

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.No.202/Viz/2020 to 207/Viz/2020
(निर्धारण वर्ष/Assessment Year:2011-12 to 2016-17)**

Dy.Commissioner of
Income Tax
Central Circle-1
Guntur

Vs. Sri Arunachalam Manickavel
Prop : M/s Bharathi Soap Works
11/25, Amaravathi Road
Gorantla, Guntur
[PAN :ACFPA3107K]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri D.K.Sonowal, CIT DR
: Shri M.V.Prasad, AR.

सुनवाई की तारीख / Date of Hearing : 25.11.2020
घोषणा की तारीख/Date of Pronouncement : 23.12.2020

आदेश /ORDER

Per Bench :

These appeals are filed by the revenue against the orders of the Commissioner of Income Tax (Appeals)-3, Visakhapatnam in Appeal No.312 & 313/2019-20/CIT(A)-3/VSP/2020-21 dated 27.07.2020 for the Assessment Years (A.Y.) 2011-12 & 2012-13, Appeal No.305 to 308/2019-

20/CIT(A)-3/VSP/2020-21 dated 27.07.2020 for the A.Ys 2013-14 to 2016-17. The appeals are filed with the delay of 3 days along with condonation petition stating administrative reasons and requested to condone the delay. We have heard both the parties and condone the delay and admit the appeals of the revenue.

2. The Revenue has raised the following grounds which are common for all the assessment years.

1. *The order of the Ld.CIT(A) is erroneous both on the facts and in law.*

2. *The Ld. CIT (Appeals) ought to have appreciated the probative value of voluntary admission u/s.132(4) and upheld the additions made towards under invoicing of sales and unaccounted purchase of acid slurry which is based on the assessee's voluntary admission u/s.132(4) and also based on circumstantial evidence.*

3. *The Ld. CIT (Appeals) ought to have appreciated the fact that the assessee failed to prove coercion in his admission of income u/s. 132[4].*

4. *The Ld. CIT (Appeals) failed to appreciate that even the entry in books of account can be incriminating when the assessee failed to explain it with proof as in the instant case, the assessee failed to explain the variation in charging different rates in sale invoices and admitted the income on account of it.*

5. *The Ld.CIT (Appeals) while observing that the only incriminating material Found in the course of search was gold and cash failed to appreciate the fact that the source for such cash and gold was generated in earlier years to the search year.*

6. *The Ld. CIT (Appeals) has failed to appreciate that there exists incriminating material pertaining to payment of Rs.1 crore to Sri M. Chinnathorai (Asst. Year 2011-12), payment of Rs.0.33 crore to M/s. Muthoot Finance (Asst Year 2014-15) and a loose sheet with notings was found and seized (Annexure A/AM/GNT/PO/01) which was explained as payment of cash of Rs.520 crore (Asst. Year 2016-17) to M/s.Gowthama Budha Textile Park Pvt. Ltd., and also failed to observe that the source was generated not just in the year in which such amounts were expended.*

7. *The Ld.CIT (Appeals) failed to appreciate that the basis as explained in assessment order at para Nos. 7.2.6 to 7.2.12 was to present the circumstantial evidence to show that the assessee was dealing with cash and there is no fool proof system of accounting and much of the transactions were taking place on oral instructions and understandings, thus the Ld. CIT (Appeals) failed to consider the issue in a holistic manner and instead considered and allowed each ground separately.*

8. *The Ld. CIT (Appeals) failed to took a holistic view of the proof gathered at the time of search, the circumstantial evidence and the nature of assessee's admission as in tax matters the degree of proof is that of preponderance of possibilities.*

9. *The Ld. CIT (Appeals) failed to appreciate the fact that the assessee failed to ask for cross-examination of cashiers and distributors and held as if the Assessing Officer suo-motu required to afford an opportunity the assessee to cross-examine.*

10. *The Ld.CIT (Appeals) failed to appreciate the facts as narrated in the assessment that assessee requested for cross-examine Sri Suresh Kumar Surana, who stays in Pondicherry, on 28.11.2019 when the assessment is getting time barred by 31.12.2019.*

11. *The Ld. CIT (Appeals) failed to remand the issue to the A.O to afford an opportunity to the assessee and calling for a remand*

report, when it is quite apparent from the assessment order that the opportunity was afforded due to the time and logistics involved.

12. While passing the original order dt: 27.07.2020 as well as the modification order (Corrigendum) dt: 12.08.2020, the Ld.CIT(A) ought to have taken into account the fact that the ITSC has not accepted the version of the assessee with regard to income from Real Estate etc. and therefore the Ld.CIT(A) should have sustained the entire addition made in the Assessment Order by the Assessing Officer.

13. Any other ground that maybe urged at the time of hearing.

Since the facts are identical, all the appeals are clubbed, heard together and a common order is being passed for the sake of convenience.

2.1. During the appeal hearing the Ld.DR submitted that all the grounds of appeal are related to the addition of under invoicing of sales and unaccounted purchases.

3. ***Brief facts of the case:*** The facts are taken from I.T.A No.202/Viz/2020 for the A.Y. 2011-12 which are applicable to all the appeals except change in the amounts. All the grounds of appeal are related to the addition of Rs.5,81,04,956/- comprising of under invoicing of sales of Rs.3,80,55,836/- and unaccounted purchase of acid slurry for Rs.2,00,49,120/-. Shri Arunachalam Manickavel is the Proprietor of

M/s Bharathi Soap Works and also the Chairman and Executive Director of the Company M/s Bharathi Consumer Care Products Pvt. Ltd., which is incorporated on 06.08.2009. The assessee is in the manufacture of detergent products in the trade name of 'XXX' since 1981. For the A.Y.2011-12 the assessee filed the return of income on 28.09.2011 admitting total income of Rs.5,72,60,700/-. A search u/s 132 was conducted on 30.08.2016 in the group cases of Sri Arunachalam Manickavel, Guntur and covered his residence as well as the business concerns of the assessee. Along with the assessee, some of the distributors of the assessee and the supplier of raw material i.e acid slurry were also covered u/s 132 / 133A of the Act. During the course of search, Income Tax Department Investigation wing (in short 'department/investigation wing') noticed that the company is indulging in under invoicing of sales by billing the sale price at lower rate than that of the actual sale price and receiving the difference amount in cash from the distributors. The said difference was estimated to be in the range of 8 to 10 percent of the actual sales. A statement u/s 132(4) of the Act was recorded from Mr. Arunachalam Manickavel, the proprietor of Bharathi Soap Works and the Chairman and the Executive Director of the company M/s Bharathi Consumer Care Products Ltd and he admitted that he was receiving back

the differential amount in cash, in response to Q.27 of the statement recorded on 02.09.2016. According to the statement, the assessee has admitted that he was doing under invoicing of sale price at lower rates and selling the same at higher price and the difference amount was received back from the distributors in cash. In the statement he also admitted that under invoicing was done to the extent of 8% of the actual sale value and no further expenditure was incurred. The cash was stated to be received by Sri Subbaiah Jagan, petty cashier of group concerns and remitted the same to Mr.Rama Shankar, Head Cashier, who in turn remitted the same to the assessee. Further the assessee also admitted the undisclosed income of Rs.37,84,91,758/- in the hands of M/s Bharathi Soap Works, Proprietary concern of the assessee from the F.Y.2010-11 to 2015-16, relevant to A.Y.2011-12 to 2016-17 on account of under invoicing of sales as under :

A.Y.	Unaccounted income on account of under invoicing of sales (Rs.)
2011-12	3,80,55,836
2012-13	5,22,20,398
2013-14	6,02,28,092
2014-15	6,59,72,863
2015-16	6,79,97,020
2016-17	9,40,17,546
	37,84,91,758

3.1. Simultaneously a Survey u/s 133A was conducted in the business premises of M/s Mahaveer Surfactants Pvt. Ltd., Pondicherry (in short 'Mahaveer') who deals in acid slurry and supplies to the assessee. During the course of survey, it was noticed by investigation wing that the assessee is indulging in unaccounted purchase of acid slurry which is used in manufacturing of detergent powder and detergent cakes. During the course of survey in the premises of Mahaveer Surfactants, some material was found and marked as Annexure/KGA/MSPL/IMP-B&D, page No.76 of Annexure which shows some noting about loads of acid slurry supplied to Bharathi Group on different periods from the year 2010 to 2014. A statement was recorded from Sri Suresh Kumar Surana, the Director of M/s Mahaveer Surfactants Pvt. Ltd who has stated that they sold the acid slurry to the assessee which was not being accounted in their books of accounts. In the statement recorded u/s 133A on 30.08.2016 from Sri Suresh Kumar Surana, the Director of M/s Mahaveer Surfactants Pvt. Ltd, he stated that the notings were made by the Lab Technician for quality control and they pertain to number of loads of acid slurry sales made to Bharati group. Later on he stated that on request of M/s Bharathi Group, sales were made outside the books of accounts and the bills were generated in the third party names as cash sales. Sri Suresh Kumar Surana

also stated that the goods were sent in hired tanker / lorries and once the goods are reached the destination without being checked midway, the invoices were destroyed at both the ends. Sri Suresh Kumar Surana also furnished the details of acid slurry supplied to Bharathi Group for the period relating the A.Y. 2010-11 to 2014-15 as under:

Year	Quantity		Value (Rs.)
	No. of loads	Weight in MTS	
2010-11	14	224	2,00,49,220
2011-12	12	192	1,78,45,920
2012-13	13	208	1,93,33,080
2013-14	14	224	2,08,37,376
2014-15	11	176	1,65,60,720
		Total	9,46,26,216

3.2. The assessee was confronted with the above information gathered during the course of survey at the business premises of M/s Mahaveer Surfactants Pvt. Ltd., Pondicherry and in a statement recorded on 01.09.2016 he had accepted the cash purchase of acid slurry and admitted the undisclosed income of Rs.9,46,26,216/- outside the books of accounts as under

A.Y.	Undisclosed Income (Rs.)
2011-12	2,00,49,120
2012-13	1,78,45,920
2013-14	1,93,33,080
2014-15	2,08,37,376
2015-16	1,65,60,720
	9,46,26,216

3.3. Subsequently, AO issued notice u/s 153A calling for the return of income for the A.Y. 2011-12 to 2016-17 and in response to which the assessee filed the return of income on 10.04.2017 admitting same incomes which were already admitted in the returns filed u/s 139(1) of the Act, thus retracted from the admission given u/s 132(4). The AO had issued the notices u/s 143(2) and 142(1) calling for various details and meanwhile, the assessee filed application before the Income Tax Settlement Commission (ITSC) on 19.11.2018 for the A.Ys 2011-12 to 2017-18 u/s 245C of the Act admitting additional incomes as under :

Asst.Year	Unaccounted income admitted at the time of search (in Rs.)	Additional income admitted in the return filed in response to notices u/s 153A (In Rs.)	Additional income admitted before the Hon'ble ITSC (in Rs.)
2011-12	5,81,04,956	Nil	1,00,00,000
2012-13	7,00,66,318	Nil	Nil
2013-14	7,95,61,172	Nil	Nil
2014-15	8,68,10,239	Nil	2,00,00,000
2015-16	8,45,57,740	Nil	3,65,00,000
2016-17	9,40,17,546	Nil	3,70,00,000
2017-18	Nil	Nil	2,60,00,000
Total	47,31,17,971	Nil	12,95,00,000

4. Hon'ble ITSC vide order dated 09.01.2019, u/s 245D(2C) of the Act treated the assessee's application as invalid and held it is not allowable, since, the application was found to be not constituting the full and true disclosure of income. Consequently, assessment proceedings were revived

by the AO and the assessee has filed the writ petition on 14.02.2019 before Hon'ble High Court of Andhra Pradesh challenging the order of the ITSC which was rejected by the Hon'ble High Court of Andhra Pradesh on 30.10.2019.

5. The AO again has taken up the assessment proceedings after rejection of writ petition by the Hon'ble High Court of Andhra Pradesh and proposed to make the additions of under invoicing of sales, unaccounted purchase of acid slurry as admitted in the statement recorded u/s 132(4) apart from the income admitted before the ITSC and the assessee was called for explanation as to why the said income should not be assessed as undisclosed income.

5.1. The assessee filed explanation accepting the addition of Rs.1.00 cr. from real estate business and objected for the addition of under invoicing of sales and the unaccounted purchase of acid slurry. Assessee in his explanation stated that he did not indulge in under invoicing of sales. The assessee further stated that the bill dated 30.07.2016 found for Rs.361.53 per case was the correct bill of the company issued to Sri Sai Lakshmi Agencies the distributor and duly accounted in the books of accounts. The assessee further stated the bill of Rs.450/- was retail price but not the price of the company to the distributor. The assessee explained that

assessee sold the stock to the distributor and distributors sold the stock to the wholesaler Sri Lakshmi Kirana, Draksharamam at Rs.367.20/- and the wholesaler sells the stock to the retailer. The assessee further stated that the distributor is paying the sum of Rs.361.53/- to the assessee and the assessee is not getting any benefit out of the difference amount Rs.88.47/- which is distributed among the distributor, wholesaler and the retailer. Thus, submitted that, ultimately retailer gets the goods at Rs.450/- per case and it is not the assessee who gets the sum of Rs.450/- and there was neither under invoicing nor the assessee was receiving the unaccounted cash back from the distributors. Thus the assessee submitted that the assessee is not concerned about the price to the extent of Rs.450/-, which is ultimate price to the end consumer and only concerned to the extent of Rs.361.53/- per case to the distributor. The assessee further stated that no evidence was found by the AO with regard to receipt of cash back from the distributors either in the premises of the assessee or in the premises of the distributors. The assessee further submitted that no evidence was found by the AO with regard to suppression of sales, under invoicing of sales or with regard to receipt of cash. Thus, argued that there is no case for making the addition on the basis of statement recorded u/s 132(4) on the assumption of receiving the cash back from the distributors.

5.2. The AO not being satisfied with the explanation of the assessee relying on the statement recorded from distributors who had stated that they were giving back cash to the assessee @ Rs.50000/- to 60000/- per load, the statements from the cashiers and the statement recoded u/s 132(4) from the assessee, made the addition of Rs.3,80,55,836/- to the returned income on account of under invoicing of sales. On identical facts the AO made the similar additions for the A.Y.2012-13 to 2016-17.

5.3. Similarly on the basis of information collected from M/s Mahaveer Surfactants Pvt. Ltd. during the course of survey with regard to unaccounted purchase of acid slurry, the AO proposed to make the addition of Rs.2,00,49,120/- for the A.Y.2011-12 and the assessee objected for the addition stating that the assessee has not indulged in making unaccounted purchases and the department did not find any evidence regarding unaccounted purchases of other raw material in the premises of the assessee. Therefore, argued that he did not make any unaccounted purchases. The assessee further submitted that the department also did not show any bills which were issued in the name of the assessee by M/s Mahaveer for sale of acid slurry which was not accounted by the assessee in their books. The assessee further argued that Director of M/s Mahaveer

has given contradictory statements which cannot be relied upon and also submitted that the department neither provided the statement recorded u/s 133A from the Shri Suresh Kumar Surana, nor shown the evidences collected from the supplier of acid slurry to the assessee, thus the same cannot be used against the assessee. The assessee has asked for cross examining Sri Suresh Kumar Surana, Director of Mahaveer Surfactants Pvt. Ltd., but the AO could not provide the cross examination since the assessments were time barring. Thus, the AO relying on the admission given u/s 132(4) and the statement recorded from third party i.e Sri Suresh Kumar Surana, Director of Mahaveer Surfactants Pvt. Ltd. made the addition of Rs.2,00,49,120/- to the returned income on account of unaccounted purchases of acid slurry . Identical additions were made by the AO for the A.Ys 2012-13 to 2014-15. The details of addition made by the AO relating to under invoicing of sales and unaccounted purchases assessment year wise are as under :

A.Y.	Under invoicing of sales	Unaccounted purchases
2011-12	3,80,55,836	2,00,49,120
2012-13	5,22,20,398	1,78,45,920
2013-14	6,02,28,092	1,93,33,080
2014-15	6,59,72,863	2,08,37,376
2015-16	6,79,97,020	1,65,60,720
Total	37,84,91,755	9,46,26,216

6. Against the order passed by the AO, the assessee went on appeal before the CIT(A) and challenged the order of the AO with regard to legal validity of making the additions u/s 153A without having the incriminating material as well as on merits.

On merits the assessee challenged the order of the AO before the Ld.CIT(A) stating that the AO made the additions solely on the statement recorded u/s 132(4) without having corroborative evidence and the same is unsustainable, since, the assessee has retracted from admission given u/s 132(4).

6.1. For the A.Y.2011-12 to A.Y.2014-15, the assessee argued that the time limit for issue of notice u/s 143(2) was expired by the time, the search was conducted in the assessee's case and the assessment for the A.Y.2011-12 to A.Y. 2014-15 are unabated. The AO is not permitted to make any search assessment u/s 153A without having the seized material or incriminating material relating to such assessment years. In the instant case, the assessee argued that there was no evidence whatsoever found by the AO during the course of search indicating under invoicing of sales, unaccounted purchases or any other unaccounted income leading to making the additions, therefore, argued that there is no case for making the addition u/s 153A, hence requested to delete the additions made by the AO

for the A.Ys 2011-12 to 2014-15 and relied on the decisions of ITAT in the case of DCIT Vs. Lingam Tulsi Prasad [2016] 49 ITR 218 Hyderabad, the decision of AP High Court in the case of CIT Vs. AMR India Ltd. in ITTA No.354 of 2014 dated 12.06.2014 and the decision of this Tribunal in the case of Y.V.Anjaneyulu Vs. Dy.CIT reported in 88 taxmann.com 568 and also the decision of this Tribunal in the case of Bhavanasi Anjaneyulu Vs. ACIT in I.T.A.No.261,262,263, 349 & 354/Viz/2017 dated 19.01.2018.

6.2. The Ld.CIT(A) considered the submissions of the assessee and held that in completed assessments, additions should be made on the material found during the course of search, thus deleted the additions made in assessment order passed u/s 143(3) r.w.s. 153A and accordingly allowed the appeals of the assessee for the AYs 2011-12 to 2014-15. The Ld.CIT(A) relied on the decision of this Tribunal as well as the jurisdictional High Court decisions referred above apart from the number of other decisions mentioned in the appellate order.

7. On merits the Ld.CIT(A) observed that during the course of search, no material was found except gold and cash which was seized. With regard under invoicing of sales and the cash stated to received back by the assessee

from the distributors, the Ld.CIT(A) given a finding that from the statements recorded from Sri Pasumarthi Chandrakanth and Sri Veeram Narasimha Reddy and others, though the AO used against the assessee, copies of the same were not supplied to the assessee and the AO also did not allow the cross examination of the witnesses. She further observed that no material was found in the premises of the distributors though the searches were conducted on random basis in the case of distributors also. No addition was also made by the AO in the hands of the distributors, thus held that the statement of distributors does not give any scope to the AO to view that the assessee had received the unaccounted cash.

Similarly she observed with regard to the statements recorded from the cashiers no details or corroborative evidence was found except the vague statements thus viewed that the statements of the cashiers are also not helpful to the department to support the revenue's case.

She found that sole basis for the addition was the reply of assessee in question No.27, wherein he stated initially that he had received back t 8% of the under invoicing on actual sale value in cash. The foundation for the addition was the invoice of the company bearing No.2135 dated 30.07.2016 for Rs.361.53 per case. The assessee having retracted the admission, the AO cannot make the addition on the sole basis of statement recorded u/s

132(4) thus, held that the additions made by the AO are unsustainable, accordingly deleted the additions on account of under invoicing the sales.

7.1. With regard to the addition on account of unaccounted purchases from M/s Mahaveer Surfactants Pvt Ltd, Pondicherry amounting to Rs.2,00,49,120/-, the assessee objected for the addition stating that he has not made any unaccounted purchases from the party. It was also submitted that the director of M/s Mahaveer has given contradictory statements in the statement recorded u/s 133A by the AO. At one point, the supplier stated that they have supplied the material to the assessee without bills, at another point of time, he stated that bills were generated against some other name sake parties and booked the cash sales and submitted that the sales were over and above the sales recorded as per the books of accounts. No evidence was found in the premises of the supplier with regard to purchases made outside the books of accounts. Thus argued that the statement recorded u/s 133A has no evidentiary value. The AO also did not furnish the copy of the statement recorded u/s 133A and the material gathered at the premises of the supplier, did not give opportunity to cross examine the witness. Therefore, argued that in the absence of any material found during the course of search in the premises of the assessee and in the

premises of M/s Mahaveer Surfactants, Pondicherry evidencing the unaccounted purchases, the additions cannot be made in the hands of the assessee. Considering the arguments of the assessee, the Ld.CIT(A) held that the additions made are unsustainable, accordingly deleted the addition. The Ld.CIT(A) also passed corrigendum order on 12.08.2020.

8. Against the order of the Ld.CIT(A), the revenue has come on appeal before us. During the appeal hearing, the Ld.DR argued that the assessee has admitted the income u/s 132(4) voluntarily, therefore, the admission made in the statement recorded u/s 132(4) is valid, hence, submitted that the same is to be considered as admissible evidence and requested to uphold the addition made by the AO. The Ld.DR further argued that the assessee ought to have retracted the statement within the reasonable time. The assessee did not retract the statement within the reasonable time, thus, argued that even entries made in the books of accounts can be incriminating when the assessee failed to explain the same with the proof. The Ld.CIT(DR) further submitted that as per the circumstantial evidence, the Ld.CIT(A) ought to have taken the holistic view of the proof gathered during search. The Ld.DR further submitted that the assessee, both the cashiers of the assessee, distributors together have confirmed that the

assessee was receiving the cash back from the distributors which supports the view that the assessee had received the cash back, hence, argued that the Ld.CIT(A) ought to have upheld the addition made by the AO. With regard to the statement recorded from the Director of Mahaveer Surfactants Pvt. Ltd., he stated that M/s Mahaveer supplied the raw material to the assessee without the bills and the assessee failed to prove that he has not made purchases outside the books of accounts. The assessee requested for cross examination in the 11th hour, hence, the AO could not give opportunity for cross examination of the witnesses and thus argued that not providing the opportunity to cross examine the assessee should not be viewed adversely against the department. Apart from the above, the Ld.CIT(DR) submitted that in the instant case, even Hon'ble ITSC has rejected the application of the assessee, since, the assessee has not come before the ITSC with full and true disclosure, thus argued that the CIT(A) grossly erred in deleting the addition. The Ld.CIT(DR) submitted that there is no justification for deletion of additions made by the AO, hence requested to sustain the additions and allow the appeals of the revenue.

9. Per contra, the Ld.AR argued that there is no evidence whatsoever found during the course of search in the residential as well as business

premises of the assessee evidencing the receipt of cash back from the distributors or making unaccounted purchases. The assessee has given a statement u/s 132(4) in a stress due to constant pressure without understanding and its implications. He submitted in fact Assistant Director of Income tax Investigation computed the undisclosed income on the basis of returns of Income filed by the assessee and made to sign the statements. He further argued that due to continuous recording of the statements from the assessee without giving time gap, the assessee suffered lot of pressure and signed the statements even without referring the same. He referred page No.1 of the paper book and shown us that the search was commenced in the residential premises of the assessee at 8:30 am on 30.08.2016 and concluded at 9:15 am on the next day on 31.08.2016. Similarly in the case of proprietary concern, commenced at 4 pm and concluded at 4:30 pm on 31.08.2016. Again in the case of residence of the assessee, search was commenced at 4:20 pm on 31.08.2016 and continued till 03.09.2016 and the assessee was attending the department continuously in all the days of search with few hours of interval, which shows that there was no time to apply the mind and signed the statements without even understanding what it was. Thus argued that admissions made in the statement recorded u/s 132(4) cannot be taken at face value without having corroborative

evidence, which will cause huge financial injury to the assessee. The Ld.AR further submitted that from the plain reading of the assessment order, the seized material, no incriminating material was found during the course of search in the business premises of the assessee, evidencing under invoicing sale bills and the receipt of cash back from the distributors. What was stated to have been explained by the assessee was that sum of Rs.361.53 was the price for distributor and Rs.450/- was the sale price of the end consumer. In between, there were three layers who share the profit that is distributor, wholesaler and the retailer. The statements recorded from the cashiers also cannot be taken against the assessee since, no supporting evidence was found with regard in respect of date wise, party wise cash receipts. Further assessee receives cash regularly from the sales made to the distributors towards the realization of debts which is accounted in the books of accounts. Similarly, the Ld.AR argued that no asset was found during the course of search outside the books of accounts. The Ld.AR further argued that no evidence was found with regard to purchases made outside the books of accounts by the assessee in the premises. All the purchases were duly accounted in the books of accounts and no incriminating material was found in the premises of the assessee to support unaccounted purchases. The Ld.AR submitted that the entire

purchases and sales were duly accounted in the books of accounts. With regard to statement recorded u/s 133A in respect of M/s Mahaveer Surfactants Pvt. Ltd the Ld.AR argued that sales made outside the books of accounts required to be taxed in the hands of the other party / supplier, but not in the hands of the assessee unless it is established with proper evidence that the assessee has made purchases outside the books of accounts from the said supplier. Mere statements recorded u/s 133A without proper evidence cannot be basis of addition in the hands of the assessee. Thus argued that the Ld.CIT(A) rightly held that there is no case for making the addition in the hands of the assessee without having corroborative evidence. In the instant case as discussed above, no incriminating material was found, thus argued that there is no case for department, hence requested to uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue. The Ld.AR also heavily relied on the order of the Ld.CIT(A) on both the issues.

10. We have heard both the parties and perused the material placed on record. First we take the case on merits since, this issue covers all the appeals. Search u/s 132 was conducted in the instant case on 30.08.2016 and the search assessment was completed u/s 153A r.w.s. 143(3) on total

income of Rs.12,53,66,870/-. The assessment resulted in addition of Rs.6,81,05,672/- relating to under invoicing of sales, un accounted purchases and un accounted payment to Chinnathorai for Rs. 1.00 crore. The allegation of the AO is that the assessee is involved in under invoicing of sales and receiving the cash back from the distributors. For this purpose, the AO referred answer to question No.27, wherein, the assessee stated that he had under invoiced the sales and received the cash back from the distributor to the extent of 8% of actual sale value and admitted the additional income to the extent of Rs.37.84 crores from the A.Y.2011-12 to 2017-18 as under:

A.Y.	Unaccounted income on account of under invoicing of sales
2011-12	3,80,55,836
2012-13	5,22,20,398
2013-14	6,02,28,092
2014-15	6,59,72,863
2015-16	6,79,97,020
2016-17	9,40,17,546
2017-18	Nil
	37,84,91,758

10.1. Similarly, the assessee also accepted that he had made purchases outside the books of accounts and admitted the additional income of


income of Rs.9,46,00,000/- for assessment years 2011-12 to 2015-16 as under:

A.Y.	Undisclosed income (Rs.)
2011-12	2,00,49,120
2012-13	1,78,45,920
2013-14	1,93,33,080
2014-15	2,08,37,376
2015-16	1,65,60,720
	9,46,26,216

10.2. In respect of under invoicing of sales the Ld.CIT(A) deleted the addition holding that the without having corroborative evidence, addition made solely on the basis of statement recorded u/s 132(4) is unsustainable. For the sake of convenience we, extract para No,12.1 in page No.57 of the CIT(A) order which reads as under:

12.1. CIT(A) Decision (Against Ground no: 5, 7, 11, 12, 25 and 33)

I have gone through the submissions of the appellant and the statement recorded u/s.132(4) of the I.T. Act. In the appellant's case, the Investigating Officer while recording statement u/s132(4) from the appellant Sri Arunachalam Manickvel has not shown/referred to any incriminating document found and seized at the time of search which makes the statement invalid. Consequently, the addition made on account of the disclosure made u/s.132(4) does not stand as it was made without reference to any incriminating document. The appellant in Its written submissions filed, relied upon number case laws in support of its contention. Relevant extract of one such case law of the Hon'ble Gujarath High Court in D.C.I.T. Vs. Narendra Garg & Ashok Garg (AOP) reported in 2016) 72 Taxman.com 356 (Guj.)

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 

"Para 5 of the above judgment is extracted below:


"5. We have duly considered the rival contentions made by the learned advocates for both the sides. It is true that the addition was made by the Assessing Officer pursuant to the statement recorded u/s 132(4) of the Act. The assessee has retracted from the, said disclosure which has not been accepted by the revenue. It is required to be borne in mind that the revenue ought to have collected enough evidence during the search in support of the disclosure statement. It is a settled position of law that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes are collected. The Assessing Officer cannot proceed on presumption u/s 134(2) of the Act and there must be something more than bare suspicion to support the assessment or addition. In the present case, though the revenue's case is based on disclosure of the assessee stated to have been made during the search u/s 132(4) of the Act there is no reference to any undisclosed cash, jewellery, bullion, valuable article or documents containing any undisclosed income having been found during the search.

The appellant also relies upon the decision of the Hon'ble Delhi High Court in C.I.T Vs. Harjeev Agarwal, reported in (2016) 70 Taxmann .com 95 (Delhi). Paras 19, 20 and 21 of the above judgment are extracted below:

"19. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the assessee in its statement under the provisions of Chapter XIV-5 of the Act."

"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words 'evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations.

However, the statements recorded would certainly constitute information and if such Information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because an admission was made by the assessee during search operation."

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 

“21. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an assessee has to be computed on the basis of evidence and material found during search. The statement recorded under section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search In order for an assessment to be based on the statement recorded’

In view of the reasons discussed above, I hold that the addition made solely depending on the confession statement is void as no reference to the incriminating material was made while recording the sworn statements during the search proceedings. The statement recorded from the MD of the company without referring to any incriminating document is held to be not having any evidentiary value, and hence making addition taking shelter under the above statement is not valid and sustainable. Further , the “Retailers Price List” referred to in the statement u/s 132(4) cannot be considered as "incriminating material", as this price list only indicates the Prices of the products of the appellant company at which the goods are to be sold by the Retailers, and this price list changes from time to time . Thus, viewed from any angle, the statement recorded u/s.132(4) from the M.D. of the company solely basing and relying on the above price list can under no circumstances be termed as "incriminating material". For these reasons the addition made on account of under invoicing of sales relying on the above statement is not proper and justified. The Ld.CIT(A) also relied on the case law in the case of [2005] 148 TAXMAN 35 (AHD.) (MAC.) ITAT AHMEDABAD BENCH B ASSISTANT COMMISSIONER OF INCOME-TAX V. JORAWAR SINGH M. RATHOD”

10.3. From the perusal of the assessment order, the Ld.CIT(A) order we, find that no evidence was found with regard to under invoicing of sales or unaccounted purchases in the premises of the assessee. From the assessment order, it is also seen that no excess stock was found and there was no stock difference. The AO verified the books of accounts, no defects were found during the course of assessment. As stated earlier, search was continuously conducted in the business premises of the assessee and


recorded statement u/s 132(4) in multiple premises regularly without giving sufficient interval. Thus there is a possibility of building up pressure on the assessee which resulted in confusion in his mind. Though the Investigation Officer recorded statements u/s 132(4) from the distributors, they did not specify the date wise amounts paid and out of which the sums accounted in the books of accounts and unaccounted amounts were not furnished. No evidence was found in the premises of the assessee as well as the distributors evidencing the unaccounted cash payments though the premises of the distributors were also searched on random basis simultaneously. The statements recorded from the distributors are very vague and general. The assessee enclosed the assessment orders in the case of distributors and the AO did not make any addition in the hands of the distributors in respect of the so-called cash payments made to the assessee u/s 69C of the Act. Thus, we cannot hold the statement recorded from the distributors as valid evidence to make the addition. Similarly, the AO recorded statement from Shri Subbaiah Jagan, petty cashier as well as Sri Rama Shankar who have confirmed that they have collected cash from the distributors and handed over to the assessee. However, from the perusal of the extracts of statements in the assessment order, it is seen that except stating vaguely that they have collected the money and given to the

assessee , they have not given the details of cash received distributor-wise, date-wise amounts received and accounted in the books and unaccounted. The assessee has stated that they receive the cash regularly from sales which was collected by the cashiers and duly accounted in the books of accounts and there was no unaccounted cash. This aspect was not verified by the AO and no details were furnished by the cashiers. In the absence of specific details of distributor wise date wise cash receipt with evidence and compared with the cash book and arrives at the difference of unaccounted cash if any, the statement of cashiers also cannot be taken as the basis to hold that the unaccounted money was passed on to the assessee, since, the assessee's business involve the cash sales also.

10.4. The entire addition was made on the statement recorded from the assessee on 02.09.2016 on the basis of invoice No.2135 dated 30.07.2016 related to the sale invoice of Lakshmi Agencies which was billed for Rs.361.53 per case. It was mentioned in the assessment order that it was company's invoice which refers to the M/s Bharathi consumer care Products Pvt.Ltd.. Therefore whatever inference to be drawn from the invoice is to be drawn for the company but not to the assessee. Even otherwise the same required to be applied for A.Y2017-18 but not relatable earlier year assessments, since, no evidence was found relating to under

invoicing of sales in respect of earlier years. In his statement recorded on 02.09.2016 in question No.23 the assessee clearly explained that distributor supplies the case of soaps consisting of 100 soaps to retailer at Rs 450/-. In question No.22 the assessee clarified that the total value of case of 'mini more wash' including basic excise duty+ VAT was Rs.361.53. Thus it is clear from the statement recorded from the assessee that it fixes the rate to distributor at Rs.361.53 and from the distributor to the retailer it reaches at Rs.450/- and in between one more middlemen involved is wholesaler. In response to the show cause notice also the assessee furnished detailed explanation regarding the pricing mechanism and objections with regard to admission u/s 132(4) by the assessee which reads as under:

1. *During the course of search proceedings, the department has found the retailers price list but not manufacturer price list. Hence the comparison of retailer price list with assessee's sale bill cannot be made. There are three stages between the Assessee and the ultimate consumer. These are Distributors, Wholesalers and retailers. The prices will vary between various stages.*
2. *During the course of search proceedings, the department has identified the accounted sale bill dated 30.07.2016 to Sai Lakshmi Agencies (who is the distributor) which worked at Rs.361.53/-*
3. *In turn Sai Lakshmi agencies has sold the stock to the wholesaler Sri Lakshmi Kirana, Draksharamam at Rs.367.20*
4. *The question posed by investigation department vide No.27 of the statement recorded on 02.09.2016 it was asked that the distributor is selling for Rs.450/- which was not correct because in question No.25, the Assessee replied that retailer is paying Rs.450/- for each case and in question No.26, the Assessee*

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 

categorically told that Distributor is paying to the company Rs.361.53 for each case. Hence between Rs.361.53 and Rs.450/- per each case there are two layers namely distributors and wholesalers. Benefitting of Rs.88.47 will be known when the invoices of Distributor, wholesaler and retailer is seen. But in the present case no such effort was made by the department to find out the sale invoices during search proceedings and also in post search proceedings.

5. *From the assessee to the distributor Rs.361.53 and from the Distributor to the Wholesaler Rs.367.20 (including VAT). From the Wholesaler to the retailer also there will be price and from Retailer to consumer there will be price. Hence ultimately the end user will get per one case Rs.450/-.*

6. *The question No.27 contains who is benefitting of Rs.88.47/- posed by the investigation department is vague because how does the Assessee knows at what price the distributors, wholesalers and retailers are selling the products. The Assessee is not concerned about the prices and profits of others. The Assessee is concerned to the extent of Rs.361.53/- only.*

7. *The department has not found any evidence whether the Assessee is getting 8% cash back from distributors. The sweeping allegation that 8% cash back is also not possible to get from the distributors because the distributor is not selling the product at Rs.450/-.*

8. *The Sweeping allegation of 8 to 9% of cash back received is not correlated with any one piece of evidence found during the course of search proceedings. The department has recorded the statement without any evidence and hence there is no evidentiary value of the statement taken U/s 132(4).*

9. *As there is no evidence quoted in the statement recorded U/s 132(4), it cannot be taken as evidence for making the Assessment.*

10. *The department by showing the retailer price list made allegation and recorded the sworn statement by asking the question that it is distributor price instead of retailer. Hence the allegation by the department and price list quoted is not having correlation for indicating that the assessee is under invoicing the sales. There is no sale bill found to indicate under invoicing. In the absence of such finding allegation is not justified.*

11. *The allegation of the department of under invoicing was not based on the any evidences and hence addition on this ground cannot be justified,*

10.5. From the plain reading of the reply of the assessee, it is clear that he has gone back from the admission and explained the pricing

mechanism and margin stated to be goes to distributor, wholesaler and the retailer and emphasized that he was receiving only Rs.361.53 which was duly accounted. In the return filed in response to the notice issued u/s153A, the assessee filed the income originally returned and thus made it very clear at the time of filing the return itself that the admission made u/s 132(4) is retracted. In the circumstances it is the mandatory obligation of the AO to collect the evidences to support the additions and the statement recorded u/s 132(4) cannot help the AO. It is for the AO to address each and every objection raised in the written submissions made by the assessee and to bring tangible evidence to support the addition. In the assessment order we, do not find any material to support the addition except the statement recorded u/s 132(4) on Rs.361.53 per case which the assessee retracted. Statement was recorded from the assessee in his proprietary concern and the invoice stated to be company invoice without mentioning the name. Thus there is clear ambiguity with regard to the identity of the invoice also. Even otherwise, the said invoice was stated to be duly accounted in the books, hence there is no case for drawing adverse inference on the basis of an invoice which was accounted in the books of accounts. The assessee was continuously attending to the investigation teams and cooperating with the teams continuously from 30.08.2016 to

03.09.2016 with the interval of few hours. Multiple statements were recorded, thus we do not hesitate to agree with the assessee that the assessee was under constant pressure and the statement was given under mental stress and pressure with an intention to somehow to get rid of the departmental officers or take some relief from the searches. Therefore we, are of the considered view that the admissions made under such circumstances without the corroborative evidence cannot be made basis for making the additions. Neither evidence was found nor the AO made out a case with the date wise and party wise amount of receipt out of which the amount accounted and unaccounted with tangible evidence. As discussed earlier, no other evidence of asset was found during the course of search, inspite of the fact that the department has searched the business premises as well as the residential premises of the assessee. The issue with regard to validity of additions made solely on the basis of statements recorded u/s 132(4) was considered by the Hon'ble High court of Andhra Pradesh in *Gajjam Chinna Yellappa.v.Income-tax Officer*, [2015] 59 taxmann.com 69 (Andhra Pradesh and Telangana) and held as under:

9. The Act empowers the Assessing Officers or other authorities to record the statements of the assessee, whenever a survey or search is conducted under the relevant provisions of law. The statements so recorded are referable to section 132 of the Act. Sub-section (4) thereof enables the authorities not only to rely upon the

statement in the concerned proceedings but also in other proceedings that are pending, by the time the statement was recorded.

10. *If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under section 164 of the Code of Criminal Procedure. The evidentiary value of a retracted statement becomes diluted and it loses the strength, to stand on its own. Once the statement is retracted, the assessing authority has to garner some support, to the statement for passing an order of assessment.*

11. *In I. T. T. A. No. 112 of 2003 (see CIT v. Naresh Kumar Agarwal [\[2014\] 369 ITR 171/\[2015\] 53 taxmann.com 306 \(AP\)](#) this court dealt with the very aspect and held that a retracted statement cannot constitute the sole basis for fastening liability upon the assessee.*

12. *In the instant case, the appellants specifically pleaded that the statements were recorded from them by applying pressure, till midnight, and that they have been denied access outside the society. The Assessing Officer made an effort to depict that the withdrawal or retraction on the part of the appellants is not genuine. We do not hesitate to observe that an Assessing Officer does not have any power, right or jurisdiction to tell, much less to decide, upon the nature of withdrawal or retraction. His duty ends where the statement is recorded. If the statements are retracted, the fate thereof must be decided by law meaning thereby, a superior forum and not by the very authority, who is alleged to have exerted force.*

13. *It is not as if the retraction from a statement by an assessee would put an end to the procedure that ensued on account of survey or search. The Assessing Officer can very well support his findings on the basis of other material. If he did not have any other material, in a way, it reflects upon the very perfunctory nature of the survey. We find that the appellate authority and the Tribunal did not apply the correct parameters, while adjudicating the appeals filed before them. On the undisputed facts of the case, there was absolutely no basis for the Assessing Officer to fasten the liability upon the appellants. Our conclusion find support from the Circular dated March 10, 2003, issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of retracted statements.*


14. *Therefore, I. T. T. A Nos. 268, 273 and 308 of 2003 are allowed and the orders of assessment dated December 1, 1998, are set aside. Since the orders of assessment are set aside, I. T. T. A. Nos. 287, 291 and 294 of 2006 have virtually become infructuous and they are, accordingly, closed. There shall be no order as to costs.*

10.6. Similarly in the case of Commissioner of Income-tax, Karnataka. v. Shri Ramdas Motor Transport Ltd. [2015] 55 taxmann.com 176 (Andhra Pradesh) Hon'ble High Court held that if the statement made during the course of search remains the same, it can constitute the basis for proceeding further under the Act, even if there is no other material. If, on the other hand, the statement is retracted, the Assessing Officer has to establish his own case. The statement that too, which is retracted from the assessee, cannot constitute the basis for an order under section 158BC. For the sake of convenience we extract relevant part of the order of Hon'ble High Court as under:

20. The subject matter before the Hon'ble Supreme Court was the right of appeal, and their Lordships held that no individual has a substantive right of appeal and much would depend upon the procedure that is in vogue, at the relevant point of time.

21. In Pooran Mal (supra), a Constitution Bench of the Supreme Court examined the constitutional validity of certain parts of Section 132 itself. Even while upholding the provision, their Lordships stressed the importance of fair play and reasonableness. After referring to the protection given under the constitution against self-incrimination, their Lordships observed:

"In other words, search and seizure for the purposes of preventing or detecting crime reasonably enforced was not inconsistent with the constitutional guarantee against search and seizure. It was held in that case that the search of the appellant by a police officer was not justified by the warrant nor was it open to the officer to search the person of the appellant without taking him before a Justice of the Peace Nevertheless it was held that the court had a discretion to admit the evidence obtained as a result of the illegal search and the constitution protection against search of person or property without consent did not take away the discretion of the court. Following Kuruma v. Queen [1955] A.C. 197 (P.C.) the court held that it was open to the court not to admit the evidence against the accused if the court was of the view that the evidence had been obtained by conduct of which the prosecution ought not to take advantage. But

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 

that was not a rule of evidence but a rule of prudence and fair play. It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution of other law of evidence obtained as a result of illegal search or seizure is not liable to be shut out."

22. *We are therefore of the view that the effect of explanation to Section 132(4) of the Act is that the assessing officer can rely upon it in respect of pending proceedings also, as a piece of evidence, but not as the sole basis for imposing additional financial liability upon an assessee either in the form of denial of benefits which an assessee is otherwise entitled to, or subjecting him to prosecution. To be more precise, if there exists any other supportive material, the statement recorded under Section 132(4) can certainly be taken aid of. Conversely, in the absence of other supporting material, a statement of that nature cannot constitute the basis to burden an assessee.*

23. *The second question which is referable to the observation of the Hon'ble Supreme Court, namely, whether the statement recorded under Section 132(4) in the instant case would constitute valid evidence is equally important. In a way, it stood answered in the preceding paragraph. However, to be more clear we express the view that even in relation to the very block assessment, a statement referable to Section 132(4), but retracted by the person cannot constitute the sole basis. It can be relied upon if (a) it is not retracted from and (b) even if it is retracted from, it is supported by other material. The communication dated 11-03-2003 of the department to its officials throws light upon this. In ITTA No. 112 of 2003, decided on 09-09-2014, this Court took the said communication and the relevant provisions of the Act, and held:*

If the statement made during the course of search remains the same, it can constitute the basis for proceeding further under the Act, even if there is no other material. If, on the other hand, the statement is retracted, the Assessing Officer has to establish his own case. The statement that too, which is retracted from the assessee, cannot constitute the basis for an order under Section 158BC of the Act."

10.7. On similar facts identical view was taken by the Hon' High court of Andhra Pradesh in Commissioner of Income-tax-II, Hyderabad. v.Naresh Kumar Agarwal, [2015] 53 taxmann.com 306 (Andhra Pradesh).The assessee relied on number of decisions including the decision of Hon'ble Madras High Court in M.Narayanan & Bros v Assistant commissioner of Income tax (Special Range) wherein Hon'ble High courts have expressed

the similar views. Hon'ble Supreme Court in Pullangode Rubber Produce Co. Ltd..v.State of Kerala, [1973] 91 ITR 18 (SC) held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect. In the instant case there was no evidence found in the premises of the assessee to show that the assessee is under invoicing the sales. No other material was found and seized from the premises of the assessee with regard to receipt of cash from the distributors. No evidence was found in the premises of the distributors also to establish that the assessee was paid unaccounted cash by the distributors. The AO could not rebut the submissions of the assessee with regard to sale price and under invoicing with relevant facts and evidences. Therefore we, hold that the additions made on the basis of statement u/s 132(4) without having corroborating evidence is unsustainable and accordingly we uphold the order of the Ld.CIT(A) and dismiss the appeals of the revenue on this issue for the A.Ys 2011-12 to 2016-17.

11. The next issue is with regard to unaccounted purchases of Acid Slurry amounting to Rs.2,00,49,120/- from M/s Mahaveer Surfactants Pvt. Ltd. A survey u/s 133A was conducted in the business premises of M/s

Mahaveer Surfactants Pvt. Ltd on 30.08.2016 and a statement was recorded from Sri Suresh Kumar Surana, the Director of the company M/s Mahaveer Surfactants Pvt. Ltd. On the basis of the statement recorded from Sri Suresh Kumar Surana, the assessee had admitted the additional income of Rs. 2,00,49,120/- for the A.Y 2011-12 and admitted the aggregate sum of Rs.9,46,26,216/- for the AYs 2011-12 to 2015-16 as under:

A.Y.	Undisclosed Income (Rs.)
2011-12	2,00,49,120
2012-13	1,78,45,920
2013-14	1,93,33,080
2014-15	2,08,37,376
2015-16	1,65,60,720
	9,46,26,216

In response to the show cause notice issued by the AO, the assessee filed explanation stating that the component of acid slurry in soap manufacture is 20% and the entire purchases made from the supplier was duly accounted and no unaccounted purchases was made by the assessee. The assessee further stated that while recording the statement u/s 132(4) the department officials did not place any material or even did not show the statement recorded from the supplier u/s 133A and made the assessee to admit the income. The assessee also requested for cross examining the

supplier and the AO did not give opportunity to cross examine the supplier under the pretext of time barring and made the addition on the basis of statement recorded u/s 132(4). A survey u/sec. 133A was conducted in the business premises of M/s.Mahaveer Surfactants Pvt. Ltd. and during the course of survey, the department stated to have found a noting in the name of M/s. Bharathi which contain the details of acid slurry load supplied to Bharathi group. On an enquiry made from the Director of M/s.Mahaveer Surfactants Pvt. Ltd., initially he stated that the same represent the notings made by the lab technician for quality control and they pertain the number of loads of acid slurry sales made to M/s. Bharathi Group over and above the sales recorded in their books. Later on, he changed the version and stated that since M/s. Bharathi Group insisted for supplies outside the books of account, bills were generated against some other name and booked as cash sales in their books. In response to question No.18, Shri Suresh Kumar Surana also told that they used to send hired tanker lorries through which the goods will be sent. For transport, invoice and way bill will be sent. If the goods reached the destination without being checked midway, the invoice will be destroyed at the both ends. Thus, it is amply clear from the statement recorded from Shri Suresh Kumar Surana that except the notings made in the M/s. Bharathi Group, there was no other

evidence available with M/s.Mahaveer Surfactants Pvt. Ltd. to hold that it has made the sales to the assessee outside the books of account. As per their own version of the Director of M/s.Mahaveer Surfactants Pvt. Ltd. in respect of sales made to the assessee cash bills were generated in the name of fake parties, thus there were no sale bills raised in the name of the assessee outside the books of account. Since the supply invoices were stated to be destroyed at both the ends with regard to the transport of goods there is no evidence with regard to supply of goods to the assessee also. Thus, the statement of Mr. Suresh Kumar Surana without the proper evidence cannot come to the help of Revenue to make the addition in the hands of the assessee in respect of purported unaccounted purchases allegedly made by the assessee. In the absence of tangible evidence merely on the basis of noting in "Bharathi" it cannot be inferred that the same pertained to unaccounted sales of the assessee. Thus, the notings stated to have been available with the M/s.Mahaveer Surfactants Pvt. Ltd. is also a dumb document which is of no help. The AO as per the material gathered from M/s.Mahaveer Surfactants Pvt. Ltd. confronted with the assessee and the assessee had admitted the income of Rs. 9,46,26,216/- from the A.Ys. 2011-12 to 2011 & 2015-16 as per the details given in this order and subsequently retracted. The assessee also alleged that the ADIT has

computed the unaccounted income on the basis of returns filed and made the assessee to sign the statement. Though search was conducted on 30.08.2016 no evidence was found in the residential as well as business premises of the assessee with regard to the unaccounted purchases made by the assessee. The search was continued from 30th August to 3rd September with a time gap of few hours between 9.15 AM to 4.20 PM on 31.08.2016 as per panchanama enclosed in paper book. Thus, it is evident that the assessee was continuously under pressure. The assessee stated that 18% to 20% acid slurry constitutes main product. The AO did not make out the details of production and actual consumption of acid slurry, accounted consumption and the difference if any, to arrive at the unaccounted expenditure in slurry acid consumption. In the absence of the above exercise, it is not possible to hold that there was unaccounted expenditure incurred for the purchase of raw material. Since the assessee stated that he has accounted all the purchases, in the absence of any evidence found during the course of survey or search it is not possible to arrive at the unexplained expenditure in the manufacture of detergents and make addition. The department has recorded the statement u/sec.132(4) without even showing the statement recorded u/s 133A from Mahaveer Surfactants and the evidences gathered from the M/s Mahaveer which

shows that admission was on undue stress and pressure. As observed from the orders of the lower authorities, the AO neither provided the material collected from the premises of M/s.Mahaveer Surfactants Pvt. Ltd. nor provided copies of statements recorded u/sec. 133A to the assessee and simply worked out the unaccounted income on the basis of material stated to be supplied to the assessee which is incorrect. As per settled law the AO is not permitted to use the evidence gathered behind the back against the assessee without giving opportunity to the assessee. In the instant case, search was conducted on 30.08.2016 and the assessee filed the return of income on 10.04.2017 admitting the income, which was declared in original return of income, thus, made it clear that the assessee has gone back from the admission given u/sec. 132(4). The assessee also retracted the statement subsequently, once the assessee retracted the statement recorded u/sec. 132(4), it is incumbent on the AO to prove the unaccounted purchases alleged to have been made by the assessee as discussed earlier in this order while discussing the issue of 'under invoicing' as held by the Hon'ble Jurisdictional High Courts and other cases relied upon by the assessee. No sale bills issued by the supplier to the assessee which was found to be unaccounted in the books of the assessee were available in the premises of M/s Mahaveer Surfactants Pvt. Ltd., during the course of

survey. No lorry receipts for transportation of goods, weighment slips etc. were available with the supplier. The AO also did not place any evidence regarding the assessment made in the hands of supplier M/s Mahaveer Surfactants with regard to discrepancy found during the course of survey, specifically with regard to the assessee. It is obligation of the AO to make necessary enquiries to ascertain the correctness of the statement recorded from Mahaveer Surfactants and make out a case for addition in the hands of the assessee as well as Mahaveer Surfactants Pvt. Ltd., No such exercise was made by the AO. Thus, we hold that the addition made by the AO on account of acid slurry solely on the basis of statement recorded u/sec. 132(4) without any tangible evidence is unsustainable. Accordingly, we uphold the order of Ld.CIT(A) and dismiss the appeal of the Revenue. Accordingly, the appeals of the revenue for the A.Y. 2011-12 to 2015-16 on this issue are dismissed.


12. The next issue in this case is validity of making additions u/sec. 153A without having the seized material. The Ld.CIT(A) deleted the addition holding that the AO is not permitted to make the addition without having seized material for the A.Y.2011-12 to 2014-15. In search cases once the assessment is completed or unabated the assessing officer is not permitted

to make the additions without having the seized material. The Ld.CIT(A) followed the decision of this Tribunal as well as the decision of jurisdictional High Court in the case of A.M.R. India Pvt. Ltd. (supra) and deleted the additions. We have deleted the entire addition on merits, hence, the issue is only of academic interest. The Ld.CIT(A) deleted the addition as per the discussion made in para No.10.1 which reads as under:

10.1.CIT(Appeals) Decision Ground Nos. 2,3, 5 and 25 :

In the above grounds of appeal, the appellant questioned the legality of the addition made in unabated assessment without any incriminating material, on the ground that the Assessing Officer has no jurisdiction to make the addition in an unabated assessment in the absence of incriminating material found in the course of search. The appellant's contention is that in the statement recorded from the appellant Sri Arunachalam Manickaval, no documentary evidence was referred to show that it has been under invoicing of sales and the cash back was received form the Distributors I Dealers. The asst. order does not contain any reference to the outcome of the search or any inference drawn from the search for making the addition. It is further submitted that the assessment made u/s 153 A of the IT Act for the instant assessment year is an unabated assessment and the additions in search assessment shall be based on only incriminating material found in the course of search. Since in the present assessment year under consideration the addition was made without referring to any incriminating document, the asst. becomes void and legally unsustainable. In support of the above contention the appellant relied on number of case laws in support of its contention.

10.2. I have carefully considered the appellant's submissions and the material available on record. It is seen that the statement u/s 132(4) was recorded from the appellant Sri Arunachalam Manickavel on different dates. Apart from cash and gold, no other incriminating material was found at the time of search. The assessment u/s 143(3)/143(1) was completed in this case and no notice u/s 148 was pending as on the date of search and hence, the current year is in the nature of an unabated assessment. The scope of additions that can be legally made in an unabated assessment has become the subject matter before the judicial forums, In this respect, the decisions in the cases of CT Vs Continental Ware Housing Corporation Limited (374 ITR 645 (Bombay) and the decision of the Delhi High Court in the case of CIT (Central) Vs. Kabul Chawla (2015) 61 Taxman 412 are referred to wherein it was held that in cases of unabated assessments, the assessment u/s 153A shall be made only on the basis of

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 

incriminating material found at the time of search Further, the other case laws and the ITAT's orders referred to by the appellant in its written submissions also stand in favour of the appellant on the above issue. On considering the facts and circumstances prevailing in this case, in the case of pending assessment which abated on initiation of search, the Assessing Officer can make the assessment in the normal manner after scrutiny of the regular books and utilizing incriminating evidence discovered in the course of search. The concluded assessments need not disturb as otherwise the same will effect the assessments. In support its submission, the appellant relied on number of case laws and ITAT orders.

The appellant placed reliance in support of his claim that no addition can be made in an unabated assessment without any incriminating material on the following case laws:

1. 2017] 88 taxmann.com 568 (Visakhapatnam - Trib.) IN THE ITAT VISAKHAPATNAM BENCH Y, V. Anjaneyulu v. Deputy Commissioner of Income Tax, Central Circle, Vijayawada Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Absence of Incriminating material) - Assessment years 2004-05 and 2005-06 - Assessing Officer has no Jurisdiction to make additions in respect of concluded assessments in absence of any Incriminating materials found during course of search [In favour of assessee]
2. Hon'ble A.P. High Court judgement dated 12/7/2003 in JTA No266 of 2013 In case of M/s. Hyderabad House Pvt, Ltd. Upheld the decision of the ITAT Hyderabad bench, wherein it is held that computation of undisclosed income' u/s 153,4/1530 of the Act must be in reference to the incriminating material found as a result of search,
3. Where assessment proceedings on basis of return filed being already culminated by operation of law and no incriminating material being found during subsequent search, there could not be any assessment under section 153A/153C [2019] 101 taxmann.com 89 (Chennai - Trib,) IN THE ITAT CHENNAI BENCH 'B' Assistant Commissioner of Income-tax, Central Circle-2(2), Chennai v, RPD Earth Movers (P.) Ltd.
4. The following are some land mark decisions on the scope of assessments u/s 153A with reference to used of incriminating material :
 - i) CIT Vs Anil Kumar Bhatia [2013] 352 ITR 493
 - ii) CIT Vs. Chetan Des Lachman Das [2012] 25 taxmann.com 227
 - iii) CIT Vs. Lanch constructions [2016] 237 Taxman 728 (kar)
 - iv) CIT V Kabul Chawla [2015] 380 ITR 573

On going through the appellant's submissions, case laws cited above and the other documents filed, I am of the opinion that the addition made in the unabated assessment for the assessment year 2011-12 did not arise from any incriminating material found in the course of search and hence the same is held to be not in

order either on merits or from the angle of legality.”

There is no dispute that the entire addition was made on the statement recorded u/s 132(4) without having any incriminating material. The Ld.CIT(A) followed the order of this Tribunal and the decision A.P. High court supra. Therefore respectfully following the decision of Hon'ble AP High court and the decision of coordinate Bench we hold that in completed assessments the AO is not permitted to make additions without having the seized material/ incriminating material. Accordingly we, uphold the orders of the Ld.CIT(A) to the extent of deleting the addition without having the seized material and dismiss the appeal of the Revenue on this issue.

13. In the result, appeal of the revenue for the A.Y. 2011-12 to 2016-17 are dismissed.

Order pronounced in the open court through video conferencing on 23rd December 2020.

<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखासदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 23.12.2020 L.Rama, SPS</p>	<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिकसदस्य/JUDICIAL MEMBER</p>
--	---

I.T.A. No.202/Viz/2020 to 207/Viz/2020, A.Y.2011-12 to 2016-17
Sri Arunachalam Manickavel 🇮🇳

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

1. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Central Circle-1
Guntur
2. निर्धारिती/ The Assessee - Sri Arunachalam Manickavel, Prop : M/s Bharathi
Soap Works, 11/25, Amaravathi Road, Gorantla, Guntur
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam