

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

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

ITA Nos.1136, 1137/Bang/2024
Assessment Year : 2018-19, 2019-20

DCIT, Hubballi.	Vs.	Shri. Krishna Mohan Kalburgi, Travellers Bungalow Road, Hubli Traffic Island, Dharwad, Hubli – 580 029, Karnataka. PAN : ADKPK 5762 E
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sheshadri Chalapati, AR
Revenue by	:	Shri. Shivanad Kalakeri, CIT(DR)(ITAT), Bangalore.

Date of hearing	:	09.07.2025
Date of Pronouncement	:	13.08.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

Both the appeals are filed by the Revenue against the Order passed by the CIT(A) vide DIN & Order Nos: ITBA/APL/M/250/2023-24/1063499939(1) and ITBA/APL/M/250/2023-24/1063501025(1), both Orders dated 27.03.2024. Since both the appeals were heard together, we are passing common Order.

Assessment Year 2018-19

2. Briefly stated the facts of the case are that assessee is an individual. He is a partner in various partnership firms viz., M/s. Kalburgi Shelter, M/s. Ome Sweets and Foods, M/s. Kalburgi Enterprises and M/s. Kalburgi Group. During the year, assessee derived income from house property and income from other sources as

well as exempt income under section 10(2A) of the Act. Being a partnership firm, assessee filed original written of income for the Assessment Year 2018-19 electronically on 26.10.2018 declaring total income of Rs.35,33,480/- and the same was processed under section 143(1) of the Act on 29.02.2019. A search and seizure under section 132 of the Act was initiated in the case of M/s. Dharwad Mishra Pedha and Food Processing Industry, Shri. Sanjay Ganesh Mishra, Smt. Anju Mishra and Shri Anesh Avadhbihari Mishra, wherein residential premises of the assessee situated at H. No. 28, 1st Cross, Vishweshwar Nagar, Hubli – 32 was also searched under section 132(4) of the Act on 17.01.2019. Similarly, the residential premises of Shri. Giridhar Laddha, Manager, Accounts and Finance in the Mishra Group situated at No. 17, Nakshatra Colony, Shanti Nagar, Keshwapur, Hubli was also search on 17.01.2019. During the course of search, certain incriminating documents were found and seized, marked as A/GL/01, A/GL/02 and A/GL/10, which evidences that the assessee has made unaccounted investment in the form of cash. During the course of search under section 132 of the Act conducted at the residential premises of Shri. Giridhar Laddha, Manager, Accounts and Finance in the Mishra Group, the seized incriminating material contained in folders marked as A/GL/01, A/GL/02 and A/GL/10 has bearing on the computation of income of the assessee for the Assessment Year 2018-19. Accordingly, notice under section 153Cr.w.s. 153A of the Act was issued to the assessee on 30.09.2020. In response to the notice, assessee filed return of income electronically on 29.10.2020 declaring total income of Rs.36,06,140/-. Accordingly, notice under section 143(2) of the Act was issued on 02.11.2020 and other statutory notices were also issued to the assessee. In response to the notices, assessee filed detailed submissions which were called for and considered by the AO. Pursuant to search under section 132 of the Act conducted at the residence of the assessee, unexplained cash of Rs.47,61,740/- was found out of which cash of Rs.36,60,000/- was seized. During the course of search conducted sworn statement under section 132(4) of the Act on 19.01.2019 was recorded with regard

to unexplained cash found during search, it was stated that the cash is out of on-money received by him on sale of residential flats and commercial premises. Accordingly, assessee admitted additional income of Rs.91,66,000/- in his individual hands for the Assessment Year 2018-19. Further, during the course of search action under section 132 of the Act conducted at his residence, the assessee in reply to question No.26 of his sworn statement recorded under section 132(4) of the Act on 18.01.2019 stated that he had investment of Rs.10 Crores in Mishra Group through banking channel on which interest @ 12% per annum is charged. In question and answer No.28 recorded under section 132(4) of the Act on 18.01.2019 has denied having given any cash loan to Mishra Group.

3. During the course of search under section 132 of the Act conducted at the residence of Shri. Giridhar Laddha, Manager Accounts and Finance in the Mishra Group, a folder containing incriminating documents was found which was marked as A/GL/01 and seized. Page No.33 of this seized folder is a report dated 25.08.2018 containing the details of loans given by the assessee and his family members in Mishra Group both through banking channels and cash. The scanned copy in para No. 8.2 is reproduced by the AO in his Order. The details of loan given through banking channels are mentioned against the individual names of the family members of the assessee. However, the details of loans given in the form of cash are mentioned against the name "K2". During the course of search conducted at the residence of the assessee this seized page was shown to the assessee and asked to comment to which the assessee in reply to Q. No. 31 of his statement under section 132(4) of the Act dated 18.01.20189 has accepted the contents of the page with reference to loans of Rs.10 Crores given through banking channels, but denied towards the contents of loans given in the form of cash. Thus, it was observed that the assessee had partly accepted the contents of the seized documents relating to loans given through banking channels but denied towards the contents of the same seized documents evidencing loan given in cash.

However, the authenticity of the seized documents has not been questioned by the assessee. In Page No.251 of the seized folder A/GL/01 containing details of loans given by various investors including the assessee & his family members is reproduced by the AO. The seized page was shown to the assessee and asked to comment to which the assessee in reply Q. No. 32 of his statement under section 132(4) of the Act dated 18.01.2019 has reiterated that he has given loan of Rs.10 Crores to Mishra Group through banking channels and he accepted that he & his family members have given loan in cash of Rs. 5 crores..

4. During the course of search under section 132 of the Act conducted at the residence of Shri. Giridhar Laddha, certain incriminating documents pertaining to loans given by various investors to Mishra Group were found and seized. Accordingly, Shri. Giridhar Laddha was confronted and had explained the details of loans given by various investors to Mishra Group including cash loan of Rs.12.50 Crores by the assessee and his family members. The statement given by Manager is scanned by the AO in para No. 8.6.

Memorandum Page 6

5. The statement given by Manager was shown to the assessee vide question and answer No.35 of statement recorded on 19.01.2019 and asked to comment to which the assessee has refused to accept the statement of Manager (Giridhar Laddha) that he and his family members have given any cash loan of Rs.12.50 Crores but admitted to have given cash loan of Rs.5 Crores in cash. The relevant portion is reproduced :

35. What is the evidence available with you to substantiate that you have given only a cash loan of Rs. 5 crores and not Rs. 12.6 crores as mentioned in the seized material shown to you

"Ans 35 Sir, I do not have evidence for the same. But I know how much money I have given. As a lender I confirm that I have given a cash loan of Rs. 5 crores to them."

6. Further Q. and No.36 was asked to explain why he has now admitting of having given cash loans of Rs.5 Crores as against his categorical denial of having given any cash loan to Mishra Group, to which the assessee stated that out of fear he has denied of given any cash loan and requested not to consider his statement of having denied to have given any cash loan to Mishra Group, which is as under:

"Ans 36 I confirm that I have given along with my family members a cash loan of Rs. 5 crores to Dharwad Mishra Pedha i.e to Sanjay Mishra. Out of fear I had earlier stated that I have not given any cash loans. I request you to kindly not consider my reply stating that I have not given any cash on record."

7. During the course of search at the residence of Manager, the folder A/GL/01 was found and seized. Page 01 of the seized folder contains details of investments made in Mishra Group both through banking channels and cash as under:

	CASH	BANK	TOTAL
K2	11,60,00,000	10,00,00,000	21,60,00,000
SHQ	3,31,00,000	4,14,00,000	7,45,00,000
PARVA	1,00,00,000		1,00,00,000
LAXMI OPTICIAN			
TOTAL	15,91,00,000	14,14,00,000	30,05,00,000
	GR.TOTAL	30,05,00,000	

8. In question and answer No.30 in sworn statement the assessee had denied giving any cash loan of Rs.11.60 Crores by him or his family members. But he

stated that he and family members have given loan of Rs.10 Crores through banking channels and Rs.5 Crores in cash to Mishra Group. The statement is as under:

"This page was found in the residence of Shri Giridharladdha. An amount of Rs. 11.6 crores written against cash column and an amount of Rs. 10 crores written against bank column for K2. We have given an amount of Rs. 10 crores as loan to M/s Dharwad Mishra Pedha & Food Processing Industry which is paid through cheque and is accounted in the books. Rs. 11.6 crores written in the cash column is not entirely true. We have only paid cash amounts to Rs. 5 crores as loan to M/s Dharwad Mishra Pedha & Food Processing Industry"

9. During the statement recorded under section 131 of the Act on 21.01.2019 the assessee confirmed the contents of his statement recorded under section 132(4) of the Act on 18.01.2019 and 19.01.2015 and **confirmed having given cash loan of Rs.5 Crores to Mishra Group by him on behalf of M/s. Kalburgi Projects and further stated that no interest has been paid on the cash loan of Rs.5 Crores.** Further, during the course of post search verification of the seized documents by the investigating officer, statement of Shri. Shailesh Mahajan who is a co-investor was recorded under section 131 of the Act on 13.05.2019 and 14.05.2019 wherein Shri. Shailesh Mahajan recognized the documents and also explained the contents i.e., cash loans, rate of interest on cash loans and interest received in cash on loans in detail. The seized documents explained by Shri. Shailesh Mahajan also contains entries relating to the assessee and his family members and further stated that assessee was getting total interest of 21% per annum on investments of Rs.10 Crores made through banking channels out of which 12% was paid through banking channels and the remaining 9% was paid in cash. Shri. Shailesh Mahajan is the investment partner of Shri Krishna Kalburgi and this fact has also been admitted by both Shri Sanjay Mishra, Partner of M/s. Dharwad Mishra Pedha and Food Processing Industry and Manager, Accounts and Finance who looks after the

accounts and finance of Mishra Group in their statements recorded under section 132 of the Act.

10. During the course of statement of the assessee recorded under section 131 of the Act on 30.05.2019, the assessee was shown the relevant portion of the statements of Shri. Shailesh Mahajan, Shri Sanjay Mishra and Shri. Giridhar Laddha to which the assessee has not agreed to these statements and stated that he has received interest @ 12% only through bank on loans of Rs.10 Crores given through banking channels. The statement is reproduced by the AO at para 9.2 of his Order.

11. At Page No.25 of the seized documents marked as A/GL/01, a sheet named "Dharwad Mishra Pedha and Food Processing Industry Kalburgi Groups 1-April-2018 to 31-Jun-2018" containing the amounts of loans given by assessee and his family members, rate of interest, number of days, interest amount, TDS and net payable. Further, Page No.74 of the seized folder marked as A/GL/01 is a hand written statement containing the details of working of interest on total loans extended by the assessee and his family members both through banking channels as well as in cash for the period from 01.04.2018 to 30.06.2018 wherein it is mentioned that on Rs.10 Crores given through banking channels interest @ 12% is paid through banking channels and 9% is paid in cash. Pages 25 and 74 of A/GL/01 are reproduced by the AO at par No. 9.3 & 9.4. The various other documents were found regarding interest calculations etc., also which were confronted to the assessee. The AO has scanned the relevant documents in his order. The details of cash investments of Rs. 11.60 crores made by the assessee and his family members in cash has been tabulated in para 17 of the assessment order which is as under:-

Date	Investment in cash (in Rs.)	Remarks (Folder No., Page No. and Date of Report)
24.09.2017	3,00,00,000	A/GL/01-33, A/GL/02-61 (31.01.17), 35(13.11.17),34(13.11.17),15(18.02.18)
09.10.2017	20,00,000	A/GL/01-33, A/GL/02-61 (31.01.17), 35(13.11.17),34(13.11.17),15(18.02.18)
11.10.2017	80,00,000	A/GL/01-33, A/GL/02-61 (31.01.17), 35(13.11.17),34(13.11.17),15(18.02.18)
18.10.2017	50,00,000	A/GL/01-33, A/GL/02-61 (31.01.17), 35(13.11.17),34(13.11.17),15(18.02.18)
01.11.2017	1,00,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
02.11.2017	80,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
10.11.2017	50,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
13.11.2017	80,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)

		35(13.11.17),33(13.11.17),15(18.02.18)
13.11.2017	10,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
13.11.2017	10,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
16.11.2017	1,00,00,000	A/GL/01-33, A/GL/02-60 (31.01.17), 35(13.11.17),33(13.11.17),15(18.02.18)
16.11.2017	30,00,000	A/GL/01-33, A/GL/02-59 (31.01.17),15(18.02.18)
19.11.2017	1,00,00,000	A/GL/01-33, A/GL/02-59 (31.01.17),15(18.02.18)
29.11.2017	50,00,000	A/GL/01-33, A/GL/02-59 (31.01.17),15(18.02.18)
15.12.2017	10,00,000	A/GL/01-33, A/GL/02-58 (31.01.17),15(18.02.18)
30.12.2017	19,00,000	A/GL/01-33, A/GL/02-58 (31.01.17),15(18.02.18)
07.01.2018	81,00,000	A/GL/01-33, A/GL/02-15(18.02.18)
24.01.2018	10,00,000	A/GL/01-33
TOTAL	11,60,00,000	

12. Accordingly, the AO completed the assessment for both the years as under:-

Total Returned income	Rs.	36,06,140
Add : addition u/s 69 r.w.s. 115BBE as discussed in Para 23 above	Rs.	11,60,00,000
Add : addition u/s 69A r.w.s. 115BBE as discussed in Para 24 above	Rs.	91,66,000
Add : addition under the head 'income from other sources' as discussed in Para 25 above	Rs.	1,23,48,181
Total Assessed Income	Rs.	14,11,20,321
Total Assessed Income (rounded off to)	Rs.	14,11,20,320
Tax Thereon (as per computation sheet enclosed)	Rs.	

Total Returned income	Rs.	34,81,200
Add : addition under the head 'income from other sources' as discussed in Para 22 above	Rs.	2,15,10,000
Add :addition of 'unexplained money' u/s 69A of the Act as discussed in Para 23 above	Rs.	47,61,740
Total Assessed Income	Rs.	2,97,52,940
Tax Thereon (as per computation sheet enclosed)	Rs.	

13. Aggrieved from the order of the AO the assessee filed appeal before the learned CIT(A) and filed detailed written submissions. After considering the same, the learned CIT(A) allowed the appeal of the assessee observing as under:-

5.2 During the course of appellate proceedings, the appellant submitted written submissions wherein he has contended that the above action of the AO is not correct. Relevant portion of the submissions is reproduced below:

“ADDITION OF Rs 11,60,00,000/- MADE U/S 69 R.W.S 115 BBE IS WITHOUT BASIS

5.2 The appellant begs to contend that the addition made u/s 69 r.w.s 115BBE is without any basis. The AO has made the additions based on the documents seized from the residence of Shri Giridhar Ladda. It is pertinent to mention here that no such documents have been seized from the residence of the appellant. Not even any other evidence which corroborates the entries contained in the material seized from the residence of Giridhar Ladda, has been seized from the residence of the appellant. Therefore the presumption cast by S 132(4A) is not applicable to the case of applicant. i.e The documents seized from the residence of Giridhar Ladda cannot be presumed to be belonging to the appellant. Further it cannot be presumed that the contents of the said documents are true with regard to the appellant.

5.3 In the scheme of Income tax Act the person who is in possession of money has to explain the origin and source thereof. By the unambiguous words used in sub section 4A, it is clearly stated that such money or documents which are found in possession have to be construed as belonging to such person in whose custody the money or documents is found. In chapter VI of Income tax Act the deeming provisions are defined for taxation of such sums and when read together with provisions of S 132(4A) the same have to be taxed either in the hands of Mr Giridhar Ladda in whose premises these records were found or in the hands of Mr Sanjay Mishra in whose case the search was initiated.

5.4 On a lighter note the appellant contends that a person in possession of his unaccounted money may credit the same in various names . Such entry does not absolve such person from getting escaped from the clutches of taxing statutes. Even in respect of a regular credit appearing in any books the cardinal principle laid down by the Supreme Court is that the credit has to be explained with reference to identity, capacity of the giver and the genuineness of the transaction. In the instant case this very test has to be squarely applied while examining these credits in the books of Mishra/Ladda. The appellant contends that none of the tests is fulfilled for identifying the person. Mr Mishra or his accountant Ladda might have used the names known to them to take a shelter. Thus the appellant strongly contends that mere statement cannot establish the identity. Further it was for Mishra to prove the genuineness of the transaction. Without fulfilling these basic tests coupled with the onus cast on Mr Mishra and Mr Ladda and especially in view of the presumption categorically brought in tax laws u/s 132(4A) such entries recorded by Mr Ladda cannot be attributed to the appellant.

5.5 On the contrary the appellant has denied of having invested any cash money with Mr Mishra. This fact is elaborately dealt in this submission in succeeding paragraphs. It is of prime importance to understand the fact that a simultaneous search was conducted at the premises of the appellant and no iota of evidence was found towards this alleged cash investment.

5.6 Perusal of the contents of the seized material which are reproduced by the AO in the assessment order shows that there is nothing in those materials which shows that the alleged cash investments are made by the appellant.

5.7 It is pertinent to mention here that the investments are made by the appellant through banking channels and they appear as such in seized material maintained by Mishra group. These investments clearly find the name "Krishna Mohan Kalburgi".

5.8 However against the alleged cash investments of the appellant as available in seized material, his name is not mentioned. All the entries in the seized material containing the letters either "K2" or KK are presumed by the AO as cash investments made by the appellant. No content of these seized materials is in the handwriting of the appellant. None of these seized materials contain signature/authentication of the appellant anywhere. Just because the abbreviation K2/KK matches with the name of the appellant i.e Krishna Kalburgi it cannot be concluded that the entries pertain to the appellant. At the cost of repetition it is to submit that the said transactions cannot be attributed to the appellant as none of the said seized materials contain appellants signature/ authentication. Under such circumstances no prudent person will form a satisfaction that the information contained in these documents belongs to the appellant. The assessment made on such baseless and illogical satisfaction is bad in law as well as on facts.

5.9 It is pertinent to mention here that as the material based on which the AO has made additions in the case of this appellant, were seized from the possession of Shri Giridhar Ladda, the onus was on him to explain the contents of those materials with evidence. His mere statement that the entries referred to the cash loans received by Mishra Group from the appellant would not establish that the appellant has advanced those loans.

respect of these entries as these entries have been stated to be made by Giridhar Ladda who is Manager, Accounts & Finance in the Mishra Group, allegedly at the instance of Shri Sanjay Ganesh Mishra for the reasons best known to them. They might have made these entries and also admitted those to suit their requirement. Similar is the case of one Shri Shailesh Mahajan, who for the reasons best known to him has admitted to have made cash investments and received unaccounted interest. Mr Shailesh Mahajan is neither a partner nor a director in any group concerns of Mr Mishra. He cannot be supposed to know the transactions between the Appellant

and Mishra group. In his statement he has stated that the appellant too has made unaccounted investments and received unaccounted interest. It is not known how can the statement made by third party like him can be used against the appellant. His statement is not binding on the appellant. It is to submit that in the absence of appellants signature/authentication and in the absence of any corroborative evidence the alleged cash investments cannot be assessed in the hands of the appellant.

5.11 The most important point to be noted in this connection is that the premises of the appellant too was searched and not an ounce of evidence was found regarding the alleged cash investments in Mishra group. A person making such huge cash investment would obtain some surety/guarantee like promissory note/ post dated cheque/title deed of property etc from the party with whom investment is made and keep it with him. In the absence of such surety/guarantee, the investor will be left with no legal recourse if the other party refuses to return the money. Hence no prudent person will make cash investment without obtaining surety/guarantee. If at all the appellant had made the cash investment under reference, then definitely the search action at the residence of appellant would have resulted in detection of evidence of such cash investment. The fact that no evidence of alleged cash investment was found during the course of search at the premises of appellant clearly establishes that the alleged cash investments have not been made by the appellant.

5.12 It is also pertinent to mention here that for making the investment of Rs 10 crores through banking channels the appellant has obtained loan of Rs 8 crores from Axis bank. If at all the appellant had capacity to make unaccounted cash investments why he would have gone for bank loan? Why would the appellant take the

risk of making unaccounted cash investment and that too without obtaining any security for the same? This clearly establishes that the appellant has not made the alleged cash investments.

5.13 Without prejudice to my contention that addition cannot be made in my case based on the statement given by Shri Giridhar Ladda. It is to submit that Shri Giridhar Ladda vide his letter dtd 25.7.2019 has retracted all his statements u/s 132(4). In the said letter he has categorically stated that he has blindly signed the statement without reading. He has further stated in the said letter that for him cash means money and that cash does not always mean physical cash. Since the entire addition in my case is based on the material seized from the residence of Shri Giridhar Ladda and his statement which he has subsequently retracted the addition made by the AO is required to be deleted.

5.3 I have carefully considered the reasons given by the AO for making the addition and the contentions of the appellant against the said addition. The AO has made addition u/s 69, which deals with taxing of “Unexplained Investment”. For the sake of ready reference Section 69 is reproduced below.

Unexplained investments.

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

5.4 Careful reading of the provisions of Section 69, reproduced above, shows that in order to apply the provisions of the section, following 3 conditions should be satisfied.

- (i) The assessee should have made investments
- (ii) The investments should not have been recorded in the books of account, if any maintained by the assessee
- (iii) The assessee does not offer any explanation about the nature and source of the investments or the explanation offered is not satisfactory in the opinion of the AO.

5.5 The first condition is that the assessee should have made the investments. In the present case the AO is holding that the appellant has made the investments. The appellant is denying having made the investments referred to by the AO.

5.6 According to the AO the appellant has made the cash investments recorded against letters "K2" & "KK" in the seized materials marked A/GL/01, A/GL/02, A/GL/05 and A/GL/10, which are seized from the residence of Shri Giridhar Ladda. For coming to the conclusion that the entries against letters "K2" & "KK" relate to the appellant, the AO has placed reliance on the statement given by Shri Giridhar Ladda. It is pertinent to note here that since the seized materials under reference were seized from the possession of Shri Giridhar Ladda, in terms of express provisions of S 132(4) the onus was on him to explain the contents of the seized material truthfully. As regards entries stated to be relating to the appellant, who is a third party, the onus was on Mr Giridhar Ladda to give authentic corroborative evidence to prove his statement that the entries with letters "K2" & "KK" related to the appellant. It is noted from the assessment order that there is no mention of any corroborative evidence given by Giridhar Ladda.

5.7 As is evident from the assessment order, it is on the strength of the statement of Shri Giridhar Ladda that the entries in the seized material against letters "K2" & "KK" relate to the appellant, the AO held that cash investments under reference were made by the appellant. However as pointed out by the appellant in his submissions before AO as well as in appeal proceedings, Shri Giridhar Ladda vide his letter dtd 25.7.2019 retracted all his statements u/s 132(4). Perusal of the said letter shows that Shri Giridhar Ladda had categorically stated that he had blindly signed the statement without reading. In the assessment order the AO has turned a blind eye to this important aspect. Even otherwise, as discussed in the preceding paragraphs, in the absence of any further corroborative evidence, his statement could not have been used to hold that the appellant has made the cash investments under reference.

5.8 Further, it is noted from the assessment order that, Shri Giridhar Ladda in his statement, had stated that he had made the entries in the seized materials as per the directions of Shri Sanjay Ganesh Mishra. The AO has recorded that Shri Sanjay Ganesh Mishra had confirmed the statement given by Shri Giridhar Ladda. If this is so, then it was for Shri Sanjay Ganesh Mishra to prove that the entries in seized material against letters "K2" & "KK" related to the appellant. His mere confirming statement of Shri Giridhar Ladda would not be enough to conclude that the entries with letter "K2" & "KK" relate to the appellant. He too had not given any corroborative evidence to prove that the appellant had made the cash investments under reference. The possibility of Shri Sanjay Mishra having introduced his unexplained cash under the guessed entry of "K2" & "KK" cannot be discarded without enquiry or corroborative evidence.

5.9 Since neither Shri Giridhar Ladda nor Shri Sanjay Ganesh Mishra provided any corroborative evidence to prove that the cash investments under reference were actually made by the appellant, the AO ought to have brought on record

such corroborative evidence if any and if no such evidence was available then should have rejected the claim of Shri Sanjay Ganesh Mishra. It is pertinent to mention here that based on the documents found in the case of Mishra group, a search and seizure action was conducted at the premises of the appellant too on the same date i.e.17.01.2019 but the search had not resulted into finding of any evidence to show that the appellant has made cash investment under reference. In the absence of such evidence, direct or indirect, showing cash investments under reference at the premises of the appellant, no adverse inference could be drawn against the appellant.

5.10 Thus the analysis made so far boils down to the point that there were certain entries in the seized materials, which were made by Shri Giridhar Ladda as per the directions of Shri Sanjay Ganesh Mishra, as he had confirmed the statement of Shri Giridhar Ladda. As such, the onus was on him to explain the entries in the seized material. His mere stating that the entries with letters "K2" & "KK" against them pertain to appellant is not enough to tax the said sums in the hands of the appellant. In terms of provisions of section 132(4A), since he has failed to prove his statement with some further corroborative evidence it emerges that he has not discharged his duty to give satisfactorily explanation about the cash investments under reference.

5.11 It is noticed from the assessment order that during the course of assessment proceedings, the appellant had sought for opportunity to cross examine Shri. Giridhar Laddha. However the AO has turned down this request on grounds like Covid Situation and assessment getting barred by limitation. Denial of this opportunity defies the principles of natural justice and establishes an evasive approach on the part of the Assessing Officer. The addition made without giving the opportunity to cross examine is unsustainable. This ratio is a settled law through various pronouncements including Hon'ble SC in Andaman Timber Industries Vs CCE. In which the Hon'ble SC allowing the appeal of the assessee held as under:

“Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them”.

5.12 As regards the admission of Rs 5 crore made during the course of search, the appellant has contended that the same was given under pressure and has tried to explain the manner in which it was obtained. The appellant has further submitted that the said admission was retracted first on 20/05/2019 by

way of letter sent by registered post on 21/05/2019 and again on 30.5.2019 u/s 131 when his statement was recorded during the course of search proceedings itself. The appellant has contended that for these reasons and also as the admission was a bald statement as it did not have any basis, the same has no evidentiary value. Perusal of the statement shows that the denial by the Appellant of cash loans has been stated against many questions asked to him on the seized material relating to this issue. Further there is no any corroborative evidence on record. Even in the assessment order also no such co relation has been made out. The CBDT has time and again issued instructions to the officers not to insist on declaration. Since the declaration made by the appellant is not supported by any documentary evidence and is retracted u/s 131 the same has no evidentiary value.

5.13 In his submission, the appellant has contended that in the absence of further corroborative evidence, the addition as made by the AO could not have been made. He has also placed reliance on certain decisions. The relevant portion of the submissions is reproduced below:

“5.14 The appellant submits that it is settled principle of law that addition cannot be made in the hands of third party merely based on entry in material seized from some person without there being any evidence to show that this actually pertains to such party. There should be some further authentic evidence to make addition in pursuance of such entries. As submitted in the preceding paras in the case of appellant there is no such evidence. Hence the addition made by the AO is bad in law. In this regard the appellant places reliance on the following decisions:

(i) Decision of ITAT Amritsar in ITA No 265/Asr/2022 in the case of Ms Jove Enterprises Pvt Ltd V DCIT Central Jalandhar. (Copy enclosed as Annexure-2)

In this case a signed copy of agreement for sale was found and seized. In the said agreement cash payment of Rs 50 lakhs by the assessee was mentioned. Based on this the AO passed order u/s 153C bringing to tax Rs 50 lakhs as unexplained. However the ITAT relying on the registered sale deed as per which sale consideration of Rs 31,50,000/ was made by cheque, deleted the addition. It may kindly be noted that in the case of appellant even such agreement/ other signed document showing alleged cash investment is also not found. As in the said case, In the case of the Appellant also, the amount actually invested by the appellant is declared in the returns of income filed alongwith the interest earned thereon. As such the ratio of the said decision squarely applies to the case of the appellant. Hence the addition made by the AO is required to be deleted.

(ii) Decision of Hon'ble SC in the case of CIT Vs PV Kalyansundram(2007)(164Taxman78(SC)

In this case the assessee had purchased certain land at a consideration as shown in sale deed executed there for and subsequently certain notes on loose sheets allegedly written by assessee were found and seized during search operation. AO had made the addition based on the entries in seized loose sheets. However the ITAT deleted the addition by holding that reliance could not be placed on those loose sheets and vendors contradictory statement could not be relied upon. In finality, the case reached the forum of Apex court and The Hon'ble SC upheld the said order narrating that the AO is not justified in making such addition.

It is to submit that the case of the appellant gets covered by the ratio of this decision. In the case of the Appellant, even no such evidence is found. As held in the said case the statement of Giridhar Ladda (which too has been retracted by him later on) cannot be relied upon to make addition in the case of the appellant. Thus the ratio of the decision is squarely applicable to the case of the appellant. It is therefore requested to kindly delete the addition made by the AO."

5.13 In view of the aforesaid discussion in above paras, I conclude that when it comes to taxing of third party u/s 153C, addition cannot be made based on mere cryptic entries in the seized material, seized from the possession of some other person. Addition also cannot be made based merely on the statement of the party from whose possession the material has been seized unless opportunity of cross examination was accorded to the affected party. Courts have consistently held that there should be some further corroborative evidence in such cases to bring the amount under recorded in the seized material to tax. The ratio of the case laws cited by the Appellant are squarely applicable to the case of the appellant. Therefore, the contention of the appellant is found correct and the addition of Rs. 11,60,00,000/- u/s 69 r.w.s 115BBE made by the AO is hereby deleted.

6.0 Ground D raised by the appellant is related to addition of Rs.1,23,48,181/- as income from other sources.

6.1 Coming to ground D, mentioned above, vide para 18 of the assessment order the AO has worked out interest of Rs 1,23,48,181/-. Out of this Rs.82,53,181/- is worked out as interest on the cash investment of Rs. 11,60,00,000/- and Rs. 40,95,000/- is worked out as interest on the investment made through banking channel. It is seen that the interest calculations of Rs. 82,53,181/- bear the same character and nature as discussed in preceding paragraphs dealing with investment. As the addition made by the AO on account of cash investments has been deleted, the interest on the same is also required to be held as not pertaining to the appellant. Therefore the addition of Rs 82,53,181/- is hereby deleted.

6.2 As regards interest worked out at Rs. 40,95,000/- , it is seen that the AO has added this amount stating that the appellant has received additional interest of 9% per annum over and above 12% per annum on the investment made through banking channel. It is submitted by the Appellant that the calculations as per the working made by Shri Giridhar Ladda cannot be relied on the strength of the submissions made by the Appellant. As the statement/seized materials found at the place of Giridhar Ladha has been held to be incorrect in as much as taxation of the Appellant is concerned, the addition made by the AO on account of such interest of Rs 40,95,000/ is deleted accordingly.

7.0 Ground C raised by the appellant is related to addition of Rs.91,66,000/- as income from other sources.

7.1 The AO has made addition of Rs 91,66,000/ based on entries in seized materials which according to him evidence receipt of on money. Initially vide his written submissions the appellant contended that these entries , in the absence of any corroborative evidence cannot prove anything. However on 26.3.2024, the appellant made further submissions in this regard, which is reproduced below.

"We invite your kind attention to para 24 of the assessment order which states that the unaccounted cash receipts on booking of flats of Rs 71 lakhs, sale of flat & shop at Rs 18.63 lakhs and unaccounted cash receipt of Rs 2.03 lakhs aggregating in all to Rs 91.66 lakhs is treated as unexplained money. In this regard we invite your kind attention to the seized materials which is treated as the basis by the AO for this addition. We enclose herein some copies of relevant seized materials, this throws light on an important fact that along with the receipts it is coupled with payments. You will appreciate that the seized materials clearly states that some of these chits are only estimates, some are duplicate (recorded twice) and accordingly stated by the appellant in Question & Answers. In some chits there is a clear mention of payments made /expenses incurred/ payments for the receipts. All this is evident on face of the seized materials. Many of the receipts are towards providing additional furniture facilities which involves expenditure and entire receipt cannot form part of the profit.

In light of the above facts and with an intend to give a full stop to the estimations of the Appellant voluntarily offers Rs 50 lakhs as profit element from these above referred transactions referred to in para 1 for the AY 2018-19 and simultaneously request to treat the cash found Rs 47,61,760/ as explained credit for the Asst tear 2019-20 and request that no addition is warranted on this account for AY 2019-20 and Rs 50 lakhs of additional income offered may kindly be treated as sustained addition for AY 2018-19 as against the addition of Rs 91.66 lakhs made by the AO."

7.2 In para 19 of the assessment order, the AO has reproduced relevant portion of the statement of the appellant recorded during the course of search. It is observed that from the said statement, that the appellant has explained the entries as receipts as well as payments. However the AO has considered only the cash receipts of Rs 91,66,000/ and brought the same to tax. Perusal of the entries under reference shows that the entries are with regard to receipts as well as payments. Thus it is evident that the entries not only reflect unaccounted receipts of the appellant but also show unaccounted payments, estimates and notings. Therefore it is not proper to consider only the unaccounted receipts and bring the same to tax. The unaccounted payments need to be taken into account and only the net gain made by the appellant is required to be brought to tax.

Assessment Year 2019-20

4.5 The Appellant has contended that the same cannot be taxed and has submitted his written submissions objecting the said addition. The relevant para is reproduced hereunder.

4. ADDITION OF Rs 2,15,10,000/---AS INCOME FROM OTHER SOURCES

4.1 For the AY 2018-19, the AO has made addition of Rs 11,60,00,000/ u/s 69 r.w.s 115BBE. For the AY under consideration viz. AY 2019-20, the AO has brought to tax the interest alleged to have been earned on this unaccounted investment of Rs 11,60,00,000/ and the unaccounted interest alleged to have been earned from the accounted investments. The AO has worked out such unaccounted interest at Rs 2,15,10,000/ on the alleged cash investment of Rs 11,60,00,000/ and brought to tax.

4.2 In the assessment order the AO has discussed the issue of alleged unaccounted investment of Rs 11,60,00,000/, which he has taxed in AY 2018-19. The AO has come to this conclusion based on the documents seized from the residence of Shri Giridhar Ladda. It is pertinent to mention here that no such documents have been seized from the residence of the appellant. Not even any other evidence which corroborates the entries contained in the material seized from the residence of Giridhar Ladda, has been seized from the residence of the appellant.

In the appeal filed for AY 2018-19 the appellant has made elaborate contentions regarding treating this amount of Rs 11,60,00,000/ as unexplained cash investment of the appellant. For the sake of ready reference relevant portion of the same is reproduced below.

4.3 During the search proceedings at the residence of Shri Giridhar Ladda certain entries in accounts maintained by Mr Laddha for Mishra Pedha amounting to Rs 11,60,00,000/ were found with narration as K2/KK. There were no documents whatsoever available with Ladda or Mr Sanjay Mishra to explain these transactions. Mr Ladda during his statement recorded deposed that he presumed K2/KK as appellant since the initials were synonymous. He later on clarified through his retraction letter that his statement cannot be considered as valid and he explained the circumstances for the same. Only on this fact the AO came to the conclusion and satisfaction that this information relates to the appellant and hence proceeded ahead with the assessment which is the present matter for adjudication. There were no corroborative evidences found to support the conclusion of the AO. and as such this satisfaction fails the test of provisions of S 153C.

4.4 The appellant begs to contend that the addition made u/s 69 r.w.s 115BBE is without any basis. The AO has made the additions based on the documents seized from the residence of Shri Giridhar Ladda. It is pertinent to mention here that no such documents have been seized from the residence of the appellant. Not even any other evidence which corroborates the entries contained in the material seized from the residence of Giridhar Ladda, has been seized from the residence of the appellant. Therefore the presumption cast by S 132(4A) is not applicable to the case of applicant. i.e The documents seized from the residence of Giridhar Ladda cannot be presumed to be belonging to the appellant. Further it cannot be presumed that the contents of the said documents are true with regard to the appellant.

4.5 In the scheme of Income tax Act the person who is in possession of money has to explain the origin and source thereof. By the unambiguous words used in sub section 4A, it is clearly stated that such money or documents which are found in possession have to be construed as belonging to such person in whose custody the money or documents is found. In chapter VI of Income tax Act the deeming provisions are defined for taxation of such sums and when read together with provisions of S 132(4A) the same have to be taxed either in the hands of Mr Giridhar Ladda in whose premises these records were found or in the hands of Mr Sanjay Mishra in whose case the search was initiated.

4.6 On a lighter note the appellant contends that a person in possession of his unaccounted money may credit the same in various names . Such entry does not absolve such person from getting escaped from the clutches of taxing statutes. Even in respect of a regular credit appearing in any books the cardinal principle laid down by the Supreme Court is that the credit has to be explained with reference to identity, capacity of the giver and the genuineness of the transaction. In the instant case this very test has to be squarely applied while examining these credits in the books of Mishra/Ladda. The appellant contends that none of the tests is fulfilled for identifying the person. Mr Mishra or his accountant

Ladda might have used the names known to them to take a shelter. Thus the appellant strongly contends that mere statement cannot establish the identity. Further it was for Mishra to prove the genuineness of the transaction. Without fulfilling these basic tests coupled with the onus cast on Mr Mishra and Mr Ladda and especially in view of the presumption categorically brought in tax laws u/s 132(4A) such entries recorded by Mr Ladda cannot be attributed to the appellant.

4.7 On the contrary the appellant has denied of having invested any cash money with Mr Mishra. This fact is elaborately dealt in this submission in succeeding paragraphs. It is of prime importance to understand the fact that a simultaneous search was conducted at the premises of the appellant and no iota of evidence was found towards this alleged cash investment.

4.8 Perusal of the contents of the seized material which are reproduced by the AO in the assessment order shows that there is nothing in those materials which shows that the alleged cash investments are made by the appellant.

4.9 It is pertinent to mention here that the investments are made by the appellant through banking channels and they appear as such in seized material maintained by Mishra group. These investments clearly find the name "Krishna Mohan Kalburgi".

4.10 However against the alleged cash investments of the appellant as available in seized material, his name is not mentioned. All the entries in the seized material containing the letters either "K2" or KK are presumed by the AO as cash investments made by the appellant. No content of these seized materials is in the handwriting of the appellant. None of these seized materials contain signature/authentication of the appellant

anywhere. Just because the abbreviation K2/KK matches with the name of the appellant i.e Krishna Kalburgi it cannot be concluded that the entries pertain to the appellant. At the cost of repetition it is to submit that the said transactions cannot be attributed to the appellant as none of the said seized materials contain appellants signature/ authentication. Under such circumstances no prudent person will form a satisfaction that the information contained in these documents belongs to the appellant. The assessment made on such baseless and illogical satisfaction is bad in law as well as on facts.

4.11 It is pertinent to mention here that as the material based on which the AO has made additions in the case of this appellant, were seized from the possession of Shri Giridhar Ladda, the onus was on

him to explain the contents of those materials with evidence. His mere statement that the entries referred to the cash loans received by Mishra Group from the appellant would not establish that the appellant has advanced those loans.

4.12 Appellant could not be expected to furnish explanation in respect of these entries as these entries have been stated to be made by Giridhar Ladda who is Manager, Accounts & Finance in the Mishra Group, allegedly at the instance of Shri Sanjay Ganesh Mishra for the reasons best known to them. They might have made these entries and also admitted those to suit their requirement. Similar is the case of one Shri Shailesh Mahajan, who for the reasons best known to him has admitted to have made cash investments and received unaccounted interest. Mr Shailesh Mahajan is neither a partner nor a director in any group concerns of Mr Mishra. He cannot be supposed to know the transactions between the Appellant and Mishra group. In his statement he has stated that the appellant too has made unaccounted investments and received unaccounted interest. It is not known how can the statement made by third party like him can be used against the appellant. His statement is not binding on the appellant. It is to submit that in the absence of appellants signature/authentication and in the absence of any corroborative evidence the alleged cash investments cannot be assessed in the hands of the appellant.

4.13 The most important point to be noted in this connection is that the premises of the appellant too was searched and not an ounce of evidence was found regarding the alleged cash investments in Mishra group. A person making such huge cash investment would obtain some surety/guarantee like promissory note/ post dated cheque/title deed of property etc from the party with whom investment is made and keep it with him. In the absence of such surety/guarantee, the investor will be left with no legal recourse if the other party refuses to return the money. Hence no prudent person will make cash investment without obtaining surety/guarantee. If at all the appellant had made the cash investment under reference, then definitely the search action at the residence of appellant would have resulted in detection of evidence of such cash investment. The fact that no evidence of alleged cash investment was found during the course of search at the premises of appellant clearly establishes that the alleged cash investments have not been made by the appellant.

4.14 It is also pertinent to mention here that for making the investment of Rs 10 crores through banking channels the appellant has obtained loan of Rs 8 crores from Axis bank. If at all the appellant had capacity to make unaccounted cash investments why he would have gone for bank loan? Why would the appellant take the risk of making unaccounted cash investment and that too without obtaining any security for the same? This clearly establishes that the appellant has not made the alleged cash investments.

4.15 Without prejudice to my contention that addition cannot be made in my case based on the statement given by Shri Giridhar Ladda. It is to submit that Shri Giridhar Ladda vide his letter dtd

25.7.2019 has retracted all his statements u/s 132(4). In the said letter he has categorically stated that he has blindly signed the statement without reading. He has further stated in the said letter that for him cash means money and that cash does not always mean physical cash. Since the entire addition in my case is based on the material seized from the residence of Shri Giridhar Ladda and his statement which he has subsequently retracted the addition made by the AO is required to be deleted.

4.16 The appellant submits that it is settled principle of law that addition cannot be made in the hands of third party merely based on entry in material seized from some person without there being any evidence to show that this actually pertains to such party. There should be some further authentic evidence to make addition in pursuance of such entries. As submitted in the preceding paras in the case of appellant there is no such evidence. Hence the addition made by the AO is bad in law. In this regard the appellant places reliance on the following decisions:

(i) Decision of ITAT Amritsar in ITA No 265/Asr/2022 in the case of Ms Jove Enterprises Pvt Ltd V DCIT Central Jalandhar. (Copy enclosed as **Annexure-2**)

In this case a signed copy of agreement for sale was found and seized. In the said agreement cash payment of Rs 50 lakhs by the assessee was mentioned. Based on this the AO passed order u/s 153C bringing to tax Rs 50 lakhs as unexplained. However the ITAT relying on the registered sale deed as per which sale consideration of Rs 31,50,000/ was made by cheque, deleted the addition. It may kindly be noted that in the case of appellant even such agreement/ other signed document showing alleged cash investment is also not

found. As in the said case, In the case of the Appellant also, the amount actually invested by the appellant is declared in the returns of income filed alongwith the interest earned thereon. As such the ratio of the said decision squarely applies to the case of the appellant. Hence the addition made by the AO is required to be deleted.

(ii) Decision of Hon'ble SC in the case of CIT Vs P V Kalyansundram(2007)(164Taxman78(SC)

In this case the assessee had purchased certain land at a consideration as shown in sale deed executed therefor and subsequently certain notes on loose sheets allegedly written by assessee were found and seized during search operation. AO had made the addition based on the entries in seized loose sheets. However the ITAT deleted the addition by holding that reliance could not be placed on those loose sheets and vendors contradictory statement could not be relied upon. In finality, the case reached the forum of Apex court and The Hon'ble SC upheld the said order narrating that the AO is not justified in making such addition.

It is to submit that the case of the appellant gets covered by the ratio of this decision. In the case of the Appellant, even no such evidence is found. As held in the said case the statement of Giridhar Ladda (which too has been retracted by him later on) cannot be

relied upon to make addition in the case of the appellant. Thus the ratio of the decision is squarely applicable to the case of the appellant. It is therefore requested to kindly delete the addition made by the AO.

4.17 The appellant submits that from the above submissions it is clear that the appellant has not made the alleged cash investment of Rs 11,60,00,000/ nor has received any interest on these alleged unaccounted investments. Therefore the question of getting any unaccounted interest does not arise. As the appellant has neither made the alleged cash investments nor earned any interest as held by the AO, the appellant prays for deletion of addition of Rs 2,15,10,000/, made by the AO

4.6 The Assessment order and the contents of the submissions have been perused. Vide para 17.1 of the assessment order the AO has held that the appellant has made cash investment of Rs 11,60,00,000/ with Mishra group in previous year relevant to AY 2018-19 over and above the investments made through banking channels. The said amount of Rs 11,60,00,000/ has been brought to tax by him in AY 2018-19. The appeal filed by the appellant against this addition for AY 2018-19 has been allowed vide the appellate order passed for the said AY having appeal no. CIT(A)-2/PNJ/10963/2017-18 and DIN as ITBA/APL/M/250/2023-24/1063499939(1).

4.7 It is seen that the interest calculations of Rs 1,47,60,000/ bear the same character and nature as that of cash investment of Rs 11,60,00,000/. As the said addition of Rs 11,60,00,000/ made by the AO in AY 2018-19 is deleted, the interest on the same is also required to be held as not pertaining to the appellant and accordingly the addition of Rs 1,47,60,000/ is required to be deleted.

4.8 As regards interest worked out at Rs 67,50,000/ it is seen that the AO has added this amount stating that the Appellant has received additional interest of 9% per annum over and above 12% pa. on the investment made through banking channel. It is submitted by the Appellant that the calculations as per the working made by Shri Giridhar Ladda cannot be relied on the strength of the the submissions made by the Appellant. As the statement/seized materials found at the place of Giridhar Ladha has been held to be incorrect in as much as taxation of the Appellant is concerned, the addition made by the AO on account of such interest of Rs 67,50,000/ is required to be deleted

4.9 For the reasons mentioned in the preceding paras, and on the strength of the case laws relied on, the addition of Rs 2,15,10,000/- is hereby deleted.

5.0 Ground A, raised by the appellant is related to addition of Rs.47,61,740/- as unexplained money u/s 69A.

5.1 During the course of search at the residence of the appellant cash of Rs 47,61,740/ was found and seized. It was explained by the appellant that the said cash belonged to various firms of the appellant. The AO has brought this amount of Rs 47,61,740/ u/s 69A r.w.s 115BBE as unexplained money. Initially vide his written submissions the appellant contended that as the cash belonged to the firms in which he is a partner, the addition made by the AO has to be deleted. However on 26.3.2024, the appellant made further submissions in this regard , which is reproduced below.

"We invite your kind attention to para 24 of the assessment order which states that the unaccounted cash receipts on booking of flats of Rs 71 lakhs, sale of flat & shop at Rs 18.63 lakhs and unaccounted cash receipt of Rs 2.03 lakhs aggregating in all to Rs 91.66 lakhs is treated as unexplained money. In this regard we invite your kind attention to the seized materials which is treated as the basis by the AO for this addition. We enclose herein some copies of relevant seized materials, this throws light on an important fact that along with the receipts it is coupled with payments. You will appreciate that the seized materials clearly states that some of these chits are only estimates, some are duplicate (recorded twice) and accordingly stated by the appellant in Question & Answers. In some chits there is a clear mention of payments made /expenses incurred/ payments for the receipts. All this is evident on face of the seized materials. Many of the receipts are towards providing additional furniture facilities which involves expenditure and entire receipt cannot form part of the profit.

In light of the above facts and with an intend to give a full stop to the estimations of the Appellant voluntarily offers Rs 50 lakhs as profit element from these above referred transactions referred to in para 1 for the AY 2018-19 and simultaneously request to treat the cash found Rs 47,61,760/ as explained credit for the Asst tear 2019-20 and request that no addition is warranted on this account for AY 2019-20 and Rs 50 lakhs of additional income offered may kindly be treated as sustained addition for AY 2018-19 as against the addition of Rs 91.66 lakhs made by the AO."

5.2 The additional income of Rs 50 lakhs admitted as mentioned above, by the appellant has been considered in the appeal order for AY 2018-19 and therein it is directed to be brought to tax for AY 2018-19. As the said additional income is the result of net cash gain from unaccounted business transactions in cash, it emerges that the said gain of Rs 50 lakhs is available with the appellant in the form of cash. In view of this and since the said amount of Rs 50 lakhs is directed to be brought to tax in AY 2018-19, the cash of Rs 47,61,740/ found and seized during the course search is required to be held as out of the said amount of Rs 50 lakhs. Thus the cash of 47,61,740/ stands explained. Therefore the addition of Rs 47,61,740/ made by the AO u/s 69A r.w.s 115BBE is hereby deleted.

14. Aggrieved from the above order, the Revenue filed appeal before the Income Tax Appellate Tribunal.

15. The learned DR relied on the Order of the AO. He submitted that the learned CIT(A) has wrongly deleted the addition made by the AO ignoring the facts noted in paras 7 to 17 by the AO in his Order. The assessee has categorically accepted that he has invested in cash of Rs.5 Crore and he has accepted the loan given by way of banking channel and partially denied the same documents. During the course of search under section 132 of the Act conducted at the residence of Manager Shri Girdhar Laddha, a folder marked A/GL/01 was found and seized. Page No.1 of the seized folder contains details of investment made in Mishra Group both through banking channels and cash by the assessee and other investors. As per the documents, it is mentioned as K2 Rs.11,60,00,000/- cash and by bank Rs.10 Crores. The total investment made by K2 is Rs.21,60,00,000/- by the assessee and his family members. This is clear from para 8.10 of the Assessment Order. The veracity of the documents cannot be doubted once the assessee has himself accepted that the assessee has taken loan from Axis bank and

it was invested in the M/s dharwad Mishra Group and Food Processing Industry.. Whatever is mentioned in Page 1 of A/GL/01, the partial denial by the assessee is completely wrong. As per the statement recorded under section 131 of the Act which is placed at Paper Book Page No.110 in question and answerNos.2 and 3 in which the assessee has categorically accepted investment of Rs.5 Crores in cash in M/s. Dharwad Mishra Pedha and Food Processing Industry which is as underand he has confirmed on 21.01.2019, immediate after the search during the post search enquiry. The relevant part of the statements are as under:- :

Q.2 I am showing you your statement recorded on 18.01.2019 u/s 132(4) during the course of search and seizure action at your residential premises at H.No.28, 1st cross, Vishweshwar Nagar, Hubli-32. Do you confirm the statement given by you.

Ans:- Yes. I have gone through the statement and I reconfirm the contents stated in the statement given by me on 18.01.2019. However, I would like to clarify that the cash investment made in BIG Mishra Pedha Group is not in the form of loan, but the same was given to get a stake in M/s Dharwad Mishra Pedha and Food Processing Industries. Further, I would like to state that I have not received any interest or other benefits on the cash investments of Rs. 5 crore.

Q.3 In the statement given on 18.01.2019 at answer to the Q. No. 36 and Q.37 you have made a declaration of undisclosed income of Rs. 5,00,00,000/- over and above the regular income for A.Y 2018-19. The details of the same is given below.

S.L No	Nature of Amount	A.Y	Amount
1	Cash investment made in M/s Dharwad Mishra Pedha and Food Processing Industries.	2018-19	5,00,00,000
	Total		5,00,00,000/-

16. He also referred to question and answer Nos.31 to 37 of the statements recorded of the assessee u/s 132(4) of the Act. The assessee has explained the source of investment of Rs.5 Crores in cash out of his unaccounted business income. Therefore, later the retraction made by the assessee without any supporting evidence cannot be accepted even after accepting investment of Rs.5Crore as per question and answerNos.30 and 31 which is also without any

basis or any supporting documents. Therefore, he requested that the investment shown in the Mishra Group which is on the basis of the documents found in the residential premises of Accounts Manager Girdhar Laddha marked as A/GL/01, A/GL/02 AND A/GL/10 is Rs.11.60 Crores is to be upheld instead of Rs.5 Crore which is clearly on the basis of incriminating documents found. The documents found cannot be denied partially. The documents found also clearly shows that the interest has been given to the assessee, his family members and other investors in which the TDS has been deducted, which is not offered by the assessee as income in his return of income. As per question and answer No.34, assessee has himself accepted that K2 refers to assessee and his family members. As per observation of AO at Para No.8.2, the loan given in cash relates to Shri. Krishna Mohan Kalburgi and his family members and this finding has not been controverted by assessee with credible evidence. The authenticity of the documents has not been questioned by the assessee at any stage. During the course of statement recorded of the assessee, the statement recorded of Manager (Girdhar Laddha) has been provided to the assessee along with the documents found in the residential premises of Manager Shri Girdhar Laddha in which assessee has himself accepted the abbreviation of K2. Shri Ganesh Mishra is the head of the Mishra Group and he has given direction to Manager for making entries. The learned CIT(A) erred in not appreciating the fact that the additions were made on the basis of the entries found from the seized documents. Shri. Sanjay Mishra who not only accepted as owners who is income a business partner having business assignment by way of franchise of Mishra Group at various cities but has also admitted to repaying such loans in cash as interest paid thereon @ 12% in cash. He further submitted that the learned CIT(A) has ignored that similar entries of financial transactions were found in the documents seized from the residence of Manager wherein it is mentioned that Harish Mahajan, Shridhar Shetty, Satish Shetty, Mahadev Ganapathi and Madhu Habib have also given loan to Mishra Group both in cash and through banking channel. Shri. Harish Mahajan,

Shri Shridhar Shetty and Shri. Mahadev have accepted having extended loans to Mishra Group both through banking channel as well as in cash and also have received interest and repayment of loan both through banking channel as well as in cash. They have accepted the transactions appearing in the same seized documents and basis on the same, additional income has been declared and paid tax on the said additional income. Other parties mentioned in the seized documents who had made similar investments through cash and banking channels in the same seized documents A/GL/01, A/GL/02, A/GL/05 and A/GL/10 have admitted the same before the settlement commission under section 245D(4) of the Act dated 22.06.2023 in the case of Mishra Group and related parties. The learned CIT(A) has ignored the fact that on the same set of facts and evidences there cannot be a different treatment made out to the case of the assessee would be since the assessee has himself agreed to certain portion of the entries in the same seized documents and ignored the other set of entries that does not suit to him.

17. He further submitted that regarding cross objection not provided to the assessee and the learned CIT(A) has relied on the judgment of Hon'ble Apex Court in the case of Andaman Timber. It was not possible to provide cross objection to the assessee because of Covid 19 pandemic was at peak at that time and second wave was also started and the Income Tax Department had some SoP. It was impartible situation for the AO to provide cross objection to the assessee. During the course of search u/s 132 & 132(4) of the Act of the assessee the entire documents found related to the assessee and his family members were confronted to the assessee and the assessee ha replied the questions put to him, he did not ask for cross examination during the statements recorded u/s 132(4) of the Act, therefore asking for cross examination during assessment is not correct. The judgment relied on by the assessee in the case of Andaman Timber will not support the case of the assessee he further submitted that the judgment relied on by the AO support the case of the AO and he further relied on the judgment of Roshanlal

Sancheti reported in [2023] 150 taxmann.com 227 (Rajasthan), Order dated 30.10.2018 and confirmed by Hon'ble Apex Court reported in [2023] 150 taxmann.com 228 (SC), Order dated 28.11.2022.

18. The learned Counsel reiterated the submissions made before the lower authorities and strongly relied on the Order of the learned CIT(A). He further submitted that there was no incriminating material found during the course of search in the assessee's premises with regard to loan given in cash. The AO has made addition only on the basis of the statements given by Shri. Giridhar Laddha which cannot be accepted. During the course of search statement recorded under section 132(4) of the Act in which the assessee has denied of having given any cash loan to the Mishra Group, the Manager has made entry in the documents as per the instruction of Ganesh Mishra, Partner. On perusal of the seized materials which are reproduced by the AO in the Assessment Order shows that there is nothing in those materials which suggest that the alleged cash investments were made by the assessee. The most important point to be noted in this connection is that premises of the assessee too was searched and not an ounce was found regarding the cash investment in Mishra Group. A person making such huge cash investment would obtain some surety / guarantee like promissory note, postdated cheque / title deed of property, etc., from the party with whom investment is made and keep it with him. In the absence of such surety/ guarantee, the investor will be left with no legal recourse if the other party refuses to return the money.

19. He further submitted that the very basis of addition is on the basis of statement recorded of Manager. The statement recorded is not as per section 132(4) of the Act and Civil Procedure Law for recording the statement. It was recorded at 2 different places without taking on oath. The statement was recorded under section 132(4) of the Act on 18.01.2019 at the residence of Shri. Krishna Mohan Kalburgi located at H. No. 28, 1st Cross, Vishweshwar Nagar, Hubli – 32,

and the recording of statement procedure was temporarily suspended on 18.01.2017 and Shri. Krishna Mohan Kalburgi was taken to the Office of M/s. Dharwad Mishra Pedha and Food Processing Industry, located at No.3, 1st Floor, Tirumala Trade Centre, Neeligin Road, Hubli, Karnataka 580029. The statement recording got resumed under section 132(4) of the Act at 10 P.M. on 18.01.2019 but it was not recorded on oath. Therefore, whatever the question was put forth before the assessee and answers given by assessee has no evidentiary value. Therefore, those statements cannot be used as evidence as per section 17 of the Evidence Act because these 2 places are different. The first statement was recorded at the residence in pursuance of search conducted at the residence of the assessee and next statement was recorded for the search conducted at the premises of Mishra Group. Both are different statements which were recorded at 10 P.M. is completely beyond the provisions of Income Tax Act. During the course of assessment proceedings, assessee asked for cross examination of Manager but it was denied. The retraction letter was also filed by the assessee.

20. During the course of post search enquiry and statement recorded under section 131 of the Act, assessee denied having given any cash loan to the Mishra Group and he stated that it was due to pressure he mentioned this and the same was declared in front of Revenue authorities. He further submitted that Manager made entries in the documents on the instruction of Shri. Sanjay Ganesh Mishra for the reason best known to them. They might have made these entries and also admitted those to suit their requirement. Similarly, in the case of Shri. Shailesh Mahajan, who for the reason best known to him, has admitted to have made cash investments and received unaccounted interest. Shri. Shailesh Mahajan is neither a partner nor a Director in group concern of Mishra. He cannot be supposed to know the transactions between the assessee and Mishra Group. In his statement he has stated that the assessee has made unaccounted investments and unaccounted interest. How the third party knows that the assessee has also invested in the

Mishra Group. It is also pertinent to mention here that for making the investment of Rs.10 Crores through banking channels, the assessee has obtained loan from Axis Bank. If at all the assessee had capacity to make unaccounted cash investment why he would have taken loan from bank. Why would the assessee have the reason for unaccounted cash investment and that too without obtaining any surety for the same. Further, in the case of interest, learned CIT(A) has rightly decided that once the very basis of addition is not sustained then the subsequent income generated from that source also cannot be brought to tax. In support of his arguments, he relied on the following judgments :

- Shri. D. K. shivakumar Vs. DCIT in ITA No.1064/Bang/2024 Order dated 21.02.2025
- DCIT and Anr Vs. Sunil Kumar Sharma in Writ Appeal No.830 of 2022 (T-IT), Order dated 22.01.2024 (Hon'ble Karnataka High Court)
- DCIT, Bangalore and Anr Vs. Sunil Kumar Sharma in Special Leave Petition (Civil) Diary No(s). 23406/2024, Order dated 21.10.2024 (SC)

21. In the rejoinder the Id. DR submitted that the retraction made by the assessee is after thought and the learned DR submitted that the case law relied on by the learned Counsel are distinguishable on the facts. Here in the case on hand, assessee has accepted some portion of documents found during the course of search and in the same page some entries are recorded which is not accepted by the assessee. The authenticity of the documents found were not questioned by the assessee. Therefore, the entire judgment relied on by the learned Counsel are not applicable. The learned DR submitted that without prejudice atleast cash loan of Rs.5 Crores as accepted by the assessee during the course of statement recorded under section 132(4) of the Act, and confirmed on 21.01.2019 under section 131 of the Act statements may be upheld.

22. Considering the rival submissions, we noted that there was search conducted at M/s. Dharwad Mishra Pedha and Food Processing industry, Shri Sanjay, Smt. Anju Mishra and Shri. Ganesh and in the residence of the assessee on 17.01.2019. During search some incriminating documents were found pursuant to search conducted in the case of Girdhar Laddha. Therefore, notices under section 153C of the Act were issued to the assessee to file return of income. During the course of search proceedings, various documents were found and marked as A/GL/01, A/GL/02, A/GL/5 and A/GL/10. The entire facts have been brought out by the AO in para Nos.7 to 17 of the Assessment Order. In the Assessment Order, there is addition of Rs.11,60,00,000/- under section 69A of the Act on the basis of documents found at the residence of Manager Accounts (Giridhar Laddha) which was seized and statement were also recorded under section 132(4) of the Act. In the statement recorded under section 132(4) of the Act, Manager stated that certain entries from the material found from his residence are related to the assessee and his family members and others marked as A/GL/01, A/GL/02, A/GL/5 and A/GL/10 represented cash investments made by the assessee & his family members and others in Mishra Group. In the unearthed documents there were cash and bank transaction entry found but the assessee categorically denied in cash investment made by the assessee and his family. In Para No.8.2 of the Assessment Order in Page No.33 A/GL/01 has been reproduced which is very much relevant to make the addition of Rs.11,60,00,000/- in which K2 containing the details of loans given by assessee and his family members and a few others both through banking channel and by way of cash. The Manager abbreviated K2 as Krishna Mohan Kalburgi and his family members and as per question and answer No.34, the assessee has referred "K2" as himself and his family members. The Manager in the statement recorded explained the documents found and seized and these documents were confronted to the Manager (Girdhar Laddha) in which he had explained the relevant part of question and answer which is as under:

Ans	<p>Sir I agree that the Mishra Pedha entities have taken cash loans from various parties. The loan outstanding of Rs.89,49,24,734/- also contains cash loans. The bifurcation will be worked out immediately.</p>
Q.21	<p>I am showing you page no 6 of A/GL/01. Please refer to the table INVESTMENT A/C entry in the report. It is observed that following entry is mentioned:</p> <p style="text-align: center;">K2 - 14,90,00,000 K2 BANK - 14,90,00,000 PARVESH - 1,00,00,000</p> <p>Please explain the entries and also who is K2.</p>
Ans	<p>Sir K2 means Mr. Krishna Mohan Kalburgi and his family members who include Vinayak M Kalburgi, Srinivas Ravindra Kalburgi, Raghvendra Mohan Kalburgi, Ambasa, Arvind, Nityanand, Rajesh, Satyanarayana, to name a few.</p> <p>The Krishna Mohan Kalburgi family and Sri Hari Om Traders has given cash loan of Rs.14,90,00,000/- to Mishra Pedha Group entities mentioned in initial part of statement.</p> <p>In addition to this cash loan, the Krishna Mohan Kalburgi family has given bank loan of Rs.14,14,00,000/- to Mishra Pedha Group entities mentioned in initial part of statement.</p> <p>These two loan amounts are outstanding as on 02.01.2019. The interest charged for cash loan is 1.927 percentage as per monthly report.</p> <p>Parvesh is another lender who has advanced Rs.1,00,00,000 cash loan.</p>
Q.22	<p>I am showing you page no 1 of A/GL/01. Where in the table shows clear bifurcation of CASH and BANK entries as mentioned below:</p> <p style="text-align: center;">K2 - CASH - 11,60,00,000 BANK - 10,00,00,000 SHO - CASH - 3,31,00,000 BANK - 4,14,00,000 PARVA- CASH - 1,00,00,000</p> <p>These entries tally with the entries prepared for INVESTMENT A/C table in monthly report as on 2.1.2019 as per page no 6 of A/GL/01. Please confirm and explain.</p>
Ans	<p>Yes sir. These two pages give overall data of cash as well as bank loan taken from K2-Krishna Mohan Kalburgi family members, SHO- Sri Hari Om traders and Parvesh. The only difference is the SHO is added to K2 entry in monthly report as on 2.1.2019.</p>

23. From the above scanned documents, it is clear that there are 9 family members and few others. The names of the members are as under:

Vinayaka M Kalburgi, Srinivas Ravindra Kalburgi, Raghvendra Mohan Kalburgi, Ambasa, Arvind, Nityanand, Rajesh, Satyanarayan and a few.

24. During the course of statement recording at 10 P.M. on 18.01.2019 the documents found at the residence and statements of Shri Girdhar Laddhawere confronted to the assessee, the assessee has himself accepted that he and his family members have given loan to M/s. Dharwad Pedha and Food Processing industry., of Rs.10 Crores out of loan taken from the Axis Bank by members of the family and others. In the seized documents indications made as K2 by way of cash loan has been denied which is clearly wrong. The statement recorded under section 131 of the Act, on 21.01.2019 is as under:

Q.1 Please identify yourself.

Ans: - I am Shri Krishna Mohan Kalburgi S/o Shri Mohan kalburgi, aged about 46 years, residing at H.No.28, 1st cross, Vishweshwar Nagar, Hubli-32. I have studied up to B.Com. I can read, write Kannada and English. My mobile No. is 7760021222.

Q.1 Please identify yourself.

Ans: - I am Shri Krishna Mohan Kalburgi S/o Shri Mohan kalburgi, aged about 46 years, residing at H.No.28, 1st cross, Vishweshwar Nagar, Hubli-32. I have studied up to B.Com. I can read, write Kannada and English. My mobile No. is 7760021222.

Q.3 In the statement given on 18.01.2019 at answer to the Q. No. 36 and Q.37 you have made a declaration of undisclosed income of Rs. 5,00,00,000/- over and above the regular income for A.Y 2018-19. The details of the same is given below.

S.L. No	Nature of Amount	A.Y	Amount
1	Cash investment made in M/s Dharwad Mishra Pedha and Food Processing Industries.	2018-19	5,00,00,000
	Total		5,00,00,000/-

Do you confirm the same.

Ans. Yes, I reconfirm the declaration given by me in my statement recorded on 18.01.2019.

Q 4 Do you have anything more to say?

Ans: Since I have cooperated with the department and made the declaration voluntarily, it is requested that no penalty or prosecution proceeding may be initiated against me. I shall abide by the law and pay tax liability at the earliest.

25. From the above statement recorded under section 131 of the Act, the statement recorded under section 132(4) of the Act has been confirmed by the assessee which is clear from question-and-answer Nos.28 to 38. In the question-and-answer Nos.28 to 38 recorded u/s 32(4) of the Act, the assessee has himself accepted Rs.5 Crores cash loan by him and his family members and few. During the course of statement recorded under section 131 of the I T Act, the same amount has been confirmed as noted supra. Further, the investigating officer did not ask any question about the documents found displaying the cash loan noted supra of Rs.11.60 Crores as per A/GL/01 in 131 of the I T Act. It means, it is implied that the declaration made by the assessee of Rs.5 Crores as cash loan has been accepted by the Revenue. There is no doubt in regard to the loan given by cheque taken from Axis Bank and there are 13 lenders who have given Rs.10 Crores loan. As per the loan agreement dated 20.06.2018, there are 13 lenders and it has been confirmed by Giridhar Laddha noted supra. Further during the course of statement recorded u/s 131 of the Act, the investigating officer did not ask any question about the quantum of loans given by the assessee and his family members and a few. There are no definite shares among the lenders identified.

26. Therefore, we reject the entire arguments of the learned Counsel that there was no any loan given by way of cash. We found substance on the submission of the learned DR. The assessee himself has accepted that he has given cash loan of Rs.5 Crores which is clear from question and answerNos.30 to 38 recorded u/s 132(4) of the Act, which cannot be denied that there was no any loan given by the assessee in cash but admitted in Paper Book Page No.110 under section 131 of the Act of Rs.5 Crores is also noted supra. The judgment relied on by the learned DR supports the case of the Revenue. We make it clear that in the documents found the assessee has accepted that he has given loan through banking channel as well as it is noted as cash also. However, AO has made addition of entire Rs.11.60 Crores in the hands of the assessee but as per question and answerNo.21 of Manger

there are 9 family members and a few who have invested in M/s. Dharwad Mishra Pedha and Food Processing Industry but share of individuals have not been quantified. The entire addition cannot be added in the hands of the assessee, the for want of clear information of the actual investment by individual members which will be just and proper to divide the amount of Rs.11,60,00,000/- among the 9 members and a few. We noted from the statements recorded that the assessee and Giridhar Laddha have in their statements accepted that assessee and his family members and a few have invested in cash/bank in the Mishra Group. However, the investigation wing did not ask further question about the quantum of investments made in cash by other family members and a few. We also noted that the AO has during the course of assessment proceedings, did not ask about the share of investments by individual family members i.e. quantum of investment. The entire cash investments mentioned in seized documents have been added in the hands of the assessee which is not justified. In the statement recorded question No.21 of Giridhar Laddha in which the total 9 investors names are clear and there is further mention of 'a few'. The 13(thirteen) persons including HUFs have given loan of Rs. 10.00 crores out of bank loan in the M/s Dharwad Mishra Pedha Group and food processing Industry, therefore, it is assumed that all thirteen persons have also given cash loan. Accordingly, assessee's share will be of Rs. Rs.38,46,153 (Rs. 5,00,00,000/13)- and should be taxed in the hands of the assessee and the rest amount should have been taxed among other family members of the assessee and a few. Accordingly, we direct the AO to tax on the income of Rs.38,46,153/- in the hands of the assessee and we further direct to calculate the proportionate unaccounted interest income proportionately. Accordingly, the addition made towards interest in the impugned Assessment Year as well as in the Assessment Year 2019-20 has to be calculated proportionately in the hands of the assessee. During the course of hearing, the learned Counsel submitted that cross objection was not provided to the assessee. This has been answered by the learned DR in his argument. Therefore, there was impracticable situation during Covid

19 period. The entire documents found in respect of the assessee and his family members at the residence of Shri Girdhar Laddha and statements recorded of Shri Girdhar Laddha were confronted to the assessee during search and statements recorded u/s 132(4) of the assessee. Therefore, the judgment relied on by the learned Counsel in the case of Andaman Timbers is not applicable. Further, the learned Counsel submitted that the assessee filed retraction statement recorded under section 132(4) of the Act which are also without any supporting documents but the documents found at the residence of Manager clearly indicates that the assessee has given loan through banking channel as well as through cash which is credible evidence evident from the seized documents. Therefore, the retraction made and subsequent denial by the assessee also does not support the case of the assessee. The documents found marked as A/GL/01, A/GL/02 and A/GL/10 cannot be considered as a dumb document as the assessee has partially accepted the entries made in the same document. Therefore, the case law relied on by the learned Counsel is not applicable to the present facts of the case. The statement recorded u/s 132(4) and confirmed by the assessee during the statements recorded u/s 131 of the I T Act clearly indicates evidentiary value as per section 17 of the Evidence Act and the entries relating to banking transactions are co-related with the assessee's statements. IN the result the Appeal for the Ay 2018-19 of the revenue is partly allowed.

ITA No. 1137/Bang/2024: AY 2019-20

27. Further, in the case of Assessment Year 2019-20, the Revenue had challenged the quantum of deletion of interest of Rs.2,15,10,000/- which includes interest Rs.67,50,000/- out of investment from loan funds and the balance amount of Rs.1,47,60,000/- out of cash loan given by the assessee and his family members and a few. The entire amount has been added in the hands of the assessee. However, the assessee is not the beneficiary of the total interest as per the question and answer No.21 of the Giridhar Laddha noted supra. The entire interest should

be distributed among the entire family members and a few as apportioned in the AY 2018-19 as supra. Therefore, this issue is also required to be apportioned in the manner above, therefore this issue is remitted back to the AO to calculate actual share of the assessee. We further direct to the AO to give deduction under section 57(iii) of the Act towards any expenditure incurred by the assessee for earning interest income i.e., Axis bank loan interest, etc., since there is no doubt about the loan given through banking channel out of loan taken from Axis Bank which is not a undisclosed income of assessee and others.

28. During the course of search proceedings, the statement recorded of Giridhar Laddha on the basis of documents found marked as A/GL/01 in which “K2” and KK relates to the appellant. The AO has relied that K2 and KK are related to Krishna Mohan Kalburgi and family members. During the course of appellate proceedings, the learned Counsel submitted that on 25.07.2019 Shri. Giridhar Laddha retracted all his statements recorded under section 132(4) of the Act. In the retraction letter he has mentioned that he had blindly signed the statement without reading. The retraction filed by Giridhar Laddha cannot be accepted, since the retraction was made without any documents. During the search proceedings 2 panches (witness) were presented and if he had any objection he could have raised this issue before the higher authorities but did not do so. Even during the statement recorded of the assessee the statement recorded of Giridhar Laddha was confronted to the assessee and in this regard a specific question No.34 was raised which is as under:-

“34. Who is the K2 mentioned in these sheets?”

Ans: As confirmed by Giridhar Laddha, K2 refers to me. However the entries totaling to 12.6 crores are not cash loans forwarded by me. As a joint family, me and my family members have given a cash loan of Rs.5 Crore to Dharwad Mishra Pedha through Sanjay Mishra.”

29. From the above statement of the assessee, it is clear that the assessee himself has accepted that K2 denotes Krishna Mohan Kalburgi and his family. Therefore, retraction statement cannot be accepted. "The learned CIT(A) has wrongly observed that K2 does not denote the name of the assessee and he has also observed that there was no iota of evidence regarding cash investments under reference were actually made by the assessee. The AO could not bring any corroborative evidence regarding cash investments by the assessee". This finding is also wrong. In the documents marked as A/GL/01 scanned supra denotes K2 and cash and bank investment is also separately mentioned. The learned CIT(A) has forgotten that the assessee himself has accepted partially the entries made in the seized documents regarding loan given out of bank loan taken from Axis Bank and confirmed by him during 131 & accepted during 132(4) of the Act. Therefore, the finding of the CIT(A) is not acceptable.

30. In the result, appeals filed by the Revenue are partly allowed for both the years.

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

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Bangalore.

Dated: 13.08.2025.

/NS/*

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR,ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.