Melhotra vs. ACIT** ITA No. 63/IND/2019 dated 22/10/2020
- ITAT Indore in **Alankar Jewelers vs. DCIT** in ITA No.992/Ind./2019 dated 30/04/2021
- ITAT Ahmedabad in **Abhi Developers vs. ITO** (2007) 12 SOT 444 (Ahd)
- ITAT Jaipur in the case of **Jai Singh Yadavvs. ACIT** in ITA No.125/JPR/2022 dated 15/06/2022
- **CIT v. Dhingra Metal Works** [2011] 196 Taxman 488/9 taxmann.com 83,(Del.)
- **ITO v. Vijay Kumar Kesar** [2010] 327 ITR 497 (Chhattisgarh)
- **CIT v. Diplast Plastics Ltd.** [2010] 327 ITR 399/186 Taxman 317 (Punj. & Har.).

wherein it has been held that it is not permissible under law to make assessment of tax solely on the basis of the statement made on oath by an assessee, before the income tax authority during the survey proceedings under Section 133A of the Act.

1.6 The Hon'ble Kerala High Court in **Paul Mathew & Sons vs. CIT** (2003) 263 ITR 101 has held that the statement recorded u/s. 133A has no evidentiary value. Further, Delhi High Court in **CIT vs. Dhingra Metal Works** – (2010) 328 ITR 324 has held that survey officer are not authorized to administer an oath and to record a sworn statement u/s 133A which is in sharp contrast with section 132(4) which specifically authorizes an officer to examine a person on oath. Moreover, the word “may” used in section 133A(3)(iii) of the Act clarifies beyond doubt that the material collected and the statement recorded during the survey was not a conclusive piece of evidence by itself.

1.7 The Hon'ble High Court of Gujarat in the case of **CIT vs. M.P. Scrap Traders [2015] 60 taxmann.com 205 (Gujarat)** ruled:

“Section 69, read with section 133A of the IT Act, 1961- Unexplained investments (Retraction of statements)- Assessment year 2007-08- Assessing officer made addition in the hands of assessee firm as well as its partner, as unexplained investments solely relying upon the statement of partner recorded at the time of survey, which was subsequently retracted- Except said statement, there was no other material or corroborative material with A.O. to justify said addition- Whether addition made by A.O. were to be deleted- Held, Yes.”

1.8 In the case **CIT vs. S. Khader Khan Son (2008) 300 ITR 157 (Mad.)**, the Hon'ble Apex Court had dismissed the Special Leave Petition filed by the department and affirmed the decision of Madras High Court as below:

“An admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made admission to show that it is incorrect.

The word 'May' used in section 133A(3)(iii) viz. 'record the statement of any person which may be useful for or relevant to any proceeding under this Act' makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by themselves. The statement obtained u/s 133A would not automatically bind upon the assessee.

Section 133A does not empower any ITO to examine any person on oath in contradiction to the power under section 132(4). Statements recorded u/s 133A is not given evidentiary value, therefore, admission made during such statement cannot be made the basis of any addition."

1.8 Hon'ble Madras High Court in **CIT Vs. S. Khader Khan Son** (2008) 300 ITR 157 had held that the scope and ambit of the materials collected during the course of survey action under section 133A shall not have any evidentiary value. It could not be said solely on the basis of the statement given by one of the partners of the assessee-firm that the disclosed income was assessable as lawful income of the assessee.

1.9 The Hon'ble Apex Court (2012) 254 CTR 228(SC) had dismissed the Special Leave Petition filed by the department and affirmed the above decision of Madras High Court as below:

"An admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made admission to show that it is incorrect.

The word 'May' used in section 133A(3)(iii) viz. 'record the statement of any person which may be useful for or relevant to any proceeding under this Act' makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by themselves. The statement obtained u/s 133A would not automatically bind upon the assessee.

Section 133A does not empower any ITO to examine any person on oath in contradiction to the power under section 132(4). Statements recorded u/s 133A is not given evidentiary value therefore, admission made during such statement cannot be made the basis of any addition."

1.10 It is submitted that CBDT also in its Circular dated 10th March, 2003 had stated that during the course of assessment proceedings, the Assessing Officer should rely upon the evidences gathered during the course of search/survey operation and then only, the relevant assessment should be framed. Apart from the legal grounds even on merits of the case, the Assessing Officer had made the addition without any application of mind simply on the basis of surrender made by the assessee during the course of survey.

1.11 Going by the verdict of the Hon'ble Supreme Court/High Courts/ITATs and the position reaffirmed by the Central Board of Direct Taxes through its Circular, it becomes

abundantly clear that no addition can be made or sustained simply on the basis of statement recorded at the time of survey. In order to make an addition on the basis of surrender during search or survey, it is *sine qua non* that there should be some other material to co-relate the undisclosed income with such statement.

1.12 The AO in his order at Page-3 has stated During the survey action, assessee has offered undisclosed income of Rs. 1,25,00,000/- on account of transactions recorded in loose papers. During the survey action under section 133A of the Act, loose papers were impounded wherein unaccounted transactions are recorded and assessee has offered undisclosed income of Rs. 1,25,00,000/- on the basis of discrepancies found in the impounded documents. After this observation, the AO has reproduced the statements of the assessee recorded during survey on 8.2.2018. He has also reproduced the letter given by the assessee explaining the reasons for not honoring the surrender made. Then, he has held - Above submission is duly considered but not found acceptable. Assessee himself accepted in his statement that he is engaged in the out of books sale and purchase business activities. He has also failed to explain the transactions recorded in the loose papers. Therefore, his statement given in post survey proceedings is just an afterthought.

1.13 He has further referred to certain loose papers (Page-1,6 & 11 of Exhibit-1) and has finally held - Thus, considering overall discrepancies in books of accounts and unaccounted transactions recorded in loose papers, addition of Rs. 1,25,00,000/- is made in total income of the assessee.

1.14 From the above observations, it is absolutely clear that the basis of addition is the surrender made by the assessee in his statements rather than the evidences gathered by the Department during survey. During the course of assessment, detailed explanation as to each and every page of the impounded documents was provided (*which is again being provided as attachment*) and reconciliation of the same with the regular books of accounts was made. The books were duly examined by the AO and each and every entry was explained to his satisfaction. Again, during the appellate proceedings, detailed explanation on each of the impounded papers was provided as is evident from the online submissions made, the copies of which are part of the paper book. But ignoring all these evidences, the Ld.CIT(A) sustained the addition to the extent of Rs.1,25,00,000/-

1.15 As regards Page-1 of Ann.-1, it was explained that the amount was given for furniture work of the residential house under construction. The same was got reconciled from the cash book and the building construction account. Even the loose paper clearly indicated that the payment has been made in cash for furniture labour. But the AO insisted that it was an unsecured loan. As regards Page-6, it was cleared that the amount related to restructuring of old loan which was given in FY 2010-11 by Shri Gopal Das, father of the assessee. A copy

of undertaking dated 1.12.2017 given by Shri Lalit Kumar, the borrower was also filed during assessment. An affidavit by Shri Lalit Kumar was adduced as additional evidence during the appellate proceedings. As for Page-11, an amount of Rs.50,000/- has been advanced to Shri Asan Das, out of the undisclosed income generated out of undisclosed sale, which has already been offered for tax. So, it can be seen that no separate addition can be made on the basis of these three documents referred to by the AO.

1.16 As for the entries of unrecorded sales in the impounded diaries, an entry wise summary of all the seven diaries impounded during survey was prepared. The sales as per these diaries aggregated to Rs.65,17,012/- Profit @ 8% amounting to Rs.5,21,361/- was offered to tax in addition to the normal business profits. Therefore, the income on the basis of impounded documents having been duly disclosed, there exists no ground for making addition simply on the basis of surrender.

1.17 There is no material on record to show that all the expenditure incurred in respect of sales recorded in the diaries were duly claimed by the assessee and the sales receipts was the net income of the assessee, particularly when assessee has not maintained the books of account in respect of these transactions, or they have not been produced or relied upon by the assessee. There is no material with the Department to arrive at a conclusion that for receiving the sale consideration, assessee did not incur any expenditure. As pointed out earlier, that the only basis for the Revenue to assess the income in its entirety, is the statement of the assessee recorded during the course of survey. No evidentiary value can be attached to such statement unless it is supported by some material. In this view of the situation, it can be held that there is no material with the Department to make addition of the sale proceeds in its entirety and what is assessable under s. 44AD is 8% of the gross receipt. It may be added that the Net profit rate of the assessee as per the audited books is just 1%. In the present case assessee has shown income of 8% therefore, no further addition can be made by AO.

1.18 The Ld.CIT(A) has finally held in para-6.12 of his order - The appellant had admitted the whole amount as his unaccounted income in his statement recorded during the course of survey, therefore if he is retracting from his statement and coming with different version (unrecorded sale and profit element) without any supporting cannot be accepted. This adjudication by the Ld.CIT(A) is contrary to his own observation in the preceding part of this paragraph. Further, the copy of assessee's statement recorded during survey on the issue (Q.No.18) is being filed in the paper book, which will clear all the doubts. The assessee had in very clear and unambiguous terms stated that these diaries contain entries of sales of M/s Ma Ambey Electronics and at this moment (during survey) he is unable to give further clarification, which will be given later on. The appellant never admitted that the entries reflect his unaccounted income.

1.19 From the above, it is transpired that the transactions shown in the diary are the business receipts. Now coming to question whether the amount recorded in the diary represents the income in its entirety or percentage of profit embedded in such receipts. In this regard it is submitted that it is the only percentage of profit embedded in such receipts that can be added to the total income of the assessee for the reasons as detailed under:

i. If the entire amount of receipt is added to the total income of the assessee then it would result into exorbitant profit which is not possible in the line of business of the assessee. There is no dispute about the fact of the business in which the assessee is engaged i.e. trading of electronic items and solar panels.

ii. There was no information gathered during the survey operation suggesting that the assessee has made some investment for the earning of such undisclosed receipts as discussed above.

In view of the above, it is the only the element of profit embedded in such business receipts which can be added to the total income of the assessee. The appellant draws support and guidance from the judgment of Hon'ble Gujarat High Court in the case of **CIT vs. Samir Synthetics Mill** reported in 326 ITR 410. The appellant places further reliance on the judgement of Gujarat High Court in the case of **CIT vs. Gurubachhan Singh J Juneja** reported in 302 ITR 63. The relevant extract of the judgment is reproduced as under:

6. Hence, in absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged unaccounted sales, the finding of the Tribunal that only the gross profit on the said amount can be brought to tax does not call for any interference. The Tribunal was, therefore, justified in deleting the addition of Rs. 10,85,003/- made on account of unaccounted cash sales. We are also conscious to the fact that the assessee during the survey proceedings has admitted the fact that the impugned amount represents its income.

The High Court of Gujarat in the case of **CIT vs. President Industries** (2002) 258 ITR 654 (Guj) has held that the Tribunal was justified in holding that *the entire undisclosed sales could not be added as income of the assessee but the addition could be made only to the extent of estimated profits embedded in sales for which the net profit rate was adopted and hence no referable question of law arises.*

1.20 It would not be out of place to mention that the AO had issued notices u/s 142(1) on three occasions, i.e. 11.03.2021; 09.04.2021 & 03.05.2022, as stated by the AO himself in his assessment order in para-5. The assessee has duly made the compliance of all these notices, replying to each and every query. The audit report, cash book and ledgers, along with supporting vouchers, were produced, which were examined by the AO. No discrepancies were pointed out in the books. No further queries were raised. In these circumstances, there existed no grounds for making any addition. The assessee was under an impression that the AO is fully satisfied with the authenticity and genuineness of his

books. Without issuing any show cause for the proposed additions, the same were made, which is also against the principles of natural justice.

While making the addition of the impugned amount of Rs.1,25,00,000/-, the AO has failed to pin point the specific discrepancies as would support the surrender. He has referred to the seven diaries (Ann.-A/2 to A/8), the profit of Rs.5,21,361/- on the sales of Rs.65,17,012/- recorded there in had already been included in the books and offered for tax in the ITR, apart from the regular business income. The AO has referred to 3 loose papers while making the addition, whereas an income of Rs.4,10,625/- has already been offered for tax after taking into account all the 37 pages of Ann.- A/1. The expenditure on furniture of Rs.1,25,000/- given to Kishan Lal Suthar stands accounted for in Other income shown in ITR, the loan of Rs.14,00,000/- alleged to be advanced to Lalit Kumar during the year, as a matter of fact, had been advanced by his father, Shri Gopal Das, way back in FY 2010-11, which has been clearly explained in his reply by the assessee filed during assessment (copy of the reply forms part of paper book). Supporting evidence in the form of Sahmatipatra dated 01.12.2017 given by Shri Lalit Kumar had also been provided at the time of assessment. Had the AO any doubts, he could have called and examined Shri Lalit Kumar and Shri Gopal Das, which he chose not to do, and without assigning any reason, went on to make the addition. An affidavit from Shri Lalit Kumar stating the facts was filed as additional evidence, before the Ld.CIT(A). The Ld.CIT(A) has not given any cognizance to this piece of evidence. Although, the assessee had also filed an affidavit in support of his contention but the Ld.CIT(A) never called for a Remand report from the AO nor examined Shri Lalit Kumar. Under these circumstances, the averments contained in duly sworn affidavit are to be accepted as a correct, unless the same are rebutted by the evidence. On this proposition, the appellant relies on the decision of Hon'ble Supreme Court in the case of **Mehta Parikh & Company Vs CIT** 30 ITR 181 (SC), which says - *S.143(3) : Assessment – Affidavit – When a statement is given in affidavit, the same is proved to be correct unless proved otherwise.* The above decision was followed by the Supreme Court in in **Daulat Ram Rawatmull v. CIT**(1973) 87 ITR 349 (SC), wherein it was held - *Once an affidavit is furnished, it should be presumed to be a correct statement of facts. If these facts are to be controverted, either the deponent must be examined or evidence contrary to facts must be led. In the absence of these the affidavits could not be ignored.* The appellant would also like to place reliance in this regard on the following decisions - **Dr. Prakash Rathi Vs ITO** 36 TW 1 (Jodh ITAT), **ITO Vs Doctor Tej Gopal Bhatnagar** 20 TW 368 (Jodh ITAT), **Labh Chand Bohra Vs ITO** 219 CTR 571 (Raj), **Shrikumar Vs ITO** 36 TTJ 538, **Smt. Savitri Devi Vs ITO** 11 ITD 422 Delhi, **CTO Vs Kewal Ram SumnomalCavanduspur**92 STC 629 (Raj), **ITO Vs Vardhaman Industries** 99 TTJ 509 (Jodh ITAT), **ACTO Vs Kishore Shyam Brajesh Kumar** 93 STC 213 (Raj), **Indo Malwa United Mill Liikmed Vs State of MP** 60 ITR 41 (SC), **Late Mangilal Agarwal Vs ACIT** 208 CTR 159 (Raj), and **Union of India Vs Kamalaxmi Finance Corporation** 92 Taxmann 43.

For the amount of Rs.50,000/- advanced to Asan Das, the source is out of profit on undisclosed sale offered for tax. Apart from the above referred source, the assessee had received back loans advanced along with interest which was more than sufficient to advance an amount of Rs.50,000/- The difference in stock and cash was also duly reconciled. But the AO chose to make the addition solely relying on the surrender made by the assessee in his statements during survey.

- 1.21 In Para-6.4, the Ld.CIT(A) has observed - *The appellant had retracted his surrender without any basis. He had neither at the time of retraction nor during the assessment proceeding given any proof, cogent material or any satisfactory explanation about the unrecorded transactions found from his premises. Any claim of retraction cannot be entertained in the absence of any supporting evidence.* This observation is incorrect and baseless. The appellant had given a detailed description of each and every entry found noted in the impounded documents (Page-56 to 100 of the paper book) He has himself gone on to include every entry in working out his income and has honestly offered it for tax. What supporting evidence the Ld.CIT(A) was looking forward to, is not clear.
- 1.22 In Para-6.14, the Ld.CIT(A) has stated “*the statement recorded during survey proceeding along with incriminating material is very much strong evidence in eye of law*”. In Para-6.12, he has tabulated all the figures mentioned in the impounded diaries/loose sheets and added them up. It would be pertinent to mention that the figures in the impounded documents, as a matter of fact, comprise of unrecorded sales, Purchase bills duly recorded in books, loans advanced during different financial years, cheques obtained as security against loans and sales, etc. Finally, he has further tried to show that the unaccounted income (worked out by him) aggregates to Rs.1,52,59,930/- which is the sum total of all figures mentioned in the impounded documents. The main basis of the CIT(A) in confirming the addition is the statements recorded during survey. CIT(A)’s blind endorsement of AO’s action breaches Sec. 250(6) compliance.
- 1.23 The Ld.CIT(A) has further held that as the AO had accepted the returned income for AY 2016-17 and AY 2017-18, the addition for loans advanced during these assessment years, should be made during this AY, i.e. AY 2018-19. It may be mentioned that during survey, the loose papers impounded, pertained to different financial years. Consequently, the then AO reopened the assessment for AY 2016-17 and AY 2017-18, holding that the income to the extent of loans advanced during these years have escaped assessment. Simultaneously, he also assessed these loans as Income of AY 2018-19. During the reassessment proceedings for AY 2016-17 and AY 2017-18, which was subsequent to the completion of assessment for AY 2018-19, the appellant rightly submitted that these loans have been taken into cognizance for making assessment for AY 2018-19. The then AO, in his wisdom, chose not to make any addition on account of these loose papers and accepted the returned income for these assessment years. There was no

misrepresentation or an attempt to mislead the department. It is a basic concept made clear under the Income tax law by the **Charging section** (section-4) that income of one financial year (known as previous year) is taxable in following financial year (known as assessment year). When the papers found during survey clearly indicated the period (AY) to which they pertained, there is no reason to tax them in another period(AY) and is clearly against the canons of taxation.

1.24 Now, before the CIT(A), the appellant rightfully submitted that valid addition on account of loose papers impounded could have only been made for the year to which these pertained. The appellant had made up his case before the then AO and the Ld.CIT(A). If the then AO accepted the appellant's argument and finalized the assessment by not making any addition, the AO committed a mistake, for which remedial action, as per the Income Tax Act, could have been taken. But now, the CIT(A) can not sustain the addition for AY 2018-19 to the extent of the aggregate of these loans pertaining to AY 2016-17 and AY 2017-18.

Sir, in view of the above facts of the case and the legal position, the additions made by the AO and sustained by the CIT(A) may kindly be deleted and the returned income be accepted.”

6. Ld. AR of the assessee in support of the contention so raised in the written submission, placed reliance on the following evidence / records in the form of

Paper book :

| S.No. | Particulars | Page No. |
|-------|---|----------|
| 1. | Written submission before the Hon'ble Tribunal | 1-13 |
| 2. | Copy of ITR & Computation for FY 2018-19 along with Balance sheet and P & L account | 14-19 |
| 3. | Explanation of loose papers of Exhibit-1 | 20-21 |
| 4. | Details of Post dated cheques and Other income | 22 |
| 5. | Affidavit of Lalit Kumar | 23 |
| 6. | Details of Purchases - July, 2017 | 24 |
| 7. | Details of Purchases - September, 2017 | 25 |
| 8. | Details of Purchases - December, 2017 | 26 |
| 9. | Ledger A/c of Goldy Sales Agency | 27 |
| 10. | Ledger A/c of Pooja Industries | 28 |
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7. The ld. DR is heard who relied on the findings of the lower authorities and more particularly advanced similar contentions as stated in the order of the ld. AO. He vehemently argued that the assessee had voluntarily surrendered an amount of Rs.1,25,00,000/- on account of various discrepancies found during survey and the AO had rightly made the addition and the Ld.CIT(A) has passed a well reasoned order confirming the action of the AO, which may kindly be upheld.

8. We have heard the rival contentions and perused the material placed on record, as well as the relevant provisions of law and the case laws cited by the Ld.AR in support of his case. We find that the Ld.CIT(A) has confirmed the addition primarily resting his decision on the surrender made by the assessee during the course of survey and not giving cognizance to the retraction made by him (the assessee) later on. He has further observed that the retraction was not valid as there is no evidence available on record to show that the said surrender of income was made on incorrect facts or under any threat etc. He has relied on various case laws to bring home the point that voluntary deposition at the time of survey is binding unless proved otherwise with proper evidences, facts and figures.

He has referred to a number of case laws. We are afraid that the case laws cited by the Ld.CIT(A) are mostly in respect of deposition made during the course of search u/s 132(4), which have evidentiary value. It may be remembered that the statements recorded u/s 133A are not at par with the statements recorded u/s 132(4). We disagree with the Ld.CIT(A) on this issue. We would like to refer to the decision of Delhi High Court in the case of CIT vs. Dhingra Metal Works – (2010) 328 ITR 324 wherein it has been held that survey officer are not authorized to administer an oath and to record a sworn statement u/s 133A which is in sharp contrast with section 132(4) which specifically authorizes an officer to examine a person on oath. Moreover, the word “may” used in section 133A(3)(iii) of the Act clarifies beyond doubt that the material collected and the statement recorded during the survey was not a conclusive piece of evidence by itself.

9. The Hon’ble Supreme Court in the case of CIT vs. S.Khader Khan Son held thus - ***Section 133A of the Income Act, 1961 - Survey - Whether Section 133A does not empower any ITO to examine any person on oath; so statement recorded under section 133A has no evidentiary value and any admission made during such statement cannot be made basis of addition - Held, yes [In favour of assessee] [2012] 25 taxmann.com 413 (SC)***

10. The CIT(A) has failed to take into consideration the explanation offered by

the assessee in respect of each exhibit of Annexure-A. The AR invited our attention to the statements of the assessee recorded during survey. In reply to Q.No.18 in respect of Exhibit A/2 to A/8, the assessee stated that these diaries pertain to M/s Maa Ambey Electronics, in which sales made to different parties have been noted, some of which are recorded in his regular books while others are not. He further stated that he is not in a position to offer any clarification on it right away and would file the same later on. Later, on being examined u/s 131 by the Authorised officer of survey on 06.03.2018, he deposed that the entries in the impounded diaries are his undisclosed sales pertaining to the current year and he would pay tax on the profits imbibed in these sales by including the same in his ITR. The assessee has aggregated the total sales made on the basis of these diaries and suo-motto offered a profit of 8% on these sales. This takes care of the impounded material and the income comprised therein in respect of Exhibit A/2 to A/8. The Ld.CIT(A) has held the entire sales reflected in these diaries to be income of the assessee on the basis of his statements recorded during survey. He has erred in not giving cognizance to the statements of the assessee recorded on oath u/s 131 post survey, by the Authorised Officer, wherein the assessee clearly deposed that he would pay the due tax on the income comprised in these sales once the copies of impounded material is made available to him. It cannot be a matter of an argument that the amount of sales by itself cannot represent the

income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold have been made by the assessee and that has also not been disclosed. In the absence of such finding of fact, the question whether entire sum of undisclosed sale proceeds can be treated income of the relevant assessment year, answers by itself in negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales. So, what can be taxed is the profit comprised in these unrecorded sales and not the entire sales. We are guided by the decision of Hon'ble High Court of Gujarat in the case of CIT vs. President Industries (2002) 258 ITR 654 (Guj) on this issue.

11. In respect of Annexure A1, which comprises of 37 loose papers, we find that detailed explanation in this regard was filed before the AO as well as the CIT(A). Our attention was drawn to the reply filed by the assessee on 14.08.2023, the acknowledgement of which shows attachment named Exhibits (Appeal), a copy of which was made available to us. The CIT(A) has not at all

referred to it in his order. We have thoroughly perused this attachment. We find that the assessee has duly accounted for all the income comprised in these loose sheets and has included the same in the ITR filed by him. From the Computation of Income forming part of the Paper book, we find that the assessee has surrendered Rs.9,31,990/- apart from his regular income, instead of Rs.1,25,00,000/- admitted during the course of survey on 09.02.2018. As a matter of fact, during the course of survey, the aggregate of all the figures found noted in the diaries/loose papers, was confronted to the assessee and he surrendered the same. The Authorised officer, after the survey, recorded his statements on oath u/s 131 on 06.03.2018 and sought his explanation on the impounded material. In these statements, he gave page wise explanation in respect of the impounded material, specifically stating that the income comprised in the impounded diaries/loose papers would be additionally offered to tax, apart from his regular income. At the time of assessment, the AO made no effort to establish that the surrendered amount was not proper. If the assessee does not adhere to the surrender made during the course of survey, then it is for the Assessing Officer to bring on record cogent material and other evidences to support the addition, rather than rely on statements simplicitor. We find that the matter has not been properly processed by the AO. We draw support in this respect from the decision of Hon'ble Jurisdictional High Court in the case of CIT

vs. Ashok Kumar Jain [2015] 53 taxmann.com 173(Rajasthan) the head note of which reads –“Where assessee had surrendered lesser sum instead what he admitted during course of survey, in absence of any exercise made by Assessing Officer to hold that said surrendered value was not proper, addition made was to be deleted.”

12. We find that the Authorised officer of survey stepped into the shoes of the Assessing officer in obtaining clarification in regard to the seized material. She should have left this task to the AO. But once she has done so, the statements of the assessee taken by her on oath can not be disregarded by the Revenue because they may be disadvantageous to them. The assessee’s explanation in these statements carries equal weight and has to be given full credence. The Assessing officer committed another blunder by making the addition solely on the basis of surrender made during survey. He miserably failed to link the surrender made to the incriminating material found during survey. As a matter of fact, the assessee’s retraction of surrender made is not without any basis, as held by the CIT(A). The Ld.CIT(A) has erred in observing that neither at the time of retraction nor during the assessment proceeding, the assessee gave any proof, cogent material or any satisfactory explanation about the unrecorded transactions found from his premises. We find that the assessee has rightly segregated the loose papers and has duly included all the income pertaining to the relevant year

(AY 2018-19) in his ITR, on the basis of notings on these papers. The Ld.CIT(A) is grossly in error in concluding that the income reflected in these loose sheets for AY 2016-17 and 2017-18, should also be assessed in this year, as they have been left out to be assessed in those particular years. The Income Tax Act of 1961, forms the backbone of India's tax system. It outlines rules, regulations, and procedures for tax assessment, collection, and enforcement. Crucial to this Act are its charging provisions – the sections defining when income is taxable. These provisions are vital in determining a taxpayer's liability. Charging provisions are the foundation of tax legislation. They specify the scope and chargeability of income, clarifying when and what income is to be taxed, who's liable and under what conditions. Essentially, they inform taxpayers that their income is subject to tax and outline the rules. In the Income Tax Act, key charging provisions are found in Sections 4, 5, and 9. Section 4 is particularly important, establishing the basis for income tax levies – that income is taxable under the Act's provisions. Section 4 is paramount, mandating that income tax is levied on the previous year's income of every person, according to the Act's provisions. Section 4 establishes the charge of income tax in India, specifying that tax is levied on an individual's total income for the assessment year. Being so, the incomes reflected in the loose sheets pertaining to AY 2016-17 and 2017-18 could only be assessed in those years only, and not in AY 2018-19, as held by

the Ld.CIT(A), whatever be the circumstances.

13. We find that the assessee has rather surrendered the actual income after analyzing the impounded material. From the CBDT Circular in F. No. 286/98/2013-IT (Inv. II) dated 18th December, 2014 it was amply clear that the CBDT had emphasised on its officers to focus on gathering evidences during search / survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion / under influence. The uncorroborated statements collected by the AO could not be the evidence for sustenance of the addition made by the AO. It has been consistently held by various courts that a sworn statement could not be relied upon for making any addition and must be corroborated by independent evidence for the purposes of making assessments.

14. Thus, it is evident that the Ld.CIT(A) sustained the addition without considering all the facts and evidences on record merely because the assessee has surrendered the same at the time of survey. In view of the decision of Delhi High Court in the case of Dhingra Metal Works (supra) and of Apex Court in the case of CIT v. S. Khader Khan Son [2008] 300 ITR 157 (Mad.) as well the Circular of CBDT vide letter F.No. 286/2/2003-IT(Inv.II) dated 10-3-2003, the addition cannot be made/sustained only on the basis of surrender made at the time of survey. In view of the above legal and factual position, the impugned addition

made by the Ld. AO and sustained in appeal by the Ld. CIT(A) which was founded merely on the basis of admission made u/s 133A of the Act but it badly lacked by corroborative evidence of presence of any errors or omissions in the records, deserves to be reversed, hence, ordered accordingly.

15. The appeal of the assessee in the result, stands ALLOWED.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal)

Rules, 1963 by placing the details on the notice board.

Sd/-

(Dr. Mitha Lal Meena)
Accountant Member

Sd/-

(DR. S. Seethalakshmi)
Judicial Member

Dated 24/06/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order