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,न्यायिकसदस्य 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.197/Viz/2020 to 201/Viz/2020**
(निर्धारण वर्ष**/Assessment Year:2013-14 to 2017-18)**

Dy.Commissioner of Income Tax Central Circle-1 Guntur	Vs.	M/s Bharathi Consumer Care Products Pvt. Ltd., 11/25, Amaravathi Road, Gorantla, Guntur **[PAN : AADCB9107B]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri D.K.Sonowal, CIT DR
प्रत्यार्थी की ओर से / Respondent by	:	Shri M.V.Prasad, AR
सुनवाई की तारीख / Date of Hearing	:	25.11.2020
घोषणा की तारीख/Date of Pronouncement	:	23.12.2020

आदेश /O R D E R

Per Bench :

These appeals are filed by the revenue against the orders of the Commissioner of Income Tax (Appeals)-3, Visakhapatnam in Appeal Nos.314 to 318 /2019-20/CIT(A)-3/VSP/2020-21 dated 31.07.2020 for the Assessment Year (A.Y.)2013-14 to 2017-18. The appeals are filed by the Revenue 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.

1.1. Since the facts are identical, these appeals are clubbed, heard together and disposed of in common order for the sake of convenience. The Revenue has raised the common grounds for the assessment years 2013-14 to 2016-17. During the appeal hearing, the Ld.DR submitted that all the grounds of appeals are related to the addition of under invoicing of sales and unaccounted purchases.

Grounds of Appeal :

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

2. The Ld. CIT (Appeals) ought not have held the assessment order passed u/s.143(3) r.w.s 153A as void when the Act prescribes issuance of notice u/s.153A for six assessment years, preceding the year of search, as mandatory when a search is initiated and also the CBDT vide para 65.5 of its Circular No.7 of 2003 (263 ITR 107 St.) explained the statute in clear terms, and the process of calling for returns u/s.153A has to end in completing the assessment.

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

4. The Ld. CIT (Appeals) ought to have appreciated the fact that the assessee failed to prove coercion in his admission of income u/s132(4).

5. 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.

6. 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.

7. 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.5.20 crore (Asst. Year 2016-17) to M/s Gowtham 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.

8. The Ld. CIT (Appeals) failed to appreciate that the basis as explained in assessment order presents the circumstantial evidence to show that the assessee was dealing with cash and there's 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.

9. 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.

10. 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.

11. Any other ground that may be urged at the time of hearing.

2. Ground No.1 and 11 are general in nature which does not require specific adjudication.

3. For the A.Ys 2013-14 and 2014-15, in ground No.2, the department challenged the order of the Ld.CIT(A) in holding the assessment order as void and the remaining grounds of appeals for A.Y.2013-14 to 2016-17 are related to the merits of the case with regard to deletion of addition pertaining to under invoicing of sales.

4. **Brief facts of the case**: The facts are taken from I.T.A No197/Viz/2020 for the A.Y. 2013-14 which are applicable to all the pending appeals except change in the amounts. For the A.Y. 2013-14 the Assessing Officer(AO) made the addition of Rs.67,19,801/- relating to under invoicing of sales to the returned Income. 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. For the A.Y.2013-14 the assessee filed the return of income on 30.09.2013 admitting loss of Rs.1,34,93,053/-. A search u/s 132 of the Income Tax Act, 1961 (in short 'Act') was conducted on 30.08.2016 in the group cases of Sri

Arunachalam Manickavel, Guntur which covered his residence as well as business concerns. Along with the assessee some of the distributors and suppliers of raw material 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 actual sale price and receiving the different 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 had 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 Shakar, Head Cashier, who in turn remitted the same to Shri Arunachalam Manickvel, the Chairman (in short Sri Arunachalam) of the group. In the statement recorded from the Chairman, he admitted that under invoicing was done to the extent of 8% of the actual sale value and no further expenditure was incurred. The statements recorded from Sri Subbaiah Jagan and Sri Rama Shankar also confirms the above fact. Further the Chairman also admitted the unaccounted income of Rs.37,84,91,758/- in the hands of proprietary concern and a sum of Rs.17,54,21,383/- in the hands of the assessee company for the A.Ys.2013-14 to 2016-17 on account of under invoicing of sales as under :

A.Y.	Unaccounted income on account of under invoicing of sales (Rs.)
2013-14	67,19,801
2014-15	2,12,80,610
2015-16	5,58,53,658
2016-17	9,15,67,314
2017-18	Nil
	17,54,21,383

4.1. Subsequently, the AO issued notice u/s 153A calling for the return of income for the A.Y. 2013-14 to 2017-18 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 Hon'ble 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	Nil	Nil	Nil
2012-13	Nil	Nil	Nil
2013-14	67,19,801	Nil	Nil
2014-15	2,12,80,600	Nil	Nil
2015-16	5,58,53,658	Nil	Nil
2016-17	9,15,67,314	Nil	94,97,907
2017-18	Nil	Nil	1,75,95,157
Total	17,54,21,383	Nil	2,70,93,064

4.2. 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 Hon'ble High court of A.P and proposed to make the additions of under invoicing of sales as admitted in the statements 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 objected for the proposed addition of under invoicing of sales stating that the assessee 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 to Sri Sai Lakshmi Agencies was the correct bill issued by the company to the distributor and duly accounted in the books of accounts of the assessee. The assessee also stated that what was told by the assessee with regard to Rs.450/-per case was retail price but not the price of the company to the distributor. The assessee also stated that assessee sold the stock to the distributor, distributors in turn sold the stock to the wholesaler Sri Lakshmi Kirana, Draksharamam at Rs.367.20/- per case and the wholesaler sells the stock to the retailer. The assessee further stated

that the distributor is paying the assessee a sum of Rs.361.53/- per case and the assessee is not getting any benefit out of the difference amount of Rs.88.47/- which is distributed among the distributor, wholesaler and the retailer. Thus, submitted that 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 is 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 the 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 have stated that

they were giving cash back to the assessee @ Rs.50,000/- to Rs.60,000/- per load, statements from the cashiers and the statement recorded from the assessee u/s 132(4) made the addition of Rs.67,19,801/- to the returned income on account of under invoicing of sales. On identical facts the AO made the similar additions for the assessment years 2013-14 to 2016-17 as per the details given below:

A.Y.	Unaccounted income on account of under invoicing of sales (Rs.)
2011-12	nil
2012-13	nil
2013-14	67,19,801
2014-15	2,12,80,610
2015-16	5,58,53,658
2016-17	9,15,67,314
	17,54,21,383

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 stating that the additions were made solely on the statement recorded u/s 132(4) without having corroborative evidence and the same is unsustainable, since the assessee has retraced from admission given u/s 132(4).

6.1. For the A.Y.2013-14 and 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 assessments for the A.Y.2013-14 and 2014-15 got unabated and no incriminating material was found, hence, argued that 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. The assessee submitted that there was no evidence whatsoever that was found by the AO during the course of search proceedings indicating under invoicing of bills or any other unaccounted income escaped from the assessment to make 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 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 ITA 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 assessment was completed u/s 143(3) on 23.03.2015 and hence viewed that the addition required to be made on the material found during the course of search, thus deleted the addition made in the assessment order passed u/s 143(3) r.w.s. 153A. 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 orders.

6.3. On merits also the Ld.CIT(A) observed that during the course of search, no material was found except gold and cash which was seized. With regard to under invoicing of sales and the cash stated to have been 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 Veesam Narasimha Reddy and others though the AO used the statements 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 with regard to the unaccounted

cash payments made to the assessee, though the searches were conducted on random basis in the case of distributors also. No addition was made by the AO in the hands of the distributors in respect of cash payment made to the assessee u/s 69C of the Act, 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 the corroborative evidence was found except the vague and general 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 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 which was accounted in the books and no defect was found. 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 of sales.

7. 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 and the assessee having not retracted within reasonable time, the admission given u/s 132(4) is valid and cannot be brushed aside. The DR further 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 the 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 has received the cash back, hence argued that the Ld.CIT(A) ought to have upheld the addition made by the AO. The assessee requested for cross examination in the 11th hour, therefore, the AO could not give opportunity for cross examination. Hence argued that not

providing the opportunity to cross examine the assessee should not be viewed adversely against the department. Thus argued that the Ld.CIT(A) ought to have remitted the matter back to the file of the AO or confirmed the additions. Apart from the above, the Ld.CIT (DR) argued 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) ought to have sustained 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.

8. 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 the understatement of income. The assessee has given a statement u/s 132(4) in a stress due to continuous pressure without understanding its implications. He submitted that in fact, the Assistant Director of Income tax Investigation computed the undisclosed income on the basis of returns of income filed by the assessee on pure guess work 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 statements were given without knowing the implications. He referred page No. 1 of the paper book in the case of Arunachalam Manickvel and demonstrated that search was commenced in the residential premises of the assessee at 8:30 AM 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 Arunachalam Manickvel, search was commenced at 4:20 pm on 31.08.2016 and concluded at 10:50 PM on 01.09.2016 and the assessee has given statement without having time to think and analyse the issues. The statements were recorded from the assessee on 30.08.2016 to 03.09.2016 at the residence and at the business premises, proprietary concern regularly without giving sufficient intervals. Thus argued that the assessee has not applied mind and simply signed the statement whatever recorded by the investigation wing. Thus argued that admissions made in the statement recorded u/s 132(4) is invalid and cannot be taken at it's 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, it clearly shows that there was no incriminating material that 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. No evidence was found with regard to concealment of income also. What was stated to have been explained by the assessee was that the sum of Rs.361.53 was the price per case to the distributor and Rs.450/- was the sale price of the end consumer per case. In between, there were two/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 evidencing the payment of cash to the assessee. The Ld.AR further submitted that assessee receives cash regularly from the sales made to the distributors towards the realization of debts which is accounted in the books of accounts. Thus submitted that whatever cashiers told was the receipt of accounted cash from the distributors but not the cash outside the books of accounts. The Ld.AR submitted that the entire purchases and sales were duly accounted in the books of accounts. Thus argued that the Ld.CIT(A) rightly held that there is no case for making addition in the hands of the assessee without having corroborative evidence, solely on the basis of the statement recorded u/s 132(4). 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.

9. We have heard both the parties and perused the material placed on record. First we take the case on merits since, the 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 loss of Rs.62,12,345/-. The assessment resulted in addition of Rs.67,19,801/- relating to under invoicing of sales. The allegation of the AO is that the assessee was involving in under invoicing the 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 distributors to the extent of 8% of actual sale value and admitted the additional income to the extent of Rs.17.54 crores from the A.Y.2013-14 to 2017-18 as under:

Asst.Year	**Unaccounted income on account of under invoicing of sales**
2013-14	67,19,801
2014-15	2,12,80,610
2015-16	5,58,53,658
2016-17	9,15,67,314
2017-18	Nil
Total	17,54,21,383

9.1. In respect of under invoicing sales the Ld.CIT(A) deleted the addition holding that the addition made solely on the basis of statement recorded u/s 132(4) is unsustainable. For the sake of convenience we, extract para No.11.1 and 11.2 of the CIT(A) order which reads as under:

11.1. **CIT(A) Decision: (Against ground no. 6,8, & 25)**

I have gone through the submissions of the appellant and the statement recorded u/s.132(4) of the 1T. Act. In the appellant's case, the Investigating Officer white recording statement u/s.131(4) from the MD of the appellant company Sri Arunachal. Manikvel was 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 of case laws in support of its contention, Relevant extract of one such case laws 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.) is extracted below '

"Para 5 of the above judgement is extracted below:

> *"1. We have duly considered the rival contentions made by the learned advocates for both the sides. It is true that the addition 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 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 .cam 95 (Delhi). Peres 19, 20 and 21 of the above judgement are extracted below:

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

3. In our view a plain reading o section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search, The words evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any ***proceedings*** *under the Act as expressly mandated by virtue of the explanation to section 132(4) of the Act, However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation."*

4….. 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 and material found during search. The statement recorded under section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence / material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded".

The following extract of the decision in the case of CIT Vs Haraeevi Agrawal, reported in (2016) 70 Taxmann. com, 95 Delhi, relied upon by the appellant is applicable to the appellant's case.

5. ….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 seconded and the evidence / material found during search in order to for an assessment to be based on the statement recorded'.

11.2) 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 134 cannot be considered as "incriminating material", as this write 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 following case law describes the spirit of section 132(4) which is applicable to the present facts of the appellant.

In the case of [2005] 148 Taxman 35 (AHD.) (MAG.) ITAT AHMEDABAD BENCH B

Assistant Commissioner of Income Tax V. Jorawar Singh M. Rathod

Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income - Assessment year 1993-94 Assessing Officer made an addition to assessee's income on basis of statement of assessee recorded under section 132(4) at time of search. Assessees case was that during course of recording statement, he was under constant threat of penalty and prosecution and was confused about various questions asked by search party about documents, papers, etc, of other persons found from his premises and he had declared sum under pressure which was evident from fact that no such corroborative evidence, asset or valuables were found in form of immovable or movable properties from his residence - Whether on facts, addition could not be sustained Held, yes

Relevant paragraph of the judgment is as under

"We have heard the learned Representatives of the parties and perused the record. After considering the facts of the case, we find that the AO had made the addition merely on the basis of statement recorded under section 132(4) of the Act at the time of search, We find that at the time of search the evidence or material or assets, immovable or movable properties were found which supports the disclosure of Rs.16 lakhs. The assessee had retracted from the said disclosure which has not been accepted by the Department, it is true that simple denial cannot be considered as a denial in the eyes of law but at the same time It is also to be Seen (that) the material and valuable and other assets are found at the time of search. The evidence ought to have been collected by the Revenue during the search in support of the disclosure statement, The decision cited by learned Departmental Representative is distinguishable on facts. In the said case, the disclosure was of Rs.7 lakhs which was supported by investment in house property, unaccounted cash, unaccounted investment in furniture and unaccounted in gold ornaments etc., whereas in the case

under consideration no such assets or valuables were supported to the disclosure, it is settled position of the law that authorities under the Act are under an obligation to act in accordance with law. Tax can be reflected only as provided under the Act, If an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected [S.R.Koshti v. CIT (2005) 193 CTR (Guj) 518] . The ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all, There must be something more than bare suspicion to support the assessment or addition. [Dhakeswari Cotton Mills Ltd. v. CIT (1954)26 ITR 775 (SC)). It is true that an apparent statement must be considered real until it was shown that there were reasons to believe that the apparent was not the real, Science has not yet invented any instrument to test the reliability of the evidence placed before e Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities (CIT v Durga Prasad More 1973 CTR (SC) 500: (1971) 82 lTR 540 (SC)]. In the light of above discussion, we apply the ratio of Apex Court in the case of Durga Prasad (supra), i.e. test of human probabilities, we do not find any material on record on which basis it can be hold that the disclosure of the assessee for Rs. 16 laths is in accordance with law and in spirit of section 132(4). Under the circumstances, we find that the CIT(A) has correctly deleted the addition".

9.2. From the perusal of the assessment order, the Ld.CIT(A) order we, find that no evidence is found with regard to under invoicing of sales or unaccounted purchases either in the premises of the residence or the business 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 the statements u/s 132(4) in multiple premises regularly without giving sufficient intervals to the assessee to apply the mind on the issues raised by the department. 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 sum accounted in the books of accounts and unaccounted amounts were not furnished and there was no record of having given the unaccounted amounts to the assessee. 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 without having the basic details of date wise, party wise cash payments and their accounting in the books of accounts of the assessee. It is to be ascertained whether the same were accounted in the books of accounts or not ? Similarly, the AO recorded statement from Shri Subbaiah Jagan, Petty cashier as well as Sri Rama Shankar who 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 accounted in the books and unaccounted. The assessee has stated that they receive cash regularly from distributors which was collected by the cashiers and duly accounted in the books of accounts and there was no unaccounted cash. This fact was not disputed by the department. 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 and verification with the cash book with regard to their accounting and arrives at the difference of unaccounted cash, if any, the statement of cashiers also cannot be taken as evidence to hold that the unaccounted money was passed on to the assessee, since, the assessee's business involve the cash sales also.

9.3. 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 which was accounted in the books of the assessee. The

year wise unaccounted income was computed on sales declared by assessee on the presumption of cash received back @8% of actual sales which is incorrect since the distributors told that they paid the cash ranging from Rs.50,000/- to Rs.60,000/- per load. It was mentioned in the assessment order that it was company's invoice and duly accounted in the books of accounts.. Even otherwise the same required to be inferred for A.Y2017-18 but not relatable earlier years 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 a 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 per case and from the distributor to the retailer it reaches at Rs.450/- and in between one more middle men involved is the 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 puce list with the 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.36153/.

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 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 ofRs.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 any evidences and hence addition on this ground cannot be justified.

9.4. From the plain reading of the reply of the assessee, it is clear that he has gone back from the admission and explained the price difference from Rs.361.53 to Rs.450/- as the margins pertaining to distributor, wholesaler and the retailer and emphasized his contention that he was receiving only Rs.361.53 which was duly accounted. In the return of income filed in response to the notice issued u/s153A the assessee filed the income originally returned and thus made it very clear 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) solely cannot be made the basis. 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 except the statement recorded u/s 132(4) on Rs.361.53 which the Chairman

retracted. Statement was recorded from the Chairman and said invoice was 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 said invoice was accounted in the books of accounts and there was no difference. 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 and 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, party wise cash of receipt from each distributor which was said to be unaccounted. As discussed earlier, no other evidence of concealed/undisclosed asset or income 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 on the basis of

statement 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 assessees, 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."*

9.5. Similarly in the case of *Commissi*oner 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 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 Honble 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."

9.6. 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.

9.7. 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 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 solely 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 for the A.Ys 2013-14 to 2016-17 on this issue.

10. The next issue in this case is validity of making additions u/sec. 153A without having seized material. The ld. CIT(A) deleted the addition holding that the AO is not permitted to make the addition without having seized material. 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 in para 10.1 & 10.2 of the appeal order for the A.Y.2013-14 which reads as under :

> *"10.1. I have considered the submissions of the appellant, contents of the assessment order and the case laws relied upon by the appellant and found that the appellant's claim deserves to succeed. The appellant submitted that the assessment in this case for the A.Y.2013-14 was completed u/s 143(3) on 23.03.2015. If the concluded assessment order is to be agitated by the Assessing Officer, it should be based on the material which was unearthed during the course of search proceedings. In the case on hand, no such material was found and seized at the time of search and hence the assessment made is void. In support of this contention, the appellant placed reliance on number of case laws mentioned in written submissions. One such decision more applicable to the appellant's case is in the case of DCIT, Center Circle-1 New Delhi Aggrawal Entertainment (P) Ltd., (2016) 72 Taxmann.com 340 (Delhi Tribunal), extract of which is extracted below :*
>
> > *Section 153A read with section 143 of the Income Tax Act, 1961 – Search and seizure Assessment in case of (in case of section 143(1) assessment) – Assessment Year 2004-05 – whether assessment in respect of*

which return has been processed under section 143(1), cannot be regarded as pending for purpose of section 153A as Assessing Officer is not required to do anything further about such a return and thus said assessment cannot be reopened in exercise of power of section 153A – Held, yes [Paras 10 and 12]

The Hon'ble Jurisdictional High Court also express its view as under :

A.P.High Court decision in the case of CIT Vs. M/s AMR India Ltd. in ITTA No.354 of 2014 dated 12.06.2014. The Hon'ble High Court held that the A.O. has no jurisdiction to re-agitate the assessments which were already completed and subsiding. The relevant portion is extracted below :

"We have heard Sri J.V.Prasad, learned counsel for the appellant and gone through the impugned judgement and order of the learned Tribunal.

It appears that the learned Tribunal found on fact that after completion of assessment proceedings and after reaching finality thereon, the Assessing Officer tried to reagitate the assessments. According to us, the learned Tribunal has rightly held that the Assessing Officer has no jurisdiction to reagitate the assessments which were already completed and subsisting. We therefore do not find any element of law to be decided in this appeal.

10.2. On considering the appellant's submissions and case law extracted above, I am in agreement with one appellant's suibmissions. In the instant case, the impugned addition was made without referring to any incriminating document found and seized at the time of search operations which is not permissible as per law. As submitted by the appellant, there are number of case laws on this issue, out of which one case law is more relevant to the appellant's case, is extracted above. In view of the submissions of the appellant and the case laws cited in support of appellant's contention, I am of the opinion that the appellant's submissions in this respect deserve to succeed and the addition made is liable for deletion. Accordingly grounds raised are allowed."

10.1. 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 in the case of A.M.R. India Pvt. Ltd. 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) and dismiss the appeals of the revenue on this issue for the A.Y. 2013-14 and 2014-15.

A.Y.2017-18: ITA/201/VIZ/2020

11. Only issue involved this appeal is cash deposit of Rs.1,74,52,500/- made during demonetization period i.e. 08.11.2016 to 31.12.2016. The assessee was asked to explain the source of deposits. In response, the assessee explained before the AO that the source was as per the books of accounts and also produced the cash book for verification. From the books of accounts, the AO found that the said sum of Rs.1,74,52,500/- was received from Arunachalam Manickavel. The assessee furnished confirmation letter before from Mr. Arunachalam Manickavel and also filed a letter confirming the advancement of loan was out of money received from Gowtham Budha Textile Park Pvt. Ltd relating to real estate business income which was admitted before the Hon’ble Income Tax Settlement Commission (ITSC). The AO did not believe the contention of the assessee.

In the absence of proof for receipt of the money from M/s Gowtham Budha Textile Park Pvt.Ltd, made the addition u/s 68 r.w.s. 115BBE of the Income Tax Act, 1961 (in short 'Act'). On appeal the Ld.CIT(A) deleted the addition.

12. We have heard both the parties and perused the material placed on record. In the instant case, the assessee had explained the source and furnished the confirmation letter and also explained the source of source. The creditor of Arunachalam Manickavel is having credit worthiness and there is no dispute. The department also conducted the search against the creditors, thus there is no dispute with regard to identification and credit worthiness of the creditor. Therefore, there is no case for making addition in the hands of the assessee. If at all the AO disbelieved the source of source, the same required to be made addition in the hands of the creditor, but not in the hands of the assessee. Therefore, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

13. In the result, appeals of the revenue for the A.Y.2013-14 to 2017-18 are dismissed.

Order pronounced in the open court on 23rd December, 2020.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	**(वी.दुर्गा राव)**
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
लेखासदस्य/ACCOUNTANT MEMBER	**न्यायिकसदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 23.12.2020
L.Rama, SPS

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 – M/s Bharathi Consumer Care Products Pvt. Ltd., 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