

**IN INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER AND
SHRI. SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos.568 and 569/Bang/2025
Assessment Years : 2009-10 to 2012-13

Shri. Krishnamurthy, Represented by his LR Smt. Nagarathnamma, No.152, 2 nd Floor, Hanuman Chambers, 7 th Cross, 2 nd Main, Chamarajpet, Bangalore – 560 018. PAN : ADMPK 2463 J	Vs.	DCIT, Circle –2(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ravishankar S. V, Advocate
Revenue by	:	Shri. Balusamy N, JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	22.07.2025
Date of Pronouncement	:	31.07.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member:

All these appeals are filed by the assessee against separate Orders passed by the learned CIT(A) vide DIN and Orders Nos. CIT(A)-15/BNG/10019/2009-10 and CIT(A)-15/BNG/10015/2010-11 for Assessment Years 2010-11 and 2011-12 respectively, dated 24.01.2025.

2. The grounds taken for the Assessment Year 2010-11 and 2011-12 are similar. Therefore, we are reproducing the grounds for the Assessment Year 2010-11 for the sake of convenience and brevity, which are as under:

1. *The orders of the authorities below in so far as it is against the Appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case*
2. *The appellant denies himself liable to be assessed to a total income of Rs.1,22,82,557/- for the assessment year 2010-11 on the facts and circumstances of the case.*
3. *The learned CIT(A) is not justified in confirming the adhoc disallowance of Rs.70,52,447/- towards hire charges, without rejecting the books of the appellant on the facts and circumstances of the case.*
4. *The learned CIT(A) is not justified in confirming the adhoc disallowance of Rs.5,00,000/- towards various expenditure, without rejecting the books of the appellant on the facts and circumstances of the case.*
5. *The authorities below have failed to appreciate that it is settled position of law, that "consent does not confer jurisdiction", on the facts and circumstances of the case.*
6. *The authorities below have failed to appreciate that the statement recorded under section 133A of the Act is of no evidentiary value on the facts and circumstances of the case.*
7. *The authorities below have accepted the turnover achieved as being correct and thus the true income achievable on the said turnover alone is required to be brought to tax, on the facts and circumstances of the case.*
8. *Without prejudice and not conceding that the income offered was true and correct, no increase in income could have been arrived at, which was more than the percentage of profit achievable in the nature of the business and the income shall not exceed the reasonable profits achievable in the industry, on the facts and circumstances of the case.*
9. *Without further prejudice, the income offered is at an average of 3% of gross receipts and is higher than the industry average of 2% for the nature of business and size of operations and no addition to income was permissible, on the facts and circumstances of the case.*
10. *The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
11. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
12. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity.*

3. Since in both the years, the issue raised by the assessee are similar, therefore, the decision taken for the Assessment Year 2010-11 shall apply mutatis mutandis for the Assessment Year 2011-12.

4. Briefly stated the facts of the case are that the assessee is engaged in the business of truck operations under the name and style of M/s. Vinayaka Transport, a proprietary concern. Assessee filed return of income for the Assessment Year 2010-11 declaring income of Rs.47,30,110/- dated and filed on 27.09.2010. A survey under section 133A of the Act was conducted on 06.02.2013 during which a sworn in statement of the assessee was recorded on 07.02.2013 dated 14.02.2013 by making a total addition of Rs.75,52,447/-. Accordingly, the income of the assessee was assessed at Rs.1,22,82,560/-. During the assessment proceedings, assessee produced the required documents in support of claims made in the return of income for verification and after hearing the case consequent to the survey conducted on 06.02.2013, the AO made addition as per statements recorded during the survey proceeding under section 133A of the Act of Rs.75,52,447/- (Rs.7052,447 + Rs.5,00,000). During the course of survey proceedings, it was found that the assessee has made various cash payments to the truck drivers towards fuel expenses, toll charges, replacements, repairs and maintenance and these expenditures were incurred outside the head office in cash. Some of the entries were supported by internal vouchers.

5. Aggrieved from the Order of the AO, assessee filed appeal before the CIT(A). During the appellate proceedings, assessee submitted detail written submissions raising various grounds and submissions were also made. The main thrust of the arguments before the learned CIT(A) is that the provisions of section 40A(3) of the Act is not applicable to the assessee and it is covered under the exemptions provided under Rule 6DD(j). However, the learned CIT(A) did not accept this contention and noted that the AO has not disallowed the expenditure under section 40A(3) of the Act. Therefore, the explanation provided under Rule

6DD(j) will not be applicable to the assessee and dismissed the appeal of the assessee.

6. Aggrieved from the above Order, assessee filed appeal before the Tribunal. The learned AR reiterated the submissions made before the lower authorities and strongly contested that the AO has made addition under section 40A(3) of the Act. Therefore the explanation provided under Rule 6DD(j) will be applicable to the assessee and further submitted that The NET Profit for the year 2010-11 is 3.01 % and for AY 2011-12 is 3.08 % and for AY 2012-13 is 3.05% and submitted that if the addition made by the AO is added the net profit become very in high side in the transportation business. co HE relied on the decision of Hon'ble Apex Court in the case of Attar Singh GURUMUK SINGH reported in 191 ITR 667 (SC)

7. He further submitted that the books of accounts of the assessee were got audited by Chartered Accountant and tax audit reports were placed before the AO as well as CIT(A) and both the authorities have not pointed out any single mistake in the books of accounts audited and he further submitted that the AO has not rejected the books of accounts of the assessee and did not find any single entry in the books of accounts that is incorrect and he has made adhoc disallowance only on the basis of survey statements and he relied on some of the relevant part of the statement in which it was noted as under:

"10. It is seen that the hire charges are paid for the transportation of coal by way of cash which amounts to more than Rs.5 Crores every year starting from 2009-10 to 2012-13 which attracts the provisions of section 40A(3)(ia) for disallowance for entire expenditure. Please offer your comments?"

The Transportation of coal is mainly from Andhra to Tamilnadu and to the places out of Bangalore. The transporter who transporting coal are not

accepting freight charges in cheques. However, in the competitive market we have to face this situation paying ht transport charges to the drivers of the vehicles on the spot of delivery of goods. It may be an issue for disallowing the expenditure as per the provisions of htge Income-tax but these expenditure should be considered in the interest of business man like us in the competitive world, because its an actual payment.

5. Please explain how the transportation charges are paid in cash for the transportation of coal? The coal is transported mostly from Andhra Pradesh to Mysore, Shivagangai, Haliyal, Karwar, Sindanur. The transportation charges are paid to the lorry driver in cash on production of lorry bills on the spot of delivering goods.

Q.3 Please refer to Q.10 of your Sworn statement dated 06/02/2013. As seen by your accounts and as questioned during the course of survey, the major portion of hire charges paid for transportation of coal is by way of cash. The prima facie enquiry conducted by this office reveals that some of the expenditure booked under this head is not genuine. What do you say about this?

I cannot prove that the entire expenditure is genuine. Hence, I am willing to offer this non-genuine expenditure for taxation as additional income. Hence, I accordingly declare the following additional income for the following assessment years for taxation.

- 1. For A.Y. 2013-14, I declare Rs.1,00,00,000/- as additional income on account of disallowance of hire charges.*
- 2. For A.Y. 2012-13, I declare Rs.40,00,000/- as additional income on account of disallowance of hire charges.*

3. *For A.Y. 2011-12, I declare Rs.40,00,000/- as additional income on account of disallowance of hire charges.*
4. *For A.Y. 2010-11, I declare Rs.70,52,447/- as additional income on account of disallowance of hire charges.*

8. He further submitted that the profit rate declared by the assessee is 3.01% which is more than the industry norms and relied on the judgment of jurisdictional Hon'ble High Court in ITA No.213/2014 dated 14.10.2014 in the case of M/s. Deluxe Roadlines Pvt. Ltd., Vs. DCIT in ITA No.213/2014, Order dated 14.10.2014 and submitted that in this case the books of accounts were not produced and Hon'ble High Court has observed that the Revenue authorities have applied 8% and reduced to 3% profit purely on the basis of guess work but the case of the assessee is better than that. The assessee has maintained proper books of accounts and got audited and it was submitted to both the authorities but they have not pointed out and he strongly relied on paras 6 and 7. He further submitted that the judgment of the Hon'ble Apex Court in the case of CIT Vs. Khader Khan and Sons is very much applicable since in this case the Hon'ble Apex Court affirmed the judgment of the Hon'ble High Court of Madras reported in (2012) 79 DTR SC 184 that the statement recorded during the course of survey proceedings has no evidentiary value. Therefore, whatever declaration made by the assessee during survey proceedings, in view of the judgment of Hon'ble Madras High Court during the survey proceedings cannot be added only on adhoc basis without concrete finding by the AO.

9. On the other hand, the learned DR relied on the Order of the lower authorities and submitted that during the course of survey proceedings, it was observed that the assessee had made various payments to the truck drivers for meeting various expenses. Accordingly, he accepted as his additional income which has been added under section 40A(3) of the Act. Therefore, the exception provided under section

6DD(j) will not be applicable to the assessee and during the proceedings before the lower authorities, assessee has given general remarks and modus operandi adopted and certain case laws without bringing out specific facts and documents and he submitted that the Order of the lower authorities should be upheld.

10. Considering the rival submissions and perusing the entire material available on records and Orders of the authorities below, we noticed in facts that there was a survey conducted in the case of the assessee on 06.02.2013 and the assessee accepted the additional income that he was not able to prove that the direct expenditures are genuine. Accordingly, he was willing to offer the non-genuine expenditure for taxation as additional income because during the course of survey proceedings, various expenditures were paid to the lorry drivers by cash. The AO has made adhoc addition after satisfying himself without finding any lacunae in the books of accounts maintained by the assessee. The AO has made addition only on the additional income accepted by the assessee during the course of survey proceedings on the basis of the statement recorded. Assessee's books of accounts have been audited and the tax auditor has issued tax audit report in Form Nos.3CB and 3CD and we do not find any qualification/remarks in the tax audit report. The tax audit report as well as books of accounts have not been rejected by the AO. We also note from the tax audit report that as per the return of income, the net profit rate is 3.01% and if we add the addition made by the AO, the net profit rate will be 7.80% which is very much on the higher side in the nature of its business. The Hon'ble High Court has decided in the above case cited supra @3%, therefore it will be unfair for the assessee's case. During the course of hearing, the learned Counsel has relied on the judgment of Hon'ble Madras High Court in the case of CIT Vs. S. Khader Khan and Sons reported in (2008) 300 ITR 157 (Madras) which was affirmed by the Hon'ble Apex Court reported in (2012) 25 taxmann.com413 (SC) as very much applicable to the assessee. During the proceedings before the Hon'ble High Court of Madras, the following questions of law were framed and all these questions were affirmed in favour of the assessee by observing as under:

- “(i) Whether, on the facts and in the circumstances of the case, the Income-tax Tribunal is right -in law in holding that the statement made during survey under section 133A of the Income-tax Act has no evidentiary value?*
- (ii) Whether, on the facts and in the circumstances of the case, the Income-tax Tribunal is right in not considering the fact that the branch contractors agent account book in which entries were made subsequent to the survey and not found during the survey nor produced the survey, could be relied upon ?*
- (iii) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in not considering the tact that the voluntary statement made without any coercion or duress given during the course of survey action under section 133A could form the basis of the assessment?”*

The brief facts are : The assessment year involved in this appeal is 2001-02. The assessee filed its return of income on October 29, 2001, disclosing an income of Rs. 12,640. The return was processed under section 143(1) of the Income-tax Act, 1961 (in short "the Act"), on August 27, 2002, and notice under section 143(2) of the Act was issued on August 27, 2002, and served on the assessee on September 24, 2002. In the instant case, a survey action was conducted under section 133A of the Act on July 24, 2001, in the premises of the assessee at 90, Syed Mada Street, Shevapet, Salem, and one of the partners of the firm, by name Asif Khan, in his sworn statement offered an additional income of Rs. 20,00,000 for the assessment year 2001-02 and Rs. 30,00,000 for the assessment year 2002-03. However, the said statement was retracted by the assessee through its letter dated August 3, 2001, stating that the partner Asif Khan, from whom a statement was recorded during the survey operation under section 133A, was new to the management and he could not answer the enquiries made and as such, he agreed to an ad hoc addition, which could never be achieved by the business owing to the severe competition and to the legislation by the Government prohibiting smoking in public places. The assessee, thus, contended that the statement of Asif Khan recorded under section 133A has no evidentiary value. It was specifically contended that the power to examine a person on oath is specifically conferred on the authorities only during the course of any search under section 132(4) of the Act and, therefore, it was requested that the survey operations would not serve any useful purpose and the sworn statement recorded during the survey should not be given any weightage.

But, the Assessing Officer found that certain books were not produced or, impounded at any time nor were they produced during the course of survey action and that certain entries in the books were made subsequent to the survey action and only at the time of survey action, the assessee had come forward with the "admissions. Therefore, the Assessing Officer came to the conclusion that he had reason to believe that the assessee had evaded production of those books during the survey action and even after the survey action, as it could be seen from the survey folders. Accordingly, the Assessing Officer not accepting the book, viz., "branch contractors" agent book produced after the survey to support the claim of manufacturing process, came to the conclusion that it is to be impounded and accordingly, based on the admissions made by the assessee, which are directly relatable to the defects noticed during the action under section 133A of the Act he recomputed the assessment and sought for the balance tax payable by his assessment order dated March 30, 2004.

Aggrieved by the said assessment order dated March 30, 2004, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who, by order dated November 30, 2006, held the issue in favour of the assessee. On appeal at the instance of the Revenue, the Appellate Tribunal holding that there was no infirmity in the order of the Commissioner, dismissed the Revenue's appeal. Hence, the present appeal by the Revenue, raising the substantial questions of law referred to above.

All the three substantial questions of law raised by the Revenue revolve on the vexed question whether the materials collected and the statement elicited during the survey operation under section 133A of the Act had any evidentiary value. For the purpose of clarity, it is apt to refer sections 132(4) and 133A of the Act, which are extracted as hereunder :

"131 Search and seizure. Q)—.. (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account other documents or assets found as a result of the search, but also in respect of all matters relevant for the purpose of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act—"

"133A. Power of survey.—(1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction, or

(c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession—

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and

(iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation.—For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.

(3) An income-tax authority acting under this section may,—

(i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him.

(iii) record the statement of any person: which may be useful for, or relevant to/ any proceeding under this Act.

(4) An income-tax authority acting under this section shall on no account, remove or cause to be removed from the place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under sub-section (1) of section 131 for enforcing compliance with the requirement made.

Explanation.—In this section,—

(a) 'income-tax authority' means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or Deputy Director or an Assessing Officer, and for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax, if so authorised by any such authority;

(b) 'proceeding' means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised, or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year."

In the instant case, there was a survey operation conducted under section 133A of the Act in the assessee's premises and a statement was recorded from one of the partners. Assuming there were discrepancies and irregularities in the books of account maintained by the assessee, an offer of additional income for the respective assessment years was made by the partner of the firm. But, such statement, in view of the scope and ambit of the materials collected during the course of survey action under section 133A shall not have any evidentiary value, as rightly held by the Commissioner and the Tribunal since such statement was not attached to the provisions of section 133A of the Act. 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. Since there was no material on record to prove the existence of such disclosed income or earning of such income in the hands of the assessee, it could not be said that the Revenue had lost lawful tax payable by the assessee.

In the decision in Putlangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18, the apex court held that 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 the admission to show that it is incorrect.

Where a survey was conducted in the premises of the assessee, a medical practitioner, and a statement was recorded from him, in which the assessee surrendered additional income and pursuant to the same, the Assessing Officer reopened the assessment, but during the course of which the assessee retracted the additional income offered and contended that the statement was the result of duress, which was not accepted by the Assessing Officer and also by the Tribunal holding that the statement is valid and that it was made without duress, a Division Bench of the Allahabad High Court in Dr. S.C. Gupta v. CIT [2001] 248 ITR 782 (All), of course, placing reliance on the decision of the apex court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 held that the burden that was laid on the assessee to establish that the admission made in the statement at the time of survey was wrong and that there was no additional income was not even attempted to be discharged and thus, the order of the Tribunal was based on facts and no question of law arose from it.

A power to examine a person on oath is specifically conferred on the authorities only under section 132(4) of the Act in the course of any search or seizure. Thus, the Income-tax Act whenever it thought fit and necessary to confer such power to examine a person on oath, has expressly provided for it, whereas section 133A does not empower any Income-tax Officer to examine any person on oath. Thus, in contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement recorded under section 133A of the Act is not given an evidentiary value, vide a decision of the Kerala High Court in Paul Mathews and Sons v. CIT [2003] 263 ITR 101.

The scope of sections 132(4) and 133A also came up for consideration before the Kerala High Court in Paul Mathews and Sons v. CIT [2003] 263 ITR 101. In the said case, the assessee therein made

an attempt to draw a distinction between the two provisions, viz., sections 132(4) and 133A. According to the assessee, there is no provision to administer oath or to take any sworn statement and that a mere admission or an acquiescence cannot be a foundation for an assessment and that any statement given during a survey has no effect as an "admission" nor can it be a statement on oath. According to the assessee, his statement during the survey with reference to any books of account cart hardly be the basis for any assessment. It was also contended on behalf of the assessee that any material collected or any statement recorded during the survey under section 133A cannot be put against the assessee, as the same has no evidentiary value. The Division Bench of the Kerala High Court, appreciating the stand taken by the assessee and after referring to section 133A of the Act, held as here- under (page 108) :

"... we find that such a power to examine a person on oath is specifically conferred on the authorised officer only under section 132(4) of the Income-tax Act in the course of any search or seizure. Thus, the Income-tax Act, whenever it thought fit and necessary to confer such power to examine a person on oath, the same has been expressly provided whereas section 133A does not empower any Income-tax Officer to examine any person on oath. Thus, in contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by; such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law... Therefore, the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this. (emphasis supplied)

Similarly, when the issue, whether the expression "such other materials or information as are available with the Assessing Officer in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, came up for consideration before this court in CIT v. G. JCSenniappan [\[2006\] 284 ITR 220](#), a Division Bench of this court, in which one of us was a party (P.P.S. Janarthana Raja J.), answered the question in the affirmative, against the Revenue and in favour of the assessee, holding that the materials collected during the survey under section 133A cannot be taken into consideration while determining the undisclosed income in respect of block assessment as per section 158BB, as the same has no evidentiary value.

Again, when an identical question whether the material found in the course of survey in the premises of the builder could be used in the block assessment of the assessee, came up for consideration before this Division Bench in an unreported case in T. C (A) No. 2620 of 2006, this court, by order dated November 22, 2006—since reported in CIT v. S. Ajit Kumar [\[2008\] 300 ITR 152](#), of course, following the, earlier decision of this court in G.K. Senniappan's case reported in [\[2006\] 284 ITR 220](#), while confirming the order of the Tribunal, answered the question in favour of the assessee, in limine.

What is more relevant, in the instant case, is that the attention of the Commissioner and the Tribunal was rightly invited to the circular of the Central Board of Direct Taxes dated March 10, 2003, with regard to the confession of additional income during the course of search and seizure and survey operations. The said circular dated March 10, 2003, reads as follows :

"Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search and seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending, assessment proceedings also, the Assessing Officers should rely upon the evidences/materials gathered during the course-of search/survey operations or thereafter while framing the relevant assessment orders."

From the foregoing discussion, the following principles can be culled out:

- (i) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in Pulkngode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 ;*
- (ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews and Sons v. CIT [2003] 263 ITR 101 (Ker.);*
- (iii) The expression "such other materials or Information as are available with the Assessing Officer" contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide CIT v. G. K. Senniappan [2006] 284 ITR 220 (Mad.) ;*
- (iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S. Ajit Kumar [2008] 300 ITR 152 (Mad.);*
- (v) Finally, the word "may" used in section 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act", as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.*

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement, obtained under section 133A would not automatically bind upon the assesses we do not see any reason to interfere with the order of the Tribunal.

Accordingly, rinding no substantial question of law arises for consideration, the tax case appeal stands dismissed."

11. The case was against the Revenue by the Hon'ble High Court of Madras, the Revenue filed appeal before the Hon'ble Apex Court cited supra which was also affirmed in favour of the assessee. Therefore, relying on the above judgment, we allow the appeal of the assessee.

12. Since we have decided the issue for Assessment Year 2010-11 in ITA No.568/Bang/2025 in favour of the assessee as per above terms, therefore, the decision for the same is applicable for the Assessment Year 2011-12 in ITA No.569/Bang/2029.

13. In the result, both the appeals of the assessee are allowed.

14. To sum up, appeals in ITA Nos.568 and 569/Bang/2025 are allowed.

Pronounced in the court on the date mentioned on the caption page.

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 31.07.2025.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.