

(2018) 08 RAJ CK 0268
In the Rajasthan High Court
Case No : Income Tax Appeal No.140 of 2018

**M/s Bannalal Jat Constructions Pvt. Ltd @APPELLANT@Hash cit Central
Circle-2 Ajmer**

Date of Decision : 31-08-2018

Acts Referred:

Income Tax Act, 1961 — Section 131, 132(4), 132(4A)(i), 133A, 260A, 292C

Citation : (2018) 08 RAJ CK 0268

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Prakul Khurana, Sanjay Jhanwar, Siddharth Bapna, Anil Mehta

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J

This appeal under Section 260A of the Income Tax Act, 1961, which seeks to challenge the order dated 29.12.2017 of the Income Tax Appellate

Tribunal, Jaipur bench, Jaipur, was admitted to hearing on following substantial question of law:-

â??Whether under the facts and circumstances of the case and in law the Id. ITAT was justified in upholding the additions made by the Assessing

Officer merely on the basis of statements recorded u/S 132(4) of the Income Tax Act, 1961 ignoring the presumption laid down u/S 292C of the

Income tax Act, 1961 and the evidences brought on record by the Appellant?

Briefly stated, the facts of the case are that a search was conducted at the business/residential premises of Shri Banna Lal Jat, the Director of

appellant company - M/s. Bannalal Jat Constructions Private Limited, on 10.10.2014, in which he was also operating his proprietary concern in the

name of M/s. Bannalal Jat Contractor. During the search proceedings at residential premises of Shri Bannalal Jat, a cash worth of Rs.1,21,43,210/-

was found and inventorised as per Annexure CF of Panchnama dated 11.10.2014. He, in his statement, recorded under Section 132(4) of the Income Tax Act, 1961 (for short "the IT Act") during the course of search and even subsequent statement recorded under Section 131 of the IT Act,

admitted the same as undisclosed income of the appellant-company. However, subsequently while filing the return of income for the relevant

assessment year, the appellant-company did not offer the said undisclosed income to tax. The assessing officer therefore served upon the appellant-

company a show cause notice as to why it has failed to disclose the said income and also to get the cash verified from the regular books of accounts.

The appellant-company in response to the show cause notice, submitted written reply on 02.12.2016 contending that withdrawals were made from the

account with Bank of Baroda and State Bank of Bikaner and Jaipur between the period from 20.09.2014 to 30.09.2014, which was kept at the

residence and out of that amount, he kept a sum of Rs.70 lakh in the morning in the car for making payment to labour, tractor, material etc. Thus, in

the survey the appellantcompany explained the amount of Rs.98.92 lakh (70+19.92+9) pertained to his business. The extract from the account

maintained in the computer books for the financial year 2014-15 was submitted. It was also stated that the print out of incomplete books of account in

computer was taken by the ADI (Investigation) team, according to which cash balance of Rs.4,21,691/- only was unaccounted in the balance-sheet of

M/s. Bannalal Jat Construction Private Limited.

The survey was converted into search and the statement of the assessee under Section 132(4) was recorded on 10.10.2014 at 10:15 PM and

thereafter search was concluded on 11.10.2014 in the morning and the assessee stated that such cash belonged to the appellant-company as

undisclosed income. The assessee thereafter maintained that the subsequent statement of assessee under Section 132(4), whereby cash was

surrendered was incorrect and obtained under pressure. In case, this cash balance seized from Shri Bannalal Jat belonged to his proprietary concern

and cash balance of the company was only Rs.4,21,691/- on the date of survey/ search. The assessing officer rejected the statement of the assessee

observing that on examination of books of account it was found that at several places there were instances of unaccounted incomes/profit, some of

which were even surrendered by the assessee during the post search proceedings. In the statement of Shri Bannalal Jat recorded on 10.10.2014, he in reply to question no.6 admitted that the books of account of the appellant-company has been written up to 09.10.2014 but expenses for last 3-4 months were yet to be entered. Shri Bannalal Jat, in reply to question no.8, admitted that in his business of civil construction, he inflated various expenditure and income so generated by inflating the expenditure is in form of cash which was found at his residence and the same was not recorded in his books of accounts and he surrendered the cash so found amounting to Rs.1,21,43,210/-. During the course of post search proceedings and after three months of search action, Shri Bannalal Jat, vide statement recorded under Section 131 on 04.12.2014 again confirmed the admission of undisclosed cash of Rs.1,21,43,210/- as has already been offered under Section 132(4) of the IT Act. In view thereof, the Assessing Officer made an addition of Rs.1,21,43,210/- as unaccounted income of the appellant-company. The CIT (Appeals) concurred with the findings recorded by the Assessing Officer and dismissed the appeal filed by the appellant-company. The second appeal filed by the appellant-company was again dismissed by the Income Tax appellate Tribunal (for short, "the ITAT") vide impugned judgment dated 29.12.2017.

Mr. Prakul Khurana, learned counsel for the appellant company, has submitted that the appellant-company on updating the books of accounts of M/s. Bannalal Jat (Proprietorship concern of Shri Bannalal Jat), which was stated to be incomplete during the course of statement recorded under Section 132(4) of the IT Act, it was reconciled and it became evident that the aforesaid cash balance of Rs.1,21,41,528/- was available in the books of accounts of M/s. Bannalal Jat and that the cash found belonged to the said proprietorship concern and not the appellant-company. Accordingly, this amount was not offered in the return of income filed by the appellant-company thereby retracting the statement of the company recorded under Section 132(4) of the IT Act. There is thus no dispute of whatsoever kind regarding the form and manner of retraction. Reference is made to Instruction No.286/2/2003-IT (INV-II) dated 10.03.2003 to show that nondisclosure in the return of income is considered as retraction by the department. Reliance is placed on a judgment of the High Court of Madras in M.

Narayanan and Bros. Vs. Assistant Commissioner of Income-tax, Special Investigation Circle, Salem" (2011) 13 Taxmann.com 49 (Madras), wherein retraction made during the course of assessment proceedings was entertained and relief was granted on merits of the explanation.

It is argued that it was not a case of simple retraction but backed by books of accounts of M/s. Bannalal Jat, wherein no discrepancy was found by the Assessing Officer and cash balance as on 31.03.2015 has been accepted by the department coupled with the fact that in the initial statement recorded under Section 133A of the IT Act during the course of survey Shri Bannalal Jat himself stated the cash found was out of the withdrawals from his bank account. The appellant-company has clarified the reason for the delay in completion of books of M/s. Bannalal Jat by plausible reasoning duly explained in its reply dated 02.12.2016 for not including the cash found of Rs.1,21,41,528/- in the return. The authorities below have wrongly disbelieved the explanation of the appellant duly supported by other corroborating evidence. The ITAT has rejected all the arguments without objectively dealing with the same being unduly influenced by the notion that the appellant cannot be allowed to retract from the statement at this stage.

The findings of the ITAT that the assessee carries business activities of the appellant-company from both residence and official premises, are not based on any material and are perverse. Further, the argument of the assessee relating to statutory presumption under Section 292C of the IT Act was also based on the "panchnama" drawn of cash seized in the hands of Shri Bannalal Jat and statement recorded under Section 133A of the IT Act and not entirely on the factum of residence of Shri Bannalal Jat, where the amount was seized. The ITAT has not dealt with the contentions raised neutrally and without being influenced by the fact of admission recorded under Section 132(4) of the IT Act.

Shri Prakul Khurana, learned counsel for the appellant, argued that reliance placed by the ITAT on the judgment of this Court in CIT, Bikaner Vs. Ravi Mathur" 2017 (1) WLC (Raj.) 387, is wholly misconceived as the aforesaid judgment is distinguishable on facts. Learned counsel submitted that the same Bench of the ITAT constituting of same members in the case titled Assistant Commissioner Income Tax, Central Circle, Ajmer Vs. Shri Devendra Kumar Choudhary (ITA 828/JP/16), has taken a dramatically opposite

view. Therein initially jewellery worth Rs.30 lakh was surrendered as undisclosed income in the statement recorded under Section 132(4) of the IT Act but subsequently the same was not offered for taxation while filing the return of income after a gap of 357 days. The ITAT despite taking note of the judgment of this Court in Ravi Mathur, supra, upheld the deletion of the addition accepting the explanation by relying on CBDT Instruction No.286/2003-IT/INV dated 10.03.2003, which prohibits the department from obtaining confessions as to undisclosed income during the course of search and seizure and survey operations. It is argued that this Court in Ravi Mathur, supra, had no occasion to consider the CBDT Instruction. Learned counsel submitted that no material has been placed by the Department in rebuttal of the appellant that the cash found belonged to Shri Bannalal Jat. The authorities being the fact finding authorities are obligated to objectively consider the explanation of the assessee on merits and evaluate supporting material. Reliance is also placed on the judgment of the Supreme Court in Pullangode Rubber Produce Company Ltd. Vs. State of Kerala and Another â?" (1973) 91 ITR 0018 (SC).

It is argued that Section 132(4A)(i) and Section 292C of the IT Act also provide statutory presumption that when a document/money is found in the possession or control of any person in the course of search, the same is considered to belong to the same person. The onus is on the department to rebut the presumption by leading cogent evidence. Reliance is placed on the judgment of the Delhi High Court in Pepsi Food (P) Ltd. Vs. ACIT â?" (2014) 52 Taxmann.com 220 (Delhi). The additions cannot be solely based on the statements, which are subsequently retracted even if belatedly, as held by the Delhi High Court in CIT Vs. Sunil Aggarwal â?" (2015) 64 taxmann.com 107 (Delhi).

It is argued that it is a settled position of law that if in the facts and circumstances of the case and evidence, if two views are possible, the view in favour of the assessee should be preferred. Reliance in support of this argument is placed on the judgment of this Court in Escorts Heart Institute and Research Centre Limited Vs. DCIT (TDS) JP â?" (2017) 87 taxmann.com 184 Rajasthan.

Per contra, Mr. Siddharth Bapna, learned counsel for the respondent-revenue, submitted that Shri Bannalal Jat, the Director of the appellant-assessee

produced the books of accounts and disclosed several instance of unaccounted income/profit. Although, in the initial statement, Shri Bannalal Jat, the

Director of the appellant-company, admitted that the cash belonged to him and the source of such cash was withdrawal from the bank account

between 20.09.2014 to 30.09.2014, however, the same was not offered to tax. The subsequently produced copy of cashbook of M/s. Bannalal Jat

Contractor, a proprietorship concern of Shri Bannalal Jat, incorporated number of pending entries, which itself proves that the cash-book and books of

accounts of Shri Bannalal Jat were incomplete on the date of search. The correctness and completeness of such cash-book was not accepted by the

assessing officer. There was a time gap of more than 10-15 days from the respective dates of withdrawal and the date of search, which defies the

argument of the assessee. Even if the "panchnama" of the cash was found and seized in the name of Shri Bannalal Jat, the same was

voluntarily admitted in his statement under Section 132(4) as belonging to the appellant-company. Subsequently, again on 04.12.2014 in his statement

recorded under Section 131 of the IT Act, Shri Bannalal Jat admitted surrender of undisclosed income of the M/s. Bannalal Jat Construction Pvt. Ltd.

Learned counsel for the respondent-revenue, relying on the judgment of this court in Ravi Mathur, supra, argued that the statements recorded under

Section 132(4) of the IT Act have great evidentiary value and cannot be discarded in a summary manner by simply observing that the assessee has

retracted the same. The retraction has to be genuinely made within reasonable time and immediately after such a statement has been recorded either

by filing a complaint to the superior authority or otherwise brought to the notice of the higher officials, duly sworn affidavit or statements supported by

convincing evidence. Nothing has been done by the assessing officer in the present case. Learned counsel, in support of his argument, has also relied

on the judgments in Rameshchandra and Company Vs. Commissioner of Income-Tax " 1987 SCC OnLine Bom 596 of High Court of Bombay at

Nagpur, Dr. S.C. Gupta Vs. Commissioner of Income-Tax " (2001) 248 ITR 782 of the Allahabad High Court, Bachittar Singh Vs. Commissioner

of Income-Tax and Another " (2010) 328 ITR 400 of the Punjab and Haryana High Court, Commissioner of Income Tax Vs. M/s. Hotel Meriya

" (2011) 332 ITR 537 of the Kerala High Court, Commissioner of Income-Tax Vs. Lekh Raj Dhunna " (2012) 344 ITR 352 of the Punjab and

Haryana High Court, The Commissioner of Income Tax Vs. O. Abdul Razak &" (2013) 350 ITR 71 of the High Court of Kerala, and ACTO, Anti

Evasion-I, Alwar Vs. M/s. Khandelwal Foods Products, Station Road, Alwar &" 2017 (1) RLW 612 (Raj.) of this Court.

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

The ITAT in its impugned judgment dated 29.12.2017 has taken note of the fact that the appellant-company carries out his business activities from

both his residence as well as the official premises and these business activities pertains to both of his concerns, namely, M/s. Bannalal Jat

Construction Private Limited and M/s. Bannalal Jat Contractor, the proprietary concern of Shri Bannalal Jat. The ITAT, therefore, rejected the

argument regarding presumption under Section 292C of the IT Act that cash so found at the residence belongs to him and not to the appellant-

company. The ITAT noted that Shri Bannalal Jat in the statement recorded under Section 133A of the IT Act during the course of survey, in reply to

question no.11, submitted the cash amounting to Rs.28,92,500/- belonged to his business and the same can be verified from the books of accounts

maintained at his Head Office at Jahajpur. In reply to question no.14 with regard to source of Rs.70,00,000/- found in the car registered in his name,

he submitted that he used the car for his business purposes and he had withdrawn this amount from the Branch of Bank of Baroda situated at

Jahajpur and Branch of State Bank of Bikaner and Jaipur situated at Jahajpur between the period 20.09.2014 and 30.09.2014 and the same could be

verified from the records maintained at his Head Office at Jahajpur. Further, in answer to question no.16 with regard to the amounts of cash of

Rs.70,00,000/-, Rs.19,92,500/- and Rs.9,00,000/- found at his residence, he submitted that Rs.70,00,000/- was withdrawn by his clerk (â??munshiâ??)

and his sons from the Bank Account and given to him. However, it could not be explained as to from which particular bank the withdrawal was made.

Regarding Rs.19,92,500/- which was stated to be given by Shri Satya Narain, he submitted that there is no supporting evidence available with him;

and, in respect of the amount of Rs.9,00,000/-, he stated the same to be his business receipts. In reply to question no.22 whether he maintains

individual cash books being the proprietor of M/s. Bannalal Jat Contractor and also the Director in M/s Bannalal Jat Construction Pvt. Ltd., he

submitted that he does not maintain individual cash books.

This court in CIT, Bikaner Vs. Ravi Mathur, supra, which was relied by the ITAT in the present case, after considering catena of previous decisions,

held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and it cannot be discarded in a summary and

cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which

the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a

complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by

convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion. We deem it appropriate to reproduce

para 15 of the said judgment, which reads thus,

â??15. In our view, the statements recorded under Section 132(4) have great evidentiary value and it cannot be discarded as in the instant case ITA

No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer by the Tribunal in a summary or in a cryptic

manner. Statements recorded under Section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to

come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while

the statements were recorded at the time of search on 9.11.1995 and onwards but retraction, is almost after an year and that too when the assessment

proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such

a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by

way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements

initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the

instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value

and it is normally presumed that whatever stated at the time of recording of

statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes:-

Regarding the amount of Rs. 44.285 lakhs, it is now contended that the statement u/s 132(4) was not correct and these amounts are in ITA

No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations.

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

The judgment of the Delhi High Court in CIT Vs. Sunil Aggarwal, supra, relied by the assessee does not in any manner extend any assistance to him

because that was a case in which the court found that the assessee, apart from retracting the statement, also discharged the onus on him through

cogent material to rebut the presumption that stood attracted in view of the statement made under Section 132(4) of the IT Act with reference to the

entries in the books of accounts of the sales made during the year and the stock position. Similar was the position in Kailashben Manharlal Chokshi

Vs. Commissioner of Income-tax â?" (2008) 174 Taxman 466 (Gujarat), wherein the High Court of Gujarat found that the assessee gave proper

evidence in support of his retraction. The High Court of Madras in M. Narayanan and Bros. Vs. Assistant Commissioner of Income-tax, supra, held

that when assessee had explained his statement as not correct in context of

materials produced, no amount could be added to his income on the basis of his statement. Similarly, what has been held by the High Court of Bombay in Commissioner of Income-tax, Central-II, Mumbai Vs. Omprakash K.

Jain &" (2009) 178 Taxman 179 (Bombay) was that the assessing officer, while considering whether retraction was under duress or coercion, had

also to consider genuineness of documents produced before him.

The Punjab and Haryana High Court in Commissioner of Income-Tax Vs. Lekh Raj Dhunna, taking note of the fact that the assessee had made a

statement under Section 132(4) of the IT Act whereby a surrender of Rs.2 lakh was made and further that the assessee had admitted that he had

earned commission from a party, which was not disclosed in the return filed by him and certain documents were seized which bore the signature of

the assessee, held in para 16 of the report as under:-

¶16. Thus, in view of sub-sections (4) and (4A) of Section 132 of the Act, the Assessing Officer was justified in drawing presumption against the

assessee and had made addition of Rs.9 lakhs in his income under Section 68 of the Act. The onus was upon the assessee to have produced cogent

material to rebut the aforesaid presumption which he had failed to displace. The assessee retracted from the said statement, vide letters dated

November 24, 1998, and March 11, 1999, during the course of assessment proceedings. However, no value could be attached thereto in the present

case. In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee

could have retracted from the same at the earliest. No plausible explanation has been furnished as to why the said statement could not be withdrawn

earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search cannot be held to be

bad. The Tribunal, thus, erred in concluding otherwise. The Tribunal, therefore, was not justified in reversing the order of the Assessing Officer which

was affirmed by the Commissioner of Income-tax (Appeals) also.¶

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

¶7. It is not disputed that the statement was made by the assessee at the time of survey, which was retracted on May 28, 2003, and he did not take

any further action for a period of more than two months. In such circumstances,

the view taken by the Tribunal that retraction from the earlier statement was not permissible, is definitely a possible view. The mere fact that some entries were made in a diary could not be held to be sufficient and conclusive to hold that the statement earlier made was false. The assessee failed to produce books of account which may have been maintained during regular course of business or any other authentic contemporaneous evidence of agricultural income. In the circumstances, the statement of the assessee could certainly be acted upon.â??

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

â??8. It cannot be doubted for a moment that the burden of proving the undisclosed income is squarely on the shoulders of the department.

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

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

evidence as contemplated in any adjudication especially since Section 131 confers on all officers empowered therein with the same powers as vested

in a court under the Code of Criminal Procedure, for the purpose of the Income Tax Act.

10. A Division Bench of this Court in *C.I.T. v. Hotel Meriya*, (2011) 332 ITR 537 considered the scope of a statement recorded under Section 132(4)

and found that such statement recorded by the officer as well as the documents seized would come within the purview of evidence under Section

158(BB) of the Income-tax Act read with Section 3 of the Evidence Act and Section 131 of the Income Tax Act. Based on the above finding, it was

also held that such evidence would be admissible for the purpose of block assessments too. The explanation to Section 132(4) of the Income Tax Act

was also noticed by the Division Bench to further emphasise that the evidence so collected would be relevant in all purposes connected with any

proceedings of the Income Tax Act.â??

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

â??7. As regards the assesseeâ??s contention that the statement having been retracted the Assessing Officer should have independently come to a

conclusion that there was additional income as sought to be assessed and that there was no material to support that there was such income, this

contention in ourâ?? view is not correct. As held by the Supreme Court in *Pullan-gode Rubber Produce Co. Ltd. v. State of Kerala*, (1973) 91 ITR 18

an admission is an extremely important piece of evidence though it is not conclusive. Therefore, a statement made voluntarily by the assessee could

form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on

the assessee to establish that the admission made in the statement at the time of survey was wrong and in fact there was no additional income. This

burden does not even seem to have been attempted to be discharged. Similarly, *P.K. Palwankar v. CGT*, [1979] 117 ITR 768 (MP) and *CIT v. Mrs.*

Doris S. Luiz, [1974] 96 ITR 646 (Ker) on which also learned counsel for the assessee placed reliance are of no help to the assessee. The

Tribunalâ??s order is concluded by findings of fact and in our view no question of law arises. The applications are, accordingly, rejected.â??

Reverting back to the present case, the ITAT, on the basis of such statement of Shri Bannalal Jat, concluded that he was managing his business

affairs of both his proprietary concern as well as appellant-company from his residence and that in the absence of individual cash-book of respective

concerns and other details maintained by him, it is not possible to identify whether the cash so found belongs to the proprietary concern or to the

assessee company. Subsequently, when the statement under Section 132(4) of the IT Act was recorded on 10.10.2014, which was concluded at his

residence, Shri Bannalal Jat categorically admitted that the cash amount of Rs.1,21,43,210/- belonged to his company M/s. Bannalal Jat Construction

Private Limited and the same was its undisclosed income. Thereafter another statement under Section 132(4) of the IT Act was recorded at his

business premises on 11.10.2014. In reply to question No. 8, he was asked to explain the source of cash amounting to Rs.3,380/- found at his office and

Rs.1,21,43,210/- found at his residence, he submitted regarding the amount of Rs.1,21,43,210/- found at his residence that he was unable to give any

explanation and admitted that he was in the business of civil construction and in such business, various expenses have been inflated and shown in the

books of accounts, and that the income so generated on account of such inflation in expenses is represented in the form of cash was found at his

residence. This undisclosed income belonged to his company M/s Bannalal Jat Construction Pvt. Ltd. In response to question no.11 wherein he was

asked to provide any other explanation which he wishes to provide, he submitted that pursuant to search operations where various documents, loose

papers, entries, cash, investment, advances and individual expenditure details have been found and taking all that into consideration, he surrendered

Rs.4,01,43,210/- as his undisclosed income. He also categorically stated that the said disclosure is in the hands of M/s Bannalal Jat Construction

Private Limited in respect of unexplained cash amounting to Rs.1,21,43,210/- and Rs.2,50,00,000 and Rs.30,00,000/- totalling to Rs.2,80,00,000 in his

individual capacity.

Subsequently, on 04.12.2014 during the post-search proceedings, statement of Shri Bannalal Jat was again recorded under Section 131 of the IT Act,

wherein he was again confronted with the various documents seized and cash found during the course of search and the consequent surrender made

by him in respect of his two concerns and in response thereto, he again confirmed the surrender of undisclosed income amounting to Rs.1,21,43,210/-

and Rs.1,35,00,000/-. It is in this background that we have to view his reply to the show-cause notice submitted on 02.12.2016. This show-cause

notice was issued to him by the assessing officer when the appellant-company offered the said undisclosed income to tax. The reliability, importance

and sanctity of admission made during search could be refuted only by cogent and convincing evidence. We may in this connection refer to earliest

judgment of the Supreme Court in Pullangode Rubber Produce Company Ltd., supra, wherein it was held that admission is an extremely important

piece of evidence but it can't be said that it is conclusive. It is open to the person, who made admission to show that it is incorrect. The assessee

should be given proper opportunity to show the correct state of affairs. The law with regard to this has developed much thereafter. There is no

gainsay the fact that admission made during the search can be disputed by the assessee and at the same time however it is equally well settled that the

statement made voluntarily by the assessee could form the basis of assessment. Mere fact that the assessee retracted the statement at later point of

time could not make the statement unacceptable. The burden lay on the assessee to show that the admission made by him in the statement earlier at

the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded

under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of

compulsion for assessee to make such statement. However, a bald assertion to this effect at much belated stage cannot be accepted. The assessee

indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting. The assessee, while

filing the return of income, has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of

search. Subsequent retraction from the surrender without having evidence or proof of retraction is not permissible in the eyes of law. The statement

recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.

In view of the above discussion, the question formulated vide order dated 09.05.2018 is answered in favour of the revenue and against the assessee.

The appeal is accordingly dismissed.