**आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।**
**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**
**AND**
**SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.103/RPR/2020**
**CO No.15/RPR/2023**
**निर्धारण वर्ष / Assessment Year : 2017-18**

The Assistant Commissioner of Income Tax
(Central Circle)-1, Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Chhattisgarh Distilleries Limited
6B, Express Tower, 42A Shakespeare Sarani,
Theatre Road, Kolkata
PAN: AAACS5073L

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, Advocate
Revenue by : Shri S.L Anuragi, Ld. CIT-DR

सुनवाई की तारीख / Date of Hearing : 29.07.2025
घोषणा की तारीख / Date of Pronouncement : 31.07.2025

## आदेश / ORDER

**PER PARTHA SARATHI CHAUDHURY, JM:**

The captioned appeal preferred by the revenue and cross objection by the assessee emanates from the order of the Ld.CIT(Appeals)-3, Bhopal dated 16.09.2020 for the assessment year 2017-18 as per the grounds of appeal on record.

2. Both the parties herein conceded that since the facts and issues involved in both these matters are absolutely similar and identical, therefore, the cases may be taken up together and dispose of vide this consolidated order.

3. The brief facts of the case are that the assessee is a company and engaged in a business of distillery and a flagship company of Kedia Group. In this case, search and seizure operation u/s.132 of the Income Tax Act, 1961 (for short 'the Act') was carried out at residential/business premises of the assessee on 14.11.2015. Consequently, notice u/s.153A of the Act was issued on 01.04.2019 for A.Y.s2012-13 to 2017-18. In response to the above notice, the assessee filed return of income for A.Y.2012-13 to 2017-18 on 26.10.2016. The details of the return of income for A.Y.2017-18 are as under:

| A.Y. | Date of filing of return u/s. 139(1) | Returned income (in Rs.) | Date of filing of return by the assessee against notice u/s. 153A | Income declared in return u/s. 153A | Additional income offered by the assessee (In Rs.) |
|---|---|---|---|---|---|
| 2017-18 | 08.06.2018 | 25,94,92,990/- | 17.04.2019 | 26,03,17,880/- | 8,24,890/- |

The A.O made the addition of Rs.1,50,37,554/- on account of @2% of total revenue of Rs.75,18,77,696/- and Rs.5,50,00,000/- on account of capital investment for obtaining 35 group shops u/s. 69C of the Act and to be charged u/s. 115BBE of the Act.

4. The Ld. CIT(Appeals) after considering the assessment order and the submissions placed on record by the assessee held and observed as follows:

> "4.1 Ground no. 1 to 4:- Through these grounds of appeal the appellant had challenged the addition of Rs.1,50,37,554/- on account of @2% of total revenue of Rs.75,18,77,696/-. During the course of search various documents i.e page no 22-25 of LPS-1 & 25-29 of LPS-2 were found and seized from factory premises of the appellant located at village Khapri, Kumhari, Chhattisgarh. The relevant extract of loose papers are scanned on page no 3 to 6 of the assessment order. The AO during the course of assessment proceedings observed that the revenue sharing of profit among the partners as a result of sale of liquor from contracted shops was at Rs.1,75,89,52,070/- and share of assessee was shown at Rs. 66,58,98,983/-. These documents were also shown to both the directors i.e. Shri Ramakant Shukla and Shri Naveen Kedia. Statements of both the directors were recorded u/s.132(4) of the Act. Shri Naveen Kedia in his statement admitted that in order to obtain a contract for 35 shops and therefore, a capital of 5.50 crores was invested by CDL. As

per AO neither Shri Ramakant Shukla nor Shri Naveen Kedia were able to explain the accounting to profit from sale of liquor in books of accounts. Therefore, the AO required the assessee to explain the said transaction and reconcile the same with regular books of accounts. The assessee in reply submitted that the data mentioned on the loose paper is government published data which is available in public domain of the state Excise Department. The AO after considering reply of the assessee did not find the same acceptable and stated that both the directors had accepted the revenue and investment of capital for obtaining contract for 35 shops.

4.1.1. I have considered the facts of the case, plea-raised by the appellant and findings of the AO. The appellant during the course of appellate proceedings has brought some interesting facts to light which needs to be discussed. The appellant stated that the impugned loose paper i.e. 20-25 of LPS-1 was not found from bunglow of the director in factory premises. The impugned loose papers were found from cabin of Shri Sanjeev Fathepuria as stated in Q.No 98 of the statement of Shri Naveen Kedia. Therefore, the place of acquisition of these loose paper is not clear. The appellant in its written submission from first line to the end has stated that the figures mentioned on the said loose papers represents figures mentioned in the Excise notification dated 10.02.2016 and does not represents any profit earned from sale of liquor. As a matter of fact the appellant is a manufacturer of liquor and as per prevailing excise guidelines the appellant cannot apply for license of any shop in its name. Therefore, the findings of the AO that unaccounted income was earned out of sale of liquor through licensed shops is out rightly rejected. The AO has alleged that various loose papers were found during the course of search stating the unaccounted sale made by the appellant amounting to Rs.268,75,47,643/-. The presumption made by the AO was on the basis of loose paper i.e. page no 22-25 of LPS-I and 25-29 of LPS-2. On perusal of the impugned loose papers it was seen that the same represents details of liquor shops in different districts of Chhattisgarh. Further, on perusal of notification of Excise department No.क्रमांक/आव/ढेका२०१६//४९१ दिनांक १००२.२०१६. which is also available on website of excise department Chhattisgarh and can be verified by this link https://excise.cg.nic.in/Uploads/nirdesh%2016-17.pdf., it was observed that the entries mentioned on the impugned loose papers against name of shops of each districts exactly matches the same with the figures mentioned on impugned

loose paper against name of shops in respective district. Therefore, it cannot be said that the impugned loose paper represents unaccounted sale of the appellant company. Each and every figure matches same with the notification of excise department. Therefore, the AO has erred in totality in presuming that the said loose papers represents unaccounted sale of the appellant and the additions have been made by the AO on sheer assumption and guess work.

During the course of search statement of Shri Ramakant Shukla, Director of the appellant company, was recorded on oath u/s 132(4) wherein as per AO he has admitted that the said loose paper represents sales of liquor through various shops, however, on perusal of the impugned statement it was observed that Shri Ramakant Shukla has never admitted any unaccounted sales and in reply to Q.No.15 has stated that he did not know much about the paper and can only be explained by Shri Uday Rao. Neither the search party nor the AO has made any enquiry from Shri Uday Rao. The appellant has explained that Shri Uday Rao is an Excise consultant and brought these sheets as business proposal for consideration of the appellant company to participate in referred liquor license allotments. Mr. Rao stated that the other parties as mentioned on the loose paper will be ready to take stated percentage of share as mentioned against their names in the prospective venture and the percentage of share of appellant is available. Mr. Rao was not aware of the legal complications that a liquor manufacture cannot take liquor sales license in his own name, therefore, the said proposal was refused by the middle level management of the company and was never executed. Another statement of Shri Naveen Kedia, director of the appellant company, was recorded during the course of search. The appellant has strongly contended that Shri Naveen Kedia is a patient of Dextrocardia, Diabetes, Hypertension and Chronic insomnia and anxiety neurosis from past 24 years and even during the course of search a doctor was also called for his falling health. The doctor even measured his blood pressure at 180/120 mm Hg. As per appellant the statement started at 13.30 hrs on 16.11.2017 and continued upto 19.20 hrs 18.11.2017 and more than 100 questions were raised. Shri Kedia was even pressurized by prosecution proceedings in the middle of statement at Q.No 29 and therefore, Shri Kedia surrendered himself and signed the statement at the instance of search party. The said statement was retracted on 22.11.2017 which is within 4 days. Thus, the statement has no evidentiary value and that too in absence of any cogent evidence on record. Appellant

has argued that the said transaction has never taken place through appellant. Neither any of the person/firm/company nor any of the director or Shri Uday Rao has ever stated that any such transaction actually took place and the entire addition has been made on sheer presumption and assumption basis. The appellant in his statement recorded on oath has also denied to have any information about these transactions. On the other hand the AO failed to establish how the said transactions materialized when no license was issued in the name of appellant. Also, the AO failed to bring on record any cogent evidence, creating direct nexus of unaccounted sales and capital investment. Therefore, in absence of any cogent evidence having direct nexus with the impugned transaction, the said impugned paper i.e. page nos. 22-25 of LPS-I and 25-29 of LPS-2 cannot be used against the assessee and are to be treated as deaf and dumb documents.

4.1.2 This is settled legal position that any 'dumb document' cannot be used as an evidence to draw an adverse inference against the assessee. Case laws supporting this proposition are as under.:-

**ACIT Vs. Satyapal Wasson (2007) 295 ITR (AT) 352 (Jabalpur)** Held that

the crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transactions of the assessee in the relevant assessment year. Any gap in the various components as mentioned in section 4 of the Income Tax Act must be filled up by the Assessing Officer through investigations and correlations with the other material found either during the course of the search or on the investigation. As a result, we hold that document No.7 is a non-speaking document."

Most important ratio laid down in the said judgment is that "impugned document" must be speaking one and without any second interpretation and must reflect all the details about transactions of the assessee. In the instant case, the impugned loose papers are nothing but extract of the said notification of excise department. The loose paper does not even bears any name of the appellant, however, the AO has presumed that the abbreviation CDL is Chhattisgarh Distilleries Limited' i.e. appellant company. The impugned loose papers are undated, unsealed and unsigned. Also, the AO does not have any independent corroborative evidence

having nexus that the alleged unaccounted sales was done by appellant through impugned 35 shops. Most importantly, appellant being a liquor manufacturer cannot even take part in liquor license process, then how it would be possible to sale liquor without having license in the name of appellant. Absence of these vital details is making the loose papers under consideration i.e. page nos 22-25 of LPS-1 and 25-29 of LPS-2 as "deaf & dumb document". The onus was solely on the AO to fill such vital gaps by bringing positive evidence on record and prove the allegation about alleged "unaccounted sales" by the assessee, which he utterly failed to do so.

**CRI vs VC Shukla 3 SCC 410**

The Hon'ble Supreme Court has held that loose sheets of paper cannot be termed as 'book' within the meaning of s. 34 of Evidence Act. It has also been held therein by the Hon'ble Supreme Court that even correct and authentic entries in books of account cannot, without independent evidence of their trustworthiness, fix a liability upon a person. The Hon'ble Supreme Court also observed that even assuming that the entries in loose sheets are admissible under s. 9 of the Evidence Act to support an inference about correctness of the entries still those entries would not be sufficient without supportive independent evidence.

**Rakesh Goyal Vs. ACIT (2004) 87 TTJ (Del) 151 –**

The findings of Hon'ble Tribunal was as under:-

"20.1 After perusing the findings of the CIT(A) and the submissions of both the parties, we do not find any infirmity in these findings. Firstly the finding of the CIT(A) has not been controverted by the learned Departmental Representative by filing any positive evidence. The copies of the pages found from the possession of the assessee are placed in the paper book and after going through these papers, we find that these are simply deaf and dumb documents and they cannot be considered for making any addition. This is a settled principle of law that any document or entry recorded in those documents should be corroborated with positive evidence. Here in the present case nothing has been corroborated or proved that assessee was dealing in money lending business."

**Mohan Foods Ltd Vs. DCIT (2010) 123 ITD 590 (Del) –**

Held that –

although the contents of the relevant seized documents show that the amounts mentioned therein relate to some expenditure, in the absence of any other evidence found during the course of search or brought on record by the AO to show that the said expenditure was actually incurred by the assessee, the same cannot be added to the undisclosed income of the assessee by invoking the provisions of s. 69C— Assessee explained that the said entries represented estimates made by its employees in respect of proposed expenditure—There is no evidence on record to rebut/controvert the said explanation-Additions not sustainable.

**CIT Vs. S M Agarwal (2007) 293 ITR 43 (Del) –**

Held that

"In this case the department seized documents "Annexure A-28 p. 15, - gives the details of certain handwritten monetary transactions which shows that the assessee had given a loan of Rs.22.5 lacs on interest and earned interest income of Rs.3.55 lacs on it. The Tribunal hold this document as dumb document.

The relevant findings of the Tribunal as mentioned in the above order is as under:-

“We have ourselves examined the contents of the document and are unable to draw any clear and positive conclusion on the basis of figures noted on if. The letters 'H.S.', 'T.2' and ‘D-Shop’ cannot be explained and “no material has been collected to explain the same. Likewise, the figures too are totally unexplained and on the basis of notings and jottings, it cannot be said that these are the transactions carried out by the assessee for advancing money or for taking money. Thus, in our opinion, this is a dumb document."

Hon'ble High Court confirmed the findings of the Tribunal and relevant findings was as under:-

“12. It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So, unless and until the contents of the document are proved against a person, the possession of the document or handwriting of that person, on such document

by itself cannot prove the contents of the document. These are the findings of fact recorded by both the authorities i.e. CIT(A) and the Tribunal."

"15. Similarly, in the present case, as already held above, the documents recovered during the course of search from the assessee are dumb documents and there are concurrent findings of CIT(A) and the Tribunal to this effect. Since the conclusions are essentially factual, no substantial question of law arises for consideration".

**Jayantilal Patel Vs. ACIT & Ors (1998) 233 ITR 588 (Raj) –**

Held that –

"During search at the residence of Dr. Tomar, the Department official found a slip containing some figures» This piece of paper claimed to have been recovered at the time of search contains figures under two columns. In one column, the total of these figures comes to Rs.17,25,000 from 31st May, 1989, to 8th Dec., 1989, and in the other column, the total of these figures comes to Rs.22,12,500. An addition of Rs.22,12,500 on the basis of figures on a small piece of paper in respect of purchase of Plot No. B-4, Govind Marg, Jaipur was made by the AO. This plot B-4, Govind Marg, Jaipur, has been purchased jointly by Dr. Tomar, Dr. Mrs. Tomar and B.S. Tomar, HUF. :

Held that no addition on account of entries on a piece of paper which is claimed to have been found at the time of search, can be made, treating the figures as investment for purchase of plot No. B-4, Govind Marg, Jaipur in the hands of Dr. Tomar, Dr. Mrs. Tomar and B.S. Tomar HUF."

**N K Malhan Vs. DCIT (2004) 91 TTJ (Del) 938 –**

Held that –

"We have perused the aforesaid explanation and the seized document placed at assessee's paper book-! pp. 48 and 50. The document does not state of any date or the year against the entries written therein. It does not show whether the assessee has made or received any payment. It also cannot be deciphered from the said documents that the entries therein pertain to the block period. The AO also did not bring on record any material to show that only investment has been made by the assessee in any chit fund company or otherwise.

The document found and seized might raise strong suspicion, but it could not be held as conclusive evidence without bringing some corroborative material on record. The document contained only the rough calculations and was silent about any investment. On the basis of such a dumb document, it cannot be said that there were investments made in fact by the assessee. Heavy onus lay upon the Revenue to prove that the document gives rise to undisclosed investment by the assessee. This onus has not been discharged. Accordingly no addition of undisclosed income could be made on the basis of such a document. Such a view has also been entertained by the Hon'ble Allahabad High Court in CIT vs. Dayachand Jain Vaidya (1975) 98 ITR 280 (All). The addition so made, therefore, is directed to be deleted."

**Stanamsingh Chhabra vs. Dy. CIT (2002) 74 TTJ (Lucknow) 976:**

None of the loose papers seized are in the hand writing of the assessee. There is some jotting by pencil in some coded form on the loose papers made by the surveyed person or some other person. Moreover, no entries are supported by any corroborative evidence; such loose papers cannot be called even the documents as they are simply the rough papers to be thrown in the waste paper basket. In this connection, the assessee relies upon the court decisions.

**CIT Vs. Chandra Chemouse P. Ltd. (2008) 298 ITR 98 (Raj.):**

It is held that –

(i) Additions can be made only when evidence is available as a result of search or a requisition of books of accounts or documents and other material. However additions cannot be made on the basis of inferences.

(ii) No facts were available to AO after search and inference of AO did not fall within the scope of Section 158BB.

(iii) Deletion of additions made by Tribunal of assumed undeclared payments made for purchase of property was on basis of facts.

**Ashwani Kumar V. ITO (1991) 39 ITD 183 (Del) and Daya Chand V. CIT (2001) 250 ITR 327 (Del) and S.P. Goel V. DCIT (2002) 82 ITD 85 (Mum.)**

Nine out of 19 slips found were without any name or amount and therefore were dumb documents and no adverse inference could be drawn.

**Common Cause (A Registered Society) Vs. Union of India - 30 1TJ 197 (SC).**

In this case, the Hon'ble Court held that without any independent evidence or corroborative material, no addition is permissible on the basis of loose paper jottings & notings. The relevant paras of the order are as under :-

16. With respect to the kind of materials which have been placed oil record, this Court in V.C. Shukla 's case (supra) has dealt with the mater though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Join Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

17. It has further been laid down in V.C. Shukla (Supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below:-

"14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents thot the documents were not admissible in evidence under Section 34 with the following words:

"An account presupposes the existence of two persons such as a seller and o purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case ore not records of the entries arising out of a contract. They do not contain the debits and credits. They con of the most be described as o memorandum kept by o person for his own benefit which will enable him to look into the some whenever the need arises to do so for his future purpose. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were mode do not find o mention in full. They have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

19. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus;

"37. In Beni v. Bison Dayol it was observed that entries in books of account ore not by themselves sufficient to charge any person with liability, the reason being that o man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the bock of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hiro Lol v. Ram Rakho the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with

respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.

4.1.3 Further, in numerous other case laws courts have consistently upheld the view that no addition could be made in the hands of the assessee on the basis of the dumb loose papers seized during search, in absence of any corroborative material to show unaccounted sales by the appellant. Some of the case laws are as under:-

**(i) M M Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 2000**

Held that no addition could be made in the hands of assessee on the basis of the dumb loose slips seized from his residence, in the absence of any corroborative material to show payment of any undisclosed consideration by the assessee towards purchase of land".

**(ii) Monga Metals (P) Ltd Vs. ACIT 67 TTJ 247 (All. Trib)—**

Holding that Revenue has to discharge its burden of proof that the figures appearing in the loose papers found from assessee's possession constitute undisclosed income. [In the present case, loose papers were not even seized from assessee's possession].

**(iii) Paola Bhatt Vs. ACIT (2000) 73 ITD 205 (Mum. Trib)**

Held that where document seized during search was merely a rough noting and not any evidence found that actual expenditures were not recorded in books of account, additions not justified. [In the instant case, similarly no other corroborative evidence was found in search to prove that details/figures mentioned in notings on page 117 to /19 of A/1 represent 'on money' payments by the assessee].

**(iv) Atual Kumar Jain Vs. DCIT (2000) 64 TTJ (Del.Trib) 786 –**

Held that additions based on chit of paper, surmises, conjectures etc. could not be sustained in the absence of any corroborative evidence supporting it. [Similarly in present case, neither either parties hove admitted payment/receipt of

on money' nor any corroborative evidence was seized to support the findings of the AO].

**(v) S K Gupta Vs. DCIT (1999) 63 TTJ (Del.Trib) 532**

Held that

"that additions made on the basis of torn papers and loose sheets cannot be sustained as same do not indicate that any transaction ever took place and does not contain any information in relation to the nature and party to the transaction in question."

**(vi) Jaddamba Rice Mills Vs. ACIT (2000) 67 TTJ (Chd) 833**

Held that

"No addition can be made on dump documents".

It is settled legal position that onus of proof is on the person who makes any allegation and not on the person who has to defend. As per legal maxim "affairtnanti non neganti incumbit probation" means burden of proof lies upon him who affirms and not upon him who denies. Similarly as per doctrine of common law "incumbit probation qui digit non qui negat" i.e. burden lies upon one who alleges and not upon one who deny the existence of the fact. Further, it is most important to mention that nowhere in the said impugned loose papers are nothing but proposed business deal for acquiring license for liquor shops in various district of Chhattisgarh. The AO has failed to discharge his onus of proof especially when addition has been made under "deeming, fiction". In view of this lacune on the part of AO, impugned addition is legally not sustainable. As held in the case of **CIT v/s KP Varghese 131 ITR 574 (SC)** by Hon'ble Apex Court in absence of evidence that actually assessee paid more amount than declared in registered deed, no addition can be made. In the case of **Bansal Strips (P) Ltd & Ors Vs. ACIT (2006) 99 ITD 177 (Del)** it has been held that :-

"If an income not admitted by assessee is to be assessed in the hand& of the assessee, the burden to establish the such income is chargeable to tax is on the AO. In the absence of adequate material as to nature and ownership of the transactions, undisclosed income cannot be assessed in the

hands of the assessee merely by arithmetically totally various figures jotted down on loosed document".

4.1.4 This is an undisputed fact that neither any incriminating material was found or seized during search proceedings nor any person has ever admitted about these unaccounted sales, as per loose papers, from the appellant company. In absence of any corroborative evidence to-prove that there was any sale was made though liquor shops and any investment was made in acquiring liquor shops, the AO has no locus to assume that 1 A appellant has made investment of Rs.5,50,00,000/- and has also made unaccounted sales of Rs.268,75,47,643/-. It is settled law that AO cannot make any addition merely on basis of suspicion, however strong it may be. The AO is not justified in presuming certain facts without having anything to corroborate. Hon'ble Supreme Court in the case of **Dhakeshvvari Cotton Mills Ltd. v/s CIT (1954) 26 ITR 775 (SC)** has held that although strict rules of evidence Act do not apply to income tax proceedings, still assessment cannot be made on the basis of imagination and guess work. It has been held in the case of **Umacharan Saha & Bros co. v/s CIT 37 IT1 21 (SC)** that suspicion, however strong cannot take place of evidence. Similar views have been expressed by Apex court in the case of **Dhiraj Lal Girdharilal v/s CIT (1954) 26 ITR 736 (SC**).

4.1.5 Shri Naveen Kedia in his statement recorded on oath on 16.11.2017 has admitted that a sum of Rs.5,50,00,000/- was invested as capital in acquiring liquor license of 35 shops. However, the said statement was retracted on 22.11.2017 and it was submitted that during the course of search it was explained to the search party that the said loose papers does not relates to appellant company and no such unaccounted sales was made. However, the A.0 giving reference to the statement of Shri Naveen Kedia and copies of impugned loose papers found during the search, made addition for undisclosed investment in 35 liquor shops. However, no specific reference was made to any incriminating material having its bearing on the surrendered income. The A.O has also failed to bring on record any positive evidence having nexus with the impugned investment or the alleged unaccounted sales. Thus, it can be safely concluded that the addition made by the A.O was not on the basis of the incriminating material found during the course of search but only on the basis of retracted statement of Shri Naveen Kedia. . Even in post search enquiries no irregularity has been

brought on record and the only addition made is towards income declared in the statement recorded u/s 132(4). Hon'ble ITAT Indore in the case of ACIT(1) VS. Sudeep Maheshwari ITA No 524/Ind/2013 dated 13.02.2019 has held as under:-

"6. It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.3 crores in personal name. It is also slated that the case laws as relied by the A.O. are not applicable on the facts of the present case. The assessee has relied on the decision of the Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect. However, reliance is placed on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 TaX171(11717.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assesse liable for tar and the assessee retracted .from such admission and revenue could not furnish any corroborative evidence in support of such evidence. It was further urged by the assessee that admission should he based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but if is also a settled position of law that the addition cannot he sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O which supported the contents of the statement. In absence of such material coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs.6959000/- and Rs.7500000/- in A.Y. 2008-09 and 2009-10 respectively. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. Therefore no inference is called

for in the finding of the Ld. CIT(A) and is hereby affirmed. Ground raised by the revenue is dismissed."

**4.1.6** Hon'ble Gujarat High Court in the case of **Kailashben Mangarlal Chokshi vs. CIT - (2008) 14 DTR 257 (Guj.)** has held that merely on the basis of admission the assessee could not have been subject to additions unless and until some corroborative evidence is found in support of such admission.

**4.1.7** Hon'ble Jharkhand High Court Shree Ganesh Trading Co. V/s Commissioner of Income-tax Tax Case No.8 of 1999 order dated 03.01.2013 held as under;

"4. We considered the submissions of the learned counsel for the parties and perused the reasons given in the impugned orders as well as reasons given in the case of Kailashben Manharlal Chokshi (supra).

5. It appears from the statement of facts that there was a search in the business premises of the petitioner's firm as well as in the residential premises of its partner Shri Sheo Kumar Kejriwal on 24th September 1987. During the course of search the statement of Shri Sheo Kumar Kejriwal had been recorded under section 132(4) of the Income Tax Act and in the statement he stated that he was partner in the Ganesh Trading Company i.e. the present assessee-firm in his individual status and that he surrendered Rs.20 lacs for the assessment year 1988-89 as income on which tax would be paid. He further stated that other partners would agree to the same: otherwise it would be his personal liability. However in the returns filed after search the income of Rs. 20 lacs surrendered by Shri Sheo Kumar Kejriwal was not declared by the assessee-firm. On being asked to explain the reason for not showing the surrendered amount in the returns it was submitted by the assessee that declaration made by the partner was misconceived and divorced from real facts. It was contended that the declaration was made after persuasion which according to the learned counsel for the assessee Shri Binod Poddar in fact was because of coercion exerted by the search officers. In explanation, it was submitted that the firm or the individual had no undisclosed income. The assessee's said retraction was not accepted by any of the authorities below on the ground that the statement given by the assessee appears to be voluntarily given statement disclosing undisclosed income of Rs. 20 lacs. According to the learned counsel for the assessee Shri Binod Poddar the Assessing Officer had full jurisdiction to proceed

for further enquiry and could have collected evidence in support of alleged admission of undisclosed income of the assessee.

6. We are of the considered opinion that statement recorded under section 132(4) of the Income Tax Act 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) of the Income Tax Act and when there is incriminating admission against himself then it is required to be examined with due care and caution. In the judgment of Kailashben Manharlal Chokshi (supra) the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also no specific reason has been given for rejection of the assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search there was no recovery of assets or cash by the Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation no assets or cash was recovered from the assessee in that situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lacs. Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore we are of the considered opinion that in the present case a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lacs.

7. In view of the above reasons without answering the question about retrospective operation of the proviso to section 134(4) we are holding that the authorities below have committed error of law in drawing inference from the materials placed on record i.e. admission of the assessee coupled with its retraction by the assessee. The Revenue may now proceed accordingly".

4.1.8 Further Hon'ble ITAT in the case of **M/s Ultimate Builders vs ACIT Central-II Bhopal ITA No 134/Ind/2019 dated 09.08.2019** wherein it has been held that the statement given by the assessee was without any specific reference to any incriminating material therefore addition on account of undisclosed income offered in statement was deleted. Besides this decision of Hon'ble Gujarat High Court in the case of **Kailashben Manharlal Choksi 328 ITA 411 (2008)** also supports the contention that merely on the basis of admission the assessee could not be subjected to addition unless & until some corroborative evidences is found in support of such addition.

4.1.9 In the case of **CIT vs Jaya Lakshmi Ammal (2017) 390 ITR 189 (Mad.)** Hon'ble Madras High Court has held as under:

"we are of the considered view that for deciding any issue against the assessee the authorities under the IT Act 1961 have to consider as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence then statement recorded under s. 132(4) of the IT Act. 1961 alone should not be the basis for arriving at any adverse decision against the assessee. If the authorities under the IT Act 1961 have to be conferred with the power to be exercised solely on the basis of a statement then it may lead to an arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore under Judicial review courts have to exercise due care and caution that no man is condemned due to erroneous or arbitrary exercise of authority conferred."

The court further held that "if the assessee makes a statement under s. 132(4) of the Act and if there are any incriminating documents found in his possession then the case is different. On the contra if mere statement made under s. 132(4) of the Act without any corroborative material has to be given credence than it would lead to disastrous results. Considering the nature of the order of assessment in the instant case characterized as undisclosed and on the facts and circumstances of the case we are of the view that mere statement without there being any corroborative evidence should not be treated as conclusive evidence against the maker of the statement."

4.1.10 Hon'ble Jurisdictional Tribunal Indore in the case of **ACIT Vs. Shri Yogesh Kumar Hotwani 30 ITJ 353/380**

**(Ind-Trib)** has held that no addition can be made merely based on statement u/s.132(4) without linking to the seized books of accounts other documents money bullion jewellery or other valuable articles or things. In para 18 of the order at page 380 the Tribunal held as under :-

We also find that disclosure was not made by the assessee hence it is not binding on him. We also rely on the decision in the case of CIT v. Chandra Kumar Jethmal Kochar (2015) 230 Taxman 78 (Guj) Asstt. CIT v. Kunwarjeet Finance Pvt. Limited (2015) 61 Taxmann.com 52 (Ahm-Trib.) CIT v. Jagdish Narayan Ratan Kumar (2015) 61 taxmann.com 173 (Raj) wherein it was held that when addition of disclosure made by the assessee in statement recorded u/s.132(4) it cannot be sustained despite retraction when Revenue could not furnish any positive evidence in support of such addition. Therefore we are unable to uphold the findings of the AO and inclined to agree with Ld.CIT(A). Further the Hon'ble Rajasthan High Court in the case of Jagdish Narayan Ratan Kumar (supra) has held that statement made during search must be correlated with records which are found and if there is no ambiguity explanation given by the assessee should be taken into consideration before making assessment. Thus based on these decisions we are of the opinion that the addition made by merely based on statement u/s 132(4) without linking to the seized books of accounts other documents money bullion jewellery other valuable articles or things is not sustainable in law.

4.1.11 As far as applicability of provisions of section 115BBE is concerned it is held that since no unaccounted income has been earned by the appellant provisions of section 115BBE are not applicable in the case of appellant.

4.1.12 In view of the above discussion material evidences on record and case laws cited firstly the loose papers or rather say it as dumb document should be a speaking one having direct nexus with the assessee, which was not in the case of appellant. Secondly the loose papers are undated and unsigned. Thirdly no independent incriminating material was found suggesting capital investment and unaccounted sale of liquor. Fourthly the additions have been made only on the basis of a retracted statement of Shri Naveen Kedia. My findings on the issue under consideration are based on the various conclusions drawn by me which have been discussed in the above paras. Therefore the AO was not justified in making additions simply on guess work and solely on the

> basis of some dumb diary. Thus the protective additions made by the AO amounting to Rs.15037554/- & Rs.55000000/- are Deleted. Therefore appeal on these grounds is Allowed.
>
> 4.2. Ground no. 5 :- This ground of appeal is general in nature which does not require any special adjudication.
>
> 5. In the result appeal is Allowed."

5. The Ld. CIT-DR submitted that so far as the place of acquisition of the said loose papers are concerned, the same has not been clearly dealt with by the Ld. CIT(Appeals). In this regard, he submitted that as per the assessment order, Para 5.1 of the A.O, it is therein stated that documents seized during search and seizure operation seized as Pages 22-25 of LPS-1 from the factory premises of Chhattisgarh Distilleries Limited situated at Village-Khapri, Taluka-Kumhari, Durg, Chhattisgarh, whereas, at Para 4.1.1 of the Ld. CIT(Appeals)'s order, it is therein mentioned that such loose papers were found from cabin of Shri Sanjeev Fathepuria as stated in Q.No 98 of the statement of Shri Naveen Kedia.

5.1 The Ld. CIT-DR further submitted relying on the finding of the A.O that the loose papers that were found based on which the A.O has made addition were not dumb documents but reflected various names corresponding to sales made. However, the Ld. CIT-DR could not establish that such figure of sales were in relation to any unaccounted sales with regard to the assessee.

6. Per contra, the Ld. Counsel for the assessee placed strong reliance on the order of the Ld. CIT(Appeals) and submitted that the additions that were made by the A.O based on the loose papers found could not be termed in any way as incriminating material. The revenue has not proved any co-relation or direct link with regard to any tax evasion and such loose papers found, therefore, are in the nature of dumb document only as held by the Ld. CIT(Appeals). Furthermore, he submits that loose papers were undated and unsigned and there is no independent incriminating material that were found by the revenue suggesting any capital investment and unaccounted sales of liquor by the assessee.

6.1 The Ld. Counsel further submitted that the additions have been made based on the retracted statement of Shri Naveen Kedia which does not have any evidentiary value since they were not independently co-related through any incriminating material found against the assessee.

7. We have heard the rival contentions and considered the facts and circumstances and analyzed the judicial pronouncements placed on record. The additions have been made by the A.O based on certain loose papers which were found as the loose papers pages 22 to 25, LPS-1, pages 25-29, LPS-2. That it had been held by the Ld. CIT(Appeals) that addition made on the basis of such loose papers are uncalled for since those documents were dumb documents as there is no direct nexus between the

assessee and those loose papers found by the department. There is no evidence which suggests any unaccounted sales conducted by the assessee or any tax evasion by the assessee. In fact, such loose papers represents details of liquor shop in different district of Chhattisgarh. The Ld. CIT(Appeals) also had perused the Notification of Excise Department No. क्रमांक/आव/ढेका/२०१६/४९१ दिनांक १०.०२.२०१६ which is also available in the website of the Excise Department, Chhattisgarh and link is made also part of the order as https://excise.cg.nic.in/Uploads/nirdesh%2016-17.pdf and accordingly, it was held by the Ld.CIT(Appeals) that such entries mentioned in the impugned loose papers against the name of shop of each district matches with the figure mentioned on the impugned loose papers as against the name of the shops in the respective districts. There is no evidence in the impugned loose papers representing any unaccounted sales of the assessee company. That further, each and every figure matches absolutely with the Notification of the Excise Department, therefore, the A.O had erred in totality in presuming that such loose papers represents unaccounted sales of the assessee and therefore, the addition have been made by the A.O on sheer presumption and guess work basis without any cogent facts and evidences.

8. Further, it is noted that in the course of search statement of one Shri Ramakant Shukla, Director of the assessee company recorded on oath

u/s.132(4) of the Act wherein as per A.O, he has admitted that the said loose paper represents sales of liquor through various shops. However, on perusal of the impugned statement it was observed by the Ld. CIT(Appeals) that Shri Ramakant Shukla had never admitted any unaccounted sales and in reply to Q.No.15 has stated that he did not know much about the paper which can only be explained by Shri Uday Rao. That neither the search party nor the AO has made any enquiry from Shri Uday Rao. The assessee has explained before department that Shri Uday Rao is an Excise consultant and had in fact brought those sheets as business proposal for consideration of the assessee company to participate in referred liquor license allotments. Mr. Rao had stated that the other parties as mentioned on the loose paper were ready to accept the stated percentage of share as mentioned against their names in the prospective venture and the percentage of share of appellant was also available. Mr. Rao was not aware of the legal complications that a liquor manufacture could not take liquor sales license in his own name, therefore, the said proposal was refused by the middle level management of the company and was never executed. This fact is not disputed by the department. Another statement of Shri Naveen Kedia, Director of the assessee company was recorded during the course of search. The assessee had strongly contended that Shri Naveen Kedia is a patient of Dextrocardia, Diabetes, Hypertension and Chronic insomnia and anxiety neurosis since past 24 years and even during the

course of search a doctor was also called for due to his falling health. It was further noted by the Ld. CIT(Appeals) in his findings that Mr. Kedia was even pressurized by prosecution proceedings in the middle of statement at Q.No 29 and therefore, Shri Kedia had surrendered himself and signed the statement at the instance of search party of the department.

9. Further, we observe that Mr. Kedia had retracted his statement on 22.11.2017 which was within four days and therefore, such retracted statement within due time does not have any evidentiary value and that too without any corroboration of independent evidence. It is also noted that neither any of the person/firm/company nor any of the director or Shri Uday Rao has ever stated before the department that any such transaction actually took place and therefore, the entire addition has been made on sheer presumption and assumption basis. The Ld.CIT(Appeals) opined and held that the AO failed to establish how the said transactions materialized when no license was issued in the name of the assessee. There has been no evidence brought on record by the A.O creating direct nexus of unaccounted sales and capital investment by the assessee. In view of these enquires and examination of facts, it was held by the Ld. CIT(Appeals) that the said loose papers i.e. page nos. 22-25 of LPS-I and 25-29 of LPS-2 were dumb documents.

10. The Ld. CIT-DR has not placed on record any evidence on record to refute these facts. There is no evidence by the department ever suggest that any unaccounted transactions have been done by the assessee which were reflected in the referred loose papers. The Ld. CIT-DR failed to establish that such loose papers were in the nature of incriminating material.

11. Regarding the contention raised by the Ld. CIT-DR regarding the place of acquisition of such loose papers referred at Para 4.1.1, in fact the assessee has contended that there is inconsistency regarding place of acquisition of such loose papers at Pages 22-25, LPS-1 whether they were found from factory premises or from cabin of Shri Sanjeev Fathepuria as stated in Q. No.98 of the statement of Shri Naveen Kedia. Therefore, it is the assessee who had questioned it before the department regarding exact place of acquisition of those loose papers.

12. Regarding the second contention of the Ld. CIT-DR that such loose papers were not dumb document, it is noted that as has been examined by the first appellate authority who had perused notification of Excise Department and every entries in those loose papers matches with the Notification of the Excise Department wherein, it only depicts name of shops in respective district and the sales done by those different shops. There is no evidence brought on record even before this bench regarding

any fact suggesting that such loose papers represents unaccounted sales of the assessee. That further the loose documents have been found are undated and unsigned. In this regard, we refer to the decision of the ITAT, Raipur Bench, in the case of **Deputy Commissioner of Income Tax (Central-2) Vs. Sanjay Agrawal, (2025) 174 taxmann.com 108 (Raipur-Trib.)** wherein it has was held and observed as follows:

> "8. We have considered the rival contentions, perused the material available on record and case laws relied upon by the parties. On a thoughtful consideration of the facts, submissions, evidence and the arguments of both the parties, we may herein observe that during the search & seizure on the assessee, the document seized by the department titled as "Sauda-Ikrarnama" was drafted for acquisition of plant and machinery along with General land, Adivasi land, JCB, Loader, Bus, Hyva, Stores items, Plot, House, other assets/ liabilities etc. It is an admitted fact that the said document was undated, unsigned and unwitnessed, printed on a plan paper, having certain handwritten corrections (copy placed at PB 36-38, also reproduce in the assessment order). It is the fact borne from record that many of the terms and conditions from the alleged agreement were not acted upon, like transfer of 32.5-acre general land, 2.5 acres of Adivasi land, certain liabilities which were to be settled by the seller group, advance of Rs. 2.5 crore to be made at the time of hand over on 15.09.2017 and such position of facts have not been disputed by the revenue. Apart from, such terms and conditions, which were not pursued by the parties, the income tax liability of the seller group have been taken over by the assessee (the buyer). The statement of directors of seller group recorded on oath u/s 132(4), wherein the alleged document was confronted, and explanation was sought, Mr. Rajesh Agrawal, seller had categorically refused to have knowledge of any such document and about any action based on terms & conditions therein, he answered that the consideration was agreed at Rs. 12.50 crores only. The Ld. AO was of the opinion that the response of Shri Rajesh Agrawal and Shri Sanjay Agrawal was contradicting in nature but was unable to expose such inconsistency, he placed his belief on the particular clause mentioned in the alleged agreement that the total consideration is Rs.25 crores, out of

> which Rs. 12.00 crores are to be paid by cheque and Rs. 13.00 crore to be paid in cash. Ld. AO had firmly picked para 3 of the alleged document "Sauda-Ikrarnama", that the seller will pay 20 instalments of Rs. 70 lac each to the buyer starting from 01.01.2018, accordingly, addition for first three months i.e., Jan 2018 to March 2018 amounting to Rs.2.10 crore was made in the relevant AY, treating the same as unexplained investment u/s 69 of the Act. It is further brought to our knowledge by the Ld. AR that no addition for remaining 17 instalments of Rs.70 lac have been ever made by the department in the ensuing years, whereas such contention was not objected by the revenue, it is therefore, observed that such inconsistent approach of the department itself shows that the addition made in the year under consideration was with halfhearted conviction, as no corroborative material or evidence regarding cash payment could be brought on record by the revenue. It is clearly emanating from the aforesaid observations that the document found during the search i.e., "Sauda-Ikrarnama" which was unsigned, undated, unwitnessed, denied by the counter party, was just a loose paper having certain proposed transaction which were not carried out in toto, thus, the same constitutes a dumb document. Such dumb document was believed as a sacrosanct truth by the Ld. AO, though with respect to particular terms and conditions as per his convenience, brushing aside the remaining part of it. Admittedly, none of the parties either seller group or buyer group had admitted such cash transactions. The allegation of cash transaction could not be substantiated by support of any independent incriminating material by the revenue; therefore, we concur with the findings of Ld. CIT(A), that the Ld. AO was not justify in making the additions simply on guess work and solely on the basis of a dumb document, we thus, approve the same and uphold the decision to delete the addition of Rs. 2.10 crore made by the Ld. AO."

13. In the referred decision also, the loose papers that were found, there were no independent corroborative evidence brought on record by the revenue. Further, documents found during search was also undated and unsigned which is similar and directly applicable to the facts of the present case before us.

14. Considering the totality of the facts and circumstances and on examination of the judicial pronouncements, we uphold the order of the Ld. CIT(Appeals) and sustain the relief provided to the assessee. As per the above terms grounds of appeal raised by the revenue are dismissed.

15. In the result, appeal of the revenue in ITA No.103/RPR/2020 for A.Y.2017-18 is dismissed.

**CO No.15/RPR/2023**
**A.Y.2017-18**

16. In the cross-objection, the assessee had stated that it is only supportive of the order of the Ld. CIT(Appeals) which has already been upheld by this Bench dismissing the appeal of the revenue. Apart from that the assessee has assailed one legal ground with regard to Section 153D of the Act stating that the assessment order is illegal and without jurisdiction. That once the revenue appeal has been dismissed and the relief provided to the assessee has been sustained, then there is no grievance left to the assesse so far as the tax implications as per the Act are concerned and in such scenario, raising legal ground through cross objection shall become non-est as per law. Accordingly, cross objection filed by the assessee stands partly allowed.

17. In the result, cross objection filed by the assessee in CO No.15/RPR/2023 for A.Y.2017-18 is partly allowed.

18. In the combined result, appeal of the revenue is dismissed and cross objection of the assessee is partly allowed.

Order pronounced in the open court on 31st day of July, 2025.

| Sd/- | Sd/- |
|---|---|
| **ARUN KHODPIA** | **PARTHA SARATHI CHAUDHURY** |
| **(ACCOUNTANT MEMBER)** | **(JUDICIAL MEMBER)** |

रायपुर/ RAIPUR ; दिनांक / Dated : 31st July, 2025.
SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.