IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.Nos.2100, 2101, 2102, 2103, 2104 & 2105/Del./2018
Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2014-15 & 2015-2016

Shri Pradeep Kumar Sharma, Ghaziabad. PAN AFJPS2392K C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi-085.	vs.	The DCIT, Central Circle, Noida.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Smt. Sushma Singh, CIT-DR

Date of Hearing :	01.03.2021
Date of Pronouncement :	03.03.2021

ORDER

PER BENCH :

All the appeals by Assessee are directed against common Order of the Ld. CIT(A)-IV, Kanpur, Dated 31.01.2018, for the above assessment years.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Briefly the facts of the case are that a search and seizure operation under section 132 of the Income Tax Act, 1961 was conducted on 27.1 1.2014 on the premises of the assessee comprising Maconss. Meenu Creation and Yadav Singh Group of cases. Further, in response to notice under section 153A of the I.T. Act, assessee filed return of income declaring income of Rs.1,97,115/-, Rs.2,69,519/-, Rs.3,50,640/-, Rs.9,41,660/-, Rs.13,00,890/- and Rs.7,52,800/- for A.Y. 2009-10 to A.Y. 2012-13, A.Y. 2014-15 and A.Y. 2015-16 respectively. Later on, statutory notices were issued and A.O. completed the assessments by making additions/disallowances of Rs.9,09,000/-, Rs.4,99,500/-, Rs.8,53,500/-, Rs.13,44,000/-, Rs.1500/- and Rs.1,77,000/- for A.Y. 2009-10 to A.Y. 2012-13. A.Y. 2014-15 and A.Y. 2015-16 respectively on account of unaccounted commission income earned by the assessee.

3.1. The Ld. CIT(A) noted the background of the facts of the case which lead to the above additions. A search and seizure action under section 132 of the I.T. Act was conducted in the Yadav Singh, Rajesh Manocha and Meenu Group. During the course of search action at the residence of Smt. Kusum Lata wife of Shri Yadav Singh evidences in the form of slips were found which established that Shri Yadav Singh has indulged in the practice of awarding contract with the help of his other colleagues for which an unaccounted and illegal commission of 5% was paid to Shri Yadav Singh and his colleagues which includes the assessee also. This fact was categorically admitted by Shri Ramendra Kumar Singh, an employee of the Noida Authority who was subordinate to Shri Yadav Singh. During his statement recorded on oath under section 132(4) of the I.T. Act, 1961 at the residence of Smt. Kusum Lata wife of Shri Yadav Singh at 8/10 Sector 51, Noida. Clinching evidences in the form of diary and loose slips were found from the possession of Shri Ramendra Kumar Singh who came to see Mr. Yadav Singh at the residence of Smt. Kusum Lata. These incriminating documents were seized during the course of search. The perusal of the said dairy as well as slips clearly reveals the fact that Shri Yadav Singh and his colleagues including the assessee who is working as an Accountant with the Noida Authority and directly reports to Shri Yadav Singh were involved in receipt of illegal commission for awarding of contract works. It was clearly brought out in the assessment order that Shri Yadav Singh, Shri Ramendra Kumar Singh and Assessee indulged in awarding contract to the builders/contractors against the commission of 5% of the contract value. The assessee has also accepted in statement recorded on oath that he along with Shri Yadav Singh and Shri Ramendra Kumar Singh has received the illegal and illicit commission. Thus, the assessee has accepted the fact of receipt of illegal and illicit commission on the contract awarded during the relevant assessment years under appeal. It was also established by the AO that the assessee has received illegal and illicit commission of Rs.100/- to Rs.2000/- per bond. Therefore, AO added back Rs.1500/- as average commission per bond during the relevant assessment years under appeals as per the following table :

A.Y.	Contracts	100 to 2000 per bond lence average 1500/-
2009-10	606	90900
2010-11	333	499500
2011-12	569	853500
2012-13	896	1344000
2013-14	0	0
2014-15	1	1500
2015-16	113	177000
Total	2523	3765500

3.2. The assessee challenged the above additions before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee briefly submitted that he was an employee of Noida Authority in his capacity as an Accountant. During the course of search at the residential premises of Shri Yadav Singh, Shri Ramendra Kumar Singh was present and his statement was recorded under section 132(4) of the I.T. Act, 1961. Shri Ramendra Kumar Singh made a mention of the name of the assessee in the Accounts Department. The assessee was also searched on the same day on 27.11.2014, which was also closed on the same day and thereafter summons were issued to the assessee under section 131(1) of the I.T. Act,1961 and statement of the assessee was recorded under section 131(1A) of the I.T. Act, 1961. The additions appears to have been made on the basis of the statement recorded under section 131(1A) of the I.T. Act, 1961, without corroborating evidence on record. Nothing was recovered during the course of search in the case of assessee. None of the papers found from other persons were connected with the case of the assessee. The assessee is not connected with Shri Yadav Singh or Shri Ramendra Kumar Singh in any manner. Copy of the Panchanama would show that nothing is recovered from the premises of the assessee at the time of search. The statement of assessee was never recorded under section 132(4) of the I.T. Act, 1961. The statement of assessee was recorded much later on after conclusion of the search on 03.02.2014 to 05.12.2014 in different sittings and assessee was required to write down in his handwriting a pre-written statement provided by the

Investigating Officer. The wife and son of the assessee were also directed to appear in the O/o. Investigating Officer without any reasons though no clarification was required from them. No such statement was recorded from them. The assessee later on made a representation to the concerned Officers and protest was lodged for recording an incorrect statement under coercion. The assessee has also filed an Affidavit to the same effect. The assessee never received any commission. The A.O. called the wife and son of the assessee in order to put a pressure on assessee to agree to the statement to be recorded by the Investigating Officer. Otherwise, they were not connected with any matter and their statements were never recorded. During the course of search, statement of Shri Ramendra Kumar Singh was recorded, but, assessee was not allowed to cross-examine his statement at any point of time. No reason or justification have been shown why the wife and son of the assessee were called for in the O/o. The Investigating Officer. It, was, therefore, explained that above additions are made without any incriminating material and just on the basis of the statement of assessee recorded subsequently without bringing any corroborative evidence on record. The Ld. CIT(A), however, did not accept the contention of assessee and confirmed the additions in all the assessment years under appeal and dismissed the appeals of assessee. The findings of the Ld. CIT(A) in paras 5.3 to 5.6 of the Order are reproduced as under :

> "*5.3. The undersigned has carefully gone through the assessment order, written submission and verbal argument of the Ld. AR. It is seen that during the course of search certain incriminating document in the form of* dairies *and the loose slips* were *found and seized which revealed that the appellant along with Shri Yadov Singh, Shri Ramendra Singh has received illegal and illicit commission on the contract awarded from Noida Authority, Yamuna Express Way Authority and Greater Noida Authority. This incriminating document impounded from the residence of Smt.*

Kusum Lata is annexed as Annexure-A being integral part of this order.

This incriminating document was confronted to Shri Ramendra Singh (Asst. Project Engineer) and the detailed statement of Shri Ramendra was recorded on oath u/s 132 (4) of the Act at 8-10, Sector 51, Noida on 27.11.2014, wherein he accepted that Shri Yadov Singh and Shri Pradeep Sharma the appellant along with himself were involved in the receipt of illegal commission payment on the award of contract works. A detailed statement of Shri Ramendra is produced by the AO in the assessment order. Further, in the post search proceedings statement of the appellant was recorded on oath u/s 131 (1A) of the Act, wherein it was categorically accepted by him that he is in receipt of illegal commission against contract awarded to the various contractors during his posting from 2003 onwards till the date of recording of statement. It is also categorically admitted by the appellant that quantum of such commission varies from Rs.1,000 to

Rs.2,000 per bond. The detailed statement of the appellant is reproduced by the AO from page no. 20 to 29 of *the assessment order. The AO estimated the illicit commission of the appellant @ 1500 per bond which cannot be faulted within absence of any other material on the contrary Therefore, AO has correctly estimated the commission income of the appellant during this relevant assessment years which is as follows :* Even as

A.Y.	Contracts	100 to 2000 per bond lence average 1500/-
2009-10	606	90900
2010-11	333	499500
2011-12	569	853500
2012-13	896	1344000
2013-14	0	0
2014-15	1	1500
2015-16	113	177000
Total	2523	3765500

5.4. Even though, the appellant has filed the retraction statement it may be noted that the same may be treated as self-serving document. This is a settled preposition of law u/s 132 (4A) and u/s 292C of the Act that the incriminating document found during the course of *search is true and correct. In the instant case the contents of the document established beyond doubt that illegal commission were received by the appellant along with Shri Yadov Singh and his colleagues. The contention of the appellant that his statement u/s 131(1A) was forcibly recorded is without any cogent evidences. The fact of received of illegal commission was also accepted in the statement recorded on oath by Shri Ramendra and the appellant. The statement on oath of appellant is also corroborated by the seizure of incriminating document, annexed as Anneuxre-I, which is part and parcel of this order In a view totality of the facts and circumstances of the case and considering the legal presumption of law as mentioned here-in-above it is concluded that the AO has correctly made the addition in these relevant assessment years. Therefore the same is confirmed and the appeal of the appellant is dismissed.*

6. Result :

In the result, for statistical purposes, these six appeals i.e. A.Y. 2009-10 to A.Y, 2012-13, A.Y. 2014-15 & A.Y. 2015-16 are dismissed."

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. Learned Counsel for the Assessee submitted that A.O. has reproduced the seized paper found from the residence of Smt. Kusum Lata from the possession of Shri Ramendra Kumar Singh in the assessment order, copy of which is filed in the paper book, which shows that it was signed by Smt. Kusum Lata and it did not find mention even name of the assessee. Therefore, it could never be treated as an incriminating material found from the possession of Smt. Kusum Lata or Shri Ramendra Kumar Singh. No material evidence was found or seized during the course of search in the case of assessee. Copy of the Panchanama in the case of assessee is filed which shows the documents found and seized are NIL. The A.O. merely made an estimated additions without referring to any seized material in all the

assessment years. The statement of Shri Ramendra Kumar Singh was not confronted to assessee or allowed any cross examination on behalf of assessee. If the A.O. wanted to use the third party statement or material against the assessee, the A.O. shall have to follow the procedure provided under section 153C of the I.T. Act, 1961. However, the A.O. framed the assessments under section 153A of the I.T. Act, 1961, therefore, such statements or material recovered in the case of Smt. Kusum Lata or Shri Ramendra Kumar Singh cannot be read in evidence against the assessee. No addition could be made against the assessee under section 153A because no incriminating material is found or seized during the course of search. Therefore, the case of the assessee would be covered by Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 573. He has referred to reply of the assessee Dated 23.12.2016 which was filed before the CIT, Central Circle, Noida explaining under what circumstances statement of assessee was recorded under coercion and duress. The assessee denied to have made any voluntary statement. The assessee also explained that he has not made any investment in any house property in his name or in the name of his family members. He has also filed copy of the letter Dated 13.12.2014 which was filed before President and Chief Executive Officer of Noida explaining that Department has forced to take his statement. He has submitted that assessee was not available at the time of search at the place of the search and later on his statement was recorded under section 131 of the I.T. Act, 1961. The assessee made a retraction to the statement recorded under section 131 of the I.T. Act by filing a letter and affidavit. Therefore, without bringing any corroborative evidence, estimated the additions on account of commission earned, cannot be made in any of the assessment years. He has submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of PCIT, [Central]-3 vs., Anand Kumar Jain (HUF) & Others in ITA.No.23/2021 etc., Dated 12.02.2021.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that in the statement of assessee statement of Shri Ramendra Kumar

Singh has been referred to. The affidavit of retraction was made after more than one year on Dated 14.07.2016, therefore, such retraction is not valid. The assessee in his statement has admitted for taking commission/bribe which is the basis for making the additions against the assessee. The Ld. D.R. submitted that assessee was not available at the time of search, therefore, his statement was recorded later on Dated 4/5.12.2014 in which assessee made an admission of earning commission for which additions have been rightly made by the authorities below in all the assessment years under appeal. The Ld. D.R. also submitted that assessee in his statement has not been able to explain as to how the expenditure incurred out of the salary, therefore, it is a clear evidence that assessee earned commission income. The Ld. D.R. in her written submissions has referred to unreported decision of different Benches of the Tribunal as well as decision of Hon'ble Gujarat High Court and Hon'ble Himachal Pradesh High Court with regard to some GST and service matter. The Ld. D.R. as regards the order sheet Dated 06.01.2021 in which the Ld. D.R. has sought time for filing an application for consolidation of the other connected appeals submitted that she has made efforts to locate the files of all connected matters, but, are not able to get the details, therefore, no application for clubbing/consolidation have been made by the Ld. D.R. Since these are early hearing appeals, both the parties argued the appeals finally. The Ld. D.R, therefore, submitted that there is no merit in the appeals of assessee, therefore, same may be dismissed.

6. We have considered the rival submissions and perused the material on record. Learned Counsel for the Assessee relied upon the Judgment of Hon'ble Delhi High Court in the case of PCIT [Central]-3 vs., Anand Kumar Jain (HUF) & Others vide Order Dated 12.02.2021 (supra), in which the Hon'ble Delhi High Court in paras 6 to 11 held as under :

> *"6. We have considered the contentions of Mr. Sharma, however, we feel that the instant appeals do not raise any question of law, much less substantial*

question of law for our consideration. The relevant portion of the impugned order reads as under:-

> *"5. (...) We find that the Ld. Counsel for the assessee has drawn our attention towards the relevant portion of the judgment / decision of the Hon'ble Supreme Court of India, Hon'ble High Courts and various Benches of the Tribunal on the legal issue on which he argued, Ld. Counsel for the assessee further submitted that admittedly from assessee's own premises during search u/s. 132 of the Act no incriminating material was found and no adverse statement is there on record of the assessee u/s. 132(4) of the IT Act and it is an admitted fact before us that mere basis of un-confronted statement of Sh. Pradeep Kumar Jindal recorded u/s. 132(4) of the Act in his own separate search action and on the basis of unconfronted material for the said search u/s. 132(4), which in our considered opinion, cannot be made as a sole basis for making the additions u/s. 153A of the IT*

Act without recourse of mandatory and exclusive provisions under the Act like u/s 153C of the Act which specifically covered the extant situation. In our opinion, the decision of the Hon'ble Supreme Court of India, Hon'ble High Courts and the various Benches of the Tribunal are directly applicable in the present case wherein they have adjudicated and decided the similar issue in favour of the assessee by accepting the similar arguments of the Ld. Counsel for the assessee. (…)

xx … xx … xx

5.1. As regards the arguments advanced by Ld. CIT(DR) are concerned, the same are not applicable in the present case because keeping in view the assessment order passed by the AO we have not seen from the proceedings of the AO regarding providing any statement of Sh. Pradeep Kumar Jindal to the assessee meaning thereby the Revenue Authorities have not provided the statement of Sh. Pradeep Kumar Jindal to the *assessee and also did not provide the opportunity of cross examination of Sh. Pradeep Kumar Jindal, on which basis the addition has been made and the provisions of Section 153A of the Act have been wrongly applied in the case of the assessee. Therefore, we do not find any cogency in the arguments advanced by the Ld. CIT(DR) and the case laws cited by him in support of his contention are not applicable here."*

7. The preliminary question under consideration before us is whether a statement under Section 132(4) constitutes incriminating material for carrying out assessment under S. 153(A) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under Section 132(4) forms the foundation of the assessment carried out under Section 153A of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the *record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot re-appreciate evidence while exercising jurisdiction under section 260A of the Act.*

8. Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in CIT v. Kabul Chawla, concerning the scope of assessment under Section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine *qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the explanation to section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment. This court in Principal Commissioner of Income Tax, Delhi v. Best Infrastructure (India) P. Ltd., 2 has inter-alia held that:*

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

9. In Commissioner of Income Tax v. Harjeev Aggarwal, 4 this Court had held as follows:

> *"23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.*
>
> *24. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as*

expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

25. (…) 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 158B(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.*

26. In CIT v. Sri Ramdas Motor Transport Ltd., (1999) 238 ITR 177 (AP), a Division Bench of Andhra Pradesh High Court, reading the provision of Section 132(4) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked. (…)

27. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under Section 132(4) of the Act can form a basis for a block *assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.*

28. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assessees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.

29. In Commissioner of Income Tax v. Naresh Kumar Aggarwal: (2014) 3699 ITR 171 (T & AP), a Division Bench of Telangana and Andhra Pradesh High Court held that a statement recorded under Section 132(4) of the Act which is retracted cannot constitute a basis for an order under Section 158BC of the Act. (...)"

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the

AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.

11. Accordingly, the present appeals, along with all pending applications, are dismissed."

6.1. In this case initially search was conducted under section 132 of the I.T. Act, 1961 at the various premises belonging to Shri Yadav Singh, Rajesh Manocha and Meenu Group. Search was also conducted at the residence of Smt. Kusum Lata from where evidences in the form of slips were found which according to the A.O. has disclosed that they get commission from the parties. The statement of Shri Ramendra Kumar Singh, who is an employee of the Noida Authority who worked for Shri Yadav Singh was recorded on oath under section 132(4) of the I.T. Act, 1961 at the residence of Smt. Kusum Lata wife of Shri Yadav Singh and during the course of search diary and loose slips were also found from the possession of Shri Ramendra Kumar Singh which were marked as Annexures A1 and A2 and attached with the assessment order. The A.O. on the basis of statement of Shri Ramendra Kumar Singh and Annexures A1 and A2 and statement of assessee recorded subsequently under section 131 of the I.T. Act, 1961 concluded that assessee has received commission on the contract awarded to different contractors and estimated the commission income earned by the assessee and others on the basis of these material and additions have been made accordingly in all the assessment years under appeal. It is, therefore, clear that these seized material was found from the possession of Smt. Kusum Lata and Shri Ramendra Kumar Singh which are marked as Annexures A1 and A2. Therefore, Annexures

A1 and A2 have not been recovered from the possession of the assessee during the search at any point of time. Thus, the presumption under section 132(4A) and Section 292C of the I.T. Act, 1961 is not sustainable under Law against assessee. Therefore, such evidences cannot be read in evidence against the assessee. It is also a fact that during the course of search separately at the residence of the assessee, Panchanama was drawn because assessee was not present at the time of search and nothing was found incriminating against the assessee. The Panchanama also shows that it is drawn for the items "NIL". Thus, no material much less than the incriminating material was found during the course of search from the possession of the assessee. It may also be noted that Annexures A1 and A2 as referred to in the impugned assessment orders even do not disclose any name of the assessee or any material as to how the assessee is connected with the seized material. Since the documents itself do not indicate any involvement of the assessee for getting any commission etc., therefore, such recovery of the Annexures A1 and A2 would not implicate the assessee for earning of any commission at any point of time. Thus, the evidences which remained with the Revenue was the statement of Shri Ramendra Kumar Singh recorded under section 132(4) of the I.T. Act, 1961. This statement of Shri Ramendra Kumar Singh is not corroborated with any evidence or material on record. Thus, his statement alone is not sufficient to fasten any liability upon the assessee so as to compute undisclosed income in the form of getting commission by the assessee. The assessee claimed that statement of Shri Ramendra Kumar Singh was not confronted to assessee and no right of cross-examination have been allowed to assessee. The Ld. D.R, however, submitted that while recording statement of assessee, statement of Shri Ramendra Kumar Singh have been referred to would clearly indicate that statement of Shri Ramendra Kumar Singh was confronted to the assessee. Therefore, there is a compliance to the provisions of Law. However, we do not agree with the submissions of the Ld. D.R. It is well settled Law that if the Revenue recorded statement of any witness at the back of the assessee, such statement shall have to be confronted to the assessee and right of cross-examination to such statement shall have to be given to the assessee. We rely upon Judgments of the Hon'ble Supreme Court in the case of Kishanchand Chellaram vs., CIT [1980] 125 ITR 713 (SC) and in the case of Andaman Timber Industries [2015] 281 CTR 214 (SC). In this case no material is produced before us to show if any right of cross-examination have been allowed by the A.O. or the other Income Tax Authority to the statement of Shri Ramendra Kumar Singh to the assessee. Therefore, such statement otherwise also cannot be read in evidence against the assessee. Similarly, no statement of assessee was recorded under section 132(4) of the I.T. Act, 1961. Later on A.O. recorded the statement of assessee under section 131 of the I.T. Act, 1961 which is the sole basis of making the above estimated additions against the assessee, but, the statement of the assessee is also not corroborated by any evidence or material on record. We may also note even if assessee has made some admission in his statement recorded under section 131 of the I.T. Act, 1961, however, the question is what is the basis of assessee in making any admission in statement recorded under section 131 of the I.T. Act, 1961. Admission of fact can be made if it is based on some fact or recovery of the material during the course of search. However, the Revenue has failed to point-out as to what is the basis of assessee making any admission for receipt of any commission particularly when the seized document did not refer to the name of the assessee. Therefore, such admission alone is not sufficient to make the addition on estimate basis which was also later on retracted by the assessee. Thus, the statement of assessee alone cannot be the basis for making any estimated additions against the assessee. May be the assessee has retracted from the statement given under section 131 later on and there is a delay in retracting by filing a letter and affidavit to the Income Tax Authorities as well as President of Noida Authority, but, the delay in retracting the statement is of no significance because there were no corroborative material found during the course of search at the residence of Smt. Kusum Lata or Shri Ramendra Kumar

Singh or at the residence of the assessee. Thus, in the absence of any corroborative evidence, statement of Shri Ramendra Kumar Singh or assessee cannot be the basis for estimating the additions of commission against the assessee in all the assessment years under appeal. It is well settled Law that if no incriminating material was found during the course of search, such type of additions cannot be made against the assessee. We rely upon the Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra). Further the statement of Shri Ramendra Kumar Singh and Annexures A1 and A2 found in their case being a third party cannot be referred to or relied upon in the case of the assessee unless the procedure provided under section 153C of the I.T. Act, 1961 have been adopted by the authorities below. Thus, the issue is entirely covered by Judgment of Hon'ble Delhi High Court in the case of PCIT [Central]-3 vs., Anand Kumar Jain (HUF) & Others (supra). Considering the totality of the facts and circumstances of the case, we do not find any justification to sustain any of the additions in any of the assessment years under appeal.

The decisions relied upon by the Ld. D.R. of different Benches of the Tribunal in the written submissions are not applicable to the facts and circumstances of the case and the decisions of Hon'ble Gujarat High Court and Hon'ble Himachal Pradesh High Court as referred to by the Ld. D.R. in her written submissions admittedly connected with the GST or Service matter. Therefore, these decisions relied upon by the Ld. D.R. in the written submissions would not support the case of the Revenue. Considering the totality of the facts and circumstances of the case, we are of the view that all the additions based on estimate basis made by the A.O. cannot be sustained in Law. We, accordingly, set aside the Orders of the authorities below and delete all the additions in all the assessment years. Accordingly, all the appeals of the Assessee are allowed.

7. In the result, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/- Sd/-
(N.K. BILLAIYA) (BHAVNESH SAINI)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Delhi, Dated 03rd March, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi