

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D. B. Income Tax Appeal No. 47/2018

Pr. Commissioner of Income Tax (Central), Jaipur

----Appellant

Versus

Shri Roshan Lal Sancheti, Prateek-13, Milan Talkies Road, Ashok
Nagar, Hari Sewa Marg, Bhilwara (Raj.)

----Respondent

For Appellant(s)	:	Mr. Siddharth Bapna on behalf of Mr. Anil Mehta.
For Respondent(s)	:	Mr. Prakul Khurana on behalf of Mr. Sanjay Jhanwar.

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR**

REPORTABLE

Judgment

30/10/2018

(Per Hon'ble Mr. Justice Mohammad Rafiq)

This income tax appeal pertaining to assessment year 2013-14 under Section 260A of the Income Tax Act, 1961 has been filed by the appellant-revenue assailing judgment dated 15.09.2017 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal') whereby the appeal filed by the respondent-assessee was allowed and appeal filed by the appellant was dismissed.

This appeal was admitted by this Court vide order dated 10.04.2018 on the following substantial question of law:

“(1) Whether on the facts and circumstances of the case of in law the Hon'ble ITAT was correct in upholding the decision of the CIT(A) and further deleting the addition of surrendered income by observing that affidavit of retraction

filed by the assessee on 19.05.2013 has not been examined by the AO at any stage despite the facts that income surrendered in the statement under Section 132(4) of the Income Tax Act, 1961 dated 26.09.2012 was affirmed by the assessee in the statement recorded u/s 131 of the Income Tax Act on 15.10.2012?"

The skeletal facts essential for deciding the appeal are that search and seizure proceedings under Section 132 of the Act were carried out on 26.09.2012 at the residential premises of the assessee group and his family members. According to the revenue, certain incriminating documents/lose papers/books of accounts, etc. were found there, which were inventorized. Some of them were also seized at the time of search/survey under Section 132 of the Act. Thereafter, statement of the assessee was recorded on 27.09.2012, where a surrender of Rs. 2,28,44,545/- was extracted from the assessee and his statement was concluded at 9.00 P.M. on 27.09.2012. This statement surrendering the income was again reconfirmed from the assessee before the ADIT in statement under Section 131 of the Act on 15.10.2012 and 17.12.2012. However, these statements were later retracted by the assessee by filing an affidavit on 20.05.2013. The case of the assessee was selected for scrutiny and the assessee submitted return of income on 26.09.2013 declaring income of Rs. 36,81,840/- and agriculture income of Rs. 1,27,066/-. Notices under Section 143(2) and 143(1) of the Act were served on the assessee and after considering the response, assessment order was passed by the Assessing Officer on 25.03.2015 whereby additions were made in respect of the purchase of properties and constructions on the basis of seized material and admissions made

by the assessee, total amounting to Rs. 3,42,05,891/- and agricultural income of Rs. 1,27,066/-.

The assessee being aggrieved by order of assessment preferred appeal before the Commissioner of Income Tax (Appeals)-2, Udaipur [for short 'the CIT(A)']. The CIT(A) considering the fact that the assessee retracted from the statement recorded during the course of search by filing affidavit on 20.05.2013 explained reasons of surrender, vide its order dated 30.03.2016 and deleted various additions details of which are as under:

"The additions of Rs. 24,11,588/- in respect of plot at Luv Garden and investment and construction thereof were deleted on the basis that the actual cost incurred were duly debited in the books of accounts and no discrepancies were found except surrender made by the assessee.

Addition of Rs. 1,37,725/- in respect of plot at Mahendra SEZ were also deleted on the ground of retractions which could not be rebutted by the Assessing Officer.

Additions of Rs. 36,56,632/- in respect of land in Mahapragya Nagar, Asind, Bhilwara were also similarly deleted.

Additions of Rs. 78,35,000/- in respect of investment in Anand City, Arjia, Ajmer Road, Bhilwara in Shop No. 12 were also deleted.

Additions of Rs. 88 lacs as advance since purchase of land were deleted to the extent of Rs. 73 lacs.

The third ground of appeal in respect of addition of Rs. 20 lacs on account of unexplained advances were deleted considering to be known.

The fourth ground of appeal in respect of addition of Rs. 15,90,350/- was deleted.

The fifth ground of appeal in respect of addition of Rs. 33,12,000/- on the basis of page-73 of Annexure-AS-2 relating to some constructions of plots, was deleted. However, in respect of commission charges to the extent of 33,000/- were upheld.

The six ground of appeal in respect of addition of Rs. 7,77,000/- was also deleted."

The revenue preferred appeal against the aforesaid order of CIT(A) before the Tribunal whereas the assessee also preferred appeal against the part of order of CIT(A). The Tribunal vide judgment dated 15.09.2017 dismissed the appeal of the revenue, however, allowed the appeal of the assessee in respect of addition upheld by the CIT(A) amounting to Rs. 15,00,000/- as advance to one Kaluram Gurjar. Hence this appeal.

Mr. Siddharth Bapna, learned counsel for the appellant-revenue, submitted that there is no material whatsoever on record to suggest that surrender was made by the assessee under any pressure, coercion or threat. Search proceedings were carried out at the residential premises of the assessee on 26.09.2012 and 27.09.2012. Statement under Section 132(4) of the assessee was recorded in the presence of two witnesses, who were called at the choice of the assessee from his own locality. This statement was again confirmed by the assessee in front of ADIT in the statement under Section 131 of the Act recorded on 15.10.2012 and later in statement dated 17.12.2012. In the search, on the basis of seven loose papers which were seized on which the assessee had written various amounts showing undisclosed investment in construction, purchase and advances the assessee agreed to surrender amount of Rs. 2,28,44,545/-. Thereafter, the statement of the assessee on these seven papers was recorded on 27.09.2012 where surrender of the aforesaid amount was made by the assessee. The assessee again confirmed the statement of surrender before ADIT in his statement under Section 131 of the Act on 15.10.2012 and thereafter in his further statement dated 17.12.2012 when he made additional surrender of Rs. 10,00,000/-. Learned counsel argued that the surrender was retracted by the assessee in the

affidavit filed on 20.05.2013, after the long lapse of 237 days from the date of search. The very fact that the respondent-assessee took almost eight months to file affidavit of retraction means that there was neither any pressure nor any coercion on him to make any surrender. In fact, the entries of unrecorded business transactions were explained by none other than the assessee himself and it was on that basis that he made disclosure during search proceedings or post search proceedings. Subsequently, he procured affidavits of Shri Suresh, Shri Ashok Jat and Shri Padam Kumar Jain, which were of no help in the absence of any documentary evidence.

Learned counsel argued that the statement recorded under Section 132 of the Act in the presence of the witnesses would have overriding effect over any subsequent retraction. Learned counsel referred to Para 5 to 9 of the retraction affidavit dated 20.05.2013 to argue that the assessee has therein also admitted having made the surrender and given the statements. Learned counsel in support of his arguments relied upon the judgments in ***M/s. Bannalal Jat Constructions Pvt. Ltd. Vs. ACIT, Central Circle-2, Ajmer (D.B. Income Tax Appeal No. 140/2018 decided on 31.08.2018)*** and ***CIT, Bikaner Vs. Ravi Mathur, 2017 (1) WLC (Raj.) 387; Rameshchandra and Company Vs. Commissioner of Income-Tax - 1987 SCC OnLine Bom 596 of High Court of Bombay at Nagpur, Dr. S.C. Gupta Vs. Commissioner of Income-Tax - (2001) 248 ITR 782 of the Allahabad High Court, Bachittar Singh Vs. Commissioner of Income-Tax and Another - (2010) 328 ITR 400 of the Punjab and Haryana High Court, Commissioner of Income Tax Vs. M/s. Hotel Meriya -***

(2011) 332 ITR 537 of the Kerala High Court, Commissioner of Income-Tax Vs. Lekh Raj Dhunna – (2012) 344 ITR 352 of the Punjab and Haryana High Court, The Commissioner of Income Tax Vs. O. Abdul Razak – (2013) 350 ITR 71 of the High Court of Kerala, and ACTO, Anti Evasion-I, Alwar Vs. M/s. Khandelwal Foods Products, Station Road, Alwar – 2017 (1) RLW 612 (Raj.) of this Court.

Per contra, Mr. Prakul Khurana, learned counsel for the respondent-assessee submitted that the surrender was extracted from the assessee by income tax authorities during the search proceedings by use of coercion, duress and threat, which facts have been explained by the assessee in greater detail in the affidavit of retraction. It is argued that affidavits of Shri Suresh, Shri Ashok Jat and Shri Padam Kumar Jain were also filed, in which they have stated on oath that they did not own any land and therefore there did not arise any question of their accepting any advance from the assessee. Learned counsel referred to Instruction No. 286/2003-IT(Inv.) dated 10.03.2003 issued by the Central Board of Direct Taxes which acknowledges the fact that in certain cases, assessee are forced to disclose the income during the course of search, seizure and survey operations. It was advised therein that there should be focus and concentration on collection of evidence of income which lead to information of what has not been disclosed or is not likely to be disclosed before the Income Tax Department, and no attempt should be made to obtain confession as to any disclosed income. Circumstances in which the assessee had to give the statements under Section 132(4) and/or under Section 131 of the Act have been explained

in the affidavit filed on 20.05.2013. The very fact that the search continued for as long as 36 hours indicates that coercion and undue influence were exercised by the authorities of the appellant-department for making surrender. The affidavit filed by the assessee on 20.05.2013 explained in minute details the circumstances which led to surrender and how the surrender was extracted from the assessee from the aforesaid seven papers. The assessee has not brought any evidence on record to prove the facts mentioned by the assessee in the affidavit. The persons whose names were mentioned on the papers seized by the department have also denied any amount having been received by them from the assessee as advance against the sale of the properties/land.

Learned counsel argued that the Assessing Officer has not given any reason in the assessment order as to why the explanation given by the assessee in the affidavit was not acceptable. Learned CIT(A) has given detailed reasons in respect of each deletion of the addition made by the Assessing Officer. Learned counsel in support of his arguments relied upon the judgment of the Supreme Court in ***Pullangode Rubber Produce Company Ltd. Vs. State of Kerala & Another, (1973) 91 ITR 0018 (SC)*** and submitted that the Supreme Court therein held that the admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs. Reliance is also placed on the judgment of Madras High Court in ***M. Narayan and Bros. Vs. Assistant Commissioner of Income Tax, Special Investigation Circle,***

Salem, (2011) 13 Taxmann.com 49 (Madras) wherein retraction made during the course of assessment proceedings was entertained and relief was granted on merits of the explanation. It is argued that additions cannot be made merely on the basis of statements which are subsequently retracted even belatedly as held by Delhi High Court in **CIT Vs. Sunil Aggarwal, (2015) 64 Taxmann.com 107 (Delhi)**. Learned counsel relied on the judgment of this Court in **Escorts Heart Institute and Research Centre Limited Vs. DCIT (TDS) JP, (2017) 87 Taxmann.com 184 Rajasthan; Commissioner of Income Tax Vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC)** and argued that if two views are possible, the view in favour of the assessee should be preferred. Reliance is also placed on the judgments in **Commissioner of Income Tax Vs. K.Y. Pilliah & Sons, (1967) 63 ITR 411 (SC); Deputy Commissioner of Income Tax Vs. Ratan Corpn., (2005) 197 CTR 536 (Gujarat); The Assistant Commissioner of Income Tax, Central Circle, Ajmer Vs. Shri Devendra Kumar Choudhary, 2-S-10 to 2-S-18, Basant Vihar, Bhilwara, ITA No. 828/JP/16; Commissioner of Income Tax Vs. Ashok Kumar Soni, (2007) 291, ITR, 172 (Raj.); Kailashben Manharlal Chokshi Vs. Commissioner of Income Tax, (2008) 174 Taxman 466 (Gujarat); Commissioner of Income Tax, Central-II, Mumbai Vs. Omprakash K. Jain, (2009) 178 Taxman 179 (Bombay); Mehta Parikh & Co. Vs. Commissioner of Income Tax, (1956) 30 ITR 181 (SC); Shree Ganesh Trading Co. Vs. Commissioner of Income-Tax, Dhanbad, (2013) 257 CTR 159 (Jharkhand); Commissioner of Income Tax, Karnataka Vs. Shri Ramdas**

Motor Transport Ltd. (2015) 230 Taxman 187 (Andhra Pradesh); Chetnaben J. Shah Vs. Income Tax Officer, Ward-10(3), (2016) 288 CTR 579 (Gujarat).

We have given our anxious consideration to rival submissions and carefully perused the material on record.

Statement of the assessee under Section 132(4) of the Act was recorded on 26.09.2012 when the search was carried out at his residential premises. This statement was recorded in the presence of two witnesses who were called at the choice of the assessee from his own locality. The assessee in the proceedings of search agreed to surrender Rs. 2.25 crores as per seven papers found during the search by the Department. Five out of those seven papers were marked as Annexure AS-1 and other two were marked as Annexure AS-2. Various amounts disclosing investments and constructions amounting to Rs. 2,28,44,545/- were written on these papers. Therefore, statement of the assessee about these papers was recorded on 27.09.2012, wherein he surrendered the aforesaid amount. This statement was again reconfirmed by the assessee in his statement recorded under Section 131 of the Act on 15.10.2012 and 17.12.2012 before the ADIT. In this statement, the assessee confirmed the entries made on the papers seized as AS-1 and AS-2. In fact, the assessee in his statement dated 25.10.2012 acknowledged further surrender of Rs. 10,00,000/- which he again confirmed in subsequent statement dated 17.12.2012. The affidavit of retraction was filed by the assessee with inordinate delay of 237 days on 20.05.2013. The said affidavit runs into four pages. In para 5 of the affidavit, the assessee admitted that the representative of the department prepared list of 28 exhibits,

which were mostly original sale deeds etc. and pressurised him to make surrender of Rs. 5 crores. It was stated that if the original documents were to be taken away by the department, it would have created a difficulty for the assessee to depose them of, therefore, he under pressure had to agree for the surrender. In para 6 of the affidavit also he admitted that after long deliberations and arguments, a consensus was arrived at for surrender of Rs. 2.25 crores on the condition that the representative of the department would not carry the original documents of the sale deeds. In para 8 of the affidavit, it was alleged that the representative of the department got seven papers prepared for surrender of Rs. 2.25 crores on account of which he was made to surrender a sum of Rs. 2,28,44,545/-. In para 9 of the affidavit it was stated that the aforesaid surrender was got verified by him in subsequent statement under Section 131 on 15.10.2012 followed by 17.10.2012. On the basis of aforesaid seven papers, further surrender of Rs. 10,00,000/- was also extracted from the assessee. Confirmation statement given by the assessee under Section 131 of the Act was recorded on 25.10.2012 wherein details of various transactions of sale and purchase of the land and property by the appellant was made. In para 15 of the affidavit, the assessee alleged that on the basis of two documents marked as AS-2, advance amount of Rs. 25 lacs was shown to have been given as loan and a sum of Rs. 21,00,000/- was shown to have been given to Shri Ashok Jat for his land ad-measuring 8 bigha in village Suwan. In para 16 of the affidavit, advance of Rs. 15,00,000/- was shown to have been given in papers AS-2 to Shri Kalu Ji Gurjar and further advance of Rs. 27,00,000/- was shown to be given to Shri Padam Kumar Jain.

All these transactions were in fact fictitious. These persons had given affidavits that they did not have any such land, argued the learned counsel for the assessee.

This court in CIT, Bikaner Vs. Ravi Mathur, supra, which judgment has been relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and they cannot be discarded summarily and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion. We deem it appropriate to reproduce para 15 of the said judgment, which reads thus,

"15. In our view, the statements recorded under Section 132(4) have great evidentiary value and it cannot be discarded as in the instant case ITA No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9.11.1995 and onwards but retraction, is almost after an year and that too when the assessment proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise

brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes:-

"Regarding the amount of Rs. 44.285 lakhs, it is now contended that the statement u/s 132(4) was not correct and these amounts are in ITA No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations."

Therefore, what we gather from the Assessment Order and on perusal of the above finding that the retraction was at the stage when the assessment proceedings were being finalized i.e. almost after a gap of more than an year. Such a so-called retraction in our view is no retraction in law and is simply a self-serving statement without any material."

The judgment of the Delhi High Court in CIT Vs. Sunil Aggarwal, supra, relied on by the assessee does not in any manner extend any assistance to him because that was a case in which the court found that the assessee, apart from retracting the statement, also discharged the onus on him through cogent material to rebut the presumption that stood attracted in view of

the statement made under Section 132(4) of the IT Act with reference to the entries in the books of accounts of the sales made during the year and the stock position. Similar was the position in *Kailashben Manharlal Chokshi Vs. Commissioner of Income-tax – (2008) 174 Taxman 466 (Gujarat)*, wherein the High Court of Gujarat found that the assessee gave proper evidence in support of his retraction. The High Court of Madras in *M. Narayanan and Bros. Vs. Assistant Commissioner of Income-tax, supra*, held that when assessee had explained his statement as not correct in context of materials produced, no amount could be added to his income on the basis of his statement. Similarly, what has been held by the High Court of Bombay in ***Commissioner of Income-tax, Central-II, Mumbai Vs. Omprakash K. Jain – (2009) 178 Taxman 179 (Bombay)*** was that the assessing officer, while considering whether retraction was under duress or coercion, had also to consider genuineness of documents produced before him.

The Punjab and Haryana High Court in *Commissioner of Income-Tax Vs. Lekh Raj Dhunna*, taking note of the fact that the assessee had made a statement under Section 132(4) of the IT Act whereby a surrender of Rs.2 lakh was made and further that the assessee had admitted that he had earned commission from a party, which was not disclosed in the return filed by him and certain documents were seized which bore the signature of the assessee, held in para 16 of the report as under:-

“16. Thus, in view of sub-sections (4) and (4A) of Section 132 of the Act, the Assessing Officer was justified in drawing presumption against the assessee and had made addition of Rs.9 lakhs in his income under Section 68 of the Act. The onus was upon the assessee to have produced cogent material to rebut the

aforesaid presumption which he had failed to displace. The assessee retracted from the said statement, vide letters dated November 24, 1998, and March 11, 1999, during the course of assessment proceedings. However, no value could be attached thereto in the present case. In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee could have retracted from the same at the earliest. No plausible explanation has been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search cannot be held to be bad. The Tribunal, thus, erred in concluding otherwise. The Tribunal, therefore, was not justified in reversing the order of the Assessing Officer which was affirmed by the Commissioner of Income-tax (Appeals) also."

The Punjab and Haryana High Court in *Bachittar Singh Vs, Commissioner of Income-Tax, supra*, in para 7 of the report, held as under:-

"7. It is not disputed that the statement was made by the assessee at the time of survey, which was retracted on May 28, 2003, and he did not take any further action for a period of more than two months. In such circumstances, the view taken by the Tribunal that retraction from the earlier statement was not permissible, is definitely a possible view. The mere fact that some entries were made in a diary could not be held to be sufficient and conclusive to hold that the statement earlier made was false. The assessee failed to produce books of account which may have been maintained during regular course of business or any other authentic contemporaneous evidence of agricultural income. In the circumstances, the statement of the assessee could certainly be acted upon."

The High Court of Kerala in *The Commissioner of Income Tax Vs. O. Abdul Razak, supra*, in para nos.8, 9 and 10 of the report, held as under:-

"8. It cannot be doubted for a moment that the burden of proving the undisclosed income is squarely on the shoulders of the department. Acquisition of properties by the assessee are proved with the documents seized in search. Since under statement of consideration in

documents is the usual practise the officer questioned the assessee on payments made over and above the amounts stated in the documents. Assessee gave sworn statement honestly disclosing the actual amounts paid. The question now to be considered is whether the sworn statement constitutes evidence of undisclosed income and if so whether it is evidence collected by the department. In our view the burden of proof is discharged by the department when they persuaded the assessee to state details of undisclosed income, which the assessee disclosed in his sworn statement, on being confronted with the title deeds seized in search.

9. Section 132 of the Income tax Act deals with search and seizure and sub-Section (4) of Section 132 empowers the authorised officer during the course of the search and seizure to examine on oath any person who is found to be in possession or control of any books of account, documents, money or valuable articles or things etc. and record a statement made by such person which can be used in evidence in any proceedings under the Income Tax Act. The explanation appended to Clause (4) also makes it clear that such examination can be in respect of any matters relevant for the purpose of any investigation and need not be confined to matters pertaining to the material found as a result of the search. A plain reading of Section 132(4) would clearly show that what was intended by empowering an officer conducting the search to take a statement on oath was to record evidence as contemplated in any adjudication especially since Section 131 confers on all officers empowered therein with the same powers as vested in a court under the Code of Criminal Procedure, for the purpose of the Income Tax Act.

10. A Division Bench of this Court in C.I.T. v. Hotel Meriya, (2011) 332 ITR 537 considered the scope of a statement recorded under Section 132(4) and found that such statement recorded by the officer as well as the documents seized would come within the purview of evidence under Section 158(BB) of the Income-tax Act read with Section 3 of the Evidence Act and Section 131 of the Income Tax Act. Based on the above finding, it was also held that such evidence would be admissible for the purpose of block assessments too. The explanation to Section 132(4) of the Income Tax Act was also noticed by the Division Bench to further emphasise that the evidence so collected would be relevant in all purposes connected with any proceedings of the Income Tax Act."

The Allahabad High Court in Dr. S.C. Gupta Vs. Commissioner of Income-Tax, supra, in para 7 of the report, held as under:-

"7. As regards the assessee's contention that the statement having been retracted the Assessing Officer should have independently come to a conclusion that there was additional income as sought to be assessed and that there was no material to support that there was such income, this contention in our view is not correct. As held by the Supreme Court in Pullan-gode Rubber Produce Co. Ltd. v. State of Kerala, (1973) 91 ITR 18 an admission is an extremely important piece of evidence though it is not conclusive. Therefore, a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and in fact there was no additional income. This burden does not even seem to have been attempted to be discharged. Similarly, P.K. Palwankar v. CGT, [1979] 117 ITR 768 (MP) and CIT v. Mrs. Doris S. Luiz, [1974] 96 ITR 646 (Ker) on which also learned counsel for the assessee placed reliance are of no help to the assessee. The Tribunal's order is concluded by findings of fact and in our view no question of law arises. The applications are, accordingly, rejected."

All the aforementioned judgments were considered by this Court in **M/s. Bannalal Jat Constructions Pvt. Ltd. (supra)** wherein also the assessee retracted from his statement initially given under Section 132(4) of the Act on 10.10.2014 followed by confirmation statement under Section 131 on 04.12.2014 and made the following observations:

"Reverting back to the present case, the ITAT, on the basis of such statement of Shri Bannalal Jat, concluded that he was managing his business affairs of both his proprietary concern as well as appellant-company from his residence and that in the absence of individual cash-book of respective concerns and other details maintained by him, it is not possible to identify whether the cash so found belongs to the proprietary concern or to the assessee company. Subsequently, when the

statement under Section 132(4) of the IT Act was recorded on 10.10.2014, which was concluded at his residence, Shri Bannalal Jat categorically admitted that the cash amount of Rs.1,21,43,210/- belonged to his company M/s. Bannalal Jat Construction Private Limited and the same was its undisclosed income. Thereafter another statement under Section 132(4) of the IT Act was recorded at his business premises on 11.10.2014. In reply to question No. 8, he was asked to explain the source of cash amounting to Rs.3,380/- found at his office and Rs.1,21,43,210/- found at his residence, he submitted regarding the amount of Rs.1,21,43,210/- found at his residence that he was unable to give any explanation and admitted that he was in the business of civil construction and in such business, various expenses have been inflated and shown in the books of accounts, and that the income so generated on account of such inflation in expenses is represented in the form of cash was found at his residence. This undisclosed income belonged to his company M/s Bannalal Jat Construction Pvt. Ltd. In response to question no.11 wherein he was asked to provide any other explanation which he wishes to provide, he submitted that pursuant to search operations where various documents, loose papers, entries, cash, investment, advances and individual expenditure details have been found and taking all that into consideration, he surrendered Rs.4,01,43,210/- as his undisclosed income. He also categorically stated that the said disclosure is in the hands of M/s Bannalal Jat Construction Private Limited in respect of unexplained cash amounting to Rs.1,21,43,210/- and Rs.2,50,00,000 and Rs.30,00,000/- totalling to Rs.2,80,00,000 in his individual capacity."

In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two

stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days.

In view of above discussion, we are persuaded to allow the appeal of the revenue which is accordingly allowed. The substantial question of law formulated by this Court vide order dated 10.04.2018 is answered in favour of the revenue and against the assessee in the aforesaid terms.

(GOVERDHAN BARDHAR),J

(MOHAMMAD RAFIQ),J

Manoj/



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