IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.5671/Del/2016
(ASSESSMENT YEAR 2012-13)

ACIT, Central Circle-30, New Delhi.	Vs.	Sh. Shyam Sunder Jindal, 12A, Green Avenue, Sector-D, Pocket-3, Vasant Kunj, New Delhi -110070. **PAN-AAGPJ0184N**
(Appellant)		**(Respondent)**

Assessee by	Shri Rohit Jain, Advocate and Shri Shivam Gupta, CA
Department by	Ms. Jaya Choudhary, CIT-DR
Date of Hearing	16/04/2025
Date of Pronouncement	21/05/2025

O R D E R

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the appellate order of the ld. Commissioner of Income Tax (Appeals)-30, New Delhi [Ld. CIT(A), in short] dated 28.08.2016, for the Assessment Year: 2012-13 in appeal No. 125/15-16/2102 passed u/s 250(6) of the Income Tax Act, 1961 (the Act, in short).

2. Brief facts of the case are that a search and seizure actions u/s. 132 of the Act and/or survey action u/s. 133A of the Act was carried out by the Income Tax Department on the B.C. Jindal group of cases on 14.11.2011 of which the assessee is one of the members and his residence was also searched. The return of income for the year under appeal was filed by the assessee on 27.09.2012 declaring total income at Rs.3,71,04,136/-. The main source of income of the assessee are from Professional fee, interest income and dividend income. As a result of search jurisdiction over the cases was assigned to Central Circle -22,

New Delhi vide order u/s. 127 of the Act. The notice u/s. 143(2) and further notices u/s 142(1) were issued from time to time and the assessee responded to the notices issued and filed details required during the assessment proceeding. During the search at the residence of the assessee at 12A Green Avenue, Pocket -3, Vasant Kunj, New Delhi loose papers were found/seized marked as Annexure-A-1 to A-18. Statement of assessee were recorded u/s 132(4) of the Act where in response to question No.22, the assessee made a disclosure of additional income of Rs. 100 crores on account of the discrepancies found at the time of search. Thereafter during post search proceedings before the ADIT, Unit-IlI(1), the authorized representative of the assessee (his CA) vide letter dated 28/05/2012 re-confirmed the surrender and increased the amount of additional income from 100 crores to 130 crores and stated the bifurcation of the disclosure of additional income offered by the assessee during the search. According to the said letter, Rs. 90 Crores was offered as additional Income of M/s Lucky Holding Pvt Ltd, Rs. 30 crores as income of Shri B.C. Jindal and Rs. 10.00 crores as additional income by assessee himself. However, in the return of income filed by the assessee on 29/09/2012, no additional income was offered for tax which was admired at the time of search. Accordingly, a show cause notice was issued to the assessee on 19.11.2014 and the assessee was asked to explain as to why the addition of Rs. 10 crore may not be made in his case for A.Y. 2012-13 as per his admission on oath during the statement recorded u/s 132(4) of the Act. In response, the assessee stated that the surrender of Rs. 10 crores was made on *ad hoc* basis and was under extreme pressure. The AO has rejected the plea of the assessee and made the addition of Rs. 10.00 crores as Income from Other Sources in the hands of the assessee.

3. Aggrieved by the above order of the Assessing Officer making the addition, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) has deleted the additions made towards the surrender made of RS. 10.00 crores. Against the said deletion revenue has filed the appeal before the Tribunal.

4. The Department has assailed the appeal before us on the following grounds:

> *"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 10,00,00,000/- made by the A.O. on account of additional income disclosed by the assessee in his statement recorded u/s 132(4) of the I.T. Act on 15.11.2011 during the course of search proceedings and non-declaration of it in the return of income.*
>
> *2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating the fact that disclosure of this additional income was reconfirmed by the assessee through letter dated 28.05.2012.*
>
> *3. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*
>
> *4. That the grounds of appeal are without prejudice to each other.*
>
> *5. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

5. Before us, the CIT ld. DR submitted that the observations by the CIT(A) in the impugned order that there was no incriminating material but a statement of the assessee recorded during the proceeding u/s. 132(4) is only piece of evidence found as a result of search which although retracted however, will not make the fact corrected that there was no incriminating material, therefore, the addition was justified and she vehemently supported the order of the ld. AO on this issue The ld. DR further challenged the various finding of the ld. CIT(A). She has heavily relied on the statement recorded u/s. 132(4) of the Act wherein the assessee has accepted the additional income of Rs. 10.crores as his additional income in addition Rs. 120 crores offered as additional income in the hands of other entities. Ld. CIT DR further stated that the addition was based on the confession before the investigation and now the assessee cannot say that the statement is not correct. No evidence was filed in support the allegation that the statements were recorded and admission was obtained from the assessee under pressure. In addition, the ld. DR also filed a written submission in respect of the grounds raised by the revenue, which is reproduced as under:

> *"1. Kind attention is invited to para 16 of the assessment order. It is submitted that during the course of search at the residence of the assessee, certain documents were seized vide Annexure A-1 to A-18. When confronted with such documents, the assessee admitted that these documents relate to him,*

his business and his family. Further, in response to question no. 22 of the statement on oath recorded u/s 132(4) during the course of search on 15.11.2011, the assessee voluntarily offered an amount of Rs 100 Crore as undisclosed income over and above the regular income for the discrepancies found during the search operation. Out of total disclosure of Rs. 100 Crores, disclosure to the tune of Rs.10 Crores was made by the assessee in his personal capacity. The admission made by the assessee of undisclosed income under section 132(4) of the I. T. Act as discussed above has been reproduced on page 16 of the assessment order.

2. Vide letter dated 28.05 2012. i.e. 6 months after the search, the assessee submitted a letter before the department in which he confirmed that income of Rs. 10 Crore has been offered by way of disclosure in his name. Thus, statement recorded during the course of search was confirmed by the assessee even 6 months after the search. (Page 16 of assessment order).

3. Hon'ble Bench is requested to take note of the fact that from perusal of assessment order, it is apparent that the assessee has not retracted the said admission of additional income made under section 132(4) of the I.T. Act by way of any affidavit filed before the Investigation Wing or the Assessing Officer. There is no mention of any such affidavit in the findings of the Ld. CIT(A) either.

4. As the assessee had not included the additional income disclosed by way of admission on oath under section 132(4) of the I.T. Act in his return of income, the assessee was issued a show cause notice for making addition of Rs. 10 Crores based on his admission on oath. In response to such notice, the assessee took plea vide letter dated 04.12.2014 that admission of additional income of Rs.10 Crore was on adhoc basis and was made under pressure. It was also alleged that such admission has not correlation with any incriminating material.

5. Allegation of the assessee regarding exertion of pressure on him after more than 3 year of recording of the statement is without any basis. The assessee has not given any basis to claim that said statement was recorded under some coercion or pressure. Such claim of the assessee gets contradicted by the fact that he had reconfirmed content of his statement recorded under section 132(4) by way of a letter dated 28/05/2012, which was filed around 6 month after such statement. Such letter, by no stretch of imagination can be considered as having been written under some kind of pressure or coercion. Moreover, in case as alleged, statement u/s. 132(4) of the Act was recorded under some pressure, why did assessee not make complaint about the same to higher authorities in the department? Further, if the statement was recorded under pressure, why did assessee not retract it within few days of recording of such statement? It is pertinent to highlight that assessee is making allegation of pressure and harassment more than 3 years after the date of making the statement. There is no reason or justification given by the assessee for taking such a long time gap for challenging the statement. In fact, as stated earlier, case records also indicates that the assessee did not

file any retraction by way of affidavit before the concerned authorities. Thus, conduct of the assessee subsequent to recording of the sworn statement clearly indicates that there was no pressure upon the assessee at the time of making such a statement and it was a voluntary statement made by the assessee taking into consideration his business affairs and discrepancies therein.

6. Further, as noted by the AO in para 16 (page 15-16) of the assessment order, it is pertinent to highlight that during the recording of statement under section 132(4) during the course of search, the assessee was shown and confronted with documents seized by the investigating team. Thus, the assessee perused such documents and being the best judge of his documents, he knew about the discrepancies therein. Therefore, in the statement recorded, in his wisdom, he admitted on oath in response to question no. 22 of the statement that the admission of undisclosed income was "for the discrepancies found during the search operation". Thus, the assessee was conscious of discrepancies in his business affairs and content of the documents and additional income was offered for tax towards such discrepancies only. Therefore, it is not justifiable to state that statement made was without reference to any document.

7. A statement recorded under section 132(4) of the I.T. Act is a statement on oath and it has high evidentiary value. It gives rise to presumption about correctness of the facts stated/asserted in such a statement. As such presumption is rebuttable, the persons making such statement is required to bring some evidence on record to rebut the presumption about correctness of the assertion made in such statement. In other words, a statement made under section 132(4) of the Act cannot be rebutted just by making some new assertion or subsequent claim, which is not supported by evidence. Till the time such evidence is brought on record, examined by the authority and found to be justifiable, content of the statement under section 132(4) of the Act are required to considered as true as per the provision of law. In the present case, the assessee has not produced any evidence, either before AO or Ld. CIT(A), to rebut the presumption arising from his statement recorded under section 132(4) of the Act. Further, in light of facts of the case as narrated above, it does not get proved that said statement was recorded by exerting some kind of pressure or coercion upon the assessee. Therefore, as per the law, the content of the statement under section132(4) are required to considered as true. In his order, the Ld. CIT(A) has neither given any finding supporting the claim of assessee regarding pressure/duress on him, nor held that the assessee successfully rebutted the presumption arising from statement under section132(4). In absence of such findings in his order, the Ld. CIT(A) committed an error of law in ignoring the admission made by the assessee under section 132(4) of the I.T. Act and deleting the addition made by the A.O.

8. Without prejudice to the contention of the Revenue that admission of additional income by the assessee was based on seized documents and discrepancies therein as noted and judged by the assessee in his wisdom at the time of recording of the statement on oath, relief could not have been

allowed to the assessee by the Ld. CIT(A) merely on the ground that "addition made by the A.O. is not based on any document found in the search action" in light of fact that such addition was based on an admission made in a sworn statement under section 132(4) of the I.T. Act, which was neither rebutted nor proved to be invalid/improper one. Thus, the decision of the Ld. CIT(A) is contrary to provisions of the law.

Case Laws being relied upon:

A. There are catena of judgements, where in evidentiary value and importance of a sworn statement have been examined by the Hon'ble High Courts and Hon'ble Supreme Court. In this regard, following decisions, which squarely covers the issue of admission made under section 132(4) of the I.T. Act in favour of the Revenue, may kindly be taken into consideration while deciding the appeal.

1. *B Kishore Kumar Vs CIT 234 Taxman 771(SC)*
2. *Bhagirath Aggarwal Vs CIT 215 Taxman 229*
3. *CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi)*
4. *Smt Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)[*
5. *Bannalal JatConsructions Pvt Ltd Vs ACIT 264 Taxman 5 (SC)*
6. *M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-238-SC-IT)*
7. *Raj Hans Towers (P) Ltd. Vs CIT 373 ITR 9*
8. *PCIT Vs Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)*
9. *Vinod Kumar Khatri Vs DCIT 2015-TIOL-2669-HC-DEL-IT*

B. Even though, the assessee did not make any retraction by way of affidavit or some specific communication to the department, it did not offer to tax admitted undisclosed income in his return of income. Following decisions may kindly be taken into consideration with regard to validity and evidentiary value of statement recorded u/s 132(4) of I.T. Act despite the retraction made in the return of income.

1. *Smt. Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)*
2. *Bhagirath Aggarwal Vs CIT 351 ITR 143*
3. *CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi)*
4. *ACIT Vs Hukum Chand Jain [2010] 191 Tasman 319 (Chhattisgarh)*
5. *Green view Restaurant Vs ACIT [2003] 133 Taxman 432 (Gauhati)*
6. *Raj Hans Towers (P) Ltd. Vs CIT 373 ITR9*
7. *PCIT Vs Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)*

6. With this the ld. CIT DR submitted that the addition deleted by ld. CIT(A) deserves to be restored, and he prays accordingly.

7. Per contra, ld.AR of the assessee vehemently supported the order of ld. CIT(A) and argued that there is no incriminating material found during the search from the possession of the assessee or at any other place indicating any undisclosed income earned by the assessee. The ld. CIT(A) has after recording

the detailed findings and following binding decisions allowed the appeal of the assessee on the issue of addition on account of alleged admission of additional income in the statements recorded during the search. The ld. AR of the assessee submitted that by not declaring additional income in the return of income filed, the assessee has retracted from the confession of additional made in the statements recorded u/s 132(4) which cannot be binding since the same was made under pressure. The search was commenced in the early morning and recording of statements were continued for around 12 hrs. and assessee was allowed a break of only few minutes in the evening.

8. It is further submitted by the ld. AR that the admission of undisclosed income of Rs. 10,00,00,000/-, was made on ad hoc basis, without referring to any incriminating document found in the search & seizure action u/s 132 of the Act. He further stated that in the case of Shri B.C. Jindal, admission of undisclosed income of Rs. 30 crores was included in the return of income filed on 31.8.2012 and due taxes along with interest were paid as such surrender was based on the incriminating material found as a result of search. Ld. AR further submitted that undisclosed income of Rs. 90 crores as admitted in the hands of M/s Lucky Holdings Pvt. Ltd., for A. Y. 2012-13 since, was not supported by any document found and seized during search, therefore, the same was not offered in the return of income. Ld. AR stated that that the case of M/s Lucky Holdings Pvt. Ltd., for A. Y. 2012-13, case was reopened u/s 148, however, no addition was made towards the alleged surrender of Rs. 90.00 crores in the assessment order passed u/s 147/143(3) on 29.3.2016 by the same incumbent, copy of which is placed in the paper book pages 60-61.

9. Ld. AR also stated that that no seized material evidencing the fact that the appellant was in possession of the undisclosed income of Rs. 10 crores, in the form of any cash or assets or any undisclosed investment was found as a result of search nor brought on record by the AO during assessment proceedings. The

Ld.AR of the assessee also filed a detailed written submission and further placed reliance on various judicial pronouncements which reads as under:

Statement recorded under duress-Subsequently clarified / retracted

10. It is at the outset submitted that the statement of the assessee was recorded under duress and undue pressure, which is demonstrated as under:

11. The search action was initiated on the morning of 14.11.2011 and recording of statement, it is submitted, commenced at 9.45 am which continued, without any break, for about 12 hours. This is evident from the statement itself, where the assessee after responding to question No. 16, specifically requested that he be allowed some time to rest. The relevant extract of the said statement reads as under:

"Q.16. Please refer to your answer in question no.9, as per which loans have been shown from some of these companies mentioned in Ques. No. 15. In the light of this fact you have wrongly stated that you do no recollect anything about these companies and also do not recollect having financial transactions with these companies. Please comment.

Ans. I am not able to recollect any financial transactions with any of these companies. The reply in answer to Q.No.9 was based upon the documents received from office. Further, I want to add that the raid in continuation since last 12 hours, I want to have 45 minutes rest.

Statement discontinued temporarily at 8.15 pm for providing rest as requested" (emphasis supplied)

12. Most importantly, the recording of the statement was resumed at 9 pm on the same night of 14.11.2011 and continued till the wee hours of 15.11.2011. It may be noted that the recording of statement went on during odd hours and ultimately concluded only during the early hours of the next day i.e., 15.11.2011.

13. At the fag-end of the recording of statement, when the assessee was completely exhausted, he was asked to comment on certain voluminous seized annexures (documents and hard disk) marked as Annexure A-1 to A-18, found from his residential premises, in response to which the assessee categorically stated that the aforesaid annexures relate to his business and family and that he shall offer his comments on the same later on. The extracts of the said question and response, which was one of the last queries posed to the assessee is extracted hereunder:

"Q.21 During the course of search at your residence i.e., 124, Green Avenue, Sector D-III, Vasant Kunj documents/hard disk found and seized as Annexure A-1 to A-18. Please comment on the contents of these Annexures.

Ans. Documents/Hard Disks found and seized from my residence as Annexure A-1 to A-18 contains documents relating to my business and my family. I shall offer my comments on the contents later on." (emphasis supplied)

14. Thereafter, despite there being absolutely no incriminating material found from the premises of the assessee, the assessee surrendered an ad-hoc sum of Rs.100 crores, without any basis, which noticeably proves that such surrender was made under duress and pressure The relevant extracts of the said statement reads as under:

"22. Do you want to say anything else.

Ans. Yes I want to state that for the discrepancies found during the search operation at my residence and business premises of my companies I voluntarily disclose an amount of Rs.100/- crores (Rupees hundred crores) for taxation. This discloses surrendered amount will be in addition to my regular income. I am further making this request that no penalty/prosecution may be levied/initiated against me or any of my family members/companies.

Detailed modalities of disclosures will be worked out and submitted by me as soon as possible. I am making this surrender to buy peace of mind and avoid litigation. This disclosure of Rs.100 crores is excluding any discrepancies to be found at Kolkata office and residence of Shri B.C. Jindal and M/s Jindal India Ltd., alongwith its associated concerns." (emphasis supplied)

15. It is thus evident from the above, that the amount surrendered by the assessee was clearly under duress and pressure and there was absolutely no basis for the same. In fact, in the entire statement, the assessee has nowhere conceded to having earned any undisclosed income, which is corroborated by the fact that no incriminating material, whatsoever, was found from the premises of the assessee during the course of search. It may also be pertinent to note that there is a complete disconnect between question no.21, where the assessee clearly stated that he will offer his comments on the seized annexures later and question no.22, where he surrendered Rs. 100 crores without any basis or reasoning, after which the search was concluded.

16. Most importantly, as stated above, the aforesaid statement continued at odd hours and ultimately concluded only during the carly hours of the next day i.e., 15.11.2011, when the assessee was fully exhausted and surrendered the aforesaid ad-hoc amount undress coercion.

17. In the post search proceedings, the assessee was again pressured to give the detailed working/ basis of the amount surrendered and make payment thereof. In response to the same, the authorized representative of assessee, vide a one-page letter dated 28.05.2012, gave a vague bifurcation of the aforesaid surrendered amount of Rs. 100 crores as under: (Refer page 23 of the PB):

(i) a sum of Rs.90 crores was stated to be offered on behalf of Lucky Holdings Pvt. Ltd.: and

(ii) balance Rs.10 crores was stated to be offered on behalf the assessee himself.

18. Later, on examination of the contents of the entire seized documents (including Annexures A-1 to A-18) and the state of affairs as per the regular records, it was evident that the surrender made at the time of search under duress/ coercion ought not to have been made since there was, in reality, no discrepancy that warranted any such surrender. Accordingly, return of income was on 27.09.2012 without including any such surrendered amount, thereby formally withdrawing/retracting from the surrender erroneously made under threat/ coercion.

19. On the basis of the above, the assessee on 27.09.2012, filed the return of income, for the assessment year under consideration under section 139(1) of the Act declaring income of Rs.3,71,04,136 (Refer pages 24-25 of the PB). In the said return of income, the assessee, as stated above, admittedly, did not include the above surrendered amount of Rs.10 crores.

Withdrawal retraction of erroneous surrender, with repeated requests to AO to undertake complete/ independent verification.

20. It is respectfully submitted, that the assessee withdrew/ retracted from the amount erroneously surrendered during the course of search and thereafter, repeatedly requested the assessing officer not to take cognizance of the same and undertake whatever verification as may be deemed fit to make assessment of correct taxable income, as elaborated hereunder:

21. As stated above, during the course of search, in the statement recorded under section 132(4) of the Act, the assessee, under duress and pressure, surrendered, on completely ad-hoc basis, an amount of Rs.100 crores (out of which Rs.10 crores was in personal capacity), without reference to any search material and/or incriminating material.

22. It is submitted/ reiterated that the search operation which started on 14.11.2011, continued uninterrupted for the next day and the assessee's statement was recorded more than 24 hours after the search started. The assessee was then thoroughly exhausted and was mentally extremely tired. The statement was recorded under huge pressure and only to buy peace of mind, surrender was made on ad-hoc basis. The said surrender was without confrontation of any incriminating document or discrepancy, nor was it in relation to any specific matter, which is evident on a bare perusal of the statement.

23. The surrender was rather made in relation to the last general question, "Do you want to say anything else", which clearly shows that the declaration was not at all. voluntary: otherwise, when the assessee answered all the questions and the statement was being concluded, why would he suddenly surrender an ad-hoc basis huge amount for taxation.

24. The ad-hoc surrender had, it is emphatically reiterated, no basis whatsoever and lacked correlation with any material, much less incriminating material found during the course of search. Further, even after the completion of search, relentless pressure by the investigating wing continued and to

avoid unnecessary harassment, the assessee had no option but to continue with the same position and filed.

25. Later, on undertaking detailed verification of the seized annexures, books of accounts and other relevant documents/ records maintained, it transpired that the amount surrendered was completely unfounded and ought not to have been surrendered in the first place, and accordingly, no part of the amount surrendered was offered to tax in the return of income filed on 27.09.2012.

26. Pertinently, even in the post search proceedings i.e., investigation/assessment, no incriminating documents was ever confronted to the assessee by the Department to demonstrate any nexus of the above amount of Rs. 10 crores.

Repeated request to AO to undertake verification to assess correct taxable income

27. It is imperative to note here that during the course of assessment, the assessing officer, vide notice dated 17.01.2014 (enclosed at page 27 of the PB), confronted the assessee to explain why the income surrendered during the course of search was not offered to tax in the return of income.

28. In response to the aforesaid notice, the assessee, vide letter dated 27.01.2014, explained the aforesaid reasons for not declaring any part of the surrendered amount as income (enclosed at page 28 of the PB). The relevant extracts of the letter dated 27.01.2014 are reproduced hereunder:

"….Subsequent to the search operations, the state of affairs and the copies of documents seized during the search, after obtaining the same from the department, were thoroughly examined by the assessee and the other entities belonging to the group. The state of affairs as per the records and books of account maintained by the group assessees and the contents of the seized documents did not reveal any discrepancy that warranted inclusion of any income other than the regular income found as per the books of accounts and the records maintained by the group assessees. As such the exaggerated disclosure amount of Rs. 100 crores made on the basis of unfounded apprehensions amidst the then prevailing environment was not includible in the returns of income filed by the group assessees.

The asssessee and the other entities of the group prepared and filed their income tax returns on the basis of actual state of affairs. The income returned by the group assessees are correctly computed on the basis of the transactions undertaken as duly recorded in the books of account and supported by the records and documents maintained

The assesses of the group have already submitted all such details as required by your office in connection with the returns of income filed and shall submit such other details as you may require and will explain each and every query in regard to the returns of income filed and any document or information in connection therewith." (emphasis supplied)

The assessee thus, categorically stated that the entire details have already been submitted and shall submit any other details as the assessing officer may require and also offered to explain each and every query in regard to the return of income filed and any document or information in connection therewith.

29. Thereafter, the assessing officer, after almost 10 months, issued show-cause notice dated 19.11.2014 (enclosed at pages 29 to 31 of the PB), again confronting the assessee to explain as to why the amount surrendered in response to question no.22 of the statement recorded during the course of search was not offered to tax. In the said notice, the assessing officer, despite the assessee's earlier letter dated 27.01.2014, did not pin-point/ confront the assessee with any specific document/information which warranted surrender of any additional income.

30. In response to the aforesaid show-cause notice, the assessee, vide letter dated 04.12.2014 (enclosed at pages 32 to 37 of the PB), again reiterated that the surrender made during the course of search was ad-hoc, without any basis and was made under huge pressure, only to buy peace. In the said letter, the assessee even pin-pointed that the Department was unable to place on record any incriminating material to insist the assessee to offer to tax such amount. The relevant extracts of the aforesaid letter is reproduced as under:

".....The aforesaid alleged surrender of Rs. 10 crores made during the search proceedings was adhoc and not based on any discrepancy/incriminating documents found during the search. The aforesaid surrender had absolutely no basis in law as the same has no nexus or correlation with any material found during search, and no such material have been confronted to me by the Department till date.

The search operation which started on 14.11.2011, continued uninterrupted for the next day and my statement was recorded more than 24 hours after the search started. I was then thoroughly exhausted and was mentally extremely tired. The statement was recorded by me under huge pressure and was to buy peace of mind. It was made on absolutely adhoc basis and neither there was any confrontation of incrementing document or discrepancy nor it was in relation to any specific matter. It was rather made in relation to a question "Do you want to say anything else". Thus the statement then recorded had no basis whatsoever and lacked correlation with any incriminating material. Even after the completion of search relentless pressure by the investigating wing continued and to avoid unnecessary harassment, I had no option but to continue the same position with them

Subsequently when the return was filed by me on 27.09.2012 for the aforesaid assessment year, it was based on the factual position extracted out of books of accounts and other relevant documents/records maintained by me, as well as from the copies of the seized documents provided by the department annexures Al 10 A18, and the same, therefore, reflects the correct taxable income as per the provisions of the Act.

It will be apposite to mention here that in response to your goodself's letter dated 17.01.2014 in connection with the captioned proceedings, I, vide letter dated 27.01.2014 had already explained the aforesaid reasons for not declaring any part of the alleged surrendered amount as income.....

After writing of the above letter offering my declared income in the return filed by me for detailed scrutiny, even till date the department has not brought out anything on record to justify the alleged addition of Rs. 10 crores to my income.

It will, thus, be appreciated that the income returned by me was very much available for scrutiny & verification by your goodself, for which necessary cooperation has always been offered by me.

In view of the above, it is respectfully submitted, that no cognizance in law can be taken of the alleged surrendered amount during the search inasmuch as the same has no sanctity in the eyes of law, the same being de-hors any incriminating material or documents found during search. It is further pertinent to mention that even in the post search proceedings like investigation or assessment, no incriminating documents have been confronted to me by the Department to demonstrate any nexus of the above amount of Rs. 10 crores. Being so, the same was of no consequence and no adverse inference can be drawn on that basis
.....
Considered in the light of the aforesaid factual and legal position, it is respectfully submitted, that the aforesaid sum of Rs. 10 crores having no nexus whatsoever with any incriminating documents/evidences which have been confronted to me which would demonstrate that the said amount represents my income for the assessment year under consideration either during the search proceedings or thereafter." (emphasis supplied)

31. On perusal of the above letter dated 4.12.2014, it will kindly be appreciated that the assessee had categorically mentioned before the assessing officer that:

a) the amount surrendered during the course of search was ad-hoc, without any basis and under huge pressure;

b) the contents of seized documents, copy of which was provided to the assessee much later, do not reveal any discrepancy that warranted inclusion of any income other than the regular income of the assessee

c) the income declared in the return of income was the actual income of the assessee taxable under the provisions of the Act, which has been determined on the basis of extensive analysis of the books of accounts and other allied documents/records, and

d) the Department was unable to bring anything on record to justify the alleged addition of Rs.10 crores to the income of the assessees

e) instructions issued by the CBDT categorically provide that the assessments should not be based on confessions obtained during search;

f) income filed is available for scrutiny and verification, for which the assessee has always offered necessary cooperation.

32. Thereafter, the assessing officer, once again issued notice dated 19.01.2015 (enclosed at pages 38 to 39 of the PB), directing the assessee to explain as to why the amount surrendered in response to question no.22 of the statement recorded during the course of search was not offered to tax. In the said notice, too, the assessing officer, despite repeated requests by the assessee, was again unable to pin-point any specific document/ information which was incriminating and warranted surrender of any additional income by the assessee.

33. In response to the above, the assessee again, vide letter dated 28.01.2015 (enclosed at pages 40 to 43 of the PB), referred to his earlier letter(s) dated 27.01.2014 and 04.12.2014 and submitted that surrender made during the course of search was under pressure and not based on any incriminating material and thus without any basis. In the said letter, the assessee again requested the assessing officer to first confront the assessee with any specific document/incriminating material before coercing the assessee to surrender any additional amount

34. It is further respectfully submitted that even the seized Annexures A-1 to A-8 (found from the residential premises of the assessee), which though referred, but has not been relied upon by the assessing officer, did not even include any document relating to the assessee warranting any addition and stands fully explained and accepted by the assessing officer (Refer pages 90-139 of the PB].

35. Despite the above, the assessing officer proceeded to conclude the assessment by making addition of Rs. 10 crores in the hands of the assessee, without any basis and failed to bring on record any incriminating material/document to support such addition, that too, despite repeated requests by the assessee during the course of assessment.

36. In the aforesaid facts, it is respectfully submitted that no cognizance could have, in law, been taken of the amount surrendered on an ad-hoc basis by the assessee during the search, more so, when the surrender did not have any nexus with any document(s), much less incriminating, found during the course of search. Income tax Act mandates assessment of real "income"

37. In this regard, it is respectfully submitted that assessment under the provisions of the Act is required to be made with reference to the correct taxable real "income" of the assessee and consequently, such assessment ought to be as per documents, records and evidence and not merely on the basis of any ad-hoc, that too, involuntary statement/ surrender made during

the course of search, which too stands subsequently retracted/ clarified, as discussed hereunder.

38. It is well settled law that admission of income cannot be the sole basis to tax any income/amount. It is always open to the assessee to explain the contents of the earlier admission. the circumstances in which the same was made and even retract from the same if the admission was made under mistaken impression of facts and/or law.

39. In this context, reference may be made to the following settled legal position:

a) Purpose of assessment is to tax correct taxable income;

b) Admission is relevant, but not conclusive;

c) Addition cannot be made solely on the basis of a statement that, too, a statement that stands retracted, and/ or is explained subsequently,

d) Statement once retracted, looses its evidentiary value, and cannot, therefore, be the sole basis of any addition.

40. Each of the aforesaid aspects is briefly explained hereunder:
(a) Purpose of assessment is to tax correct taxable income

41. First and foremost, it is trite law that it is the duty of the taxing authorities to correctly assess the tax liability of an assessee by duly following the relevant provisions of law. It is settled law that the purpose of assessment is to compute the correct taxable income of the assessee as per the provisions of the Act.

42. Reliance in this regard is placed on the following decisions wherein it has been held that the assessing officer is duty bound to compute income of the assessee in accordance with law:

- *CIT vs. Mahalaxmi Sugar Mills Co. Ltd: 160 ITR 920 (SC)*
- *National Thermal Power Limited v. CIT: 229 ITR 383 (SC)*
- *Assam Company (India) Ltd. vs. CIT: 256 ITR 423 (Gauhati)*
- *Nathmal Bankatlal Parikh & Co. V. CIT: 122 ITR 168 (AP FB)*
- *CIT V. Smt. Archana R. Dhanswatay: 136 ITR 355 (Bom)*
- *Chokshi Metal Refinery Vs CIT: 107 ITR 63 (Guj.)*
- *Circular No. 14 (XL-35), dated 11.4.1955*

43. The aforesaid decisions, it will be kindly appreciated, make it amply clear that the purpose of the assessment is to correctly determine the taxable income of the assessee in accordance with the provisions of the Act.

(b) Admission relevant, but not conclusive-judicial precedents

44. It is also trite law that admission, if any, made by the assessee on an incorrect/ erroneous impression in the return or the books of accounts may be relevant, but is not conclusive and can be clarified/ withdrawn at a subsequent stage.

45. Reliance, in this regard, is placed on the following decisions wherein the Courts have consistently held that admission, per se, cannot be the foundation of assessment; admission may be an important piece of evidence but cannot be held to be conclusive.

- *Pullangode Rubber Produce Co. Ltd. vs. State of Kerala: 91 ITR 18 (SC)*
- *The Supreme Court in Sri Krishna vs. Kurukshetra University, AIR 1976 SC 376*
- *Abdul Qayume vs. CIT: 184 ITR 404 (All.)*
- *The Federal Bank Ltd. vs. The State of Kerala: AIR 1995 Kerala 62 @ 64 (Ker)*

46. To the same effect are the following decisions:

Basant Singh V. Janki Singh: AIR 1967 SC 341 (SC)
Bharat General Reinsurance Co. Ltd.: 81 ITR 303 (Del)
Satinder Kumar (HUF) V. CIT: 106 ITR 64 (HP)
DCIT V. Sreeni Printers: 67 STC 279 (Ker.)
KrishanLal Shiv Chand Rai V. CIT: 88 ITR 293 (P&H)
Indo Java & Co. V. IAC: 30 ITD 161(SB)

Addition cannot be made simply on the basis of statement recorded during search, that too, in violation of CBDT Instruction

47. Reference in this regard may be made to provisions of section 132(4) of the Act, which reads as under:

> *"(4): The authorized officer may, during the course of the search or seizure. examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.*
>
> *Explanation for the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act." (emphasis supplied)*

48. On perusal of the above, it may be noted that statement under section 132(4) of the Act can be recorded only if the person is found in possession of hooks of account, documents, assets, etc. Thus, plainly, the intention of the Legislature is to permit such examination only where the books of account, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken.

49. It may be clarified that Explanation to section 132(4) of the Act also permits recording of statement with reference to books of account, documents, assets, etc., found during search and also any in respect of any other matter.

The primary condition, however, is that the statement recorded must relate to evidence/material found during the course of search.

50. The aforesaid provisions, in our respectful submission, makes it abundantly clear that general statement, though under section 132(4) of the Act, without any reference to any material found during the course of search could not be the sole basis for making any addition.

51. The aforesaid principle of law has also been recognized by the Central Board of Direct Taxes (CBDT) in its Instruction No. F no. 286/2/2003- IT (Inv) dated 10.03.2003 (Refer pages 162 to 163 of caselaw PB), wherein CBDT had warned the revenue officers not to obtain confession to the undisclosed income, rather concentrate on collection of evidence of income which lead to what has not been disclosed or is not likely to be disclosed before the Income-tax authorities. The relevant extracts of the said Instruction reads as under:

> *"Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if, not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely*
>
> *Further, in respect of pending assessment proceedings also. Assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders." (emphasis supplied)*

52. The aforesaid instruction was again reiterated by the CBDT in Instruction no. F. No. 286/98/2013-IT (Inv. II) dated 18.12.2014 (Refer pages 164 to 165 of caselaw PB), wherein it has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

> *"Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessee were coerced to admit undisclosed income during search/surveys conducted by the Department, It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence Such action defeat the very purpose of search/survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching*

of prosecution. Further such actions show the department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during search/survey/other proceedings under the IT. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board of adversely." (emphasis supplied).

Addition based on statement u/s 132(4) is not sustainable - judicial precedents

53. In Kailashben Manharlal Chokshi vs. CTT: 328 ITR 411 (Guj)
54. Stiree Ganesh Trading Company vs. CIT 257 CTR 159 (Jhar)
55. CIT vs. Naresh Kumar Aggarwal: 369 ITR 171 (AP)
56. CIT vs. Harjeev Aggarwal 241 Taxman 199 (Del)
57. Chetnaben J. Shah vs. ITO: 288 CTR 579 (Guj)
58. CIT v Smt. Jaya Lakshmi Ammal: 390 ITR 189 (Mad)
59. PCIT vs. Best Infrastructure (India) Pvt. Ltd. 397 ITR 82 (Del)
60 Ratan Corporation: 197 CTR 536 (Guj.)

61. It has similarly been held in the following decisions:

CIT vs. N. Swamy 241 IIR 363 (Mad)
CIT vs. Radha Kishan Goel: 278 ITR 454 (All)
Surinder Pal Verma V. ACIT: 89 ITD 129 (Chd.) (TM)
Smt. Ranjnaben Mansukhlal Shah V. ACIT: 83 TTJ 369 (Rajkot)
Ashok Manilal Thakkar vs. ACIT: 97 ITD 361 (Ahd.)
Rajesh Jain vs. DCIT: 100 TTJ 929 (Del)
Catherine Thomas V. DCIT: 111 ITD 132 (Cochin)

62. To the same effect are the decision in the following cases:

- *PCIT vs. PGF Ltd.: 457 ITR 607 (Delhi)*
- *Krishan Lal Shiv Chandra Rai vs. CIT: 88 ITR 293 (P&H)*
- *CIT vs. M.P. Scrap Traders: 372 ITR 507 (Guj)*
- *CIT vs. Ravindra Kumar Jain: 201 Taxman 95 (Jhar) (Mag)*
- *DCIT vs. Sanjeev J Aeren: ITA Nos.5596 & 5597/Del/2015 (order dated 30.10.2024) (Del. ITAT)*
- *DCIT vs. Sh. Anil Sankhwal: ITA No. 1472/Del/2020 (order dated 24.10.2024) (Del. ITAT)*

- *Rishi Grover vs. ACIT: 126 TTJ 527 (Ars.) (Refer pages 230 to 266 of caselaw PB)*

(d) Statement once retracted, looses its evidentiary value

63. It is further trite law that statement, once retracted, looses its evidentiary value. Further, in the following cases it has been held that a lawful assessment has to be based on material and such assessment cannot be done merely on the basis of admission:

- *K.T. M. S. Mohd. vs. UOI: 197 ITR 196 (SC) (Refer pages 128 to 143 of case law PB) the Court observed that statement obtained by inducement/ threat/coercion or by any improper means must be rejected and it is the maker of the statement to establish the same. However, even if maker of the statement fails to establish his allegation of inducement, etc, while acting on the statement the authority is not completely relieved of his obligation at least subjectively to apply its mind to the subsequent retraction.*

Vinod Solanki vs. UOI: (2008) 16 SCC 537

Legal position applied to present facts

64. On perusal of the aforesaid, it will kindly be appreciated that it is trite law that admission, though relevant, is not conclusive. The entire purpose of the assessment is to tax correct taxable income of the assessee under the provisions of the Act. Being so, it is not at all permissible to make any addition solely on the basis of any statement, which is not backed by corroborative/ tangible material/ evidence, and that too, a statement which is subsequently, explained/retracted/clarified by the assessee.

65. Considered in light of the aforesaid legal position, it is respectfully submitted that the aforesaid involuntary ad-hoc surrender to the extent of Rs. 10 crores was made by the assessee, under duress and pressure and was not corroborated or evidenced by any material/ document, found during the course of search. Moreover, the same was clarified/retracted by the assessee subsequently, with repeated request to the assessing officer to undertake whatever verification as may be deemed fit.

66. It is emphatically submitted that Revenue has, at no stage, brought on record any corroborative evidence/ material to support/ substantiate the addition made by the assessing officer and thus, the burden of proving that amount of Rs. 10 crores constituted income of assessee has not at all been discharged by the Revenue.

No addition made in the case of Lucky Holdings

67. It is also of utmost importance to note here that similarly in the case of Lucky Holdings Pvt. Ltd. in respect of which ad-hoc amount of Rs.90 crores was surrendered, the same was not considered by the company in the return of income filed for the assessment year 2012-13, since the same was not supported by any document found and seized during the course of search (Refer pages 44 to 46 of the PB).

68. It is submitted that the case of Lucky Holdings Pvt. Ltd. for the assessment year 2012-13 was subsequently re-opened under section 148 of the Act on the basis of disclosure made in the statement recorded of the assessee during search proceedings (Refer pages 47 to 51 of the PB). However, the assessment was ultimately concluded vide order dated 29.03.2016, passed under section 147/143(3) of the Act accepting the returned income and no addition was made on account of the so-called surrender made by the assessee (Refer pages 60 to 61 of the PB).

10. The ld. AR also filed rejoinder wherein the case laws relied upon by the ld. CIT DR vide written submissions dated 18.05.2022 are distinguished as under:

Re: Decisions relied upon by Ld. DR-Not applicable/Distinguishable

1. ***B Kishore Kumar vs. CIT: 52 taxmann.com 449 [SLP Dismissed in 234 Taxman 771 (SC)]***

In the facts of the said case, a search was conducted at the premises of the assessee's father, wherein loose sheets and notings on telephone diaries pertaining to the assessee were found by the department.

Pursuant to the same, assessment under section 143(3) r.w.s. 153A/153C of the Act was completed by the assessing officer based on admission made by the assessee during the time of search and the records seized.

In the sworn statement, the assessee on being confronted with the search documents/loose sheets and notings, without disputing the same, categorically stated that he had separate business income which was not included in his income tax returns and on this account admission of undisclosed income was made. The assessee in the sworn statement also explained the notings in the loose sheets and stated that outstanding loans given from his undisclosed finance business was recovered with interest @ 18%, which tantamounted to clear admission of undisclosed income.

It is in light of these facts that the Court held that when there is a clear and categoric admission of undisclosed income by the assessee himself, there is no necessity to scrutinize the documents. In the said case, the Court clearly observed that "it is not the case of the assessee that the

admission made by him was incorrect or there is mistake. In fact, when there is a clear admission, voluntarily made, by the assessee, that would constitute a good piece of evidence for the revenue"

In the present case, as already explained in the detailed submission dated 18.05.2022, surrender was made by the assessee under duress and pressure and was not corroborated or evidenced by any material/ document, found during the course of search. Moreover, the same was clarified/ retracted by the assessee subsequently, with repeated request to the assessing officer to undertake whatever verification as may be deemed fit

In view of the above, it is submitted that the said decision is distinguishable on facts and thereby not applicable.

2. ***CIT vs. M.S. Aggarwal 93 taxmann.com247 (Del).***

In the said case, a search and seizure operation under section 132 was conducted in case of the assessee in the course of which several incriminating documents and material were found and seized. The assessee in his statement recorded on oath under section 132(4) admitted having procured gifts of Rs.50 lakhs from 'R'
During the course of the block assessment proceedings, the assessee retracted his admission on bogus gifts, asserting that the gift given to him by 'R' was genuine and not procured. The assessee further submitted that the confession was extorted under coercion, pressure and duress. The assessing officer rejected the assessee's explanation and added amount of gift to undisclosed income of the assessee. The Tribunal, however, taking a view that transaction of gift was genuine, deleted addition made by the assessing officer.

On Revenue's appeal, the High Court reversed the order of the Tribunal after observing that was no evidence or even an indication as to how the assessee knew the donor, a well-known businessman, who gave the gift to the assessee.

In the aforesaid peculiar facts, especially considering that the assessee was unable to substantiate why such huge gift would be made by a stranger donor, the addition was confirmed by the High Court.

The aforesaid case being on its peculiar facts, is not at all applicable in the case of the assessee.

3. ***Smt. Dayawanti vs. CIT: 75 taxmann.com 308 (Del)***
Appeal dismissed in [2023] 149 taxmann.com 399 (SC)

In this regard, it is submitted that the aforesaid decision is distinguishable on facts and not at all applicable to the case of the assessee.

In this case, search and seizure operation was carried out on assessee firm and various material, documents, agreements, invoices and statements in the form of accounts and calculations were seized. The assessee along with her family members surrendered a sum of Rs.3.5 crores as additional income in respect of business carried on outside books of account. The assessing officer however rejected books of account and made addition by estimating sales and gross profit rates, inter alia on the ground that in course of search statements were recorded by assessee's son on behalf of assessee and other family members. The assessee submitted that statements were not recorded during search but later and that they could not be considered of any value for the purpose of making addition.

On these facts, the issue for consideration before the Court was whether statement recorded in post search proceedings could be considered for the purpose making addition in 153A proceedings. The Court, considering that undisputedly various incriminating material was found during the course search, which was later admitted in the statement and surrendered, held that such statement cannot be ignored from consideration.

The decision of the Hon'ble High Court was upheld by the Hon'ble apex court for the sole reason that addition was made on the basis of incriminating material.

It is submitted that in the facts of the present case, admittedly no incriminating material was found from the premises of the assessee during the course of search and thereby the said decision is distinguishable

Also, the present case has already been distinguished by Hon'ble Delhi High Court in the case of PCIT V. Meeta Gutgutia: 82 taxmann.com 287 (Delhi) and PCIT v. Best Infrastructure (India) (P.) Ltd.: 397 ITR 82 (Delhi) wherein it was observed that the decision rendered in the case of Smt. Dayawanti was premised on its own set of peculiar facts.

4. ***Bannalal Jat Constructions Pvt. Ltd. vs. ACIT: 264 Taxman 5 (SC)***

In the said case, the director of the assessee company surrendered the cash found during the course of search as undisclosed income in the statement recorded during the course of search, which was later retracted on the ground that such cash actually belonged to another proprietary concern.

In light of the aforesaid facts, the Court, after specifically taking note of the fact that cash was found from the premises of the assessee which could not be explained and that the assessee indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting, disregarded the retraction as being without

any evidence or proof and upheld the addition made by the assessing officer

The aforesaid case being on its peculiar facts, wherein retraction was disregarded considering that actual cash was found which remained unexplained, is not at all applicable in the case of the assessee.

5. ***M/s Pebble Investment and Finance Ltd. vs. ITO: 2017-TIOL-188-HC-MUM-IT (Bom)***
SLP Dismissed in 2017-TIOL-238-SC-IT (SC)

In the said case, the issue related to evidentiary value of statement recorded under section 133A of the Act, which is not applicable to the facts in the case of the assessee.

6. ***Raj Hans Towers (P.) Lad. vs. CIT: 230 Taxman 567 (Del)***

In the said case, the assessee was engaged in real estate and constructions activities. It was subjected to survey operation under section 133A of the Act. During the course of survey, the statement of one of its Directors was recorded, wherein he disclosed a sum of Rs.15,00,55,000 as additional income outside the regular books of account and furnished details in this regard.

The assessee did not disclose this income in its returns, which was declared at the time of survey. On issuance of show cause notice during assessment proceedings as why the said unaccounted amount, disclosed by the Director should not be added back to the total income, the assessee alleged that the surrendered amounts were not voluntary and bona fide and the same was obtained in illegal and arbitrary manner, and in the absence of any evidence or material in relation to the surrender, the surrender made during the course of survey was also retracted.

The assessing officer, however, rejected the explanation and added back the amounts. The CIT (A) gave partial relief by taking into account debit entries from the gross receipts, thus reducing the total taxable income, which order was confirmed by the Tribunal.

It is in light of these facts, especially considering that the Director of the assessee company had furnished complete details in support of the amount surrendered, the retraction was disregarded and the addition sustained by the CIT(A)/ITAT was confirmed by the High Court.

In the facts of the present case, as already explained above, the surrender was admittedly made on ad-hoc basis and no incriminating material whatsoever was found from the premises of the assessee. Further, even the assessing officer has not been able to pin-point/ confront the assessee with any specific document/information which warranted surrender of any additional income.

In view of the above, it is submitted that the aforesaid case is distinguishable on facts and not applicable.

7. ***PCIT vs. Avinash Kumar Setia: 81 taxmann.com 476 (Del)***

In this case, survey operation under section 133A was conducted in the case of an assessee, however no statement was recorded. Thereafter, two months later, the assessee voluntarily filed a declaration in pursuance of the proceedings under section 133A confirming surrendering income of 1.25 crores. Later, after a period of 2 years, the assessee submitted that letter for declaration was given to remove the pressure of the Income-tax Authorities and it did not represent true and correct picture of the affairs. Thus, the surrendered income was not included in the return of income filed. In the assessment proceedings, the assessing officer disregarded the retraction and proceeded to make addition of the surrendered amount, which order was confirmed by the CIT(A) and ITAT.

In the aforesaid facts, on further appeal preferred by the assessee, the High Court, after specifically considering the fact that the surrender was not made in the statement during survey, but was made voluntarily by way of declaration, that too two months after the survey had concluded, held that such declaration cannot be said to be under force or compulsion. Further, the retraction after a long gap of 2 years was also held to be unjustifiable

Accordingly, the addition made by the assessing officer was confirmed.

In view of the above, it is submitted that the aforesaid case is distinguishable on facts and not applicable to the case of the assessee in so far as in the case of the assessee the ad-hoc surrender was made under duress and pressure in the statement recorded during the course of search.

8. ***Bhagirath Aggarwal vs. CIT: 215 Taxman 229 (Del)***

In the facts of the said case, search operations were conducted in which assessee made certain statements. The assessee surrendered Rs.1 crore during the first statement and thereafter in the second statement (recorded after a gap of 10 days during further search proceedings), voluntarily increased the amount of surrender to Rs.1.75 crores. Later on, he wrote a letter to bifurcate the sum into two branches. The assessing officer finally, made addition of entire sum as the assessee's undisclosed income.

On appeal, the main question raised by the assessee before the High Court was whether the statements, whereby the surrender was made, were sufficient for making the addition or not. The Court, in this regard held that as a general rule of practice it is unsafe to rely on a retracted

confession and judicial as well as quasi-judicial authorities ought to look for corroborative evidence. But, the Court held that this was not a case of a retracted confession since the assessee had never effectively retracted his statement and there was also no allegation of any threat or intimidation having been meted out by the revenue authorities.

In the present case, as explained in our detailed submission dated 18.05.2022, the surrender was not made voluntarily but under huge pressure. The said amount was not even offered to tax in return of income filed. Further, during the assessment, the assessee vide various letter(s), repeatedly submitted that surrender made during the course of search was under pressure and not based on any incriminating material and thus without any basis

In view of the above, it is submitted that the aforesaid case is distinguishable on facts and not applicable in so far as the assessee retracted its surrender and also categorically stated that such surrender was made under duress and pressure.

9. ***Vinod Kumar Khatri vs. DCIT: 2015-TIOL-2669-HC-DEL-IT (Del).***

In the said case, in the course of search operation, from the bank accounts of the assessee's two proprietary concerns, an amount was seized. in the statement recorded during the course of search, the assessee admitted the fact of the money received in his bank accounts and further that the money belonged to him and that it represented his unaccounted income. Subsequently, during the assessment proceedings, the assessee retracted from his earlier admission of unaccounted income.

In the assessment, the assessing officer added the amount surrendered by the assessee, which was confirmed by the CIT(A) and ITAT. On further appeal, the High Court, taking note of the fact that the assessee was unable to satisfactorily explain the amounts credited, disregarded the retraction and confirmed the addition made.

It may be noted that in the aforesaid case, the addition was made on the basis of unexplained amounts credited in the bank accounts of the assessee, which could not be explained by the assessee. The decision being distinguishable on facts, is not applicable.

10. ***ACIT vs. Hukum Chand Jain: 191 Taxman 319 (Chhatisgarh)***

In this case, search and seizure operation was conducted at the business and residential premises of the assessee. In the course of search, statement of the assessee was recorded under section 132(4) wherein he surrendered Rs.30 lakhs as undisclosed income. However, in response to notice issued under section 158BC, he offered only Rs.3.52,000 in his case and aggregate amount of Rs.2,05,500 in the case of his 3 sons as their undisclosed income.

The assessing officer, completed assessment by including the amount of undisclosed income offered on the ground that the assessee was unable to explain the various loose papers, documents, availability of jewellery and silver items and cash, which he volunteered to surrender as his undisclosed income.

On appeal, the CIT(A) deleted the addition. The Tribunal dismissed the revenue's appeal holding that confessional statements made during search are often vulnerable, as the person making such statements remains under great stress and strain and he does not have relevant details, documents and books of account and in the absence of the same, precise computation relating to mode of utilization of such income and year of investment cannot be clearly furnished.

On further Revenue appeal, the High Court reversed the order of the Tribunal by holding that the assessee had, on being confronted with incriminating material, voluntarily surrendered the amount to cover the various loose papers, documents, jewellery and silver items and cash found during the search. Since he made unconditional and voluntary statement and surrendered the amount as undisclosed income, as he could not explain the recovery of cash, gold and silver ornaments and loose papers/documents seized from his business premises, the same cannot now be retracted that too in the absence of discharging the onus of proving that confession made was as a result of intimidation, duress and coercion or that the same was made as a result of mistaken belief of law or facts.

It is submitted, that in the aforesaid case, the assessee had made surrender to cover the various incriminating material found and confronted during the course of search which is distinguishable from the instance case, wherein merely ad-hoc surrender was made in the complete absence of any incriminating material.

In view of the above, it is submitted that the aforesaid decision is not applicable and deserves to be ignored from consideration.

11. ***Greenview Restaurant vs. ACIT: 133 Taxman 432 (Gauhati)***

In this case, the assessee was a partnership firm carrying on the business of running a restaurant. A search was conducted in its premises and in the course of which the books of account of the assessee were seized by the authorized officer under the Act. During the search, the authorized officer recorded certain statements of one of the partners of the firm. The case of the assessee-firm was that the said partner was not a literate person and the income-tax authorities used force and coercion to compel him to sign the said statements which the said person did out of fear and

compulsion. On receipt of copy of the statement, the said partner addressed a letter to the assessing officer retracting the statements made by him.

The assessing officer however included the amount surrendered as income of the firm. On appeal, the CIT(A) deleted the addition, which was reversed by the ITAT on the ground that assessee's partner had made his statement suo motu under section 132(4) and on facts it was clear that there was neither an inducement or threat at the time of making the disclosure.

On further appeal preferred by the assessee, the High Court reversing the order of the Tribunal remanded the matter back to the assessing officer to given adequate opportunity to the assessee to explain the retraction.

It is submitted that in the aforesaid case, the Court has in fact been decided in favor of the assessee by observing that "On an overall consideration of the facts and circumstances of the case discussed above, it was clear that the mandatory requirement of affording opportunity to the appellant-firm to adduce evidence in support of the return and explain the disclosures made in the statement of its partner had not been complied with."

The aforesaid decision, it is submitted, supports the case of the assessee in so far as the Court has specifically observed that the assessing officer is bound to provide adequate opportunity to the assessee and undertake verification before proceeding to make addition on the basis of a statement."

11. We have considered the rival contentions, perused the material available on record and gone through the findings of the lower authorities recorded in their respective orders. We have also gone through the various judicial rulings placed before us by both the parties to drive home to their contentions. As the assessee objected to the proposed addition on the ground that during the search no incriminating material indicating any undisclosed income for the year under consideration was found, which is also apparently clear from the assessment order itself and from the order of the ld. CIT(A). Further before the AO assessee has filed explanation of each and every paper found and seized during the search operation, which are available in paper book at pages 90-139, however, a perusal of which, it is evident that none of the paper has any transaction which pertained to assessee and was not a disclosed transaction. Since there is no incriminating

material found during search and seizure action carried out at the residence and business premises of the assessee, the ld. AO is not empowered to make any addition in the total income of the assessee solely based on the alleged surrender which was not supported by the material. At this juncture we refer the findings given by ld. CIT(A) while deleting the additions:

***"Findings**: - The findings are as under:*

I have carefully considered assessment order, written submissions, case law and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under:-

(i) In the case of the appellant's group, a search and seizure action u/s 132 was carried out on 14.11.2011. In the statement of income recorded u/s 132(4) of the Act, the appellant has made the total disclosure of Rs. 130 crores, which includes disclosure of Rs. 10 crs, in the hands of the appellant. The details of disclosure of Rs. 130 crores, were furnished by the AR vide letter dated 28.5.2012 and same is summarized as under:-

S. No.	***Name of Person***	***A.Y.***	***Admitted Amount (Rs.in crores)***	***Amount included in return***	***Annexure Referred***	***Remark***
1.	*M/s Lucky Holdings Pvt. Ltd.*	*2012-13*	*90*	*NIL*	*No*	*No addition was made u/s 147 by AO*
2.	*Shri S.S. Jindal*	*2012-13*	*10*	*Nil*	*No*	*Addition is made by A.O.*
3.	*Shri B.C. Jindal*	*2012-13*	*30*	*30*	*JJ/1 & JJ/7*	*Disclosure is accepted*
	Total		*130*	*30*		

(ii) Original return of income u/s 139(1) was filed on 27.9.2012, declaring total income of Rs. 3,71,04,136/-, which does not include disclosure of Rs. 10 crore, as admitted in the statement recorded u/s 132(4) of the Act.

(iii) In the assessment order, it has been stated by the A.O. that in the statement recorded u/s 132(4) of the Act, on 15.11.2011, in response to question no. 22, assessee made a disclosure of above additional income.

(iv) In the assessment proceedings, A.O. issued the show cause for bringing to tax the additional income of Rs. 10 crore, admitted in the statement recorded u/s 132(4) of the Act. However, in response to show cause, the assessee submitted detailed submission vide letter

dated 04.12.2014, stating that the surrender of Rs. 10 crore. was on adhoc basis and it was also claimed that the surrender was made under pressure.

However, the above submissions of the assessee, did not find favour and addition of Rs. 10 crs., was made.

(v) During appellate proceedings, the appellant has reiterated the submission made in the assessment proceedings and it has also been submitted by the appellant that the admission of undisclosed income of Rs. 10,00,00,000/-, was made on adhoc basis, without referring any incriminating document found in the search & seizure action u/s 132 of the Act.

It is further submitted that the admission of undisclosed income of Rs. 30 crores, in the hands of Shri B.C. Jindal, was supported by the documents found and seized during search and seizure action, which was inventorised as Annexure-JJ/1 & JJ/7, in which cash payments to various parties, for acquisition of land were noted. Therefore, this additional income of Rs. 30 crores, was included in the return of income filed on 31.8.2012, the due taxes along with interest was also paid and same has not been disputed.

It is further submitted that the admission of undisclosed income of Rs. 90 crores, in the hands of M/s Lucky Holdings Pvt. Ltd., for A. Y. 2012-13, was not supported by any document found and seized during search and seizure action and therefore, same was not included in the return of income filed on 27.9.2012. It is also submitted that in the case of the M/s Lucky Holdings Pvt. Ltd., for A. Y. 2012-13, case was reopened u/s 148, on the basis of the disclosure made in the statement recorded during search action. The assessment was completed u/s 147/143(3) on 29.3.2016 and no addition was made by the A.O. on account of disclosure of Rs. 90 crores, since this disclosure was not supported by any document found during search action.

(vi) It has been submitted by the appellant that no seized material, evidencing the fact that the appellant was in possession of the undisclosed income of Rs. 10 crores, in the form of any cash or assets) or any undisclosed investment, was found during search & seizure action or subsequently during assessment proceedings. Therefore, facts of the appellant are identical to the facts of M/s Lucky Holdings Pvt. Ltd., for A. Y. 2012-13, for adhoc disclosure in the statement recorded during search, without any incriminating document.

(vii) It is further submitted by the appellant, the CBDT has also issued Instruction No. 286/2/2003-IT Inv, dated 10.3.2003 that the A.O. should make addition on the basis of evidences collected during search and seizure action or thereafter while framing the relevant assessment order. In the case of the appellant, no evidence has been found during

course of search and seizure action nor thereafter before completing the assessment u/s 143(3) of the Act.

From the above, following facts emerged:

- *the disclosure made by the appellant for A.Y. 2012-13, was not supported by any evidence, found during course of search and seizure action u/s 132 of the Act, and*

- *no document or asset was found during course of search and seizure action nor thereafter before completing the assessment u/s 143(3) of the Act, which will support the undisclosed income.*

In view of the above, I am of the considered opinion that the addition made by the A.O., is not based on any document found in the search action u/s 132 of the Act. Therefore, the findings of the A.O. are erroneous and the addition of Rs. 10,00,00,000/-, on account of alleged undisclosed income, is deleted.

Accordingly, ground no. 3 and 3.1, are hereby allowed.

12. From the observation of ld. CIT(A) it could be seen that ld. CIT(A) accepted the contentions of the assessee and held that no addition could be made as no incriminating material was found/seized with respect to the admission made in the statements recorded during search from the possession of assessee. It is evidently clear that in the assessment order there is no mention, reference or finding that the additions have been made by the AO based on any incriminating material found/seized during the course of search and seizure in the case of the assessee.

13. Another very important aspect is being adverted to for consideration is that even in the new provisions relating to assessments consequent to search, warrant existence of incriminating material to re-open assessments relating to certain assessment years. Vide the Finance Act, 2021, the Parliament has done away with the existing legal framework for assessment in case of search or requisition forming part of Chapter XIV of the Income Tax Act, 1961- Procedure for Assessment i.e. sections 153A to 153D of the Income Tax Act, 1961 in respect of search or requisition conducted on or after 1st April 2021. For the searches

conducted u/s 132(1) of the Act on or after 1st April 2021, the assessments shall now be framed under section 147 read with section 148, 148A, 149,151 of the Income-tax Act, 1961 as substituted by the Finance Act, 2021. Under the new legal framework of search assessments u/s 147 of the Act, the assessments beyond 3 years can be reopened only when the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of an asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. Hence, the Legislature in their wisdom has introduced new provisions to mean that for assessing or re-assessing any year beyond 3 years, consequent to search on or after 1st April, 2021, the requirement of incriminating material is mandatory.

14. It is a settled proposition of law that mere statement u/s 132(4) or u/s 131 is not sufficient to make an addition. A statement made must be relatable to incriminating material found during the search or the statement must be made relatable to some material by subsequent inquiry/investigations.

15. Hon'ble Supreme Court in the case of Pullangode Rubbers Produces CO Ltd (supra) has observed as under:

> *"It is no doubt true that entries in the account books of the assessee amount to an admission that the amount in question was laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect."*

16. The crux of the aforesaid decision is that a declaration or disclosure made by the person is binding unless it is rebutted by the person by furnishing valid evidences. In the present case, assessee admitted certain income in the statements recorded u/s 132(4) of the Act which was later retracted and reasons for such retraction was explained by making detailed submission with the help of explanation of seized material which does not indicate any incriminating material. Thus, the appellant retracted the statement recorded u/s 132(4) of the

Act showing the admission made therein by him was incorrect by filing all the possible documentary evidences.

17. The Hon'ble High Court of Rajasthan in the case of Mantri Share Brokers Pvt. Ltd. reported in 96 taxmann.com 279 held as under:

> *"Section 69B of the Income-tax Act, 1961- undisclosed investments (Burden of proof)- whether where except statement of director of assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence, said sum could not be added in hands of assessee as undisclosed investments - Held, yes [Paras 10-11] 1In favour of assessee]. Para 10 & 11 of the order is as under:*
>
> *10. Before proceeding with the matter, it will not be out of place to mention that except the statement in the letter, the AO has no other material on record to assess the income of Rs. 1,82,00,000/-.*
>
> *11. It is settled proposition of law that merely on the statement that too also was taken in view of threat given in question No.36 as narrated by Mr. Gupta and the same sought to have been relied upon, there is no other material either in the form of cash, bullion, jewellery or document in any other form which can come to the conclusion that the statement made was supported by some documentary evidence. We have gone through the record and find that the CIT (A) has rightly observed as stated hereinabove, which was confirmed by the Tribunal."*

18. It would not be out of place to mention that this order of Hon'ble Rajasthan **High Court has been confirmed by Hon'ble** Supreme Court also.

19. Further, Hon'ble Delhi High Court in case of Harjeev Agarwal (supra) held as under:

> *"...A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB (1) read with Section 1588 (b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be*

used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded...."

20. Though the above principle is laid down in relation to assessment of block period u/s 158 BC of the Act, the same was also applied in respect of assessment u/s 153A, as has been held by hon'ble Delhi High Court in case of Best Infrastructure (84 Taxmann.com 287) when it was held as under:

"38. Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra)."

21. It is submitted that Hon'ble Rajasthan High Court in the case of PCIT vs Shri Sanjay Chhabra in Income Tax Appeal No. 22/2021 vide order dt. 06/04/2022 has held that addition based solely on statement later on retracted, without anything more, could not be justified in law and thus had not admitted the appeal filed by the department. The relevant observations of the hon'bl court are as under:

The argument advanced on the basis of the principle propounded by the Supreme Court in the case of Sumati Dayal (supra), does not apply to the facts of the present case at all. The Tribunal's findings are based on material placed on record. The aspect of human probability, in the present case, only goes against the Revenue because in the present case, a raid was conducted and in that process, statement is said to have been recorded under Section 132(4) of the I.T. Act, which was, later on, retracted by the Assessee. In a situation like this, where the office premises are sealed for many days and during that period, a statement is said to have been recorded under Section 132 (4) of the I.T. Act, the Tribunal's view that only the basis of such retracted statement, addition could not be justified without any other material admissible in evidence, warrants no interference as it is not a substantial question of law.

In the case of Commissioner of Income Tax Versus Harjeev Aggarwal reported in (2016) 290 CTR (Del) 263 and Kailashben Manharlal Chokshi Versus Commissioner of Income Tax reported in (2010) 328 ITR 411 (Guj) various High Courts have held that addition based solely on statement later on retracted, without anything more, could not be justified in law. Thus, the view taken by the Tribunal cannot be faulted.

In view of the above consideration, we are of the view that this appeal does not involve any substantial question of law and is, therefore, dismissed.

22. AT this juncture, it is also relevant to mention that in the case of M/s Lucky Holding Pvt. Ltd. in whose hands a sum of Rs. 90 Crores were admitted by the assessee in the same statement / letter field before the Investigation wing, the assessment u/s 147/143(3) was completed where no addition was made on account of alleged admission of undisclosed income by the assessee. The copy of the order is available in paper book pages 60-61. It is incidentally noted that the same assessing officer has completed the assessment in the case of the company where he accepted the contention that when no incriminating paper was found, no addition could be made solely based on the alleged admission in the statements recorded u/s 132(4) of the Act. However, in the case of assessee, the same assessing officer has taken a divergent stand and without referring to any incriminating material found/ seized during the search made the addition sole for the reason that assessee has admitted additional income in the statements recorded u/s 132(4) of the Act during the search proceedings.

23. It is further seen that assessee gave pagewise explanation of all the loose papers found and seized from his possession which were inventoried as Annexure A-1 to 18 and none of the paper contained any entry related to the assessee which indicates any transaction of undisclosed in nature and the explanations tendered by the assessee were accepted by AO without any adverse remark. The copies of explanation so filed before the lower authorities are placed in paper book pages 90-139.

24. In the case of Shri B.C. Jindal, since there was incriminating material found/seized indicating undisclosed income, therefore, the additional income admitted by the assessee was offered for tax and due taxes were paid, this also support the stand of the assessee that wherever the admission of additional income was based on the incriminating material, the same was honored by the respective assessee.

25. Regarding the judicial pronouncements relied upon by the revenue, we find in these cases the assessee was not able to demonstrate that the admission made in the statements recorded during search were incorrect with the plausible evidence. The Hon'ble Supreme court in the case of Pullangode Rubber (supra) has held that though admission is an extremely important piece of evidence but it cannot be said to be conclusive and the person who made the admission can show that it is incorrect. As observed above, in the instant case the assessee has tendered his explanation of each, and every paper found and seized during the search wherein he had categorically explained the nature of entries contained the name of the entity in whose books of accounts they are recorded. Thus, though all these judgements refer to the situation where additions were made on the basis of confessional statements yet, in these cases such confession was not proved incorrect thus the Hon'ble courts opined that addition made on the basis of admission should be upheld. As explained above, the facts of the present case are distinguishable thus these judgments as relied upon by the revenue are not applicable in the instant case.

26. At this stage we refer to the statements of the assessee recorded u/s 132(4) wherein after reply to Question No. 16, statements were discontinued for providing rest to the assessee at 8:45PM of 14.11.2011 and they were resumed on 9:00 PM of 14.11.2011 i.e. after allowing the assessee for rest of only 45 minutes. Thereafter, these statements were concluded on 15.11.2011 and it is not mentioned in the statements at what time they were concluded on next day. This clearly shows the mental pressure applied for obtaining the surrender from the assessee which is gross violation of the CBDT Instruction No. 286/2/2003-

IT-Inv, dated 10.3.2003 wherein directions were given to the field officers to collect the evidences during search and seizure and to avoid the practice of obtaining the surrender. As observed above, in the present case, no such incriminating evidence was collected by the search team during the course of search nor thereafter, before completing the assessment u/s 143(3) of the Act and the addition was made solely on the basis of the alleged admission obtained from the assessee in the statements recorded u/s 132(4) of the Act.

27. In view of the above and for the reasons stated above and considering the binding decisions of various High Courts and findings of the apex court in the decision cited here in above, we see no reason to interfere with the order passed by the learned CIT(A). In terms of these observations, all the grounds of appeal taken in the appeal of the revenue are dismissed.

28. In the result the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 21/05/2025.

Sd/-	Sd/-
(YOGESH KUMAR U.S.)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21/05/2025
PK/Sr. Ps
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI