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**(2016) 05 RAJ CK 0165**

**In the Rajasthan High Court**

**Case No : Income Tax Appeal Nos. 66, 67 of 2002**

CIT, Bikaner

APPELLANT

Vs

Ravi Mathur

RESPONDENT

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**Date of Decision :** 13-05-2016

**Acts Referred:**

Income Tax Act, 1961 — Section 132(1), Section 132(4)

**Citation :** (2017) 1 WLC 387

**Hon'ble Judges :** Mr. M.N. Bhandari and Mr. J.K. Ranka, JJ.

**Bench :** Division Bench

**Advocate :** Mr. N.L. Agarwal, Advocate, for the Respondents; Mr. R.B. Mathur, Advocate, for the Appellants

**Final Decision :** Allowed

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## **Judgement**

Ranka, J. - The instant appeals under Section 260A of the Income Tax Act, 1961, are directed against the order dated 28.1.1999 passed by Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (in short "Tribunal"). Substantial questions of law were admitted by this Court for the block period assessment years 1985-86 to 1994-95 and 1995-96 (up to 9.11.1995). In all these appeals, more or less identical questions have been raised and since they pertain to common order of the Tribunal, with the consent of the parties all the appeals are being decided by this common order for the sake of convenience.

2. The brief facts are that a search and seizure operation was carried on 9.11.1995 under Section 132(1) of the Income Tax Act, 1961, at the residential and business premises of the above assessee situated at A-8, Shyam Nagar, Jaipur. During the course of search, bank lockers standing in the name of various family members were also searched on 14.11.1995. As a result, cash, FDRs and incriminating documents were found, seized and taken in possession by the authorised officers of the Revenue. Statements of various members of the family were recorded by the officers under Section 132(4) of the Act. In the statements recorded, Ravi Mathur, who is the key person involved in the various business

activities, admitted and surrendered undisclosed investment in the various on-going projects and admitted receipt of un-accounted money from various purchasers of plots. It appears that though the assessee agreed to surrender certain amount on the basis of incriminating documents, cash, jewellery etc., in statements recorded under Section 132(4) on 9.11.1995 and later, however, it was contended by the assessee that the statements under Section 132(4) of the Act was not correct and the amounts which were taken into lakhs are in thousands and attempted to retract from the statements made at the time of search and seizure operation. We deem it appropriate to take facts of DBITA No. 67/2002 in the case of Ravi Mathur, who is said to be the key person and in whose case detailed order has been passed.

3. Learned counsel for the appellant-Revenue, though contended that questions of law have been admitted by this Court, which are general in nature and all the additions deleted by the Tribunal are challenged but he restricted his submissions to the questions relating to the following additions only and, therefore, we would discuss and give our findings only on the question/arguments raised by the learned counsel for the Revenue :-

a. Ashiyana Apartments & Capital Gain : Addition of Rs.31,00,000/- & Rs.13,50,384/- in three hands

b. Jewellery : Addition of Rs.93,575/-

c. Medical expenses : Addition of Rs.99,880/- in four hands

d. Seized documents : Addition of Rs.44,28,500/-

e. Property at Raja Park : Addition of Rs.1,59,333/- in various hands

f. Purchase & sale of plots: Addition of Rs.2,29,533/- in various hands

a. Ashiyana Apartments : Addition of 31,00,000/- & Capital Gain Rs.13,50,384/- each in three hands

4. During the course of investigation it was noticed by the authorised officers that voluminous bills and vouchers, and expenses towards construction of Ashiyana Apartment, were found and seized and the assessee admitted to have made unaccounted investment therein. In the statement recorded at the time of search it was stated by Ravi Mathur that the building is 75% complete and the total investment is about Rs.73,50,000/- (28,000/- sq.ft. x Rs.350/- per sq.ft.) whereas the amount recorded in books is only Rs.45 lakh (later-on found to be recorded at Rs.52,76,457/-). Thus, the assessee agreed to surrender Rs.28,50,000/- on account of unaccounted investment/expenditure. Later-on it was denied and it was pleaded that the statements recorded were under pressure and coercion. The matter was referred to the District Valuation Officer by the AO who determined the cost of construction of the property at Rs.87,70,000/- and finding a wide gap in between the two, an addition of Rs.31 lac was made in the assessment year out of undisclosed investment in Dream

House Developers and Colonizers (DHD&C) [Smt. Prem Kumari Mathur was said to be the Proprietor of the said concern].

4.1. Learned counsel for the Revenue contended that Ravi Mathur, who himself is one of the biggest builders of Jaipur and is a highly experienced and qualified person, a civil engineer by profession, during the course of investigation clearly depicted that total investment, is of an amount of Rs.73,50,000/- as the building Ashiyana Apartment is 75% complete and only Rs.45 lakh was recorded in the books of account and, therefore, he agreed to surrender an amount of Rs.28,50,000/-. The matter was referred to the District Valuation Officer, who valued the property as on the date of search at Rs.87,70,000/- and, since there was wide gap in between the value as per District Valuation Officer on the one hand and the value disclosed in the books of account on the other hand, therefore, the addition was rightly made. He contended that the Tribunal, on assumption and presumptions, came to the conclusion that the valuation was made on a later date when the Valuation Officer himself had in the Valuation Report clearly stated that the valuation has been made as on the date of search, then no contrary finding could have been recorded by the Tribunal. He contended that addition has also been deleted accepting the retraction without any basis.

4.2. Learned counsel for the appellant further elaborated and contended that the building was complete by almost 75% and even the District Valuation Officer valued the property though on 7.3.1996, but for the period as on 9th November 1995 i.e. on the day of search, however, the Tribunal without any basis took into consideration that since the date of inspection was 7.3.1996, therefore, the District Valuation Officer took into consideration the valuation as on 7.3.1996 which is contrary to the material on record. Even otherwise he contended that from November 1995 till 7.3.1996, for a period of about four months, the investment shown by the assessee was not proved. He further contended that the Tribunal has simply observed that "the surrender so made was immediately retracted after search", whereas it was pointed out that there was no retraction immediately and retraction, if any, was at the time of conclusion of the assessment proceedings, and thus an afterthought which has no evidentiary value, thus contended that the Tribunal without any basis came to a wrong and perverse finding.

4.3. Insofar as the addition relating to Capital Gain of Rs.13,50,384/-, each in three hands, is concerned, the learned counsel for Revenue contended that as per the material available on record and found during the course of search, it transpired that R.B. Mathur had purchased plot No. D-29 from one Vishwanath Kale for Rs.1,52,000/-, and it was not known as to whether it was purchased in the name of HUF though it was claimed to have been later-on partitioned but no material has been brought on record as to how HUF came into existence. He further contended that R.B. Mathur himself applied for term loan of Rs.50 lakh in his own individual capacity. An agreement dated 24.7.1994 was entered into by and between R.B. Mathur and Smt. Prem Kumari Mathur for constructing multi-

storeyed residential complex and the value was adopted at Rs.45 lakh since the land was contributed by R.B. Mathur, no investment was made and both agreed to share net profit/loss at 50:50 between these two parties. He further contended that some colour was given of the property being owned by HUF and later-on partitioned and Tribunal merely considering the contention of the assessee without going into detail has accepted the contention of the assessee and has deleted the addition on account of capital gain either in the hands of R.B. Mathur or even in the hands recipient, the three alleged co-owners Ravi Mathur, Smt. Prem Kumari Mathur and Anuj Mathur, therefore, he contended that the addition was rightly made and has wrongly been deleted by the Tribunal. Alternatively he contended that capital gain arose on transfer/contribution on 24.7.1994 and at-least capital gain arose in either hands.

4.4. Per contra, learned counsel for the assessee vehemently contended that the valuation was made on a later date, by which time further construction had taken place and there being no other material, the addition was rightly deleted by the Tribunal. He further contended that in a case of block assessment, whatever undisclosed income/asset is found, is required to be considered and not what has been disclosed in the books of account. He further contended that insofar as the property is concerned, the District Valuation Officer assessed the value as on 7.3.1996 and not as on 9.11.1995, and in between the assessee had incurred substantial amount and there was no difference in between the two, and leave apart the statement was recorded under pressure and coercion, therefore, addition was rightly deleted by the Tribunal. He contended that retraction was proper and Tribunal rightly found favour. He thus, contended that the order of the Tribunal is well reasoned and the question raised by the Revenue deserve to be answered accordingly. Learned counsel for the assessee further contended that all along the property has been shown as that of HUF and later-on partitioned and complete evidence was placed on record and the Tribunal had gone into the issue elaborately and had come to a correct conclusion based on the material on record, and extraneous material is not required to be considered.

b. Jewellery found : Addition of Rs.93,575/-

5. Addition of Rs.93,575/- was made on account of excess Gold Ornaments and Jewellery found during the course of search. Few slips were also found about purchase of some Jewellery. It was claimed that Smt. Prem Kumari Mathur (mother of Ravi Mathur) was an existing Wealth Tax assessee and had declared 935 gm. Of gold ornaments in her Wealth Tax Returns and the balance of the Gold Jewellery which remained was just about 462 gm. which was claimed to belong to wife of Ravi Mathur and wife of his younger brother (Anuj Mathur).

5.1. Learned counsel for the Revenue contended that unaccounted/unexplained Jewellery was found during the course of search, so also money slips were found depicting unexplained/unrecorded purchase of Jewellery and the authorised officer as well as the AO himself granted substantial benefit/credit taking into consideration the status of the family and thus only addition of Rs.93,575/- was

made when the addition ought to have been much more. He further contended that merely because some Jewellery has been disclosed in the Wealth Tax Returns, is no ground for deletion because the Jewellery, as disclosed in the Wealth Tax Returns did not match with the Jewellery and Ornaments, and apart from that, additional Jewellery was found in the possession of the family members, and evidence was not placed about possession by other family members. Thus, the addition was rightly made by the AO and the Tribunal simply held that once the Wealth Tax Returns show disclosure of Jewellery, credit of the same ought to have been allowed and insofar as the balance Jewellery is concerned, the same was received at the time of wedding by the wives of Ravi and Anuj Mathur.

5.2. Per contra, learned counsel for the assessee contended that the addition in respect of Jewellery was rightly deleted. He contended that admittedly Smt. Prem Kumari Mathur is an existing Wealth Tax assessee, and other than Smt. Prem Kumari Mathur there were two more female members who under the customs and tradition certainly received Jewellery at the time of wedding as the same is being given by both sides and which is quite reasonable, not excessive or unreasonable. Insofar as loose papers depicting Jewellery are concerned, they were also part of the same Jewellery relating to the other two female members, and thus the addition was rightly deleted.

c. Medical expenses : Addition of Rs.99,880/-

6. Another addition made by the AO is on account of medical treatment in London undertaken by Smt. Prem Kumari Mathur, mother of Ravi Mathur and wife of R.B. Mathur, who was accompanied by few family members and during the course of investigation the AO noticed Annexure ? "P" of panchnama dated 9.11.1995 where eight passports evidencing visit to UK were found and it transpires that they were related to travel to UK on account of emergency medical treatment of Smt. Prem Kumari Mathur, who is one of the appellants. It also revealed as per Annexure AB-19 that foreign exchange of US Dollar 2000/- and Pound Sterling 12500/- was issued in the name of Smt. Prem Kumari Mathur by the Deputy Controller of Exchange, Control Department vide letter dated 7.6.1989 for her medical treatment. The AO on the basis of these very documents and after seeking further information, found that the bare minimum expenses on air tickets and the foreign exchange taken by Smt. Prem Kumari Mathur, when converted into Indian Rupees, totalled Rs.3,34,480/- after reducing Pounds 770 which were returned after arrival by Smt. Prem Kumari Mathur. The AO also came to an apparent conclusion that six family members remained in London for a period of about 16 days i.e. June 13 to 30, 1989 (as mentioned at page 14 of the assessment order) and expenditure must have been incurred on boarding, lodging, local travelling, medicines etc., keeping in view a conservative estimate of the status of the family members of the appellants, the AO estimated an amount of Rs.1,50,000/- towards such expenditure. Needless to mention that the assessee or the family members did not disclose in their books of account

about any expenditure including foreign exchange having been incurred of visiting London and incurring amount for treatment of Smt. Prem Kumari Mathur in London.

6.1. Learned counsel for the appellants contended that the AO has, on the basis of incriminating material, found that a travel was undertaken by six members of the family and found that huge amount was spent in obtaining undisclosed foreign exchange and air tickets to and fro of six family members was taken into consideration to the bare minimum of Rs.3,52,500/-. Apart from that the AO, on a conservative basis, since nothing was forthcoming from the assessee, assumed expenditure of six persons staying in London for 16 days" period, which could not have been said to be unreasonable and excessive, and contended that the expenditure ought to have been much more than what was assumed by the AO, particularly when the claim of the assessee has been discarded that all the five members other than Smt. Prem Kumari Mathur, stayed in one-room apartment and carried even raw food from India like flour, oil, ghee etc. with them for cooking on their own, which could not have been accepted by any plausible explanation and at-least from the members of the status of appellants. Thus, he contended that addition was just and proper and Tribunal wrongly deleted the same on a perverse finding.

6.2. Per contra, learned counsel for the assessee contended that there was no material before the AO to assume any expenditure over and above the incriminating material, and thus the Tribunal was just and proper in deleting the assumed/estimated addition. He further contended that all the family members stayed in one-room apartment and had carried all the raw food ? like flour, oil, ghee etc., and including cost of tickets, and other expenditure not exceeding Rs.20,000/- was incurred per head and when the members were going for treatment then certainly the focus was only on treatment. He further contended that in block assessment the AO cannot travel beyond the material found in search and estimated addition or assumption is uncalled for, therefore, the Tribunal had rightly deleted the addition.

d. Seized documents : Addition of Rs.44,28,500/-

7. The learned counsel for the Revenue contended that addition was made on the basis of the statement of the assessee (Ravi Mathur) himself, in whose possession Annexures A-1, A-2 and A-4 were found and Ravi Mathur himself during the course of search in his statement recorded under Section 132(4) of the Act clearly stated on oath that the amount noted is in coded form, were in lakhs, and once an assessee himself states the real fact then nothing more was required to be proved. There was no claim of any undue pressure/coercion at all even after search concluded and much later at the fag end of the hearing of the assessment proceedings a simple claim was put forth which ought not to have been accepted by the Tribunal, and once documents were found in custody, control and possession such retraction is not at all acceptable. He contended that the finding of the Tribunal is unjust, bad and perverse and by no stretch of

imagination it could have given the benefit to the assessee. The Tribunal has ignored elaborate discussion made by the learned Assessing Officer, which is on the basis of seized documents.

7.1. Per contra, learned counsel for the assessee contended that pressure was built on the assessee to give such statement and the same was retracted by the assessee and the Tribunal was well justified in deleting the addition. He further contended that it is a question of fact and the addition on presumptions could not have been made by the learned AO. The documents, if any, had no evidentiary value. It contained mere rough notings and jottings. He contended that undue pressure and coercion was built at the time of search. Once the statement was retracted and found to be under pressure and coercion, the Tribunal had rightly concluded and gave benefit which was due to the assessee. The documents also did not prove that the amount could have been in lakhs as against thousands, which was clearly stated by Ravi Mathur at the time when assessment was being taken up. He thus argued that the order of the Tribunal is well reasoned and is not required to be interfered with.

e. Property at Raja Park : Addition of Rs.1,59,333/- in various hands

8. Another addition was made in reference to a property in Raja Park, as some figures were found noted in a paper and such paper was torn at the time of search. However, the AO could make out that it was noting of entries pertaining to house No. 552/7 at Raja Park, purchased by the family members of the assessee. It was found noticed that three sale-deeds were executed. It was noticed by the AO that though the property was said to have been purchased for a consideration of Rs.10,80,000/-, however, the Sub-Registrar at the time of registration of the document, took into consideration the DLC value of Rs.17,56,500/- and an additional stamp duty was charged by the Sub-Registrar. The AO was of the view that on or about the date when the said property was purchased, another property which was known as "Ashiyana Apartment", D-29, Shanti Path, Patrakar Colony, Jaipur, was valued @ Rs.4600/- per sq.yd., by the assessee's own approved valuer Shri S.K. Gupta vide report dated 1.2.1995, and taking into consideration the fact that the property 552/7, Raja Park, measuring 508.33 sq.yd. the value of the same was shown at Rs.2,125/- per sq.yd., which was almost half the value shown of "Ashiyana Apartment" and within the same locality and near vicinity, and AO noticed that the instant property at Raja Park was also equally, if not better in a posh colony/locality, was not encumbered with any statutory tenancy or otherwise and accordingly the AO was of the view that value was understated considerably.

8.1. The learned counsel for the Revenue further contended that the AO has been fair enough in coming to the aforesaid conclusion as adjacent/similarly situated land of the assessee, assessee's own valuer valued the property @ Rs.4600/- per sq.yd. and even the AO was fair enough to adopt the value @ Rs.4000/- per sq.yd. giving a further reduction of almost 15% to what was valued by the assessee's own valuer. He further contended that even the DLC

value on which the stamp duty was charged by the Sub-Registrar was Rs.17,56,500/-. Therefore, he contended that the apparent purchase consideration at Rs.10,80,000/-, was understated and either the value as assessed by the Sub-Registrar for the purposes of charging of stamp duty which is by and large fair market value or in the alternative the value adopted by the AO giving further reduction be directed to be taken into consideration. He further contended that undisclosed amount was mentioned in the seized paper that is why it was torn by the assessee on the day of search, hiding the same from Revenue.

8.2. Per contra, it has been contended on behalf of the assessee that the property was encumbered and there were several tenants and no amount over and above Rs.10,80,000/-, was paid. Learned counsel for the assessee contended that no material was found as to any payment over and above Rs.10,80,000/- having been paid by the assessee and merely because the Sub-Registrar or/and even the valuer of the assessee may have taken Rs.4600/-, does not become a basis for addition in block assessment and the Tribunal was just and proper in deleting the addition.

f. Purchase & sale of plots : Addition of Rs.2,29,533/- in various hands

9. On the basis of incriminating documents found by the AO on investigation of the seized annexures, namely AB-35, AB-37, AB-41, AB-70, AB-71, AB-75, AB-76, AB-77, AB-73, AB-74, AB-78, AB-80, AB-85, AB-88, AB-89, AB-91, AB-92, AB-93, AB-95, AB-96, AB-97, AB-98, AB-99, AB-100, and AB-101 revealed that the members of assessee's family used to frequently purchase and sell plots of land on regular basis as real estate dealers. It was also found by the AO that the members of the family understated the price at both stages i.e. at the stage of purchase as also at the stage of sale. The AO gave a few instances depicted in the above annexures to bring home about transactions made on regular basis and found that such instances were not disclosed in the regular returns of family members.

9.1. Learned counsel for the Revenue contended that clear instances were given by the AO based on the incriminating documents itself found at the residential and business premises of the assessee and when specific instances were there, the Tribunal in a summary manner ought not to have deleted the addition. How and on what basis Tribunal came to a conclusion that the transactions are recorded, when neither during the course of block assessment nor even before Tribunal it was proved, how the transactions were recorded. He contended that finding by Tribunal is wholly perverse and Tribunal has merely deleted the addition without any basis.

9.2. Per contra, learned counsel for the assessee contended that reasonable and plausible explanation was offered and addition could have been made only if specific instance of undisclosed/unexplained expenditure was found and not otherwise, and thus contended that finding of the Tribunal that in a block



assessment, addition if at all, could be made, if something is found on record unexplained, and nothing more and Tribunal being satisfied rightly deleted the same. He further contended that the Tribunal was satisfied about recording of the transactions and addition could not have been made on assumptions.

10. In support of his submissions, learned counsel for the appellants relied upon judgment of this Court in the case of CIT v. Elegant Homes Pvt. Ltd. [(2003) 259 ITR 232], one of the group entity who was simultaneously searched and whose appeal came up before this Court, and further relied on Bachittar Singh v. CIT & Anr. [(2010) 328 ITR 400 (P&H)], CIT v. Hotel Meriya (Ker) [(2011) 332 ITR 537], and CIT v. O. Abdul Razak (Ker) [(2013) 350 ITR 71].

11. In support of his contentions, learned counsel for the assessee relied upon judgment of Calcutta High Court in CIT v. Ashim Krishna Mondal [(2004) 270 ITR 160].

12. We have heard the rival contentions of the learned counsel for the parties and perused the material and judgments relied upon by the parties.

13. It would be appropriate to quote Section 132(4) of the Act, which reads as under :-

"(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922 ), or under this Act.

[Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922 ), or under this Act.]"

14. Having noticed the arguments of the learned counsel for the parties, we deem it proper at the outset to take into consideration the finding of the Tribunal about retraction/resiling of the statements recorded under Section 132(4) as the Tribunal has primarily come to a finding that retraction is proper. We would also deal with the judgments relied on by the learned counsel which has a bearing on the issues and would then give our own view on questions posed by the Revenue.

15. In our view, the statements recorded under Section 132(4) have great evidentiary value and it cannot be discarded as in the instant case by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we

have noticed that while the statements were recorded at the time of search on 9.11.1995 and onwards but retraction, is almost after an year and that too when the assessment proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes :-

"Regarding the amount of Rs.44.285 lakhs, it is now contended that the statement u/s 132(4) was not correct and these amounts are in thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations". Therefore, what we gather from the Assessment Order and on perusal of the above finding that the retraction was at the stage when the assessment proceedings were being finalised i.e. almost after a gap of more than an year. Such a so-called retraction in our view is no retraction in law and is simply a self-serving statement without any material.

15.1. Thus, in our view, the Tribunal in a summary manner has held that retraction is proper, without going in detail and manner, time of retraction, the addition deleted, is wholly on a perverse finding.

15.2. This Court in *Raj Kumar Sodhani v. The CIT* [DB ITA No. 15/2015, decided on 28.4.2016] has taken this very view that retraction after a sufficient long gap loses its sanctity.

15.3. We may also take into consideration the judgments on this issue.

15.4. The question in the case of *Bachittar Singh v. CIT & Anr.* (supra) of the Punjab & Haryana High Court, arose that a survey took place under Section 133A on 21.3.2003 and the assessee during the course of survey surrendered for

taxation a sum of Rs.19 lakh stating therein that he had purchased shop no.5-A, New Cloth Market, Ambala City, for Rs.24 lakh jointly with his brother and source of investment was not reflected in the books of account. Later the assessee sought to resile from the said statement by taking stand that he had agricultural income to that effect, the investment was from that source, he had done potato business which was evidenced by entries in a diary found during the survey, he also produced other evidence in support of his claim. The AO rejected the stand holding that there was a long gap between the statement made originally on 21.3.2003 and retraction of the said statement on 28.5.2003 (less than three months), and the stand taken was afterthought. It was also claimed that the said statement was not at par with the statement made under Section 132(4) of the Act on oath. However, the Tribunal held that retraction from the statement had to be at the earliest opportunity in the absence of which voluntary statement recorded in the presence of family members was an important material, which could be acted upon. The Punjab & Haryana High Court upheld the finding of the Tribunal, even when there was just a gap of less than 3 months. It would also be appropriate to quote relevant paras :-

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

15.5. In the case of CIT v. Hotel Meriya (supra), the facts before the Kerala High Court were that a search was conducted under Section 132(4) on 28.6.2001, which resulted that there was suppression of sale. Cash book was recorded upto 25.6.2001. Though cash book showed a cash balance of Rs. 21,31,523/- but the physical balance found on spot was only Rs.34,552/-. On interrogation of Managing Partner and the employees revealed that only 80% of the actual sales turnover in respect of liquor was recorded in the cash book. The AO arrived at a conclusion that there was concealment of income. The Court, after analysing the findings and after quoting Section 132(4) of the Act in extenso so also explanation, observed ad infra :-

"..Going by the above provision along with its Explanation we find that the statement of the partner and employees recorded and documents collected are relevant and admissible in respect of all matters for the purpose of any investigation connected with any proceedings under the Income-tax Act. Hence, we are of the opinion that the statements so recorded and documents collected by the Assessing Officer cannot be brushed aside as done by the Appellate

Tribunal stating that it is having only very limited application. We answer the question in favour of the appellant.

.. None of the provisions under Chapter XIV-B mandates that for making block assessment there shall be evidence regarding the concealment of income for every year in the block period. It cannot be expected that the assessee would retain documents regarding the concealment of income. If documents for every concealment are insisted to be searched, practically the provision for block assessment would be defeated. We cannot shut our eyes to the legislative intent. Here, what was disclosed that for sale, no bills are issued, but paper slips are issued with the price. Though carbon copy is retained it did not contain the sale price. Sale slips are destroyed then and there. Cash books are maintained by recording the 80 per cent of the price of liquor at a later date. When such practices are adopted, nobody can expect evidence for every year in a block period. What is possible is only to have a best judgment assessment on the basis of the evidence collected during search. The Assessing Officer is authorised and empowered to make block assessment in a judicious manner on the basis of the materials disclosed during the search under section 132 of the Income-tax Act."

15.6. In the case of CIT v. O. Abdul Razak (supra), on the basis of seized documents recovered during search, addition was made with respect to purchase of lands on the strength of the admission made by the assessee regarding the actual amount paid as disclosed voluntarily in his sworn statement and the amounts disclosed in the cash flow statement corroborated by the recovery and seizure of title deeds. Personal expenses were estimated on the basis of the admission made again in the statement under Section 132(4) of the Act. Though the AO made addition, the Tribunal deleted the addition on the basis that apart from the statements, there was no other material and there was a retraction made by the assessee. However, the High Court taking into consideration that the statements recorded under Section 132(4) of the Act have a strong evidentiary value, observed *ad infra* :-

"12. The Tribunal's finding that the statement recorded under section 132(4) has no evidentiary value, hence cannot be sustained. The reliance placed by the Tribunal on the retraction statement is totally untenable in so far as any statement recorded under section 132(4), statutorily deemed to have evidentiary value; cannot be retracted at the mere will of the party. A statement made under oath deemed and permitted to be used in evidence, by express statutory provision, has to be taken as true unless there is contra evidence to dispel such assumption. A self-serving retraction, without anything more cannot dispel the statutory presumption. The admission made by the assessee before the Assessing Officer corroborated by the title deeds seized in search absolved the Department from discharging any burden regarding the additions made on the strength of such admission. Admission as has been often held is the best evidence on a point in issue and though not conclusive is decisive of the matter unless successfully withdrawn or proved erroneous. Any retraction of a clear

admission made has to be on the ground of it being either erroneous or factually incorrect or one made under threat or coercion. In the instant case, the first appellate authority has clearly found that the plea of the assessee that the admissions were made under threat and coercion is clearly unfounded. The Tribunal also has categorically refused to consider the issue of threat and coercion. In such circumstances, the Tribunal ought to have seen if the assessee has established that the admissions made were erroneous and factually incorrect. It was well within the capacity of the assessee to have shown before the fact finding authorities either at the original or at the appellate stage that the assessee had only paid amounts as disclosed in the documents for the various property transactions entered into by him. The assessee having not proved any threat or coercion and further having failed to prove that the amounts shown in the documents were the only payments made, the Tribunal was not right in casting a burden on the Department. The assessee, in the instant case, has failed to successfully disprove the admissions made by him and the admissions made in a statement under section 132(4), by the clear provisions in the statute has to be considered to have evidentiary value. In the circumstances, we proceed to answer the first question of law in favour of the Revenue and against the assessee.

13. The sustainability of the additions made by the Assessing Officer with respect to undisclosed income vis-a-vis the property transactions as also that made on account of personal expenditure has to be decided with reference to the answer in the first question, since both additions are on account of admissions made in section 132(4) statement corroborated by documents recovered in search and the attendant circumstances. The Tribunal placed much reliance on the retraction and even went to the extent of stating that it was the Department's burden to prove the retraction to be untrue by bringing in any corroborative, evidence. The Hon'ble Supreme Court has considered the question of burden of proof in the decision reported in CIT v. Best and Co. P. Ltd. (1966) 60 ITR 11 (SC); AIR 1966 SC 1325.

14. In the instant case, on the clear admission of the assessee corroborated by the documents the burden on the Department ceases to exist. On the retraction being filed by the assessee, there is a burden cast on the assessee to prove the retraction or rather disprove the admissions made. It is not a shifting of the onus but a new burden cast on the assessee to disprove the earlier admissions having evidentiary value. As noticed earlier, retraction made by the assessee can only be considered as a self-serving after thought and no reliance can be placed on the same to disbelieve the clear admissions made in the statement recorded under section 132(4). Deletion of the additions vis-a-vis the property transactions on the reasoning that the Department cannot do so on the basis of the admission made under section 132(4) and on the premise that the Department ought to have proved retraction to be untrue cannot be countenanced in view of the specific words employed in section 132(4)."

15.7. The High Court of Madras in the case of K. Sakthivel v. Assistant Commissioner of Income Tax (2012) 252 CTR (Mad) 531, had also an occasion to consider an identical situation of statements having been recorded under Section 132(4) of the Act, where retraction was made during the course of the assessment proceedings and much later than the statements had been recorded, the Court held thus :-

"18. As regards the contention of the assessee that the statement recorded was in violation of provisions of CPC and Cr.P.C., we do not think that the said contention would be well received by this Court. The conduct of the assessee has to be seen herein. The assessee made a statement in the enquiry conducted by the department as regards the parting of a sum over and above what was recorded in the sale deed. A reading of the questions and answers which are extracted in the preceding para shows that the assessee was well aware of the contents of the statement made by him. The statement was recorded in the year 1999 and the assessee thereafter too participated in the enquiry until 2003 and he had no doubt about the truthfulness of the statement made. However, for some reason best known to him, the assessee in the letter on 26.6.2003, took a plea that the statement were not recorded in the presence of Dy. Director of IT (Inv.) and statements were not given voluntarily. It may be seen that the assessee is stated to have written letters on 12th June, 2003 and 26th June, 2003 and it is relevant to point out that the so-called retraction came to be made only in the letter dated 26th June, 2003, which clearly shows that it is merely an afterthought to say that he made the statement under threat or coercion. Consequently, this ground fails."

15.8. The Apex Court in the case of Surjeet Singh Chhabra v. Union of India & Others AIR 1977 SC 2560, which was a case of Customs Act, where even the retraction was made within six days from the confession, held as under :-

"3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though

retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner."

15.9. Learned counsel for the appellant relied on judgment of this Court in the case of CIT v. Elegant Homes Pvt. Ltd. (supra) which is a sister concern, where family members of the assessee were Directors and where also simultaneous search was carried by the Revenue. Ravi Mathur, one of the appellants herein and Director of Elegant Homes Pvt. Ltd., whose statements have been recorded in the search, appeared before the AO and his statements were recorded in furtherance of the search and the AO not being satisfied, made an addition of Rs.41,400/- on account of the fact that amount of Rs.41,400/- was found credited in the name of various parties and the parties were not produced, though the Tribunal deleted the addition on the ground that as the entries are shown in the regular cash books, therefore, it cannot be said that it is income from undisclosed sources. This Court taking into consideration the provisions of Chapter XIV-B of the Act, held ad infra :-

"The Tribunal has deleted the addition on the ground that as the entries are shown in the regular cash books, therefore, it cannot be said that the income is undisclosed income. In fact, in the case in hand the assessee had not filed the return till the date of search and even after search the assessee had shown the income as "nil" for the assessment year 1993-94. When the assessee was asked to prove the genuineness of the cash credit, it had failed to discharge its burden. When the assessee had filed the return in response to the notice after search, the income which had not been taxed or shown can be assessed as "undisclosed income" of the assessee.

Admittedly, Rs.41,400 had never been offered for tax and it was never shown as income of the assessee, the entries of these deposits were found in the regular cash books maintained by the assessee. When the entries were found in the books of the assessee, the assessee could not explain the genuineness of the deposits, this amount was never disclosed, it is an undisclosed income of the assessee. The Tribunal has committed an error in holding that as the entries were found in the regular books of account, therefore, it cannot be treated as undisclosed income.

The view is contrary to the provisions of Chapter XIV-B of the Income Tax Act, 1961. In Chapter XIV-B of the Act, special provisions for assessment in search cases have been given and if any amount of income has not been taxed and during the course of search, if some "undisclosed" income is found on the basis of material seized, that should be treated as undisclosed income as per the scheme of special assessment under the aforesaid Chapter."

15.10. This Court has gone to the extent that even if the entries are recorded in the regular books of account, the assessee has to prove the genuineness of the deposits and further burden has to be discharged by the assessee. The said judgment of this Court has admittedly become final and is even otherwise

binding in the instant appeals and is binding on this Court.

16. In the light of the above, we would now give our findings :-

#### Ashiyana Apartments & Capital Gain

16.1. During the course of hearing, neither the Valuation Report, nor any other material was brought on record by either side of the parties. Therefore, though almost 14 years have passed, but taking into consideration the fact that adequate material is not there for us to decide the issue or to answer the question aforesaid, we are constrained to remand the matter back to the Tribunal to redecide this issue afresh, as on the one hand the claim of Revenue is that the valuation by the District Valuation Officer was made as on "November 1995" though Valuation Report is dated March 1996 whereas the claim of the assessee is that the valuation is as on the day of inspection i.e. in March 1996. These are contradictory claims and the Tribunal has decided the issues without analysing the Valuation Report or any other material. Needless to mention, the Tribunal would now consider material on record and statements of Ravi Mathur admitting surrender and the Valuation Report, and re-decide this ground, obviously after hearing both the sides, in accordance with law.

#### Capital Gains

16.2. Insofar as the issue about capital gains is concerned, we notice that the Tribunal has not discussed the issue in a proper manner. The fact remains that the property bearing B-29 Shanti Path was purchased by R.B. Mathur from one Vishwanath Kale for Rs.1,52,000/-. Though the sale deed does not indicate that the property was purchased by R.B. Mathur in the representative capacity of HUF. While he applied for providing term loan to the institutions, the same was depicted as owner being R.B. Mathur and even the material before the AO reflected the said property as an individual. It appears that the possession of the property was given to M/s. DHD&C, a sister concern or a firm floated by the family members, and the same was valued at Rs.45 lakh and a formal agreement was made on 24.7.1994 and possession handed over. While the AO, after cost inflation index held capital gain to the tune of Rs.40,51,153/- in the hand of R.B. Mathur on substantive basis and out of abundant pre-caution since it was claimed to be belonging to Ravi Mathur, Smt. Prem Kumari Mathur and Anuj Mathur on protective basis assessed in their respective hands to the extent of 1/3 each. However, Tribunal has in a cursory manner deleted the addition holding that the property was part of HUF of R.B. Mathur and though there was an agreement with Smt. Prem Kumari Mathur of DHD&C but no capital gain has been charged as property was not sold and whenever the same shall be sold, the property will invite capital gain. We fail to understand the finding of the Tribunal in this regard. It was argued that the Tribunal has gone wrong in proceeding to consider Section 45(2) of the Act when the property was taken in stock in trade by the owner himself and argued that in the instant case the provisions of Section 45(3) of the Act shall apply where the capital assets have been



transferred by a person to a firm or body of individuals or association of persons by way of capital contribution and in the instant case the valuation of the property is to be taken on the date of such transfer. We do find mention of agreement of sale in the instant case on 24.7.1994 for the apparent consideration of Rs.45 lakh and possession is also directed to be transferred in the assessment order. In our view, capital gain liability does arise once there is an agreement depicting certain amount and possession having been transferred and it is immaterial if the amount is not received. However, since the facts are not emerging as they should appear in the order of the Tribunal, while we hold that capital gain liability does arise, in view of what we have narrated hereinbefore of possession having been delivered and agreement having been executed, but we restore and set aside this issue to the Tribunal to bring out the facts correctly on record and then to redetermine the issue afresh. The Tribunal will also go into the factum whether said property was of R.B. Mathur individual or of so-called HUF consisting of Ravi Mathur, Smt. Prem Kumari Mathur and Anuj Mathur, taking into consideration the overall material on record, including the agreement and value arrived at by the parties at Rs.45 lakh. Thus, this issue is restored to the Tribunal for deciding afresh in accordance with law.

Jewellery found : Addition of Rs.93,575/-

16.3. We have taken into consideration the rival arguments advanced. In our view, the Tribunal has rightly deleted the said addition of Jewellery taking into consideration that Smt. Prem Kumari Mathur was a Wealth Tax assessee and taking into consideration other family members in the group of assesseees which include females. We may also observe that on account of customs and traditions prevalent in India, whenever marriage takes place, females do get Gold Ornaments and Jewellery at the time of marriage or /and "Vidai" from the parental home and so also gets the same when bride arrives at the matrimonial home and this fact cannot be brushed aside. We may also add that the Central Board of Direct Taxes keeping in view the customs and traditions prevailing released Guidelines/Instruction bearing no.1916 dated 11.5.1994 where the CBDT has taken into consideration the fact that Jewellery to the extent of 500 gram per married lady, 250 gram per unmarried lady and 100 gram per male member need not be seized at the time of search but in our considered opinion the same is not restrictive for seizure purposes but can be held to be a reasonable explanation even for the purposes of assessment and thus we hold the jewellery found was reasonable and the Tribunal is justified in deleting the addition and this question is answered against the Revenue and in favour of the assessee.

Medical expenses : Addition of Rs.99,880/- in four hands

16.4. Taking into consideration the facts, we are not persuaded with the way the claim has been put forth that all the family members of the status of the family to which it belongs, could practically stay in a single room apartment and on top of it, could have carried raw food like flour, oil, ghee etc. from India for cooking

by the family members in London, though the Tribunal observes in para 17 "In our considered view assessee and his family enjoying a very high status and they are the persons of very good repute. Therefore, they will not ask for any help or assistance from friends, relatives and Jaycees members." In our view, this finding strengthens the claim of the Revenue that the assessee would not carry raw food like flour, oil, ghee etc., to London and cook themselves. Though this Court need not go into guesswork or estimation, but the manner in which huge foreign exchange was purchased and there is no proper explanation offered before the AO which could have been accepted. However, the Tribunal in a summary manner, without any basis, reduced the expenditure by Rs.1,50,000/-. Neither the assessee placed any material on record nor the Tribunal has given any basis for reducing the expenditure by Rs.1,50,000/-. In our view, when material has been found that six members had gone to London accompanying Smt. Prem Kumari Mathur for her medical treatment. The claim of the assessee that on or before the date of departure, certain petty gifts were received from friends and relatives, has been discarded as none would give petty gifts for medical expenses at-least to this class of family. Once some material is there of purchase of unaccounted foreign exchange, that too, in a large quantity, unaccounted purchase of air tickets by members for going abroad and staying in London for 16 days, then in our view connected day to day expenditure can very well be considered even in a block assessment to come to a proper, logical and plausible conclusion. None would believe that family members of the status of the assessee would even carry raw food like flour, oil, ghee etc. The claim of the learned counsel for assessee that no addition over and above the material found is required to be made, to a certain extent we may agree but on the material found, to go to a logical conclusion something more is required to be gone into by the AO. Connected expenditure on day to day needs in a foreign country, travel, boarding, lodging, are integral and related part of a foreign travel and would certainly be required to be considered. The AO in our view is well within its domain to take into consideration the unaccounted foreign exchange/air tickets and related expenditure is required to be taken into consideration. Therefore, in our view the Tribunal is not justified in deleting the addition of Rs.1,50,000/- and, we reverse the finding of the Tribunal, thus this question is answered against the assessee and in favour of Revenue.

Seized documents : Addition of Rs.44,28,500/-

16.5. We are not satisfied with the way the Tribunal has deleted the said addition. Admittedly, the documents were found in the custody, control and possession of the assessee, who had also during the course of search, given statement under Section 132(4) of the Act and it is not the case of the assessee that immediately after the search, the said statements were retracted. During the course of hearing, we inquired from the learned counsel for the assessee as to in what manner retraction was made, but he was unable to bring on record the manner in which retraction, if any, was made before the AO. We have already reproduced the relevant para of learned AO in para 15, where the learned AO

observes that retraction is now attempted to be made, and thus we have discarded the theory of retraction.

16.6. Since the learned counsel for the assessee has not placed any material or even a letter, if any, of coercion/pressure or/and the manner of retraction, we fail to understand as to how the Tribunal came to the aforesaid conclusion in deleting the addition. In our view, the deletion of addition merely because the statements on oath under Section 132(4) were retracted at the time of assessment, is perverse.

16.7. It would also be appropriate to quote para 22 of the impugned order :-

"22. We have gone through the captioned papers in original, considered the rival submissions and the statements. We are in agreement with the Id. counsel that the presumption should be applied only where specific evidence is not available as the presumption cannot over rule the specific evidence. On the basis of figurewise comparison of Annexure A-4 with Annexure A-2 which is admittedly in full rupees, it is established beyond doubt that amounts mentioned in Annexure A-4 are in thousand of rupees and not lacs of rupees. We, are, therefore, of the opinion that the amount of consideration is only of Rs.4,98,050/- and not Rs.44,28,500/-. Keeping in view this fact, we hold that the addition of Rs.44,28,500/- is unjustified and, therefore, the same is deleted. So far as the amount of Rs.4,99,050/- is concerned, the same will be discussed and decided, but on a latter stage in this order itself."

16.8. On perusal of the above finding of the Tribunal, in our view it is wholly inappropriate, cryptic, in a summary manner and in a cursory manner and without mentioning even about the statements, if any, recorded or/and retraction, if any.

16.9. We have taken note of the findings of AO vis-a-vis the Tribunal. While the Tribunal has, as aforesaid, in a summary manner took into consideration, deletion of the addition on the premise of retraction of the statements but the facts as emerge clearly establish that even the addition was even otherwise sustainable particularly in view of the fact that the AO took into consideration the various incriminating documents referred as Annexures A-1, A-2 and A-4 and the statements recorded under Section 132(4) of the Act. It transpires that according to Annexure A-1 the assessee booked 15 flats from 14 persons for an amount of Rs.170.15 lakh and received Rs.38.51 lakh through cheques and Rs.4,98,050/- by cash. The assessee further booked 2 more flats from 2 more persons. Thus, from 16 persons and for 17 flats booking amount to the extent of Rs.4.9805/- lakh was received in cash as reflected in the entries of one torn paper as detailed in the seized documents. Annexure A-4 contains entries for total cash receivable of Rs.44.285 lakh which was explained in detail with illustrations, by the assessee in the preliminary statement as coded in lakhs. These were explained to be constituted as partly having been received along with the advance at the time of booking of the flats and balance was to be received subsequently towards full

consideration of the property under construction.

16.10. The AO on page 21, has explained the manner in which the statements were given by Ravi Mathur, and it would be appropriate to quote few lines of the Assessment Order which reads ad infra :-

"...in the preliminary statement (answer to Q. No. 15 page 13) as coded in lakhs; these were explained (refer final statement Q. No. 1) to be constituted as partly received along with the advance at the time of booking of the flats and the balance was to be received subsequently as towards full consideration of the property under construction. This was done by the assessee in the final statement after considerable thought, and after referring to the various documents such as the Valuers Report which had been drawn at the time the project was still at a concept stage, i.e. it must have formed part of the project report.." Thus, the AO has found that Ravi Mathur who himself is a technical person, a Civil Engineer and one of the big builders, after analysing the various documents, agreed to surrender by observing that the money written was in lakhs.

16.11. However, the Tribunal while deciding the issue has proceeded to hold that the entries were not in lakhs but in thousands merely on the so-called retraction made at the final stage of assessment and we are unable to uphold the finding of the Tribunal. The Tribunal has not assigned any reason for taking a different view from the statements recorded under Section 132(4) of the Act. The burden which lay on the assessee after giving statements on oath, has not been discharged as the onus and burden was on the assessee to discharge, which in our view he has utterly failed.

16.12. For the reasons assigned earlier, the retraction has been held to be improper and could not have been taken into consideration by the Tribunal. The finding of the Tribunal that the coded figures are not based upon any material but on the basis of submissions of the assessee, is also contrary to the material on record. The AO, while making additions, not only on the statements but has justified the said additions by tallying same with various incriminating documents found at the time of search. We agree with the argument of the learned counsel for the Revenue that the Tribunal has utterly failed to consider the material available before it in the form of loose slips found from the premises of the assessee, statement of the assessee and the surrender made during the course of search, and under such circumstances, order of the Tribunal insofar as the deletion of addition of Rs.44,28,500/- is concerned, is not sustainable and we uphold the finding of the AO and sustain the addition of Rs.44,28,500/- and allow this ground of the appeal of the Revenue.

Property at Raja Park :Addition of Rs.1,59,333/- in various hands

16.13. We have taken into consideration the arguments of the learned counsel for the parties and in our view, this also needs to be redecided by the Tribunal as adequate material has not been brought on record by either sides. The

observation of the Tribunal that the addition is beyond the scope of block assessment is not approved in view of the judgment of this Court in assessee's own case (Elegant Homes Pvt. Ltd) where this Court has held that even if recorded, then too AO can very well call explanation for his satisfaction. The Tribunal would also go through the papers (incriminating document) which was torn on the day of search relating to this property. Thus, Tribunal would redecide this issue afresh in accordance with law.

Purchase & sale of plots : Addition of Rs.2,29,533/- in various hands

16.14. We have taken note of the submissions. In our view, the AO gave several instances and referred to many annexures which have been taken into consideration by the AO and the AO pin-pointedly observed about many agreements/notings/papers depicting purchase/sale of many plots in question and the AO had clearly pointed out that they are neither recorded nor disclosed and are undisclosed/unexplained investment/ expenditure and, therefore, the addition of Rs.2,29,533/- in the hands of various assesseees was made. We notice from the order of the Tribunal, which is reproduced hereunder :-

"30. We have gone through the facts of the case and rival submissions. We are in agreement with the argument that the generalisation cannot be permitted on the basis of one small instance particularly when it is a case of block assessment. The study of the instances quoted revealed that in one case there is an evidence of investing Rs.50,000/- over and above the recorded consideration. Though all the transactions including this have been disclosed in regular returns but so far as Rs.50,000/- is concerned, the addition is liable to be made in the hands of Shrimati Prem Kumari Mathur. In all other transactions of purchase and sale there is no evidence of passing of money over and above the consideration recorded in regular course. The consistent view of the Bench has been that generalisation cannot be permitted in absence of evidence, whatsoever strong probability there may be, an addition is not justified in a search case when no evidence whatsoever is being found to support the addition. We have also gone through the case laws cited by the parties. We find that the assessee deserves relief. Although Rs.50,000/- is sustainable in the hands of Smt. Prem Kumari Mathur, rest of the additions in all the family members is liable to be deleted. So far as the assessee is concerned, the addition of Rs.2,29,533/- is hereby deleted."

16.15. On perusal of the above, in our view, the Tribunal has merely accepted the version of the assessee particularly when the AO pointed out several instances of many agreements and the AO came to the conclusion that the assessee failed to lead evidence as to how these were recorded in the books of account. We find that the finding of the Tribunal is in a summary manner, cryptic and in a cursory manner, which cannot be accepted on the face of it. On what basis Tribunal came to a finding that all the transactions are recorded in the books except Rs.50,000/- has not been spelt out. The Tribunal being a final fact finding authority, it was not expected that without going in the merits the Tribunal would give such a finding. Though the Tribunal sustained an addition of

Rs.50,000/- on the basis of one instance, but for the other instances simply observed that "an addition is not justified in a search case when no evidence whatsoever is being found to support the addition", when specific instances have been quoted by the AO. Therefore, we do not approve the manner in which the addition has been deleted, however, we also are unable to give further finding or decision on this issue and we are constrained to remand the matter back to the Tribunal to revisit/redecide this issue afresh in the light of the material pinpointedly pointed out by the AO and in case the assessee is able to prove that the various instances quoted by the learned AO, are duly explained/found reference in the recorded books of account, then the Tribunal will pass a speaking order in accordance with law and taking into consideration the judgments referred to hereinbefore.

16.16. We have gone through the only judgment relied by learned counsel for the assessee in the case of CIT v. Ashim Krishna Mondal (supra) which in our view is distinguishable and not applicable on 40 facts.

#### Conclusion

17. In view of what we have analysed hereinbefore, the findings of the Tribunal that the AO cannot travel beyond the material found during the course of search, in our view, is not proper. To come to a reasonable and plausible conclusion in case the seized papers do not show a correct picture, the AO can certainly travel beyond even the seized papers to come to a logical conclusion and the AO can even examine the entries recorded in the books of account and such entries or other material have to be taken note of by the AO and the assessee has to offer a satisfactory explanation even of the recorded transactions and the genuineness of the same is also required to be proved.

18. For the reasons aforesaid :-

i) the additions relating to :

(a) Ashiyana Apartments of Rs.31,00,000/- and issue relating to Capital Gain of Rs.13,50,384/- in 3 hands;

(b) Property at Raja Park of Rs.1,59,333/-; and

(c) Purchase & sale of plots of Rs.2,29,533/- in each hand, of the instant appeals are restored to the Tribunal to redecide the issues after giving adequate opportunity of hearing to both the sides and the Tribunal is directed to pass speaking order and redecide the three issues in accordance with law within a period of four months from the date certified copy of this order is placed before it. Let the parties may provide copy of this judgment to the Tribunal and let the Registry send a copy of this order separately to the Tribunal and the Tribunal would thereafter proceed ahead to redecide the issues.

ii) the finding of the Tribunal insofar as deleting the addition of Rs.93,575/- relating to Gold Ornaments and Jewellery, is found in accordance with law and

we uphold the finding of the Tribunal in this regard and reject the claim of the Revenue;

iii) we reverse the finding of the Tribunal with reference to Medical expenses, addition whereof was made of Rs.99,880/- each in four cases;

iv) we reverse the finding of the Tribunal insofar as addition of Rs.44,28,500/- is concerned and uphold the finding of AO;