

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA No. 534/JP/2012  
निर्धारण वर्ष/Assessment Year : 2008-09

Shri Basant Bansal C-13, Sushant Lok1 Gurgaon – 122 002	बनाम Vs.	The ACIT Central Circle- Alwar Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHYPB 1937 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 748/JP/2012  
निर्धारण वर्ष/Assessment Year : 2008-09

Shri Roop Bansal C-13, Sushant Lok1 Gurgaon – 122 002	बनाम Vs.	The ACIT Central Circle- Alwar Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFJPK 0250 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rakesh Gupta &  
Shri Milay Chaturvedi (Adcocate)

राजस्व की ओर से / Revenue by: Smt. Rolee Agarwal, CIT - DR

सुनवाई की तारीख / Date of Hearing : 06/04/2015  
घोषणा की तारीख / Date of Pronouncement : 29/05/2015

आदेश / ORDER

PER R.P. TOLANI, JM

These are two assessee's appeals against two separate orders of the  
Id. CIT(A)-Central Jaipur dated 30-03-2012 and 11-07-2012 respectively

for the assessment year 2008-09: assessee being related, facts and grounds of both the assessee's are similar, are being disposed of by a common order for the sake of convenience. Grounds raised are as under:-

**Shri Basant Bansal (ITA No. 534/JP/2012 – A.Y. 2008-09)**

*“1 That on the facts and in the circumstances of the case and in law, the order dated 30-03-2012 passed by CIT(A)-Central, Jaipur [herein referred to as “The CIT (A)”] to the extend the same related to addition of Rs. 20 crores made on the basis of admission of the appellant was bad in law and has been passed without application of mind in a rushed manner.*

*2. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in holding that no coercion, pressure, undue harassment was exerted on the appellant to make surrender of Rs. 20 Crores.*

*3. That on the facts and in the circumstances of the case and in law, the addition of Rs. 20 crores was sustained not on the basis of any cogent material but on presumption and extraneous considerations.*

*4. That on the facts and in the circumstances of the case, the ld. CIT(A) has erred in not appreciating that in law addition cannot be sustained solely on the basis of statement, there must be independent material, evidence to corroborate the surrender, which was retracted.*

*5. That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming the addition of Rs. 20 crores without giving the appellant any opportunity to cross examine Mr. Raghbir Singh & Shri Ranga Rao, whose transactions/ statement were the basis of addition.*

*6. That on the facts and in the circumstances of the case and in law, ld. CIT(A) has erred in arriving at a conclusion that basing his decision merely on a statement, the*

*implications of which were, admittedly, not understood by him.*

7. *Without prejudice and in alternative, on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not reducing the amount of Rs. 39 lacs declared in the Income Tax Return filed by the appellant out of the alleged surrender of Rs. 20 crores confirmed by him.*

8. *Without prejudice and in alternative, on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in making assessment / addition of Rs. 4.99 crores in the hands of Shri Roop Bansal, who was not a party to appeal on protective basis.’’*

### **Shri Roop Bansal (ITA No. 748/JP/2012 – A.Y. 2008-09)**

“1 *That on the facts and in the circumstances of the case and in law, the order dated 11-07-2012 passed by CIT(A)-Central, Jaipur [herein referred to as “The CIT (A)”] to the extend the same related to addition of Rs. 4.99 crores made on the basis of admission of the appellant was bad in law and has been passed without application of mind in a rushed manner.*

2. *That on the facts of the case and in the circumstances of law, ld. CIT(A) erred in holding that no coercion, pressure, undue harassment was exerted on the appellant to make surrender of Rs.4.99 Crores.*

3. *That on the facts and in the circumstances of the case and in law, the addition of Rs. 4.99 crores was sustained not on the basis of any cogent material but on presumption and extraneous considerations.*

4. *That on the facts and in the circumstances of the case, the ld. CIT(A) has erred in not appreciating that in law addition cannot be sustained solely on the basis of statement, there must be independent material, evidence to corroborate the surrender, which was retracted.*

5. *That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in arriving at a conclusion and basing his decision merely on a statement, the implications of which were, admittedly, not understood by him.*

6. *Without prejudice and in alternative, on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not reducing the amount of Rs. 39 lacs declared in the Income Tax Return filed by the appellant out of the alleged surrender of Rs. 4.99 crores confirmed by him.*

7. *Without prejudice and in alternative, on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in upholding the assessment / addition of Rs. 4.99 crores on protective basis in the hands of Shri Basant Bansal, who was not a party to appeal while passing the order of appellant, despite the fact that same has been confirmed on sustentative basis in the hands of the appellant.’’*

2.1 Brief facts are, search and seizure operations under section 132 of the Income Tax Act, 1961 were initially carried on at assessee's residential and business premises 12.09.2007 which were followed by survey operations under section 133A on 11.10.2007 at related concerns/companies. They were followed with post search and survey enquiries. However second round of search operations were again carried out in the premises of assessee's on 17-09-2008. During the course of these proceedings no worthwhile incriminating material was discovered to indicate any undisclosed income or transactions. According to

assessee, DDs of various group concerns amounting to about 31.48 crs drawn on 12.9.2007 were put under restraint order by the department by order dtd. 20-9-07 (these facts will be dealt in detail). This restraint of huge amount created immense pressure on the assessee's for disclosure of additional income. Assessee persisted for release of DDs, department disappointed by non discovery of incriminating material in search and survey insisted for a disclosure of income of Rs. 20 crores. For a period of first one month department tried hard to find out some incriminating information from the seized material. As nothing could be fished out, a survey was again carried out on 11-10-07 by the department. Unfortunately nothing incriminating was discovered in a survey also. To justify their action, department any how wanted the said disclosure of Rs. 20 crores. Caught in this difficult situation of financial strangulation and pressure of proceedings which were adversely affecting business, assessee's were not left with any viable alternative but to concede to this demand of. Consequently on 19-11-07 by a summary letter Shri Basant Bansal made a collective disclosure of Rs. 20 crores for and on behalf of self, associated companies, their directors and their family members including Rs.4.99 crores agreed to be disclosed by Shri Roop Bansal. This summary disclosure was made as pro tem offer for alleged undisclosed Income/Investment/Expenses which may be deemed to be

earned and made during the course of business for all sale/purchase/construction of properties by the entire group. The disclosure was made as unconditional, un-retractable, owing to achieve peace of mind; to avoid litigation with the understanding with the Income-tax department that no penalty and prosecution proceedings will be initiated against the group entities i.e. companies, their directors and family members. Notices for filing returns u/s 153A of the Act were issued on both assessee's on 28-04-2010. In pursuance thereto both the assessee's filed their respective returns on 28-09-2010. Assessment u/s 153A r/w Section 143(3) of the Act in both cases were framed by AO on 28-9-2010. In furtherance of 1<sup>st</sup> search and survey inquiries on 14.01.2008 assessee was asked queries relating to an alleged property transaction for which Shri Raghbir had paid to one Shri Ranga Rao an amount of Rs.62.75 lacs from his Corporation Bank account no. SB-01/024061, Maruthi Kunj, Gurgaon. Assessee explained that Shri Raghbir, s/o Shri Kehar had sold his share of ancestral co-ownership property through assessee and it had no relation to the property and payment to Shri Rangarao. The payment reflected in Raghbir's bank a/c was made to Shri Ranga Rao out of his said proceeds of share of ancestral land. Since department in the quest of disclosure was not willing to verify any explanation offered by assesses; alternatively Shri Basant Bansal

contended that the transaction may be deemed to be part of their overall business operations and may be treated as included in the composite disclosure of Rs.20 Crores offered in the letter dated 19.11.2007. In sum and substance, assessee claims that in these coercive circumstances S/shri Basant Bansal and Roop Kumar Bansal offered a summary disclosure of income at Rs.20 Crores on behalf of their entire group, covering entire transactions which may be deemed as undisclosed including alleged Raghbir transaction. Department without any corroboration with documents, verification or allowing cross examination requested by the assessee accepted this summary surrender. Thereafter, the DDs of Rs. 31.48 crs. were released on payment of advance tax for the income of Rs. 20 crores. Relevant disclosure letters and portion of 131 statement are as under:-

**Letter dated 19.11.2007** addressed to DDIT (Intelligence-1)

**Sub: Offer of Income/Investment/Expenditure.**

Reg.:Roop Kumar Bansal/Basant Bansal, C- 13, Sushant Lok, Phase-1, Gurgaon, Haryana.

This is with reference to search and seizure operation under section 132 and survey under section 132 and survey under section 133A of the Income-tax Act, 1961 carried on 12.09.2007 and 11.10.2007 at my residential premises and the business premises of the concerns/companies in which I am interested as director, I would like to submit that during the search & seizure/survey operation certain documents, Cash, valuables etc. were found and seized/impounded from such business and residential premises. I

on my individual capacity and on behalf of the company its directors and their family members, hereby **offer aggregating to Rs. 20 Crores (Rupees Twenty Crores Only)** inclusive of Rs. 4.99 Crores (Rupees Four Crores Ninety Nine Lacs only) offered on 12.09.2007 unconditionally non-retractable as pro tem Income/Investment/Expenses which was earned during the course of business of sale/purchase/construction of properties to purchase peace of mind and to avoid litigation with the understanding with the Income-tax department that no penalty and prosecution proceedings will be initiated against the company, its directors and their family members, my family member and me.

**Letter dated 15.01.2008** addressed to DDIT (Intelligence - 1)

**Sub: Offer of Income/Investment/Expenditure.**

Reg.:Basant Bansal/ Roop Kumar Bansal, C- 13, Sushant Lok, Phase-1,

Gurgaon, Haryana.

This is with reference to search and seizure operation under section 132 and survey under section 132 and survey under section 133A of the Income-tax Act, 1961 carried on 12.09.2007 and 11.10.2007 at my residential premises and the business premises of the concerns/companies in which I am interested as director, I would like to submit that during the search & seizure/survey operation certain documents, cash, valuables etc. were found and seized/impounded from such business and residential premises and **to clarify our previous letter dated 19.11.2007 offering income of 20 Crores and further querries raised by you on 14.01.2008** in respect of property purchased from Ranga Rao and amount of Rs. 62.75 lacs received by Ranga Rao from Raghubir, S/o Kehar. In this regard we would like to submit that the co-owner Raghubir, s/o Kehar has sold his ancestral property and we do not have any relation or interest in the said land/sale proceeds and the bank account no SB – 01/ 024061 maintained with Corporation Bank, Maruthi Kunj, Gurgaon in which the sale proceeds of such land was deposited. The payment made to Ranga Rao was out of the sale proceeds received on sale of such land is separate transaction and we do not have any relation/interest on such payment/transaction. Although, the said property and the bank account were not belongs to the assessee, however **the assessee Basant Bansal still ready to pay tax on the credit entries of the said bank account of Raghubir, which is included in the**



**income of Rs. 20 Crores offered by the assessee in the previous letter dated 19.11.2007.** It is further submitted that the balance Income of Rs. 10 crores offered in the hands of Roop Kumar Bansal is also included in the income of Rs. 20 crores offered in the previous letter 19.11.2007. Hence, the assessee Basant Bansal and Roop Kumar Bansal offered income aggregating to Rs. 20 Crores, Which were earned by them from purchase and sale/advances received etc. to purchase peace of mind and to avoid litigation, with the understanding with the Income-tax department that no penalty and prosecution proceedings will be initiated against the said assessee and their family members and the concerns in which the assessee are interested as director/partner. (emphasis supplied now)

We hope your good self will find the above in order. If your good self requires any further explanation/clarification, we would be pleased to submit the same.

-Part of **statement dated 15.01.2008** recorded by Sh. N.R. Pandey, The Deputy Director of Income Tax (Intelligence - 1). Relevant portion thereof ply is also reproduced below:

“Q. I am showing your account no. SB/01/024061 of Sh. Raghubir, S/o Sh. Kedar with Corporation Bank, M—Kunj, Grugaon. It is seen that money from this account has been utilized to finance purchase of land by you and your companies. What do you have to say on this.

**Ans. We are hereby submitting letter dated 15.01.2008 in which we have clarified that in the surrender of additional income of Rs. 20 crores vide our letter dated 19.11.2007 all the credit entries in the account of Sh. Raghubir were also surrendered”.**

However Shri Basant Bansal filed his return of income u/s 153A offering only a sum of Rs.39,00,000/- (Rs. Thirty Nine Lacs Only) as additional income for the year relevant to A.Y.2008-09. During the course of

assessment proceedings Id. AO raised the issue as to why against the surrendered income of Rs. 10 Crores in his hands only Rs.39 lacs was declared as additional Income. The assessee in his reply dated 06.12.2010 contended that the letters of surrender of undisclosed income before the Id. DDIT (Intelligence-1), New Delhi regarding alleged transaction of Shri Raghbir and some bank accounts the relevant details were not allowed to be reconciled by the assessee. After search detailed reconciliation of accounts before filing of the return of income was made. It was found that neither assessee nor any group concern had any connection with the alleged deal or bank account of Raghbir consequently no undisclosed income accrued in this behalf. The AO held that relevant documents were consulted by assessee before filing the letter of surrender before the DDIT (Intelligence-1), New Delhi on 15.01.2008 and they were again provided to him on 07.12.2010. The assessee however insisted on his letter dated 6.12.10 to be correct version of related affairs and explanation of alleged transaction and relied upon various judicial pronouncements for the propositions that:-

- (i) Any adverse material used against assessee needs to be confronted for rebuttal. 67 TTJ (Delhi) 109.
- (ii) Statement made by any third party after the date of search is of no consequence assessee has a right of its cross examination. This having not been done the additions cannot be

made. 604 ITR 393 (Delhi), 183 TAXMAN 172 (Delhi), 166 TAXMAN 137 (Delhi).

(iii) It is the burden of the department that material brought on record including retracted statement must be substantially corroborated by other independent and cogent evidences. Vinod Solanki vs. UOI 233 ELT 157 (SC).

(iv) Admission made in ignorance of supporting record and legal rights or under duress cannot bind such statement or disclosure. AIR 1976 SC 376, Shri Krishan vs. Kuruksheta University.

AO was of the view that the 1<sup>st</sup> surrender was made by assessee after a period of 2 months of search, it certainly was on the basis of some evidence and information, otherwise he would not offer such a substantial sum of money as undisclosed income. Thus the surrender was made as a result of post search inquiries the modus operandi was explained by a letter of admission filed to the DDIT (Intelligence), New Delhi Dtd. 19.11.2007 & 15.01.2008. Thus the assessee's surrender was held as binding piece of evidence and the subsequent retraction was held to be untenable.

2.2 Apropos objections raised in assessee's letter dated 14.12.2010 same were dealt by AO as under:-

Cross examination of Sh. Raghbir S/o Kehar Singh & Sh. Ran Rao has not been allowed.

AO Comments: (i) Summon u/s 131 of the Income-tax Act, 1961 dated 07.12.2010 was sent at the residential address of Sh. Basant Bansal at Tauru, Distt. Gurgaon so that the same was delivered positively to him. This summon was issued to him in response to his reply dated 06.12.2010 as per which he required certain documents and cross examination of Sh. Raghubir. In the summon it was specifically mentioned that he was required to personally attend at Room No.23, Aaykar Bhawan, Moti Dungari, Alwar, Rajasthan on 14.12.2010 at 10.00 A.M. Sh. Basant Bansal did not attend on the said date. Therefore, his objection regarding cross examination of Sh. Raghubir or Rang Rao is not justified. In this regard I would like to add that the opportunity for cross examination is nothing but to entangle the assessment proceedings which he has already done by deliberately delaying the filing of details which he was asked vide notice u/s 142(1) dated 04.10.2010 to be complied by 12.10.2010 but he filed reply to that on 06.12.2010 knowing very well that the assessment proceedings were to be completed by 31.12.2010. In his this reply he sought cross examination of S. Raghubir Singh, a person for whom he has acted as introducer for opening of bank account with Corporation Bank, Maruti Kunj, P.O.-Bhondsi, Gurgaon (Copy of account opening form enclosed).

2.3 Moreover, no statement of Sh. Raghbir or Sh. Ranga Rao has been used against the assessee by me. Even the Investigation Wing, Delhi has only showed him the bank statement of account no.SB/01/024061 of Sh. Raghbir with Corporation Bank, Maruti Kunj, Gurgaon as is evident from the statement of Sh. Basant Bansal dated 15.01.2008 a copy of which has been provided to the assessee, receipt of which has been accepted by the assessee in his letter dated 14.12.2010. After seeing the above mentioned bank statement the assessee said “We are hereby submitting letter dated 15.01.2008 in which we have clarified that in the surrender of additional income of Rs.20 crores vide out letter dated 19.11.2007 although the credit entries in the account of Sh. Raghbir were also surrendered. AO observed that:

2.4 The Investigation Wing, Delhi examined certain bank accounts and came to know that the account No.SB/01/024061 of Shri Raghbir with Corporation Bank, Maruti Kunj, Gurgaon was used by Sh. Basant Bansal and the companies in which he and his brother Sh. Roop Bansal had interest, to route their unaccounted income for purchasing land. On coming to know of this account being detected by the department as discussed in the previous para which contained opening deposit of Rs.9.66 crores he became jittery and filed the letter of surrender dated 15.01.2008 to DDIT (Intelligence), probably apprehending more such

detection by the department. However, nowhere the statements of either Sh. Raghbir or Sh. Rang Rao have been used against the assessee. Only the information received from them was utilized, which ultimately led to SB/01/024061 of Sh. Raghbir with Coprporation Bank, Maruti Kunj, Gurgaon which he admitted in the letter of surrender dated 15.01.2008.

2.5 In view of the discussion as above objection of the assessee regarding cross examination of Sh. Raghbir & Sh. Rang Rao is not tenable.

2.6 There is no corroborative evidence with the department in respect of admission of unaccounted income of Rs.4.99 crores by Sh. Roop Bansal in his statement recorded u/s 132(4) of the Income Tax Act dated 13.09.2007 and no discrepancies have been pointed out till dated i.e. 14.12.2010.

AO Comments: There have been number of discrepancies in the case of M/s Misty Meadows Pvt. Ltd. One of the companies of the group in which Sh. Basant Bansal & Sh. Roop Bansal are major shareholders, which have been pointed out in the A.Y. 2003-04 to 2009-10. The assesses were not able to reconcile the discrepancies which were convey vide notice dated 07.05.2010 till the order was recorded on 26.11.2010. These discrepancies have led to major additions in all the years in the case of M/s Misty Meadows (P) Ltd.

-Copy of statement dated 12.09.2007 of Sh. Basant Bansal has not been supplied.

-AO Comments: This statement has not been used against the assessee, therefore, the demand for it, is not justified.

-The department is relying on the statement of Sh. Rang Rao who is not filing his return of income. Amount of Rs.62,75,000/- claimed to be received by him from Sh. Basant Bansal is not substantiated by any evidence, therefore, statement of Sh. Rang Rao is not reliable.

AO Comments: There is no bar in any law that the statement of a person who has not been filing return of income can not be relied upon. Copy of statement of Sh. Rang Rao has been provided to the assessee and can be very well seen from it that there is not statement from Sh. Rang Rao where he has said anything adverse against the assessee except that he received Rs.62,75,000/- from Sh. Basant Bansal has not been used by the department against him. The information received from Sh. Rang Rao has ultimately led to account no.SB/01/024061 of Sh. Raghbir with Corporation Bank, Maruti Kunj, Gurgaon which the assessee owned up in his letter of surrender.

2.7 The assessee has also mentioned in his reply dated 06.12.2010 that he has been able to lay hands of some legal documents which show that the alleged bank account i.e. SB/01024061 with Corporation Bank,

Maruti Kunj, Gurgaon is owned by Sh. Raghbir S/o Sh. Kehar Singh. The assessee has enclosed copy of letter issued by Corporation Bank certifying that the transactions in the said bank account had been conducted by Shri Raghbir. The assessee has also enclosed copy of Compromise Deed between M/s. G.P. Realtors Pvt. Ltd. And Sh. Raghbir, Sh. Chet Ram. Smt. Billo, Smt. Seema etc.. In this regard first of all I would like to mention what was the need to file these documents. Moreover, how the assessee came into possession of these documents which are not his property. Neither has he claimed in his reply that these have been provided to him Sh. Raghbir or by M/s. G.P. Realtors Pvt. Ltd. By filing all these documents the assessee wants to convey that the account no. SB/01/024061 of Shri Raghbir with Corporation Bank, Maruti Kunj, Gurgaon is not his but on the basis of it he filed letter of surrender of undisclosed income of Rs.20 Crores before the DDIT (Intelligence-1), New Delhi on 15.01.2008. In this regard I would also like to recall that it is very clear from the account opening form of account no. held by Sh. Raghbir with Corporation Bank, Maruti Kunj, Gurgaon that Sh. Basant Bansal & Sh. Roop Bansal very well knew Sh. Raghbir. And I would also like to add that it is the same bank, certificate issued by which to Sh. Raghbir has been filed by the assessee, as has been discussed above, to rely in support of his submission. From the facts of



the case as discussed in this para it is very clear that the documents filed by the assessee are stage managed. Sh. Raghbir is very well known to them and Sh. Basant Bansal & Sh. Roop Bansal who have launched hyper mega real estate project near Gurgaon of their flagship Company M/s. M3M India Ltd. For promotion of which Sh. Basant Bansal is appearing daily in advertisements on various channels of T.V., are too big shots for Sh. Raghbir to refuse them co-operation.

-Discussion on retraction of surrendered income of Rs.20,00,00,000/-.

2.8 All objections and submission and evidences relied upon by the assessee as discussed above, are with the intention to justify the retraction of surrender. In order to bring out the fallacy of the argument put forth by the assessee to justify retraction of surrender I would further like to mention that the assessee deposited Rs.3 crores as Advance Tax for the A.Y. 2008-09 filed with Central Circle7, New Delhi on 14.09.2009. Now the question arises if there was no unaccounted/unexplained income with the assessee then why he deposited Rs.3 crores as Advance Tax which is around the tax amount on the surrendered income of Rs.10 Crores. Matching of these figures very clearly points towards the fact that there was an unaccounted/unexplained income of Rs.10 crores with the

assessee which he did not include in his income while filing the return of income.

2.9 Sh. Basant Bansal & Sh. Roop Bansal have surrendered undisclosed/unaccounted income vide letters dated 19.11.2007 and 15.01.2008 before the DDIT (Intelligence-I), New Delhi will after the date of search which 12.09.2007. They had ample time to think and deliberate, consult their counsel and advisers before making the surrender of income of Rs.20 crores. Therefore, I hold that the surrender made by them is final and is binding on them. This view is also upheld by the Hon'ble Supreme Court of India in very explicit terms in its decision dated 25.10.1996 in Special Leave Petition (C) No.14028 of 1996 in the case of Surjeet Singh Chhabra Vs. Union of India and Others, wherein it has held that the Revenue officials are not Police Officers and the confession, though retracted, is an admission and binds the petitioner. As such whatever the assessee has admitted during the search operation and in post search operation before the Income-tax authorities is binding on him despite retraction. In this regard decision of Punjab and Haryana High Court also supports the above view as it has also held in its decision dated 24.09.2007 in the case of Rakesh Mahajan vs. CIT at 642 of 2007 (Taxpert) and 214 CTR 218 that "It is well settled that admissions constitute best piece of evidence because admission are self-harming

statements made by the maker believing it to be based on truth. It is well known that no one will tell a lie especially harming one's own interest unless such a statement is true." Reliance is also placed on the decision of the Hon'ble Kerala High Court which has in the case V.Kumhambu and Sons vs CIT (219 ITR 235 to 243) has held, "If a partner came forward to disclose about the non-entry of excess stock in the registers during the course of search the Income-tax Officer could use it even though there was no actual verification of the stock. The assessment was based on the statement of the assessee. Since no case had been made that the statement was made under a mistaken belief of fact or law and the statement being voluntary one there was no scope for the assessee to challenge the correctness of the assessment."

2.10 In the case of Sh. Basant Bansal & Sh. Roop Bansal, there is nothing to indicate that the admission regarding surrender of undisclosed/unaccounted income made by them before the DDIT (Intelligence-I) in the letter dated 19.11.2007 and 15.01.2008 was obtained under threat, duress or promise. Admission was voluntary and was not under a mistaken belief of fact or law as they had enough time to go through facts of their case, law applicable in their case and take advice before filing the letter of surrender of undisclosed/unaccounted income. Therefore, admission by them is final and binding on them. In this regard

it also worth noticing that after the search u/s 132 of the Income-tax Act, 1961 on 12.09.2007 and survey u/s 133A of the Act on 10.11.2007, DDIT(Intelligence-1), New Delhi conducted enquiries into the source of purchases of various lands made by Sh. Basant Bansal, Sh. Roop Bansal and companies in which they had interest. On coming to know of the same Sh. Basant Bansal and Sh. Roop Bansal filed letter dated 19.11.2007 to the DDIT (Intelligence-1), New Delhi surrendering income of Rs.20 crores which included amount of Rs.4.99 crores surrendered by Sh. Roop Bansal in his statement recorded u/s 132(4) of the Income Tax Act on 12.09.2007. Later on DDIT(Intelligence-1), New Delhi recorded the statements of various farmers around Gurgaon who have sold land to Sh. Basant Bansal, Sh. Roop Bansal & the companies in which they had interest. One Sh. Ranga Rao of Village-Dhorkha, Distt.- Gurgaon admitted that he had received Rs.30 lacs by cheque no.596557 and Rs.62,75,000/- through cheque no.122224 dated 18.12.2006 from Bansals of Tauru, Distt.- Gurgaon which is the Village of Sh. Roop Bansal & Sh. Basant Bansal. Enquiries were conducted regarding cheque no.122224 and it was found that the cheque was issued for A/c No.SB/01/024061 of Corporation Bank, Maruti Kunj, Gurgaon held in the name of Sh. Raghuveer S/o Kehar of Village-Badshahpur, Gurgoan. In this account which was opened on 11.12.2006 initial amount of Rs.9.66 crores was

deposited. In order to know the source of this amount further enquiries were conducted by DDIT (Intelligence-1), New Delhi, however before the completion of the enquiries, Sh. Basant Bansal & Sh. Roop Bansal again filed a letter dated 15.01.2008 to the DDIT(Intelligence-1), New Delhi stating that, “to clarify our previous letter dated 19.11.2007 offering income of 20 Crores and further queries raised by you on 14.01.2008 in respect of property purchased from Ranga Rao and amount of Rs.62.75 lacs received by Rang Rao from Raghubir, S/o Kehar. In this regard we would like to submit that the coowner Raghubir, S/o Kehar has sold his ancestral property and we do not have any relation or interest in the said land/sale proceeds and the bank account no SB-01/024061 maintained with Corporation Bank, Maruthi Kunj, Gurgaon in which the sale proceeds of such land was deposited. The payment made to Sh. Rang Rao was out of the sale proceeds received on sale of such land is separate transaction and we do not have any relation/interest on such payment/transaction. Although, the said property and the bank account were not belongs to the assessee, however the assessee Sh. Basant Bansal still ready to pay tax on the credit entries of the said bank account of Sh. Raghubir, which is included in the income of Rs.20 Crores offered by the Assessee in the previous letter dated 19.11.2007.”

2.11 From the above facts regarding the enquiries conducted by DDIT(Intelligence-1), New Delhi and the surrender of income made by Sh. Basant Bansal & Sh. Roop Bansal it is very clear that on finding that the department was having enough evidence of unaccounted/undisclosed income of Sh. Basant Bansal, Sh. Roop Bansal, they came forward to make the surrender. Therefore, Sh. Basant Bansal, Sh. Roop Bansal can not claim that the department did not have any evidence of their undisclosed/unaccounted income other than their statements and letters of surrender as mentioned above.

2.12 Amount of Rs.20 crores which Sh. Basant Bansal & Sh. Roop Bansal have surrendered for taxation as per letter dated 19.11.2007 & 15.01.2008 for A.Y. 2008-09, has not been included in the income declared by them for the year pertaining to A.Y. 2008-09 as is evident from the return of income filed for A.Y. 2008-09. However, Sh. Roop Bansal has claimed in his reply dated 06.12.2010 that letter regarding the surrender of undisclosed income submitted by his brother Sh. Basant Bansal before the DDIT(Intelligence-1), New Delhi was neither made by him nor confirmed by him. As such Sh. Roop Bansal has denied that he has made any surrender as per the letter dated 19.11.2007 and 15.01.2008 submitted by his brother Sh. Basant Bansal to the DDIT(Intelligence-1), New Delhi for himself and on behalf of Sh. Roop Bansal. But the fact

remains that Sh. Basant Bansal made a surrender of Rs.20 crores as per the letters submitted by him, therefore, amount of Rs.20 crores is considered to be undisclosed income of Sh. Basant Bansal as Sh. Roop Bansal has denied having anything to do with the letters of surrender filed by Sh. Basant Bansal. The AO thus framed the assessments u/s 153A r/w 143(3) by making additions of income only on the basis of disclosure of Rs. 20 crores in the hands of Shri Basant Bansal and Rs. 4.99 crs In the case of Roop Bansal.

2.13 Aggrieved both the assessee filed first appeals raising grounds about

- (i) validity of 153A proceedings
- (ii) illegal extraction of disclosure of Rs. 20 crores.
- (iii) Challenge to the rejection of explanation about the Raghurir bank a/c without any cross examination or verification.
- (iv) Unsustainable additions being based only on surmises, conjecture and not based on any incriminating material, etc.

2.14 Ld. CIT(A) after considering the same and material available on the record awarded part relief based on following observations and conclusion:-

*“5.5 I have considered the submission of Id. A.R and have perused the material on record. The facts related to the issue have been discussed elaborately by the A.O. in the assessment order. Various arguments taken by the appellant before the A.O. have not only been mentioned but properly discussed and suitably countered. On careful perusal of the submissions made before the undersigned by the A.R. of the appellant and after due consideration, it is seen that the appellant has not taken any new argument before the undersigned, hence, there is no need for repeating the arguments taken by the A.R. (though already extracted in the aforesaid paras) and countering them again elaborately. However, it will be appropriate to discuss them in brief.*

*5.5.1 The A.R. has drawn my attention to the fact that as per A.R the alleged benami account in the name of Sh. Raghubir was shown to the appellant on 15.1.2008, whereas, the appellant has made surrender of Rs. 20 crore vide letter dated 19.11.2007. I do not find any significance of this point of the A.R. AS mentioned by the A.O, the earlier search and seizure action was carried out on 12.9.2007 and subsequently the survey was carried out on 11.10.07 by the Intelligence Unit of New Delhi before the present search and seizure action carried out by Investigation Wing, Jaipur on 17.9.2008. The enquires from various farmers were conducted by Intelligence Unit, Delhi, from whom the appellant and his group companies had purchased land. The appellant, on knowing from the sellers about the enquires and before getting cornered, must have consciously taken a decision (obviously after consulting his taxation team/ advisors consisting of C.As and Advocates) to file a **letter dated 19.11.2007 under his signature wherein he has admitted Rs. 20 crore as his additional income**, obviously no one can be blamed for this surrender letter, much less the department. Rather the appellant should also possibly not blame himself because it is he who must have realized that impending enquires of the Investigation Unit may unfold many things, which may be more damaging to him.*

*5.5.2 The other argument is that in the statement recorded on 11.10.2007 at the time of survey and 12.9.2007 at the time of search, nothing incriminating was found and accordingly no credence can be given that surrender was made after two months*



*of search. I am unable to understand the significance of this argument and rather the argument itself. However, as already mentioned in detail by the A.O. and also partly mentioned in the above para, the appellant had filed **letter dated 19.11.2007 admitting income of Rs.20 crore after two months of search and seizure operation**, obviously after consulting the team of taxation experts and weighing the pros and cons of the enquires being undertaken by the Intelligence Unit at that point of time. By no stretch of imagination it can even be presumed that the appellant was under threat or coercion while writing this letter of surrender ob obviously sitting in his office and/or in the office of his tax advisors and fully assisted by tax advisors/consultants.*

*5.5.3 The other argument taken is that 'it cannot be denied that amount of Rs. 9.66 crore deposited in this bank account (referring to bank account S/B 01/024061 with Corporation Bank) represented sale proceeds of land sold by Mr. Ranga Rao and Others.' Firstly the aforesaid bank account is apparently in the name of Sh. Raghuvir S/o of Keher Singh and not in the name of Sh. Ranga Rao. Hence sale proceeds of land of Ranga Rao would not be credited in this bank account. Without prejudice to above, moreover, no evidence has been filed by the appellant that Rs. 9.66 crore deposited in this bank account represent sale proceeds of land sold by Mr. Ranga Rao and Others, as argued by the A.R.*

*5.5.4 Copy of impugned bank account of Sh.Raghuvir Singh was shown to the appellant during post search investigation conducted by Intelligence Unit, New Delhi, wherein huge deposits to the extent of Rs. 9.66 crore were noticed. Moreover, in his subsequent letter which was filed on 15.1.2008 i.e. after 2 months from earlier letter dated 19.11.2007, the appellant, after considering that he is getting cornered, has on its own admitted in its letter dated 15.1.2008 addressed to DDIT (Intelligence-1,) New Delhi **'that he is ready to pay tax on the credit entries of the said bank account of Sh. Raghuvir'**. When the appellant, who is a very reputed, knowledgeable and seasoned businessman, is himself admitting that he is ready to pay tax on the credit entries in the bank account of Sh. Raghuvir Singh, which were to the tune of as high as Rs. 9.66 crore, obviously, the source of deposit in the bank account has been admitted by the appellant to be belonging to him and since*

*they are undisclosed, the appellant has very rightly offered himself to pay tax on these deposits. Therefore, the aforesaid bank account of Sh. Raghuvir Singh though apparently operated under the signature of Sh. Raghuvir Singh but the money deposited in it belongs to appellant and being utilized by the appellant group as per his own written letter under his own signature. In this background, subsequent affidavit of Sh. Raghuvir Singh so filed by the appellant as part of the paper book on page 149 which inter-alia mentioned something related to aforesaid account no., is nothing but an afterthought attempt made in order to try to cover up and retract the rightful admission of unaccounted income so made earlier vide aforesaid two letters.*

*5.5.5 As regards not providing copies of the statement of Sh. Ranga Rao and/or Mr. Raghuvir Singh is concerned, it is seen from the body of the assessment order that copy of the statement of Sh. Ranga Rao was provided by the A.O. In any case, neither the statement of Sh. Raghuvir Singh nor the statement of Sh. Ranga Rao has been used against the appellant. It is only the bank statement of Sh. Raghuvir Singh which has been used against the appellant and it is to mention here that the copy of the bank statement of Sh. Raghuvir Singh was already shown to the appellant by the Intelligence Unit Delhi while recording his statement on 15.1.2008. Since after confronting these documents to the appellant, he has himself admitted Rs. 20 crore as his undisclosed income including the bank deposits of Rs. 9.66 Crores in the impugned bank account apparently in the name of Sh. Raghuvir Singh, the natural justice by way of providing opportunity as envisaged by Hon'ble Court has already been fully met. Without prejudice to above, the A.O. on receiving request for cross examination of Sh. Raghuvir Singh, has issued summon to the appellant for attending personally on 14.12.2010 but the appellant failed to attend. Therefore the A.O. observed that his objection regarding cross examination of Sh. Raghuvir Singh and Mr. Ranga Rao is not justified and is merely a plea taken to delay the filing of details and entangle the assessment proceedings.*

*5.6 The A.R. has referred to the various decisions. The decision in the case of Pullangode Rubber Produce Co.vs. State of Kerala 91 ITR 18, rather supports the case of the A.O. as in the aforesaid*

*case, as per the A.R. the Hon'ble Supreme Court has observed that "an admission is an extremely piece of evidence but it cannot said that it is the conclusive. It is open to the person who made the addition to show that it is incorrect."*

*In the instant case, there is admission of additional income of Rs. 20 crore that too after two months of the search vide letter dated 19.11.2007. If the appellant has any doubt as to the correctness of his admission then immediately afterward he should have retracted the letter dated 19.11.2007 by filing the affidavit and mentioning the reasons and circumstances as to how and why the admission so made earlier is incorrect. Instead of filing any such affidavit retracting the admission of additional income offered for tax, after due consideration and after due application of mind for further two months, he has consciously chosen to again file a letter dated 15.1.2008 not for retracting the contents of the earlier letter but mentioning that he is ready to pay tax on the deposits in the impugned bank account amounting to Rs. 9.66 Crores apparently in the name of Sh. Raghuvir Singh and in the same letter again reiterating the earlier admission of undisclosed income of Rs. 20 crore with the request that the surrender of deposits to the extent of Rs. 9.66 crore in the impugned bank account may be considered part of the total undisclosed income of Rs 20 crore.*

*5.6.1 Such being the situation, even none of the other decisions cited by the appellant can be of any help to him as facts of the appellant case are quite dis-similar to the facts of these cited cases. None of these cited cases, the admission of additional income has been made after two months of the search and moreover much less in none of the case, the surrendered income has been further reiterated by another letter that too filed further after two months.*

*5.7 The A.R. has tried to argue that in statement dated 20.11.07, the appellant, on being confronted about the statement of Mr Ranga Rao dated 26.10.07 that he has received Rs. 93 lakhs and part of it has been paid from the account of Sh. Raghuvir Singh. He has replied that he has paid Rs. 13 lakhs and he is not aware about the transaction. Firstly it to mention that the A.R. has not filed the copy of complete statement of appellant dated 20.11.2007. Hence, it is not known to the undersigned as to what were the other*

*questions and answers and what is their implication on the issue under consideration. Without prejudice to above, it is further mentioned that this answer of the appellant given at the early stage of the enquires is of no significance, when the appellant himself in the subsequent letter dated 15.1.2008 has admitted to pay tax on the deposits/credit entries in the impugned bank account apparently in the name of Sh. Raghuvir Singh.*

*5.8 In view of the facts and circumstances and the legal position on the issue under consideration including the various case laws cited by the A.O as mentioned in the relevant para, the admission of the additional income of Rs. 20 crore so made by the appellant on behalf of himself and his brother Sh. Roop Bansal, as a result of impending enquiries vide letter dated 19.12.2007 wherein he has included the surrender of Rs. 4.99 crore made by his brother Sh. Roop Bansal on 12.9.2007 and subsequently as a result of enquiries, reiterated the offer of additional income of Rs. 20 crore vide letter dated 15.1.2008, wherein also he included the additional income related to the deposits in the impugned bank account to the extent of Rs.9.66 crore, is upheld in relation to both the brothers.*

*5.9 However, during the assessment proceedings in the case of Sh. Roop Bansal, he has claimed that the letter of surrender of undisclosed income submitted by his brother Sh. Basant Bansal was neither made by him nor confirmed by him and he has not accepted/shown additional income in his return. Moreover, Sh. Roop Bansal has admitted Rs. 4.99 crore as his undisclosed income during the course of search carried out on 12.9.2007 and A.O. has accordingly added an amount of Rs. 4.99 crore as undisclosed income in the hands of Sh. Roop Bansal. As Sh. Basant Bansal in his letter dated 19.11.07 stated that the additional income of Rs. 20 crore so offered to tax includes Rs. 4.99 crore disclosed by Sh. Roop Bansal and A.O. has also made addition of Rs. 4.99 crore in the hands of Sh. Roop Bansal, accordingly addition to the extent of Rs. 4.99 crore, out of Rs. 20 crore so made in the hands of Sh. Basant Bansal is hereby deleted on substantive basis. However, as Sh. Roop Bansal is still disputing the addition of Rs. 4.99 crore so made in his hand in the appellate proceedings, it will be appropriate and reasonable to keep this amount of Rs. 4.99 crore in the hands of Sh. Basant Bansal on protective basis. Accordingly,*

*addition to the extent of Rs. 15.01 crore is upheld on substantive basis in the hands of appellant Sh. Basant Bansal. This ground of A.Y 2008-09 is decided as above. ‘*

2.15 Aggrieved both the assessee's are before us on this issue, revenue has accepted the orders of Id. CIT(A) on these issues.

2.16 Ld. Counsel for the assessee Shri Rakesh Gupta reiterated the facts and contends that following proceedings were carried out by department:

- 1<sup>st</sup> search on 12.9.2007 by Department at New Delhi
- Survey proceedings on 17.10.2007
- 2<sup>nd</sup> search by Investigation Wing, Jaipur on 17.9.2008.

These operations didn't result in discovery of any incriminating material which is evident from the fact that Id. AO/ CIT(A) in the entire order have not relied on any material. The edifice of additions is only disclosure which was by and large extracted out from the assessee by creating hostile and difficult conditions, some assumptions and presumptions. This makes it prima facie clear that search assessments are a result of guess work and not based on any worthwhile material, information or documentary evidence.

Consequent to these searches assessee's was under bona fide impression that though there was no incriminating evidence or record found as a result of search or any defect in the books of accounts and business dealings: the bank accounts of the group will be seized or put under restraint by department to recover the taxes. To avoid such a situation of seizure of bank accounts which had propensity to stop their business operations and bring bad repute for the stake holders including banks, the amount of about Rs. 31.48 crores lying in these accounts was converted into demand drafts 12-9-07 i.e. one day after the search.

Unfortunately the department came to know about the DDs and seized the demand drafts on 29-9-07. This again lead to a peculiar situation as the entire business was crippled and an amount of Rs. 31.48 crores was lying idle, locked up in unproductive DDs yielding not even interest. Assessee made fervent efforts for release of the DDs by applying to many authorities, copies of the correspondence in this behalf is on the record. These developments made the assessee vulnerable and a soft target for a disclosure though there was no incriminating material which made the department to hanker for a disclosure.

By taking the advantage of assessee's adverse situation and vulnerability, departmental authorities created pressure indicating that DDs will not be released unless assessee makes disclosure of undisclosed income of Rs. 20 crores and pays advances taxes thereon. It is only after extracting the alleged disclosure and payment of advance tax, the DDs were released after hectic efforts and considerable delay in Feb. 2008. It is contended that the pressure of the department can be exerted in many ways which are not confined to only time of search; physical threat; not leaving the premises or on the spot harassment. The harassment continues even after the post search proceedings as in the case of the assessee by various tactics. Withholding of non interest generating DDs. amounting to Rs. 31.48 crores itself is a potential pressure for a businessman to yield to the demands of the department. This much blockage of funds is sufficient to bring the assessee's business operations to a standstill resulting irreparable loss and capable of creating mental pressure for him to kneel before the department and abide by their dictate. This is exactly what has happened in this case and there is no justification in the repetitive findings that the disclosure was made after 2 months of search and again reconfirmed in statement u/s 131. The authorities below have conveniently omitted the crucial fact that all the while Rs. 31.48 crores of group funds were held by the department to mentally force the assessee for disclosure and its ratification.

2.17 Apropos the issue of disclosure, ld. Counsel contends that no incriminating documents whatsoever has been used by either AO or ld. CIT(A) to support the addition of undisclosed income. The only reliance on the disclosure of the assessee has its own story to tell. The only other

document relied on by the Revenue is copy of bank account SB/01/024061 maintained with Corporation Bank, Maruti Kunj, Gurgaon standing in the name of one Mr. Raghbir son of Shri Kehar Singh resident of Village Behrampur, the addition has been made with following observations:

*“this account was benami account handled by Sh. Basant Bansal & Sh. Roop Bansal, which was opened with an initial deposit of Rs.9.66 Cr. 12.12.2006. Out of it, except for Rs.5000/-, whole amount was withdrawn with in a period of 1 month upto 12.1 2007. The account was finally closed on 1.3.2007. On being confronted by the DDIT (Intelligence-1), New Delhi, Sh. Basant Bansal made a surrender of Rs.20 Cr as per letter dated 19.11.2007 and letter dated 15.1.2008”.*

2.18 From a bare reading of letter dated 19.11.2007 it is evident that surrender was protem which means for the time being; made to buy peace of mind and to avoid unnecessary harassment. The said letter dated 19.11.2007 did not refer to any fact about Raghbir, owning up of any Benami transaction or Rs. 5000/-; the entire addition is sans any other incriminatory material whatsoever. It was a non-specific simple statement made under the aforementioned to buy peace for release of seized DDs; getting over the duress and conducting the obstructed business.

**2.19** On 11.10.2007, again a survey under section 133A of the Act was carried out and hard pressed by repeated onslaught of proceedings, for release of DDs the fateful letter dated 19.11.2007 surrendering Rs.20Cr,

was filed post survey proceedings. The questions asked during the statement of Mr. Basant Bansal are referred to, Ld. Counsel contends that none of them indicate that any incriminating was found whose reply could not be given and which on human conduct or preponderance of probabilities can inspire the appellant to make a huge surrender of Rs.20Cr. The facts, aforesaid circumstances, question with no reference to seized material clearly indicate the background building up of pressure induced the assessee to declare an undisclosed income which did not exist. The seizure of DDs, harassment of proceedings; loss of repute and obstruction of business were the main compelling factors. Nature of the questions put to the Appellant were as under:

<b>Question</b>	<b>Nature of question</b>
No.1 to 3	General information was sought as to the Appellant, companies / concerns in which he is a director or has financial interest.
No.4 to 7	Where the companies are assessed to tax, their returns, books of account and where the books are kept.
No.8	Information as to the nature of business.
No.9	Where the land was purchased during last 3 to 4 years and licenses applied for.
No.10 & 12	Source of purchase of land. Why no interest was paid on loans taken from group companies.
No.11	Enquiry as to the purpose of Kharsa & Khatoni documents found in office.
No.13	Information with regard to cheque books of three bank accounts.
No.14.	Details of bank account of companies and family members.
No.15.	Source of FDR's with HDFC bank.



No.16.	Source of cash of Rs.1,57,000/- found during survey.
No.17.	Books of account of the companies have been written upto which date.
No.18.	Who is the owner of C-13, Sushant Lok-1, Gurgaon.

Except above there is nothing materially adverse in the statement of Basant Bansal recorded on 11.10.2007.

2.20 On 20.11.2007, another statement of Mr. Basant Bansal was recorded by DDIT. The queries raised related to number of issues, which included inter-alia

- (i) cheques found during the course of search,
- (ii) purpose of payment of Rs.16 Cr. by Emaar MGF Land Pvt. Ltd. source of 13 demand draft referred to in letter dated 27.9.2007,
- (iii) explanation as to sale deeds found during the course of search on 12.9.2007 & survey operation on 11.10.2007
- (iv) transaction of purchase of land from Ranga Rao son of Shriram.

The Appellant was only informed that Mr. Ranga Rao in his statement recorded on 26.10.2007 has stated that he has received approximately Rs.93 lacs and his bank statement indicated that a part of amount was paid from an account in Corporation Bank, Gurgaon in the name of Sh. Raghubir in which credit entries of Rs.9.66 Cr. appear.

2.21 In response, to the relevant question (No.6) in the statement recorded on 20.11.2007, the Appellant stated that he had purchased the

land from Mr. Ranga Rao at Rs. 30 lacs in total and that he had not paid any other amount either in cash or cheque and that he is not aware of transaction between Sh. Raghubir and Mr. Ranga Rao.

2.22 On 15.1.2008, statement of Mr. Basant Bansal was again recorded by DDIT, in which only one question was put as under:

*“I am showing you A/c No. SB/01/024061 of Sh. Raghubir, S/o Shri Kahar, with Corporation Bank, Maruti Kunj, Gurgaon. It is seen that money from this account has been utilized to finance purchase of land by you and your companies. What you have to say on this.”*

*Ans. we are hereby submitting letter dated 15.1.2008 in which we have clarified that in the surrender of additional income of Rs.20 Cr. vide our letter dated 19.11.2007 all the credit entries in the account of Sh. Raghubir were also surrendered”.*

Thereafter DDIT by the letter dated 14.1.2008 required the assessee to explain the payment of Rs.62.75 lacs from the A/c No. SB/01/024061 with Corporation Bank 15.1.2008. Assessee submitted that Sh. Raghubir has sold his ancestral property and that the Appellant has no relation or interest in the said land and the aforesaid bank account in which sale proceeds of land sold by Sh. Raghubir was deposited. Notwithstanding the categorical denial of any relation / interest with saving A/c No. SB/01/024061 of Sh. Raghubir, as the assessee's DDs worth Rs. 30 crores were held up with the department, assessee agreed to pay tax on credit

entries in the A/c No. SB/01/024061 as included in the already made surrender on 19.11.2007. It materially changed nothing in terms of overall tax liability resulting from the disclosure.

2.23 Qua the return and declaration of additional income of only Rs.39,00,000/-, assessee by letter dated 6.12.2010 submitted that it may be provided the copies of statement of Mr. Raghbir and relevant bank accounts. That the Assessing Officer by letter dated 7.12.2010 provided copies of statement of Mr. Basant Bansal, Mr. Roop Bansal, Mr. Ranga Rao and copy of bank statement of Mr. Raghbir with Corporation Bank, however copy of statement of Mr. Raghbir was not provided. By the letter dated 14.12.2010, the Appellant made following submissions:-

- Placing the copy of sale deed dated 15.12.2006, executed by Mr. Ranga Rao son of Shriram in favour of Benchmark Infotech Private Limited, it was submitted that Mr. Ranga Rao sold his land (6 kanal) in village Dhorka, Gurgaon for total consideration of Rs.30 lacs. In view of aforesaid position, it was requested that Mr. Ranga Rao who is witness of the department be called to enable the Appellant to cross examine him.
- Court order Dtd. 12-9-09, compromising the disputes between Sh. Raghbir & other co-owners on one side and GP Realtors Pvt. Ltd on the other side was filed to prove that A/c No. SB/01/024061 with Corporation Bank belonged to the Raghbir and appellant had nothing to do with the A/c. the cause title mentions the assessee's capacity as Broker which is evident from paper book page no. 63 to 68. Thus the deal was between G P Realtors and Raghbir; as the it fell into dispute Raghbir instituted legal proceedings in lower court against G P Realtors their directors as main respondents and assessee's as broker. The sale proceeds and

Corporation bank a/c were connected with this deal. Since the deal did not materialize assessee's could not earned any income. It was a complete and convincing explanation which none of the authorities below considered for obvious reason i.e. accepting the explanation would have demolished their entire case.

- The compromise deed dated 12.9.2009 records that Sh. Raghubir son of Sh. Kehar Singh and five other persons had sold land admeasuring 102 kanal and half marla in village Behrampur, Gurgaon to M/s. G.P. Realtors Pvt. Ltd. for a consideration of Rs.22,81,40,000/-. Out of total consideration of Rs.22.81 Cr., there was dispute regarding non distribution of Rs.9,67,40,000/-. The dispute led to filing of FIR's and suit and writ petition before Punjab & Haryana High Court. All the disputes were settled by compromise deed dated 12.9.2009, whereby, Sh. Raghubir and other members who had sold their land acknowledged that they have received their respective shares from the consideration of Rs.9,67,40,000/-. Pursuant to the compromise, the FIR's / suits were dismissed as withdrawn.
- Affidavit of Sh. Raghubir dated 8.9.2009, wherein, he stated on oath that he alongwith with his family member sold land admeasuring 102 kanal and half marla in village Behrampur, Gurgaon for consideration of Rs.22.81 Cr. and that he had opened A/c No. SB/01/024061 with Corporation Bank, Maruti Kunj, Gurgaon and had made deposits in the said account, which was operated by him. A letter to this effect was also written to Corporation Bank, Maruti Kunj, Gurgaon.

2.24 From the aforesaid documentary evidence, it is clear & beyond doubt that the amount of Rs.9.66 Cr. credited in the A/c No. SB/01/024061 with Corporation Bank, Gurgaon represented part part of sale proceed of Sh. Raghubir and his family members. Therefore, there is no basis whatsoever for suspecting much less holding that A/c No.

SB/01/024061 was the benami account of the Appellants. On such flimsy ground the finding of BENAMI against assessee's is grossly fallacious and bereft of any legal justification. The entire burden to prove any Benami transaction is on revenue which has not been whispered much less discussed. Rejecting assessee's explanation without an iota of verification can by no stretch of imagination be held as discharge of burden by revenue in this behalf.

2.25 Ld. Assessing Officer has justified the addition of Rs. 20 crores, entirely on the basis of surrender made by Mr. Basant Bansal by following observations:

(i) Surrender of Rs.20 Cr. made by letter dated 19.11.2007 was two months after the search, after evaluation of the material and post search enquiries, which revealed that bank accounts were opened in the name of some persons and part consideration of sale of land was deposited in these accounts, which were finally brought into various companies of the Appellant.

(ii) To enable the Appellant to cross examine the witness, summons dated 7.12.2010 was sent to his address at Tauru Distt. Gurgaon. However, the Appellant did not attend the hearing on 14.12.2010 i.e. the day fixed for cross examination of Sh. Raghbir and Sh. Ranga Rao.

(iii) Statement of Mr. Ranga Rao or Mr. Raghbir or any other third party was not relied upon / used, therefore, opportunity to cross examine was denied. As per settled principles of natural justice such denial not tenable consequently no reliance can be placed by department thereon.

(iv) On the basis of information received from various sources including Mr. Ranga Rao and Mr. Raghbir that the Investigation Wing examined SB/01/024061 of Mr. Raghbir maintained with Corporation Bank, Maruti Kunj, Gurgaon and came to conclusion that the same was used to purchase land.

(v) Mr. Ranga Rao in his statement (dated 26.10.2007) had admitted that he had received Rs.30 lacs and Rs.62.75 lacs from Bansals of village Tauru, which is the village of the Appellant. The cheque for Rs.62,75,000/- was issued from SB/01/024061. To know the source further enquiries were started, however, before the compilation of enquiries hard pressed with seizure of DDs, the Appellant made the surrender of Rs.20 Cr.

(vi) Cross examination of Mr. Raghbir Singh from who assessee and Mr. Basant Bansal acted as introducer to open bank account with Corporation Bank, Maruti Kunj, Gurgaon has been sought.

(vii) The documents such as, certificate issued by Corporation Bank that transactions relating to SB/01/024061 were conducted by Mr. Raghbir, compromise deed between GP Realtors Pvt. Ltd. and Mr. Raghbir etc. filed to show that SB/01/024061 with Corporation Bank was owned by Mr. Raghbir and not the assessee do not assist the assessee because if the bank account and the transactions did not relate to the assessee then how the assessee get these documents.

(viii) Self assessment tax of Rs.3 Cr. was paid on 28.2.2007 for the assessment year 2007-08, instead of assessment year 2008-09. If there was no unaccounted/unexplained income, then, why the assessee deposited Rs.3 Cr. as self assessment tax, which is approximate to the tax on Rs.10Cr. being the share of assessee out of surrender of Rs.20Cr.

(ix) Admission made by an assessee is binding despite retraction, more so because there is nothing to indicate that surrender was obtained under threat, duress or promise. In fact, letters dated 19.11.2007 surrendering Rs.20 Cr. was filed after initiation of enquires into the source of purchase of various lands by Mr. Basant Bansal, Mr. Roop Bansal and companies in which they

have interest. The enquires revealed that source of payment made towards purchase of land was SB/01/024061.

The emphasis of the Id. Assessing Officer reasons as stated in para 31 under the head 'basis of addition' 024061 are to the effect that bank a/c- SB/01/ was benami of the Appellant, wherein, unaccounted sale proceed was deposited and was subsequently utilized for the purpose of business. The burden to prove Benami is squarely on the department, surprisingly nothing has been referred to hold or demonstrate that the a/c was Benami of assessee. Judicial authorities have ordained that to Prove Benami an onerous burden lies on the department, instead department has held so denying even the basic rights of cross examination of person who is termed as Benami.

- The alleged benami account SB/01/024061 was shown to the Appellant on 15.1.2008, whereas, the surrender was made on 19.11.2007. Even the statement of Mr. Ranga Rao recorded on 26.10.2007 was provided to the Appellant on 7.12.2010.
- In the statement recorded on 11.10.2007, there is nothing adverse which meets the eyes. If the search conducted on 12.9.2007 and subsequent survey carried out on 11.10.2007 discovered any adverse material or incriminating document, the Appellant would have been confronted before recording his statement on 11.10.2007. The survey Dtd 11.10.2007 was off shoot of post search enquiries; with two massive actions there is no justifiable reason for not confronting such incriminating material to the Appellant while recording his statement two months after the search on 12.9.2007. The fact is no incriminating material was recovered and disclosure was a result of arm twisting. Therefore,

no adverse inference can be drawn from the fact that surrender was made after two months of search.

- The allegation that SB/01/024061 with Corporation Bank, Gurgaon was benami account being operated by the Appellant has no legs to stand. It is undisputed that the amount of Rs.9.66 Cr. deposited in this bank account represented sale proceeds of land sold by Mr. Ranga Rao and others. It is not the stand of the revenue that the land sold was owned by the Appellant or his brother. Therefore, it can not be said that the bank account is benami account of the Appellant, opened to deposit the unaccounted sale proceeds of the alleged land.
- The reason that statements of Sh. Raghbir and Mr. Ranga Rao has not been used against the Appellant is without any substance, inasmuch as, repeatedly in the order under appeal reference has been made to the enquiries by DDIT to say that SB/01/024061 was benami account of the Appellant. This reason was based on the statements of Sh. Raghbir and Mr. Ranga Rao. If these statements are ignored, then there is nothing on record to allege that SB/01/024061 was that of the Appellant and accordingly, the entire case of the revenue would fall flat. Your Appellant may require the Assessing Officer to prove its case *de hors* the statements.
- The averment of the Assessing officer that the Appellant did not avail the opportunity to cross examine Sh. Raghbir and Mr. Ranga Rao is make believe because it is not understood why the summons dated 7.12.2010 were sent to village Tauru, Distt. Gurgaon, when all other notices / communications were being addressed / sent to C-13, Sushant Lok, Phase-I, which was the residence of the Appellant. Obviously, the purpose of sending such a crucial notice to the village of the Appellant, where the Appellant does not reside was nothing but cosmetic opportunity. The law enjoins upon the Assessing Officer to send all notices at the address furnished by the assessee. It cannot be assumed that the Appellant was evading service of notices as all the details, court proceedings, exact position of Raghbir and Ranga Rao was known to the assessee. Therefore, summons dated 7.12.2010 addressed to village Tauru, Distt. Gurgaon was stage managed to ensure that the appellant is somehow brought in bad light.



- Statement of Mr. Raghubir was not provided to the Appellant, despite requests. Therefore, in any case opportunity to cross examine Mr. Raghubir was held by AO to be only a formality.
- Apropos the Assessing Officer's observation that how the documents (comprise deed / order, affidavit etc) filed with letter dated 14.12.2010 came into possession of the Appellant, when he was not owner of the property. This amounts to a frivolous assumption. The Appellant requested the concerned parties to help him who provided the documents which go to the root of the matter by explaining the issue threadbare. Revenue by defeating the principles of natural justice and by a design ignored the actual explanation to uphold their presumptions.
- In the light of compromise deed dated 12.9.2009, letter to bank and affidavit of Mr. Raghubir dated 8.9.2009, the statement of Mr. Raghubir cannot be given credence. Therefore, the case made out against the Appellant does not survive.

Thus the reasons recorded by the Assessing Officer have no merit and the surrender has no objective basis except the letters and statements dtd. 19.11.2007 and 15.1.2008 which were given in very peculiar circumstances. Except the letters and statement, there is no evidence on record to justify addition of Rs.20 Crores as undisclosed income of the Appellant. Reference was made to Instruction **F.No.286/2/2003-IT (Inv.II)** dated 10.3.2003, whereby, the Central Board of Direct Taxes has advised that in search proceedings focus should not be on confessions and the same should be on discovery of incriminating material. In this backdrop, except for bank statement of SB/01/024061, which are

demonstratively proved to be belonging to Raghbir and not belonging to the Appellants. No other material was found during search or exist on record which is claimed to be confronted to the Appellant, which could have the propensity to inspire surrender of exorbitant amount of Rs.20 crores. Therefore, the assessee's surrender was not based on any incriminating material but the only way out of avoiding the pressure, coercion enacted by the department due to restraint of its 31.48 crs. The disclosure being not voluntary and extracted by department in creating a coercive situation cannot be relied solely to be basis of additions as undisclosed income. More so when the regular books of accounts have not been found fault with and are not rejected. The settled legal position about admissions and retraction is enunciated by following judgments:

1 In **Pullangode Rubber Produce Co. v. State of Kerala (1973) 91 ITR 18**, Hon'ble Supreme Court has observed that "*an admission is an admissible 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*".

2 In **CIT v. Uttam Chand Jain (2010) 320 ITR 554**, Hon'ble Bombay High Court taking into consideration the judgment of Hon'ble Supreme Court in **Vinod Solanki v. UOI (2008) 16 Scale 31** has observed that retracted confession can be relied upon only there is independent and cogent evidence to corroborate the surrender made.

3 In **Saveetha Institute of Medical and Technical Sciences v. ACIT (2011) 012 ITR (Trib) 376 (Chen)**, wherein, addition towards capitation fee allegedly collected by the institute was

made solely on the basis of statements of students and staff recorded under section 132(4) was made. Except for a note giving the breakup of number of students who were admitted under different quotes in various courses, there was no incriminating material as to the receipt of capitation fee. Referring to the Instruction F.No.286/2/2003-IT (Inv.II) dated 10.3.2003, the addition made was deleted observing that admission made under section 132(4) was not a valid piece of evidence.

4 In **Rakesh Gupta v. ITO (2008) 25 SOT 70 (Del)**, the assessee had made declaration under VDIS with an affidavit declaring undisclosed income in the form of cash of Rs.10 lacs each for the assessment years 1993-94 & 1994-95. Since tax was not deposited, therefore, benefit of VDIS was not admissible to him. In regular assessment, the assessee could not satisfactorily explain the source of deposit in his bank account. In appeal, the CIT(A) confirmed the addition to the extent of amount found deposited in the bank account and granted the benefit of telescoping. On further appeal, ITAT deleted the addition on the ground that VDIS declaration not accepted by the appellant cannot be sufficient *and* the Assessing Officer failed to collect any evidence.

2.26 Going by these judgments and plethora of other judicial precedents, it is well settled legal position that merely on the basis of a statement which is not supported by the department with cogent corroborative material cannot be a valid addition basis for sustaining such adhoc additions. It is the burden of the department to prove that there existed relevant and cogent material to enable the AO to make such additions. The department has grossly failed to prove or demonstrate existence of any such relevant or cogent material. Assessee has demonstrated the background under which assessee was compelled to make a surrender due

to seizure of 30 crores of DDs; these facts make the surrender a piece of evidence obtained by the department without any cogent material and only using subtle arm-twisting. The disclosure thus is not binding on assessee a proposition which is supported by catena of judicial pronouncements and CBDT circulars referred to above. Thus there is no valid basis for sustaining the hypothetical addition of Rs.20 Cr. which deserves to be deleted.

2.27 Adverting to the issue of existence of pressure, threat, coercion during search proceedings, same is to be judged by reference to the existing facts and circumstances; human conduct and preponderance of probabilities. The search proceedings, record relating thereto being in the exclusive custody of the searching officers, its there wish and will which prevails during the fateful period. It is almost impossible for the assessee to adduce demonstrative evidence of exerting such pressure. Therefore, the higher courts has ordained the appellate authorities to carefully examine whether such pressure was built due to extract such surrender.

Reliance is placed on:

In **DCIT v. Pramukh Buildings (2008) 112 ITR 179 (Ahd)**, it was held that even in the absence of proof of coercion or pressure, the statement by itself cannot be taken as conclusive. Therefore, mere absence of proof of pressure, threat, coercion or inducement is not proved the statement cannot be held as conclusive and additions cannot be made by solely relying on statement or a letter.

2.28 Ld. Counsel further contends that:

(i) Survey conducted on 11.10.2007 did not yield anything incriminating that can be said to have compelled the Appellant to make surrender of Rs.20 Cr.

(ii) Had any material implicating the Appellant as (i) possessing undisclosed income or (ii) having undertaken such transactions been in the possession of the Appellant, the department would have confronted the same to the Appellant while recording his statement on 11.10.2007.

(iii) The basis of addition that A/c No. SB/01/024061 with Corporation Bank, Maruti Kunj, Gurgaon was benami account handled by the Appellant and his brother Mr. Roop Bansal stands negated for the reason that the amount of Rs.9.66 Cr. deposited in the said A/c No. SB/01/024061 represented sale proceeds of land sold by Sh. Raghbir and others to G.P. Realtors Pvt. Ltd. Since it is not the case of the department that the land sold did not belong to Sh. Raghbir and others, therefore, the allegation that A/c No. SB/01/024061 was benami account of the Appellant cannot be sustained because to say so, it will have to be held that the land sold, the proceeds of which were credited to this bank account did not belong to Sh. Raghbir. It is on record that Sh. Raghbir and others had sold its land for Rs.22.81 Cr., out of which Rs.9.66 Cr. was deposited in A/c No. SB/01/024061 in the name of Sh. Raghbir.

(iv) The aforesaid conclusion is further substantiated by the documents relating to resolution of dispute between Raghbir Singh & others (the sellers) and G.P. Realtors Pvt. Ltd. (the buyer). There is nothing to discredit the veracity of the said documents which were filed before the Assessing Officer. The Manager of Corporation Bank, Maruti Kunj, Gurgaon also certified that Sh. Raghbir himself operated the A/c No. SB/01/024061.

(v) The department did not provide the copy of statement of Sh. Raghbir. In any case, in view of independent corroborative material / evidence by way of compromise deed, order of Mediation and Conciliation Centre resolving the dispute between Raghbir Singh and G.P. Realtors Pvt. Ltd., bank certificate,

affidavit of Sh. Raghbir, alleged statement of Sh. Raghbir cannot be given any credence.

(vi) As far as, statement of Mr. Ranga Rao is concerned, the same in view of corroborative material that A/c No. SB/01/024061 actually belonged to Sh. Raghbir has lost its worth whatever little it had. It is for Sh. Raghbir to explain as to what purpose and reason he made payment of Rs.62,75,000/- to Mr. Ranga Rao from his A/c No. SB/01/024061. The said payment by itself is no reason to come to conclusion that A/c No. SB/01/024061 was benami account of the Appellant. It may be stated here that notice providing opportunity to cross examine Mr. Ranga Rao was not issued at the address on which notices etc were being issued regularly. Therefore, opportunity was only technically provided. It will not be out of place to emphasize here that the assessment order nowhere records that on 14.12.2010, Sh. Raghbir and Mr. Ranga Rao were present for cross examination. Since Mr. Ranga Rao who is the witness of the department was not produced for cross examination, therefore, his statement cannot be relied upon.

(vii) On the basis of aforesaid factual position, it was submitted that the surrender made on 19.11.2007 & 15.1.2008 was not because the Appellant was cornered on account of material in possession of the department, rather, the “*Pro-tem*” surrender was made to avoid harassment. It may be noted here that on the second day of the search on 12.9.2007, the group companies of the Appellant had withdrawn the amounts laying in their respective bank accounts by way of demand drafts in their favour. The aggregate value of the demand drafts was Rs.31.48 Cr. The department by the orders dated 20.9.2007 prohibited the banks from clearing/en-cashing the drafts. Finally that was revoked after 5 months in the first week of February, 2008 , effectively after 15 days of surrender (15.01.2008) which is *ex-facia* evidence ,of undue influence and harassment. On account of aforesaid order, the business operation of the entire group had come to a stand still. This difficult situation to which the entire group was placed was enough to break any businessman and the Appellant was no exception. It was **this reason that compelled the Appellant to agree to make surrender of Rs.20 Cr.**

(viii).It is contended that neither during search and seizure operation on 12.9.2007 nor during survey operation on

11.10.2007, any surrender was made because nothing incriminating was found. By passing restraint order on 20.9.2007, the pressure was built on the Appellant to make surrender to show that search and seizure operation was a success. It is not correct that since surrender was made after two months of the search, therefore, no pressure / coercion was exercised in obtaining the surrender. The fact of the matter, however, is that surrender was made with a view to secure release of order restraining encashment of demand drafts. Here it may be noted that the genesis of surrender is the A/c No. SB/01/024061, the amount credited in this account was Rs.9.66 Cr. On the basis of this account, there was no reason for the Appellant to make surrender of more than Rs.9.66 Cr. However, **the Appellant was made to surrender more than double the amount of Rs.9.66 Cr. which indicates that primarily, the surrender did not have nexus with A/c No. SB/01/024061.** In Instruction F.No.286/2/2003-IT (Inv.II) dated 10.3.2003, referred to in paragraph 47, the CBDT has acknowledged that instances of forced surrender have come to their knowledge. As such, it is a fact of which judicial notice can be taken that invariably pressure is put by the search team and surrender is obtained. The restrained orders were lifted on 1.2.2008 i.e. after the surrender.

(ix). That as submitted above, the entire basis of the addition was A/c No. SB/01/024061 with Corporation Bank, Maruti Kunj, Gurgaon. By placing on record the documents i.e. compromise deed, order of Mediation and Conciliation Centre, bank certificate of Corporation Bank, affidavit of Sh. Raghubir, etc., the Appellant discharged the onus that lay upon it. The onus thereafter shifted, however, the Assessing Officer did not do any further independent enquiry that may be said to have shifted the onus back on the Appellant. The retraction from the surrender is to be seen in the light of aforesaid facts. It cannot be said that the retraction was not bonafide. It is well settled that complete surrounding circumstances should be kept in view to decide whether subsequent retraction was merely for the sake of retraction or the same was based on material indicating that the surrender originally made was not well thought of. The documents filed by the Appellant, which have not been disapproved clearly prove that the surrender made by the Appellant with reference to A/c No. SB/01/024061 was not well thought of and therefore, the

retraction of the Appellant cannot be ignored as afterthought. More so because transaction of sale of land by Sh. Raghbir & others and by Mr. Ranga Rao & others were independent and it is not the case of the department that both these transactions were part of the same transaction.

(x). Without prejudice, the surrender of Rs.20 Cr. included addition on account of surrender of Rs.4.99 Cr. made by Mr. Roop Bansal on 12.9.2007, which has separately been added in his hands for the assessment year 2008-09. Therefore, in case your honour is inclined to reject our submissions and a fair and personal opportunity may be given to the Appellant.

Reliance is placed on following case laws (case law PB is on record) in support of various propositions:-

1. Ashok Kumar Son vs. DCIT, 72 TTJ NULL 323 (Raj.)
2. Pawan Lakshary (ITA No. 808/JP/201 dated 6-01-2012, ITAT Jaipur Bench)
3. Shree Chand Soni vs. DCIT 101 TTJ 1028 (ITAT Jodhpur)
4. Kailashen Manharlal Chokshi, 174 Taxman 466 (Guj.)
5. Shri Dharam Pal Gulati (ITA No. 671/Del/2012 dated 20-06-2013)
6. Mayak Poddar (HUF ) 130 Taxman 500 (Cal.)
7. Yogesh Thakkar vs. DCIT (ITA No. 3372/3373/5745/Mum/2010 dated 09-04-2013)
8. Maruti Mills (P) Ltd. vs. Union of India, 123 Taxman 737 (Raj.)
9. Basant Singh vs. Janki Singh (Appeal No.1967/341 dated 02-08-1966 (SC))
10. Shri Kishori Lal 1959 AIR 504 dated 01-12-1958.
11. R.R. Gavit vs. Sherbanoo Hasan Daya, 28 Taxman 349 (Bom.)



12. Vadilal Panchal vs. Dattatraya Dulaji Ghadigaonker 1960 AIR 1113 dated 6-05-1960 (SC)
13. Devendra Prasad Tiwari vs. State of U.P. AIR 1978 SC 1544
14. Babubhai Udesingh Parmar vs. State of Gujarat (Appeal No.1635of 2005 date of 24-1-2006 (SC)
15. CIT – II vs. Naresh Kumar Agarwal (2014) (11 TMI 57 (Andhra)
16. ACIT vs. Jorawar Singh M, Radhod (2005) 148 Taxman 35 (Ahd.) (Mag.)
17. CIT vs. S. Khader Khan Son, 79 DTR 184 (SC)
18. DCIT vs. Premsons 37 DTR 150 (Mumbai B)
19. CIT vs. S Khader Khan Son 214 CTR 589 (Mad.)
20. Bhagirath Agarwal vs. CIT, 351 ITR 143 (Del.)
21. Smt. Ranjnaben Mansukshlal Shah vs. ACIT, 83 TTJ 369 (Rajkot)

2.29 Ld. CIT(DR) in reply contends that :

(i) Surrender letter dated 19.11.2007 is under assessee's signature voluntarily admitting Rs. 20 crore as his additional income. Being a voluntary disclosure, department cannot be blamed for this surrender.

(ii) Affidavit of Sh. Raghuvir Singh filed by the appellant which inter-alia mentioned something related to aforesaid account no., is nothing but an afterthought attempt made in order to try to cover up and retract the disclosure of admission of unaccounted income.

(iii) Assessee did not avail the cross examination of Sh. Raghuvir Sing. Therefore the A.O. rightly observed that his objection regarding cross examination of Sh. Raghuvir Singh and Mr. Ranga

Rao is not justified and is merely a plea taken to delay the filing of details and entangle the assessment proceedings.

(iv) Pullangode Rubber Produce Co.(supra) rather supports the case of the department as Hon'ble Supreme Court also observed that “ **an admission is an extremely piece of evidence**”

(v) The admission of additional income of Rs. 20 crore is after two months of the search vide letter dated 19.11.2007. If the appellant had any then immediately afterward retraction should have been filed. Rather assessee reconfirmed it by a letter dated 15.1.2008.

(vi) Firstly assessee disclosed Rs. 20 crs. Thereafter included the surrender of Rs. 4.99 crore made by his brother Sh. Roop Bansal on 12.9.2007 and subsequently as a result of enquiries, reiterated the offer of additional income of Rs. 20 crore vide letter dated 15.1.2008, including the additional income related to the deposits in the Corporation bank account to the extent of Rs.9.66 crore. All this shows that the disclosure was proper and undisclosed income belonged to both the brothers.

(vii) Order of Id. CIT(A) and case laws mentioned therein are relied on by Id. CIT(DR).

2.30 We have heard the rival contentions and perused the material available on record. Facts, circumstances and contentions have been mentioned above in great details. We proceed to decide the following relevant issues:

- i. Whether the disclosure was voluntary or given under coercive circumstances.

The relevant facts and contentions about restraint orders for DDs. on 20-9-07, belonging to assessee group amounting to Rs. 31.48 crs dtd 12-9-07 & there release in first week of February have not been controverted by the department. Relevant restraint orders are placed on record. Department contends that the disclosure was voluntary and reconfirmed by a letter and statement u/s 131. Per contra assessee contends that the the letters are dtd. 19-11-07, 15-1-08 and statement was taken along with second letter; all these dates fall between the restraint period i.e. from 20-9-07 and 1<sup>st</sup> week of February 2008. This huge quantum of freezing of liquid funds by itself proves that the assessee was under tremendous pressure and harassment. Ld. CIT(A) has conveniently ignored these crucial aspects and summary confirmed the AO's findings in this behalf.

Ld. Counsel has raised the issue that assessee was searched not once but twice and to add to his miseries survey proceedings were also taken. With multitude of enforcement action if there was any incriminating material it would have surfaced and the AO would have made the additions on the basis thereof as ordained by sec. 153A and CBDT circulars. Since in first search dtd.12-9-07 department could not lay hands on any incriminating material but coincidentally could restrain assessee

DDs. worth Rs. 31.48 crs, pressure was built on assessee for disclosure. Since no incriminating material was found assessee was not willing for it. To accelerate the pressure on 11-10-07 again a survey was conducted. This time also no incriminating material was found but the coercion of restrained DDs. continued. Assessee yielded to war of nerves and by a letter dtd. 19-11-07 disclosed the 20 crores, the same has following issues:-

- a. There is no reference to any particular incriminating material.
- b. It does not refer to Raghubir, Corporation Bank or Ranga Rao issue as nothing had surfaced in this behalf.
- c. It does not refer to any undisclosed income and speaks of only income.
- d. Letter claims to be a disclosure of pro tem investment or income. Pro tem means tentative disclosure and implies it is subject to correction on reconciliation. Department did not put any question about any incriminating material which assessee could not reply. The disclosure part from pro tem is claimed to be for avoiding litigation and buying peace with the department.
- e. Any statement on oath is material piece of evidence but if the assessee is able to demonstrate that actual facts are different than the factual verification has better evidentiary value. More so when the so called statement is ensured by overt or covert; direct or indirect means of coercion, pressure or harassment. These factors are to inferred from the surrounding circumstances and human conduct; there can be no demonstrative proof as the seized record is

in the domain pf department. The facts as narrated clear make the underlying elements of pressure, coercion and harassment manifest in extracting the disclosure.

**Conclusion:** In our considered opinion the contentions raised by Id. Counsel for the assessee lead to a clear inference that the disclosure of the assessee cannot be regarded as voluntary. The pressure of restrained DDs. of 31.48 crs. against a disclosure tax liability of about 7 crs is palpable. It has the propensity to derail the business and creating enough pressure for businessmen to somehow avoid the pressure. Besides the chronology of events and attendant circumstances do not convince us that this summary disclosure was voluntary and on the scale of merit it can override the other facts. Consequently we have no hesitation in holding that the solely relied disclosure was involuntary. In these circumstances the desirability of additions is to be judged on other facts and circumstances. Reliance is placed on Hon'ble Rajasthan High Court in the case of CIT v. Ashok Kumar Soni 291 ITR 172 for the proposition that admission in statement during search proceedings is not conclusive proof. Besides Hon'ble Supreme Court in the case of Pullangode Rubber Produce(supra) has also held so that such statement can be explained in the light of correct facts.

- ii. Whether in the light of CBDT instruction dtd 10-03-2003, search proceedings and assessment can be based incriminating material and not on such disclosures.

**Conclusion:** A perusal of the CBDT instruction reveals that even Board is aware of such laconic disclosures and expects its officers to rely on incriminating evidence. Thus CBDT also is not in favor of search assessments being based only on such disclosures; it wants them to be based on incriminating material. In view the facts, circumstances, CBDT instruction and various case laws relied on by the assessee we are unable to uphold the additions solely on the basis of disclosure which doesn't meet the eye and have been hold by us to involuntary.

iii. Whether the additions are based on any incriminating material discovered as a result of search in terms of sc. 153A.

**Conclusion:** There is no reference to impugned additions being based on any worthwhile incriminating material or evidence except raising some suspicions. The sole basis of additions in both cases is proposed to be the disclosure. Consequently the additions made are not as a result of any material found during the course of search, in view thereof impugned additions cannot be sustained as they do not conform to mandate of sec. 153A.

iv. Whether the assessee furnished proper explanation about the Corporation bank a/c, Gurgaon and transaction relating to Raghubir and Ranga Rao.

**Conclusion:** As the facts emerge the Corporation bank a/c belonged to Raghbir, the proceeds deposited therein came to him through banking channel on account of agreement to sale his share in ancestral land to G P Realtors not connected to assessee. The transaction came in dispute and was subject matter of litigation, settled by a compromise before court, assessee have been termed as brokers in court proceedings. Raghbir advanced the money by cheque to Ranga Rao for purchase of some property.

Department has again relied on assessee's 2<sup>nd</sup> disclosure letter which also mentions that these transactions are not connected to assessee. As the final disclosure remained at 20 crs., assessee to avoid the harassment agreed for its inclusion as it did not take the tax liability any further. Apropos department's contention that why assessee did not tell this in first blush assessee has demonstrated that they requested for some time to verify from parties who cooperated. The affidavits, bank certificates, documents relating to G P Realtors including compromise deed all corroborate the assessee's contentions. Therefore no adverse inference or addition can be drawn against assessee in this behalf.

v. Whether on merits the impugned additions can be made in a search assessment u/s 153A which is meant for assessment of undisclosed income consequent to search proceedings.

**Conclusion:** By detailed observations we have held that neither any worthwhile incriminating material, information, and evidence was discovered as a result of impugned multiple search operations nor the

additions sustained are based on any such material. The sole basis of additions is the disclosure which we have held to be involuntary. Consequently the additions do not conform to the mandate of sec. 153A.

2.31 In view of all the facts, circumstances, record and case laws mentioned above, we delete the impugned additions in both the cases.

3.0 In the result, appeals of both assessee's are allowed.

Order pronounced in the open court on 29 /05/2015.

Sd/- (टी.आर.मीना) (T.R. Meena) लेखा सदस्य / Accountant Member	Sd/- (आर.पी.तोलानी) (R.P.Tolani) न्यायिक सदस्य / Judicial Member
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जयपुर / Jaipur  
दिनांक / Dated:- 29 MAY , 2015

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- (1) Shri Basant Bansal & (2) Shri Roop Bansal, Gurgaon
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle, Alwar
3. आयकर आयुक्त(अपील ) / CIT(A)
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.534 & 748/JP/2012)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar