

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1266 & 1267/Chny/2025  
निर्धारण वर्ष/Assessment Years: 2014-15 & 2016-17

The DCIT, Central Circle-2, Trichy.	v.	Ramasamy Sivaprakasam, No.32-A, Kamarajapuram East Karur, Karur-639 002.
		[PAN: AZWPS 4034 M]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
Department by	:	Ms. Anitha, Addl. CIT
Assessee by	:	Mr. M.K. Rangaswamy, CA
सुनवाईकीतारीख/Date of Hearing	:	17.07.2025
घोषणाकीतारीख /Date of Pronouncement	:	12.09.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These appeals preferred by the Revenue are against the orders passed by the Learned Commissioner of Income Tax (Appeals)-19, (hereinafter referred to as 'Ld.CIT(A)'), Chennai, both dated 12.02.2025 for the Assessment Years (hereinafter referred to as 'AY') 2014-15 & 2016-17 u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since the issues involved in both these appeals are common, they were heard together. Both the parties also argued them together raising



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similar arguments on these issues. Accordingly, for the sake of convenience and brevity, we dispose both these appeals by this consolidated order.

**3.** With the consent of the both the parties, we first take up the appeal of the Revenue in ITA No.1266/Chny/2025 for AY 2014-15 as the lead case. Ground Nos. 1 to 3 of the appeal are in relation to the disallowance of purchases of Rs.2,22,77,459/-. Briefly stated, the facts as noted are that, the assessee is an individual and the proprietor of M/s Pacific Exports, involved in the business of export of textiles. The assessee purchases yarn and cloth, which is converted into fabrics and mainly exported outside India. During the relevant AY 2014-15, the assessee is noted to have reported total turnover of Rs.9.8 crores, out of which export sales was Rs. 9.63 crores and local yarn sales was Rs. 17.79 lakhs. In relation thereto, the assessee is noted to have made purchases of yarn and cloth and has reported gross profit of 18.83% of the total sales.

**4.** It is noted that, a survey u/s 133A of the Act was carried out at the business premises of the assessee on 21.09.2017, in the course of which purchase ledgers were impounded vide Annexure-GS/PE/S/IMP/ANN 1 to 7. The AO is noted to have extensively reproduced sample purchase ledgers in the assessment order and observed that, there are entries for payments through cheques and there are entries of equivalent amounts



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received back in cash on the same day or the succeeding day, for which the assessee has paid commission of 0.5%. According to the AO, the entries in these ledgers evidenced that the assessee had not made actual purchases but had obtained bogus accommodation entries for generating unaccounted cash. The AO further observed that the assessee, in his statement recorded u/s 131 of the Act at the time of survey, had also admitted that these purchases were bogus and is found to have extracted the relevant portions of his statement at Pages 20-22 of the assessment order. With these observations, the AO is noted to have quantified the bogus purchases at Rs.2,22,77,459/- out of the total purchases and show caused the assessee as to why it should not be disallowed u/s 37 of the Act. The assessee is noted to have inter alia objected to the veracity of the loose ledgers impounded in the course of survey and also submitted that, he had since retracted his statement. The assessee is found to have further submitted the quantitative details along with the movement of stock and claimed that when the export sales have not been disputed, then under no circumstance could the entire purchases be alleged to be bogus, as it would then mean that the sales have been effected without purchases. The assessee also provided a comparative data of the gross-profit and net profit ratio as declared in the return of income vis-à-vis the ratios, if the alleged purchases were held to be bogus, and contended that it would be unimaginable to achieve a gross profit of 41.55% in this



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export business. The AO however is noted to have rejected the submissions put forth by the assessee and observed that the impounded material was clear, coherent and non-ambiguous and therefore, the contents thereof could not be discarded. He therefore disallowed the impugned purchases u/s 37(1) of the Act. Aggrieved by the order of the AO, the assessee carried the matter in appeal before the Ld. CIT(A).

**5.** On appeal, the Ld. CIT(A) observed that the evidences which were collected from the business premises of the assessee were meticulously maintained and that the ledgers evidencing the bills were settled by cheques in lieu of cash. The Ld. CIT(A) therefore concurred with the AO that these documents were self-explanatory and that the impugned purchases were made from bogus parties. Having held so, the Ld. CIT(A) however disagreed with the AO's action of disallowing 100% of the bogus purchases. The Ld. CIT(A) observed that the assessee had furnished quantitative analysis of purchases and sales in response to the show cause notice, which remained uncontroverted by the AO. According to the Ld. CIT(A) therefore, only a reasonable percentage of the bogus purchases could be attributed as the income of the assessee and he is noted to have estimated the same at 12.5%. Being aggrieved by this order of the Ld. CIT(A), the Revenue is now in appeal before us.



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**6.** Assailing the action of Ld. CIT(A), the Ld. DR for the Revenue submitted that, the material impounded during the course of survey clearly revealed that the impugned purchases were bogus and that the assessee had received back cash in lieu of the payments and therefore the AO had rightly disallowed the entire value of purchases. According to him, the Ld. CIT(A) was unjustified in restricting the disallowance to 12.5% of these purchases. He urged us that, the entire value of purchases ought to be disallowed. To support his submission, the Ld. DR relied on the decision of Hon'ble Bombay High Court in **PCIT v. Kanak Impex (ITA No. 791 of 2021)**.

**7.** Per contra, the Ld. AR for the assessee argued that, the AO had not disputed the sales of Rs.9.63 crores made out of the purchases of Rs.2.23 crores. He showed us that majority of these sales were exports and therefore its genuineness could not be doubted. He further took us through the quantitative details of the purchases and sales which were placed before the lower authorities and submitted that no infirmity therein was pointed out by the AO. According to him, when the quantities of the opening stock, purchases, sales and the closing stock were not in dispute and the books of accounts had also not been rejected u/s 145(3) of the Act, it cannot be said that the assessee had not made any purchases at all. The Ld. AR submitted that, it was a case where the purchases were indeed made, but the parties, who the assessee claims to have supplied



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these purchases, were not genuine. According to him therefore, the Ld. CIT(A) had rightly appreciated the foregoing facts and only estimated a profit element embedded in the alleged bogus purchases. The Ld. AR submitted that decision of Hon'ble Bombay High Court in the case of **PCIT v. Kanak (Impex) Ltd. (supra)** referred by the Ld. DR has no application as the said judgment was rendered in the context of applicability of Section 69C of the Act which deals with nature and source of payment of expenditure, whereas in the instant case, the source of payment made towards purchase was not in question and rather the disallowance was made u/s 37(1) of the Act which deals with the allowability of expenditure for which business purpose test is applicable. The Ld. AR, instead, reiterated the reliance on the judgments cited by the Ld. CIT(A) for estimating profit element embedded in the impugned purchases. He therefore does not want us to interfere with the order of the Ld. CIT(A).

**8.** Heard both the parties. The issue in dispute before us is narrow in compass. From the material placed before us, it is observed that the lower authorities have held that the impugned purchases of Rs.2,22,77,459/- was made by the assessee from bogus parties and the assessee has not preferred any appeal before us against the aforesaid findings. The only issue which requires our consideration is whether on the given facts of the case, the entire value of payments made to the



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suppliers was to be disallowed or only the profit element embedded therein was to be taxed in hands of the assessee. From the material available on record, it is observed that, the assessee is involved in the business of export of textiles under the name & style of M/s Pacific Exports. During the year, the assessee effected sales of Rs.9.8 crores which comprised of export sales of Rs.9.63 crores. Against these sales, the assessee is noted to have made purchases of Rs.6,14,68,713/- which comprised of the alleged bogus purchases of Rs.2,22,77,459/-. It is not in dispute that, in any trading / manufacturing transaction, a sale / manufacture of an article is possible only when there is a corresponding purchase. We find that, before the AO, the complete quantitative details of opening stock, purchases, sales and closing stock were furnished by the assessee in his reply dated 17.05.2023 to the notice issued u/s 142(1) of the Act. It is noted that these quantitative details and the book results of the assessee, have not been rejected by the AO. Accordingly, but for the quantities of yarn/cloth purchased by the assessee, the assessee could not have made the corresponding sales viz., export of fabrics. In the circumstances, if the entire value of purchase is considered to be non-existent, then as a corollary, the corresponding sales will also have to be treated as bogus or non-existent, which has not been done in the present case. Hence, it cannot be said that the assessee had not purchased these quantities of yarn/cloth at all. Instead, according to us, it



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is a case where the purchases were indeed made, but the parties, who the assessee claims to have supplied these purchases, are not genuine. In this context, we may gainfully refer to the decision of the Hon'ble Gujarat High Court in the case of **CIT v. Bholanath Polyfab (P.) Ltd. (355 ITR 290)** wherein similar issue was involved. In that case also, it is noted that this Tribunal was of the opinion that the purchases might have been made from bogus parties but the purchases themselves were not bogus. Considering such a situation, this Tribunal was of the opinion that not the entire amount of purchases but the profit margin embedded in such amount would be subjected to tax. On appeal by the Revenue, the Hon'ble High Court is noted to have upheld this finding of the Tribunal.

9. We also gainfully refer to the decision of the Hon'ble jurisdictional Madras High Court in the case of **CIT v. SPL Infrastructure Limited (274 taxman 292)** which is found to be relevant in the facts of the present case. In the decided case, the assessee was engaged in the business of development of civil infrastructure. The assessee had incurred expenses by way of payments made to sub-contractors. The AO found these sub-contractors to be bogus and non-existent and therefore disallowed the entire expenditure. On appeal, the Tribunal restricted the disallowance to 10% of the expenditure incurred towards sub-contractors. Aggrieved by the action of the Tribunal, the Revenue had inter alia raised



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the following questions of law before the Hon'ble jurisdictional High Court,  
which held as under :-

"(i) Whether the Tribunal was correct in restricting the disallowance to 10% of expenditure of Rs. 4,41,08,210/-incurred towards sub-contractors even though the assessee had failed to prove the identity, credibility and genuineness of the Sub-Contractors?

(ii) Whether the Tribunal was right in not appreciating the findings of the Assessing Officer that the contractors were non-existent, inexperienced, incompetent and bogus and the assessee had claimed the said expenditure only to reduce the income and the tax incidence on the income."

**10.** The Hon'ble High Court noted that, since these sub-contractors were not verifiable, the possibility of inflation of expenses could not be ruled out but at the same time agreed with the action of Ld. CIT(A) & Tribunal of not disallowing the entire expenses but restricting the same to 10%. The Hon'ble High Court observed that the disallowance of entire payments to sub-contractors would result in abnormal profitability and therefore countenanced the action of lower appellate authorities in estimating the profit element embedded in such inflated expenses. The relevant findings taken note of by us is as follows: -

"12. A bare perusal of the compared results of the Gross Profit and Net Profit by the Assessee given in para 7 of the Tribunal's order clearly shows that the said Gross Profit at the rate of 14.21% and Net Profit at the rate of 3.83% declared by the Assessee, with the addition of 10% agreed by the Assessee before the learned Commissioner of Income-tax Income (Appeals), resulted in a much better result of profits declared by the Assessee in the present Assessment Year viz., A.Y. 2010-11 2010 as compared to the previous years. The Net Profit rate in the previous three years was less than 3%, whereas the Assessee himself declared the net profit of it at the rate of 3.83% before the aforesaid addition of



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10% of Rs. 4,41,08,210/-. Therefore, the estimation of profit by the Appellate Authorities even on the premise taken by the Assessing Authority that some of the Sub--Contractors could not be produced d before the Assessing Authority, does not result in any perversity in the findings of the learned Commissioner of Income-tax Income tax (Appeals) as well as the learned Tribunal.

13. It is well known that where the books of accounts maintained by the contractors are not accepted by the Department, the estimation of profit made on the basis of history of Gross Profit rate and Net Profit rate of the Assessee in the previous years or comparable cases of contractors can be made. Once such profit rates are compared, the additions on account of non-confirmation confirmation or non-production of the Sub-Contractors, Contractors, etc. is totally irrelevant and cannot be made.

14. In the hierarchy of the fact-finding fact finding bodies created under the Income-tax tax Act, obviously the findings of the Assessing Authority stand superseded for all purposes, by the findings of the higher appellate authorities. Unless glaring perversity in the findings of the appellate authorities are pointed out and established by the Revenue in the Appeals filed by them under section 260A of the Act, there is nothing for the High Court or Constitutional Courts to do in such matters. The findings of fact arrived at by the Authorities below are binding on the High Court under section 260A of the Act, unless the perversity as aforesaid is clearly visible, established and proved.

15. As aforesaid, as against the perversity in these findings, we see a better taxable income finally taxed in the hands of the assessee, albeit with the agreement to disallowance to the extent of 10% of the payments made to the Sub-Contractors, which the assessee appears to have agreed under the compulsion of circumstances to avoid litigation and to buy peace.

16. In fact, the results declared by the Assessee of the net profit rate at the rate of 3.83% was much better as compared to previous three years and only marginally less than the previous two years of 2005-06 and 2006-07, which were at the rate of 4.20% and 3.94%. In these circumstances, no disallowance was called for. Still, if the Assessee agreed to such addition to apparently buy peace with the Department, we fail to understand as to why the Revenue has filed these Appeals to drag cases further in the High Court incurring the loss of man hours and cost of litigation. Such unnecessary litigation on the part of the Revenue Authorities deserves to be strongly deprecated, but, the Revenue Authorities do not seem to be seeing the sense behind this and keep on filing Appeals under section 260A of the Act, as a matter of routine."



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**11.** In the present case also, if the impugned purchases are disallowed, it would result in an abnormal gross profit rate of 41.55% and a distorted net profit rate of 25.45% in a regular textile export business. In our considered view therefore, the ratio laid down in the above decision is squarely applicable to the assessee's case. According to us, in the present case, it is the genuineness of the parties, from whom purchases have been made, which is under doubt and not the quantity of purchases. Hence, the AO's action of disallowing the entire value of purchases was unjustified. We thus agree with the Ld. CIT(A) that a reasonable profit qua such bogus purchases was to be brought to tax in the facts & circumstances of the case.

**12.** Our above view is also supported by the decision of Hon'ble Gujarat High Court in the case of **CIT v. Simit P. Sheth (356 ITR 451)** wherein the facts and circumstances involved were similar to the present case. In the decided case also, the purchase of steel made by the assessee were held to be bogus and therefore the AO disallowed the entire purchases. On appeal, the Hon'ble High Court noted that, the corresponding sales and book results of the assessee had not been rejected and therefore it was a case where purchases were made from different parties and bogus invoices had been obtained from different parties. The Court thus held that, not the entire purchase price but only the profit element embedded



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in such purchases could be added to income of the assessee. The relevant findings which are applicable to the he present case as well, is as under: -

"5. We are broadly in agreement with the reasoning adopted by the Commissioner (Appeals) with respect to the nature of disputed purchases of steel. It may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales. However, the vital question while considering whether the entire amount of purchases should be added back to the income of the assessee or only the profit element embedded therein was to ascertain whether the purchases themselves were completely bogus and non-existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation.

6. In the present case, the Commissioner of Income-tax Income tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned men in the books of account.

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt.CIT [1996] 58 ITD 428 (Ahd.) came to be approved.

8. If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to



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12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted."

**13.** We find that the above judgment was again followed by the coordinate Bench of Hon'ble Gujarat High Court in the case of **Pr.CIT v. Sunil Mittal HUF (164 taxmann.com 709)** wherein also the principle of estimation of profit element in bogus purchases was upheld, by observing as under:-

"10. Considering the submissions made by learned advocate Mr.Sanghani as well as the finding of facts recorded by the CIT(A) and the Tribunal, it appears that so far as the Question No.1 is concerned, the CIT(A) has noted the fact that the Assessing Officer while making addition of the entire purchases has accepted the sales. Therefore, the CIT(A) considering the fact that the Assessing Officer could not have disallowed the entire purchases in absence of any finding on correctness of the amount paid/payable to creditors, the possibility of purchasing the goods from grey market at lower rates and recording the same at inflated price in books of account cannot be ruled out and hence, made an addition of gross profit @ 13.05%. The CIT(A), in support of its findings, relied upon the following decisions :

(i) The CIT v. Simit P. Sheth [2013] 38 taxmann.com 385/219 Taxman 85/356 ITR 451 (Gujarat)

(ii) [Bombay HC WRIT PETITION NO.2860 OF 2012/Nickunj Eximp Enterprises (P.) Ltd. v. Assistant Commissioner of Income-tax [2014] 48 taxmann.com 20/229 Taxman 99 (Bombay)]

(iii) A decision of the Hon'ble Bombay High Court in the case of Pr. CIT v. Pinaki D. Panani [IT Appeal No. 1543 of 2017, dated 8-1-2020].



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(iv) A decision of the Hon'ble Bombay High Court in the case of Usha Exports v. Asstt. CIT [Writ Petition No. 2506 OF 2019, dated 12-12-2019].

11. In view of the concurrent finding of facts arrived at by both CIT(A) and the Tribunal, we are of the opinion that no question of law, much less any substantial question of law arises from the impugned Judgment and Order of the Tribunal. The appeal, therefore, fails and is accordingly dismissed."

**14.** Following the above decisions (supra) which are found to be applicable on the given facts of the present case, we accordingly countenance the action of Ld. CIT(A) that only the profit element embedded in these bogus purchases ought to be assessed to tax. Coming to the issue of estimation of the profits, on the given facts according to us, the Ld. CIT(A) has rightly estimated it at 12.5% of the value of purchases, which is found to be fair & reasonable and therefore, no further addition was warranted in this regard.

**15.** For the reasons set out above, we don't see any reason to interfere with the order of the Ld. CIT(A) in this regard and thus uphold the same. Ground Nos. 1 to 3 are therefore dismissed.

**16.** Ground No. 4 raised by the Revenue is against the Ld. CIT(A)'s action of deleting the addition of Rs.53,98,000/- made by the AO on account of alleged on-money payment on purchase of immoveable property. The facts relating to this issue are that, the assessee had



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purchased an immovable property at Anna Nagar for a cost of Rs.25,03,830/-, which comprised of purchase price of Rs.23,18,000/- and stamp duty & registration charges of Rs.1,85,830/-. It was brought to our notice that, the stamp duty authorities had also assessed the market value of the property at Rs.23,18,000/- viz., the actual consideration paid by the assessee. The AO noted that, the assessee in his statement recorded u/s 131 of the Act, in the course of survey had however admitted that the aforesaid property was actually purchased by him for Rs.77,16,000/- and had accordingly offered the difference of Rs.53,98,000/- to tax. Relying on assessee's statement, the AO proposed to add the impugned sum as on-money paid by him outside the books of accounts. The assessee is noted to have submitted that, the statement was recorded under duress and coercion and had since been retracted. The assessee also submitted that there was no material or evidence found during the course of survey which suggested that the assessee had made the impugned on-money payment and therefore claimed that no addition was permissible solely on the basis of a retracted statement. The AO however did not agree with the submissions of the assessee and added the impugned sum to the total income. On appeal, the Ld. CIT(A) was pleased to delete the same. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us.



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**17.** Heard both the parties. The case of the Revenue hinges solely on the admission made by the assessee in his statement recorded u/s 131 of the Act in the course of survey wherein he made a bald disclosure of Rs.53,98,000/- on account of purported on-money payment on purchase of immovable property. The facts available on record shows that the assessee had purchased the property at the same value at which it was assessed by the Stamp Valuation Officer for stamp duty purposes. The AO has not indicated any material or evidence impounded during the course of survey which would suggest that the assessee had paid something more than the actual purchase consideration or the assessed stamp duty value. The AO also did not make any attempt to obtain the fair market value of the property by making reference to the DVO, particularly when the assessee had retracted his statement. The AO also did not make any enquiry or investigation in the context of the retraction filed by the assessee. On these facts therefore, we countenance the Ld. CIT(A)'s findings that, in absence of any corroborative evidence, the impugned addition made by the AO solely on the basis of a retracted statement recorded u/s 131 of the Act, was unsustainable. According to us, the decision of the Hon'ble Madras High Court in the case of **Thiru A J Ramesh Kumar v. DCIT (441 ITR 495)** cited by the Ld. DR is of no assistance to the Revenue as it concerns the evidentiary value of statement recorded u/s 132(4) of the Act. It is trite law that the



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statement recorded u/s 133A of the Act (survey) cannot be equated with the statement recorded u/s. 132(4) (search) and evidentiary value of statement recorded u/s 133A of the Act (survey) stands on a lower pedestal and the statement u/s. 133A of the Act cannot be even recorded on oath, which if recorded cannot be admissible/relied upon or acted upon. For this, we rely on the decision of the Hon'ble Supreme Court in the case of **CIT v. Khader Khan Son (352 352 ITR 480)** wherein it has been held that Section 133A of the Act does not empower any income tax authorities to examine any person on oath, hence any such statement lacks evidentiary value and any admission made during the survey cannot by itself be made the basis of addition.

**18.** Similar view was expressed by the Hon'ble Delhi High Court in its judgment in the case of **Dhigra Metal Works v. CIT (196 Taxman 488)**. The facts involved in this case was that, a survey action was conducted at the premises of the assessee and discrepancies in the physical stock, vis-a-vis book stock were found. One of the partners of the assessee firm could not explain the said difference at that particular point of time and, therefore, to buy peace of mind, certain additional income was offered for assessment. Subsequently, the assessee firm submitted that the statement of the partner about stock was incorrect; and that the impugned discrepancy had been reconciled as it was only a



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mistake. The assessee therefore withdrew the offer for additional income on account of excess stock. The AO however relying on the statement of the partner given in survey u/s 133A of the Act added the excess stock found as the income of the assessee. On appeal the Hon'ble High Court held as under:

"12. From the aforesaid, it is apparent that while section 132(4) of the Act specifically authorizes an officer to examine a person on oath, section 133A does not permit the same.

13. The Kerala High Court in Paul Mathews & Sons v, CIT[2003] M3 JTR 101 and Madras High Court in C/T v. S. Khader Khan Son [2008] 300 ITR 137 have also taken a similar view. The relevant portion of the Kerala High Court judgment in the case of Paul Mathews & Sons (supra) is reproduced hereinbelow :--

"The provision also enables the income-tax authority to impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him, provided the authority records his reasons for doing so and also shall not retain the books of account for a period not exceeding 15 days. Section 133A(3)(iii) enables the authority to record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. Section 133A, however, enables the income-tax authority only to record any statement of any person which may be useful, but does not authorize taking any sworn statement. On the other hand, 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



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statement which alone has evidentiary value as contemplated under law. Therefore, there is much force in the argument of learned counsel for the appellant that the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this,"

14. Moreover, the word 'may' used in section 133A(3)(iii) of the Act clarifies beyond doubt that the material collected and the statement recorded during, the survey is not a conclusive piece of evidence by itself.

15. In any event, it is settled law that though an admission is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person who has made the admission to show that it is incorrect.

16. Since in the present case, the respondent-assessee has been able to explain the discrepancy in the stock found during the course of survey by production of relevant record including the excise register of its associate company, namely, M/s. D.M.W.P. Ltd., we are of the opinion that the Assessing Officer could not have made the aforesaid addition solely on the basis of the statement made on behalf of the respondent-assessee during the course of survey. "

**19.** In view of the above decisions (supra), we therefore concur with the Ld. CIT(A) that, the statement of an assessee recorded in the course of survey u/s 133A cannot be the sole conclusive evidence to justify an addition to the income, unless the said statement is supported by corroborative evidence. Before us, the Ld. DR appearing for the Revenue was unable to bring on record any material gathered in the course of survey, which would otherwise corroborate the original statement of the assessee. Therefore, in absence of any tangible material to support the admission made by the assessee, which has since been retracted as well,



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we countenance the following findings of the Ld. CIT(A) in this regard, which are as under:-

"6.4.4 The crisp of the above submission is as under:-

The appellant has purchased a vacant site at Anna Nagar, Karur, on 19.12.2013, for Rs. 25,03,830/- (including stamp duty and registration charges), as per the registered purchase deed (Doc. No. 08620/2013). In a sworn statement recorded on 21.09.2017, the appellant, influenced by external pressure, admitted the market value of the property as Rs. 1,500 per sq.ft, leading to an offer of Rs. 53,98,000/- as undisclosed income. However, the appellant retracted this statement during the reassessment. The appellant argues that the addition of Rs. 53,98,000/- is based solely on this retracted sworn statement and lacks corroborative evidence. No proof of on-money payment was provided, and the actual purchase value is supported by the registered deed. The appellant asserts that the department's assumptions about the market value and on-money payment are not backed by solid evidence. Therefore, the appellant requests that the addition of Rs. 53,98,000/- be deleted, as the registered purchase deed is conclusive evidence of the property's actual value.

6.4.5 The undersigned has carefully examined the issue under consideration. The AO contemplated the addition on the basis of the statement recorded, during the course of survey as per the response of the assessee to question No. 8 put forth to him. It is significant to bring it on record that the survey team has not come across any evidence to substantiate the payment of on-money made by the appellant. Further while recording the statement from the appellant, no evidence of any kind was confronted with the appellant to substantiate the alleged on money payment.

6.4.6 The issue involved is about the payment of on-money to purchase the said property. The AO while making the addition of Rs. 53,98,000/- has not attempted to cross verify the value of property with the Registrar. No findings have been made by the AO as to whether the Registrar has demanded any extra stamp duty under the provisions of 47A of the Stamp Valuation Act. Further the AO has not made any reference to the Department Valuation Officer to determine the fair market value of the immovable property. More significantly the AO has not cross verified the issue of on money payment with the vendors of the property. In addition, the AO has not brought on record about the invoking of Capital Gains in the hands of the sellers of the property. The AO treated the statement recorded from the appellant during the course



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of survey and proceeded to make the addition. Now the issue before the undersigned is whether the AO is right in making the addition on the basis of the sworn statement alone.

6.4.7 At this juncture, the undersigned has drawn reliance from the following decision (s) viz..

6.4.7.1 The Hon'ble jurisdictional High Court in the case of CIT vs. S. Khader Khan & Son [2008] 300 ITR 157 Madras has held that an admission made in the statement recorded during the course of survey cannot be the basis to make any addition. The revenue preferred Civil appeal against the above order before the Hon'ble Apex Court. The Hon'ble Apex Court in this case as reported in [2013] 352 ITR 480 (SC) has affirmed and held that "*as an Income Tax Officer under section 133A is not empowered to examine any person on oath, therefore, any admission made in a statement recorded during the course of survey proceedings could not form a basis for making any addition.*"

.....

6.4.7.6 In view of the above judicial decision(s), the undersigned is of the considered view that in the absence of any corroborative evidence, no addition can be made by relying upon the statement recorded alone. Therefore, the addition contemplated by the AO on the basis of the statement recorded is unsustainable in the eyes of law. Accordingly, the ground raised by the appellant upon this issue is hereby treated as allowed and the AO is directed to delete the addition of Rs.53,98,000/- made u/s 69B of the Act for the AY 2014-15 "

**20.** In view of the above, we see no reason to interfere with the same and accordingly dismiss this ground of the Revenue.

**21.** We now take up the Revenue's appeal in ITA No.1267/Chny/2025 for AY 2016-17.

**22.** Ground Nos. 1 to 3 of the appeal relates to the disallowance of bogus purchases of Rs.3,83,72,203/-. After considering the rival



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submissions, it is observed that, except variation in figures, the reasoning adopted by the AO to disallow the entire purchases and the findings rendered by the Ld. CIT(A) for estimating and restricting the addition to the extent of 12.5% of the purchases is identically same as in AY 2014-15.

**23.** Following our conclusions drawn while deciding Ground Nos. 1 to 3 of Revenue's appeal in AY 2014-15, we see no reason to interfere with the order of the Ld. CIT(A) and confirm the same. We therefore dismiss these grounds raised by the Revenue.

**24.** Ground No. 4 raised by the Revenue is as under:-

"4. The Ld. CIT(A) erred in not observing that Hon'ble Madras High Court in the case of Thiru. A. J Ramesh Kumar vs DCIT (2022) 441 ITR 495 (Mad) (HC)/(2022) 139 taxmann.com 190 (Mad), held that the mere fact that the appellant retracted the statement could not make the statement unacceptable. The Hon'ble High Court held that "the burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion indicating that there was an element of compulsion for appellant to make such statement."

**25.** It is noted that this ground does not emanate from the impugned order of the Ld. CIT(A) for AY 2016-17 and appears to have been blindly copy-pasted from the grounds raised in the appeal for AY 2014-15. It is



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observed that, the Ld. CIT(A) has not rendered any such finding in the impugned order for AY 2016-17 deleting any addition(s) by upholding the veracity of the retraction filed by the assessee. Hence, this ground raised by the Revenue does not stem from the order impugned before us and is accordingly dismissed. However, the case law cited by the Revenue has been considered while adjudicating Ground No.4 for AY 2014-15 (supra), and we have dealt with the same at Para No.17 (supra). Hence, we didn't find any merit in this ground raised by the Revenue.

**26.** In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on the 12<sup>th</sup> day of September, 2025, in Chennai.

**Sd/-**  
(अमिताभ शुक्ला)  
**(AMITABH SHUKLA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 12<sup>th</sup> September, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF