

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No.720/JP/2017

निर्धारण वर्ष/ Assessment Year : 2015-16

M/s Bannalal Jat Construction Pvt. Ltd., Bus Stand, Jahajpur, District Bhilwara	बनाम Vs.	ACIT, Central Circle-2 Ajmer
स्थायी लेखा सं./ जीआईआर सं./ PAN No. AACCB9357J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

राजस्व की ओर से / Revenue by : Shri A.S.Nehara (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27.10.2017

घोषणा की तारीख / Date of Pronouncement : 29.12.2017

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id CIT(A)-2, Udaipur dated 24.07.2017 wherein the assessee has taken following grounds of appeal:

"1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1,21,43,210/- by treating the cash found in search as unexplained income of the assessee on the basis of statement of director u/s 132(4) by not accepting the contention of assessee that cash so found belong to its director Shri Banna Lal Jat in individual capacity which is duly verifiable from the withdrawals made from the bank account and recorded in the regular books of accounts maintained by him.

2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 29,860/- by considering the difference in the account

statement with M/s Nahar Filling Station as undisclosed income of the assessee. He has further erred in not directing the AO to exclude this alleged undisclosed income from the income of the next year when the same was offered for tax.

3. The Id. CIT(A) has erred on facts and in law in confirming the disallowance of Rs. 82,200/- u/s 40A(3)."

2. Regarding the first ground of appeal, briefly the facts of the case are that search and seizure operations were carried out at residential and business premises of Shri Bannalal Jat in which he was operating his proprietary concern in name of M/s Bannalal Jat Contractor and also the assessee company by name of Bannalal Jat Construction Pvt Ltd. During the course of search at the residential premises of shri Bannalal Jat, cash of Rs 1,21,43,210 was found and inventorised as per Annexure CF of Panchnama dated 11.10.2014. In his statements recorded u/s 132(4) during the course of search and even subsequent statement recorded u/s 131, Shri Bannalal Jat has admitted the same as undisclosed income of the assessee company. However, subsequently while filing the return of income for the impugned assessment year, the assessee company didn't offer the said undisclosed income to tax. During the course of assessment proceedings, the assessee was asked to show-cause as to why it has failed to disclose the same and also to get the cash verified from the regular books of accounts.

3. In response to the show-cause notice, the assessee vide written submission dated 02.12.2016 submitted as under:-

"During the course of survey/search, the assessee has stated in reply to question No. 13 and 16 when question about cash of Rs. 70 Lacs found from the Car, he stated that the withdrawals were made from the bank account with bank of Baroda and SBBJ between 20.09.2014 to 30.09.2014 which was kept at residence and out of that

amount he has kept Rs. 70 Lacs in the morning in the car for making payment to labour, tractor, material etc. Thus in survey assessee explained the amount of Rs. 98.92 Lacs (70+19.92+9) pertain to his business which is out of withdrawals from bank account. The same is evident from the extract from the accounts maintained in computer for the F.Y. 2014-15 was taken and marked as A-1 duly signed by the authorized officer. Copy of the same as Page No. 43 is enclosed for ready reference. Further, it is also submitted that the print out of incomplete books of account in computer was taken by the ADI (Investigation) team which was also part of Annexure A-1. Copy of these pages are enclosed and explained as under:-

Page No.	Particulars	Justification
30	Trial balance of Shri Banna Lal Jat for the period 01.04.2014 to 09.10.2014	Showing cash balance of Rs. 1,06,76,390.67
33	Balance sheet of M/s Banna Lal Jat on 09.10.2014	Rs. 1,06,76,390.67
40	Balance sheet of M/s Banna Lal Jat Construction Pvt. Ltd. As on 09.10.2014	Showing cash balance of Rs. 4,21,691/- only

Now the survey was converted into search and the statement of the assessee u/s 132(4) was recorded at 10.15 PM on 10.10.2014 and thereafter search

was concluded on 11.10.2014 morning and the assessee so under pressure as stated that such cash belong to company as undisclosed income. The subsequent statement of the assessee u/s 132(4) whereby cash was surrendered, is thus, incorrect and under pressure. Whereas from the above said facts, it is clear and evident that cash balance found and seized from shri Banna lal Jat belongs to his proprietary concern and cash balance of company was only Rs 421,691 on the date of survey/search. Hence, kindly accept cash so found accepted.”

4. After taking into consideration the assessee company's submission, material gathered during the course of search as well as submitted during the course of assessment proceedings, the AO rejected the contention of assessee for the following reasons:-

- (i) During the course of post search proceedings, the books of account were examined and it was found that at several places there are instances of unaccounted incomes/profit, some of which were even surrendered by the assessee during the post search proceedings.
- (ii) In statement recorded on 10.10.2014, in reply to question no. 6, Shri Bannalal Jat admitted that the books of account of M/s. Bannalal Jat Construction Pvt. Ltd. has been written upto 09.10.2014 but expenses for last 3-4 months are yet to be entered. From this it is gathered that the assessee indulged in non-maintenance of proper books of account and as on the date of search it was found incomplete. The assessee indulged in maintaining transaction on diaries and loose papers which is not permissible in any of the method of accounting.

- (iii) While filing the return of income the assessee has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of search. The subsequent retraction from the surrender without having evidence in proof of retraction is not permissible in the eyes of law. The statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.
- (iv) In statement recorded on 10.10.2014, in reply to question no. 8, Shri Bannalal Jat admitted that in his business of civil construction, he has inflated various expenditure and income so generated by inflating the expenditure is in form of cash which is found at his residence and the same is not recorded in his books of accounts and he surrendered the cash so found amounting to Rs.1,21,43,210/- as undisclosed income of M/s. Bannalal Jat Construction Pvt. Ltd.
- (v) During the course of post search proceedings and after three months of search action, Shri Bannalal Jat vide statement recorded u/s 131 on 04.12.2014 again confirmed the admission of undisclosed cash of Rs.1,21,43,210/- as has already been offered u/s 132(4) of the Act.
- (vi) The contention of Bannalal Jat regarding cash withdrawals between 20.09.2014 to 30.09.2014 is not acceptable as the assessee has failed to prove/nexus between cash found and withdrawals with documentary evidences.

Accordingly, the AO made addition of Rs.1,21,43,210/- as unaccounted income of the assessee company.

5. On appeal, the Ld. CIT(A) held that assessee has not corroborated the availability of cash from the cash book of Shri Bannalal Jat and the relevant copy of the bank statement. In the cash book prepared after search, number of entries were incorporated and therefore, the cash balance worked out at Rs. 1,21,47,528/- is an afterthought and make believe picture. There is a gap of 10-15 days between the date of withdrawal from bank and the date of search which defies any acceptance that the cash withdrawn from the bank was found in search. This rules out the preponderance of probability that the cash withdrawn from the bank is found in search. Even though the Panchama of the cash found and seized is in the name of Shri Bannalal Jat but in the statement u/s 132(4), he admitted that the cash belonged to the assessee company. Hence, in the absence of any concrete circumstantial evidence and considering the silence of the assessee on this issue till the date of filing of return u/s 153A, the AO rightly ignored the make believe documents. He accordingly confirmed the addition.

6. The relevant findings of the Id CIT(A) is reproduced as under:-

"4. I have considered the facts of the case, gone through the assessment order and submission of the appellant.

4.1 There is no dispute about the reliability, importance and sanctity of admission made during search and same could be refuted under compelling and plussible evidence as guided by the Supreme Court in case of Pullangode Rubber Produce Company Ltd. V. State of Kerala and Another 91 ITR 0018. It is held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the

correct state of affairs. Similarly, the Hon'ble Rajasthan High Court in case of CIT vs. Ashok Kumar Soni 291 ITR 172 held that admissions are relevant & strong piece of evidence that may be used against the person making such admission but they are not conclusive proof of the statement contained in the admission & can always be explained.

4.2 It is seen that in the initial statement Banna Lal Jat, director of the company recorded on 09/10/2014, in reply to Q.No. 14, 15 & 16 admitted that the cash belongs to him and the source of such cash was claimed as withdrawals from bank account between 20-09-2014 to 30-09-2014. However, the same was not corroborated during the search from the cash book of M/s Banna Lal Jat contractor, a proprietary concern and relevant copy of bank statement. Moreover, though as per the cash book of M/s Banna Lal Jat contractor, the cash balance of Rs. 1,06,76,390/- is claimed before the AO in assessment proceeding, the copy of the cash book of Shri Banna Lai Jat filed by the appellant is after incorporating number of pending entries, which itself proves that the cash book and books of accounts of Shri Banna Lai Jat were incomplete on the date of search and correctness and completeness of such cashbook is not accepted by the AO. Therefore, the cash balance worked out at Rs. 1,21,47,528/- of Shri Banna Lai Jat is nothing but an afterthought and make believe picture.

4.3 Nothing turns out of the so called bank withdrawals by Sh. Banna Lal Jat of Rs. 89,50,000/- from his bank account between 23-09-2014 to 30-09-2014 as the date of search is 09-10-2014 and there is a gap of more than 10/15 days from the respective date of withdrawal and date of search. The long gap defies any acceptance of appellant's arguments that same cash withdrawn from bank was found during the search. Looking in juxtaposition of the appellants explanation that cash

withdrawn from bank was found during the search with the fact that as much as cash of Rs. 70,00,000/- was found from the his car and the cash about Rs. 30,00,000/- was found from the residence of Banna Lal Jat rules out the preponderance of probability that same cash withdrawn from bank could have been found during the search.

4.4 It is true that as per the panchnama of cash Found & seized in the name of Banna Lal Jat. However, the same was admitted voluntarily u/s 132(4) by Shri Banna Lal Jat as belonging to the assessee company. The AO has rightly relied on the said voluntarily statement u/s 132(4) of Shri Banna Lal Jat that the cash is belonging to assessee company and surrendered in the hands of the company. There is no concrete circumstantial evidence in the form of appellant's representation/retraction with supporting evidence before any authorities in Investigation Wing such as; ADIT/DDIT, Addl/JDIT, DIT, DGIT or Assessment Units such as Assessing Officer, Range head, M/s Bannalal Jat Construction Pvt. Ltd. ASSESSMENT YEAR 2015-16 ITA No. 594258981/16 -17 CIT/Pr. CIT, CCIT/Pr. CCIT or even the CBDT. Since the date of search to date of filing the return u/s 153A, the appellant has not given slightest signal that his statement u/s 132 (4) is incorrect and he is willing to undergo any verification/ investigation. By keeping silence over the issue during such a long spell of time denied both the revenue authorities- the Investigation Wing as well as Assessment Units and therefore such pleas at the fag end of assessment proceeding can not accepted.

4.5 I agree with the finding of the Assessing Officer and concur in making statement u/s 132(4) as basis for making the addition and has rightly ignored the make believe documents.

4.6 I also concurred for the several decisions applied by the AO to the facts of the present case to clearly establish that the cash found

relates to the assessee company. At the cost of repetition following citation with relevant excerpts are referred again to supply the emphasis.

(1) Kanti Lai Parbhu Da Patel V/s DCIT (2005) 93 ITD 117 (Indore)

Held that the assessee having owned up cash money initially in his statement u/s 132(4) as also confirming his admission while his statement recorded u/s 131 of IT. Act his attempt to explain it by way of agriculture income later on was untenable for is later retraction had no corroborative backing.

(4) Dr. S.C.Gupta vs. CIT (2001) ITR 782 (All)
In Dr. S.C. Gupta v/s CIT (2001) 248 ITR 782 (All), it was held that a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement earlier at the time of survey was wrong and infact there was no additional income. The burden does not seem to have been attempted to be discharged by the assessee.

(6) Kantilal C. Shah vs. Asstt. CIT (2011) 133 ITD 57/14 Taxman.com

"assessing officer made additions in respect of unaccounted income admitted under section 132(4). However, after laps of about nine months from date of admission, assessee through an affidavit sought to retract from statement made under section 132(4). It was held that statement recorded under section 132(4)

is an evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion. Since assessee retracted from his earlier statement without demonstrating any evidence to establish that statement recorded earlier was incorrect, an allegation of compulsion or coercion earlier was incorrect, an allegation of compulsion or coercion must not be accepted merely on a statement in remained unsubstantiated. Therefore, addition made on basis of statement recorded under section 132(4) was to be upheld. ”

4.7 In view of above discussion and under the facts discussed above the addition of Rs. 1,21,43,210/- made by the Assessing Officer is confirmed.”

7. During the course of hearing, Id. AR submitted that a survey u/s 133A was carried out at the business premises of M/s Bannalal Jat Contractor, a proprietary concern of Shri Bannalal Jat on 09.10.2014. In continuation to this survey, survey was also conducted at residential premises of Shri Bannalal Jat at Village Pander, Tehsil Jahajpur where the books of accounts of this concern were kept. In survey, cash of Rs. 28,92,500/- was found from the residence and Rs. 70,00,000/- in the car parked at the residence. Shri Bannalal Jat in his statement u/s 133A dated 09.10.2014 in reply to Question No. 11 explained that cash found at the residence is out of the amount withdrawn from the bank which can be verified at his main office premises at Jahajpur. Again in reply to Question Nos. 14, 15 & 16 he explained that the cash found at residence and in his car is out of the withdrawals made from his bank account between 20.09.2014 to 30.09.2014. He also stated that he had kept the amount of Rs. 70 lakhs in his car in the morning itself since he was to go to

site for making payment of various expenses like labour, tractor, stone, soil etc.

8. It was submitted that the survey was converted into search on 10.10.2014. Statement of the assessee u/s 132(4) was recorded at the office premises on 10.10.2014 and also at the residence on 11.10.2014. In the statement recorded at office u/s 132(4) dated 10.10.2014, Shri Bannalal Jat in reply to Question No. 6 stated that books of accounts of M/s Bannalal Jat Construction Private Limited is written up to 09.10.2014 but expenditure for last three to four months are not yet recorded. In respect of M/s Bannalal Jat, he stated that books of accounts are written up to 31.03.2014. A printout of the provisional/incomplete balance sheet, profit & loss account and trial balance was provided. As per these accounts, the position of cash balance was as under:-

Particulars	Cash Balance (Rs)
Trial Balance of Sh. Bannalal Jat for the period 01.04.14 to 09.10.14	Rs.1,06,76,390/-
Balance sheet of M/s Bannalal Jat as on 09.10.2014	Rs.1,06,76,390/-
Balance sheet of M/s Bannalal Jat Construction Pvt. Ltd. as on 09.10.2014	Rs.4,21,691/-

9. It was submitted that in search cash of Rs.1,21,43,210/- was found at the residence and Rs.3,380/- at the premises of M/s Bannalal Jat Construction Private Limited. This cash was inventoried as Annexure CF of Panchnama dated 11.10.2014. Out of it, cash of Rs.1,17,43,210/- was seized. The panchnama of cash found & seized was prepared in the name of Bannalal Jat. Thereafter, in statement u/s 132(4) dated 10.10.2014 recorded at the office,

Shri Bannalal Jat in reply to Question No. 8 stated that he is not in a position to explain the source of cash found at residence which is generated by inflating expenses in the books of accounts. He surrendered this amount in the hands of M/s Bannalal Jat Construction Pvt. Ltd. He reiterated the same in reply to Question No. 11 of the statement recorded at residence. Again, the surrender of cash in the hands of the assessee company was reiterated in reply to question no. 40 in statement dated 04.12.2014 recorded in post search proceedings.

10. It was submitted that after the search, the books of accounts of M/s Bannalal Jat (proprietary concern of Shri Bannalal Jat) and assessee company were completed. As per the completed books of accounts, there is a cash balance of Rs. 1,21,41,528/- in the books of M/s Bannalal Jat. Accordingly while filing the return, no income was offered by the assessee.

11. It was submitted that in light of above facts, the issue involved in this ground is whether the cash found at the residence of Bannalal Jat pertains to assessee company and whether the source of cash found at residence is verifiable from the books of accounts of M/s Bannalal Jat or not. The fact that cash found in search at the residence of Shri Bannalal Jat pertains to M/s Bannalal Jat is evident from the following facts:-

- (i) In the initial statement dated 09.10.2014, Shri Bannalal Jat in reply to Question Nos. 14, 15 & 16 has categorically stated that cash found in the car in his name which is used for his contract business is out of the withdrawals made from the bank accounts maintained with Bank of Baroda and SBBJ between 20.09.2014 to 30.09.2014. This fact is verifiable from the bank account of Shri Bannalal Jat. According to which withdrawal of Rs. 89,50,000/- is made between

23.09.2014 to 30.09.2014. It is a admitted position of law that the preliminary statement has more evidentiary value then the subsequent statement.

- (ii) In survey, cash book of M/s Bannalal Jat was found. Even as per this cash book M/s Bannalal Jat was having cash balance of Rs.1,06,76,390/-. Of course this cash book was not complete but subsequently, it was completed and as per the completed cash book, cash balance on the date of search is Rs. 1,27,47,528/- which is almost the same as found in search.
- (iii) The AO in the assessment proceeding has not found any discrepancy in the cash book of M/s Bannalal Jat. In fact in case of Bannalal Jat, he has accepted this cash book and based on the accounts prepared on the basis of this cash book has adopted the income declared by him and accepted that cash balance as on 31.03.2015. Thus, when this cash books is accepted in case of Bannalal Jat, the same cannot be ignored for verification of the cash found on the date of search.
- (iv) The Panchnama of cash found and seized is in the name of Shri Bannalal Jat and not in the name of the assessee company. Thus, when the cash is found from the possession and control of Shri Bannalal Jat, it can only be considered in his case in view of the presumption laid down u/s 292C.

In view of the above evidence and the legal position, the cash found in course of search cannot be considered in the hands of the assessee company.

12. It was submitted that the lower authorities have confirmed the addition only by relying on the statement of the Shri Bannalal Jat recorded u/s 132(4) and by drawing incorrect inference from the facts on record. The assessee's submission in this connection is as under:

- a) It is stated that assessee has not corroborated the cash found in search with the cash book of M/s Bannalal Jat and the relevant copy of the bank statement. This has no relevance when assessee in his statement dated 09.10.2014 has specifically pointed out that the cash found is out of the withdrawal made from the bank account between 20.09.2014 to 30.09.2014 and this fact is verifiable from the bank statement and also from the completed cash book produced in course of assessment proceedings. Hence, the cash book so prepared after incorporating the pending entries in which no discrepancy is found cannot be said to be an afterthought, more particularly no discrepancy is found by the AO in such cash book.
- b) The time lag of withdrawal from bank account from 23.09.2014 to 30.09.2014 till the date of search is of 10-15 days. This time lag cannot be considered as a long gap specifically when the fact of the cash withdrawal from the bank account is stated by the assessee in his statement dated 09.10.2014. Therefore, the observation of the Ld. CIT(A) as to the preponderance of probability is in favour of the assessee.
- c) The Ld. CIT(A) has accepted that cash is found and seized in the name of Shri Bannalal Jat. In spite of this, he relied on the statement u/s 132(4) of Shri Bannalal Jat on the ground that he has

not filed any representation/retraction with supporting evidence before filing the return. In holding so, he ignored the presumption laid down u/s 292C which provides that where any money, bullion, etc is found in possession or control of a person u/s 132 or u/s 133A, it shall be presumed that such money, bullion, etc belongs to such person. With this presumption in law, it was the onus of the Department to prove otherwise with concrete evidence. No such evidence is brought on record. As against this, assessee has brought on record evidence in form of the bank statement and the cash book of M/s Bannalal Jat to support the fact that the cash belongs to Shri Bannalal Jat.

- d) The Ld. CIT(A) has referred to certain decisions as to the evidentiary value of the statement u/s 132(4). In all these decisions, it has been held that though such statement has a evidentiary value but with appropriate evidence the same can be retracted. The Hon'ble Supreme Court in case of Pullangode Rubber Produce Company Ltd. V. State of Kerala and Another 91 ITR 0018 (SC) has held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs. In the present case, the assessee has established that the cash found from the residence of Shri Bannalal Jat does not belong to it and therefore, only on the basis of the statement u/s 132(4) addition cannot be made. In this connection the various cases relied by the assessee as reproduced at pages 13-14 of the CIT(A) order may be considered.

- e) The Hon'ble ITAT, Jaipur Bench in case of ACIT vs. Devendra Kumar Choudhary in ITA No. 828/JP/2016 order dated 30.06.2017 (copy enclosed) where also the assessee surrendered certain jewellery as unexplained in his statement u/s 132(4) but did not include the same while filing the return of income, deleted the addition made by the AO where assessee filed detailed explanation supported by evidence as to how the statement u/s 132(4) was not correct and the jewellery is fully disclosed.

In view of the above, the addition of Rs.1,21,43,210/- confirmed by Ld. CIT(A) by treating the cash found in search as belonging to the assessee company be directed to be deleted.

13. The Id DR is heard who has vehemently argued the matter, took us through the findings of the lower authorities and relied on the said orders.

14. We have heard the rival contentions and perused the material available on record. The issue under consideration, relates to whether the cash found at the residence of Shri Bannalal Jat pertains to the assessee company i.e. M/s Bannalal Jat Construction Pvt. Ltd. or it belongs to M/s Bannalal Jat contractor, the proprietary concern of Shri Bannalal Jat. A survey was initially conducted at the residential and business premises of Shri Bannalal Jat and subsequently, the same was converted into search operations. Here it is relevant to note that the assessee carries out his business activities from both his residence as well as the official premises and these business activities pertains to both of his concern namely Bannalal Jat Construction Pvt. Ltd and Bannalal Jat Contractor. The fact that the search warrant has been executed on him in respect of both his concerns in respect of both his residence and office premises has not been disputed. Therefore, the contention of the Id AR

regarding presumption u/s 292C that cash so found at the residence belongs to him and not to the assessee company is not correct and cannot be accepted.

15. In the statement recorded u/s 133A during the course of survey, in reply to Question No. 11, where the source of cash amounting to Rs. 28,92,500/- found at his residence was asked, Shri Bannalal Jat submitted that the same belongs to his business and the same can be verified from the books of accounts maintained at his Head Office at Jahajpur. In reply to Question No. 14, where source of Rs. 70,00,000/- found in the car, registered in the name of Shri Bannalal Jat was sought, he submitted that he uses the car for his business purposes and he has withdrawn this amount from the Bank of Baroda Branch situated at Jahajpur and SBBJ Branch situated at Jahajpur between 20.09.2014 and 30.09.2014 and the same can be verified from the records maintained at his Head Office at Jahajpur. Further in Question No. 16, further explanation of Shri Bannalal Jat was sought regarding the cash of Rs 70,00,000, Rs 19,92,500, and Rs 9,00,000 found at his residence and he submitted that Rs. 70,000,00/- has been withdrawn by his Munsis and his sons from the Bank Account and given to him, however, from which particular bank withdrawal, this amount has been given to him is not clear to him. Regarding Rs. 19,92,500/- which is given by Shri Satya Narayain, it was stated that there is no supporting evidence available with him. In respect of Rs. 9,00,000/-, he stated the same to be his business receipts. In Question No. 22, Shri Bannalal Jat was specifically asked as to whether he maintains individual cash book given that he is the proprietor of Bannalal Jat Contractor and also the Director in M/s Bannalal Jat Construction Pvt. Ltd. In response, he submitted that he does not maintain individual cash books.

16. On perusal of the above statement of Shri Bannalal Jat recorded u/s 133A during the course of survey, it is clear that he is managing his business affairs of both his proprietary concern as well as the assessee company from his residence. Further, it is also clear that the cash so found at his residence pertains to his business. However, in absence of individual cash book of respective concerns and other details maintained by him, it is not possible to identify whether the cash so found belongs to the proprietary concern or to the assessee company. At the same time, he has offered an explanation that the same has been withdrawn from his bank accounts and can be verified from the records maintained at his main office situated at Jahajpur which is again used by both his proprietary concern as well as the assessee company, however, we find that there is no corroboration of the same during the survey or subsequent search proceedings.

17. Subsequently, a statement of Shri Bannalal Jat was again recorded on oath u/s 132(4) on 10.10.2014 (concluded on 11.10.2014) at his residential premises. In Question No. 11, he was asked to explain the source of cash amounting to Rs. 1,21,43,210/- found at his residence and details thereof contained in Annexure- CF. In response, Shri Bannalal Jat stated that the said cash belongs to his company M/s Bannalal Jat Construction Company and the same is its undisclosed income and the same is surrendered in the name of M/s Bannalal Jat Construction Pvt. Ltd. Thereafter another statement u/s 132(4) was recorded at his business premises on 10.11.2014 (concluded on 11.11.2014). In question No. 8, he was asked to explain the source of cash amounting to Rs. 3,380/- found at his office and Rs. 1,21,43,210/- at his residence. In response, he submitted that regarding Rs. 1,21,43,210/- which has been found at his residence, he is unable to give any explanation. He submitted that he is in the business of civil construction and in such business, various expenses have been inflated and shown in the books of accounts, and

income so generated on account of such inflation in expenses is represented in the form of cash which has been found at his residence. This income is not represented in his books of accounts and he surrendered the said amount as his undisclosed income and willing to pay appropriate tax on the same. He also categorically stated that this undisclosed income belongs to his company M/s Bannalal Jat Construction Pvt. Ltd. In response to Question No. 11 wherein he was asked to provide any other explanation which he wishes to provide, he submitted that pursuant to search operations where various documents, loose papers, entries, cash, investment, advances and individual expenditure details have been found and taking all that into consideration, he surrenders Rs. 4,01,43,210/- as his undisclosed income. He also categorically stated that the said disclosure is in the hands of M/s Bannalal Jat Construction Pvt. Company in respect of unexplained cash amounting to Rs. 1,21,43,210/- and Rs. 2,50,00,000 and Rs. 30,00,000/- totalling to Rs. 2,80,00,000 in his individual capacity. He also requested that the cash so found at his residence may be adjusted against the tax which would be determined based on the said surrender of undisclosed income.

18. On perusal of the above two statements of Shri Bannalal Jat recorded u/s 132(4) at his residence and business premises during the course of search proceedings, what has clearly emerged is that he has made specific disclosure of undisclosed income in the form of cash amounting to Rs 1.21 crores found at his residence in the hands of M/s Bannalal Jat Construction Pvt. Ltd. and similarly, he has made specific disclosure of other undisclosed income based on seized documents found during the course of search amounting to Rs. 2.8 crores in his individual hands i.e, in hands of his proprietary concern Bannalal Jat Contractor. We do not see any ambiguity in both his statements recorded u/s 132(4) of the Act. Further in both the statements, he has said in clear

terms that the said statement has been given in his fully consciousness without any fear or pressure or undue influence from the Revenue authorities.

19. Subsequently, on 04.12.2014 during the post-search proceedings, statement of Shri Bannalal Jat was again recorded u/s 131 of the Act wherein he was again confronted with the various documents seized and cash found during the course of search and the consequent surrender made by him in respect of his two concerns. In response, he again confirmed the surrender of undisclosed income in the hands of the assessee company in respect of the cash which has been found at his residence amounting to Rs. 1,21,43,210/- and Rs 1,35,00,000 as his undisclosed income as per Annexure 1 to 6 found and seized at his residence, undisclosed investment in properties amounting to Rs 1,87,00,000 based on Annexure 2 found and seized from his office and based on other documents seized, another amount of Rs 93,00,000. Infact, he has agreed for an additional surrender of Rs 25,00,000 during the post search proceedings in hands of his proprietary concern but at the same time, has maintained the consistent stand taken earlier during the course of search, in terms of surrender of undisclosed income in the form of cash of Rs. 1,21,43,210/- found at his residence in the hands of the assessee company.

20. In view of the above discussions, it is crystal clear that Shri Bannalal Jat has been managing the affairs of both his concerns from his residence as well as his office at Jahajpur. In his statement recorded during the course of survey u/s 133A, he has stated that the cash found at his residence belongs to his business and he was not clear as to which particular business concern he was referring to. In his subsequent statement recorded on oath u/s 132(4) during the course of search, he has categorically admitted that the cash so found at his residence arises out of inflated business expenses and

belongs to his business concern run in name of Bannalal Jat Construction Pvt Ltd and has thus been surrendered as its undisclosed income. The said admission has been reiterated in not just one statement but two subsequent statements - one recorded u/s 132(4) and second recorded u/s 131 during post search proceedings. We therefore donot see any inconsistency in assessee's statements, rather the latter statements have been made more clearly and given that these subsequent statements have been recorded on oath u/s 132(4) will thus have a great evidentiary value.

21. Thereafter, the assessee company filed its return of income on 30.09.2015 wherein such surrender was not honoured by the assessee company and the undisclosed income in form of cash found at the residence was not offered to tax, effectively retracting from the statement recorded on oath u/s 132(4) of the Act. It is relevant to note that during the intervening period i.e, the day the statement was recorded u/s 132(4) on 10.10.2014 and day the return of income was filed on 30.09.2015, almost a period of 11 months, there is no communication from the assessee company to the Revenue authorities retracting from the statement so made and recorded during the course of search proceedings. In fact, during the post search proceedings, the assessee again got an opportunity wherein he was called and his statement was recorded u/s 131 on 4.12.2014 and therein, as well, he maintained his earlier stand and didn't retract from the statement so recorded during the course of search. This also proves that the contention of the assessee company that the earlier surrender during the course of search was under pressure is totally unfounded.

22. Further, it is the contention of the Id AR that after the search, the books of accounts of M/s Bannalal Jat (proprietary concern of Shri Bannalal Jat) and assessee company were completed and as per the completed books of

accounts, there is a cash balance of Rs. 1,21,41,528/- in the books of M/s Bannalal Jat. Accordingly while filing the return, no income was offered by the assessee company. The books of account under consideration relates to financial year ending on 31 March 2015 and by no stretch of imagination, it can be held that books of accounts were not finalised till the time the return of income was filed on 30.9.2015. One can possibly understand that the auditors while reviewing the books of accounts may suggest certain modifications in the treatment of various transactions especially as to how the same would be reflected in the financial statements in accordance with the accepted accounting practices and standards prescribed. But at the same time, as far as the cash transactions are concerned, it cannot be accepted that such transactions could not be recorded well in time before the close of the financial year ended on 31 March 2015 and position regarding availability of cash in hands was not known till the time assessee company files its return of income.

23. Here, we refer to the decision of the **Hon'ble Rajasthan High Court in case of Ravi Mathur & others (D.B Appeal No. 67/2002 & others)** vide its order dated 13.05.2016 where Hon'ble High Court has laid down the following proposition in law in respect of retraction of statement recorded under section 132(4) of the Act:

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

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

*by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9.11.1995 and onwards but retraction, is almost after an year and that too when the assessment proceedings were being taken up in November 1996. **We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes:-***

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

thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations.”

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

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

15.2 This Court in Raj kumar Sodhani vs The CIT (D.B ITA No. 15/2015 decided on 28.4.2016) has taken this very view that retraction after a sufficient long gap loses its sanctity.”

24. In light of legal proposition laid down by the Hon'ble Rajasthan High Court, there is clearly an inordinate delay in retraction and no justifiable explanation has been given by the assessee company for such delay. It is clearly an afterthought and loses its significance. The statement recorded u/s 132(4) has great evidentiary value and there is no material which has been brought on record that such statement has been recorded and obtained forcefully/by coercion/undue influence. Further, the assessee has been consistent in his statements so recorded even during the post search proceedings when his statement was recorded under section 131. Hence, in light of above discussions, the retraction of the statement recorded u/s 132(4) cannot be accepted in the instant case.

25. In the entirety of facts and circumstances of the cases and respectfully following the decision of the Hon'ble Rajasthan High Court (supra), the addition towards the undisclosed income in form of cash found during the course of search amounting to Rs 1,21,43,210 is confirmed in the hands of the assessee company.

26. Before parting, we may add that we have gone through all the contentions raised by the Id AR and the same have been appropriately dealt with supra and also various legal authorities which have been brought to our notice each one of which has been rendered in the context of peculiar facts and circumstances of the cases .

27. In the result, ground no. 1 of the assessee's appeal is dismissed.

28. Regarding the 2rd ground of appeal, briefly the facts of the case are that in the assessment proceeding, the AO called the account statement of the assessee in the books of M/s Nahar Filling Station. On perusal of the same, he observed that there is a difference of Rs.29,860/- in closing balance as on 31.03.2015. He therefore, made addition an of Rs.29,860/-.

29. On appeal, the Id CIT(A) confirmed the said addition and his findings are reproduced as under:-

"I have considered the facts of the case and gone through the assessment order and submission of the appellant. It is seen that there is difference of Rs. 29,860/- in the account of the assessee in the books of supplier and supplier account in the books of assessee. The claim of A/R that it has transferred the difference in income in A.Y.2016-17 can't be accepted as that year is not under appeal. Further no specific reason for transferring the income in A.Y. 2016-17 as against A.Y. 2014-15 was given. Therefore, the addition of Rs. 29,860/- made by the AO is confirmed."

30. During the course of hearing, the Id AR submitted that the difference has arisen since the party has initially debited charges of Rs.29,860/- to the account of the assessee for which entry was made in the books of accounts. Thereafter, the party reversed the same without intimation to the assessee resulting into difference. When this fact came to the notice of the assessee,

reverse entry of the same was passed in the subsequent years where the amount of Rs.29,860/- is offered for tax. Thus, when the amount is already offered for tax in AY 2016-17, the addition made be deleted for which reliance is placed in case of the decision of Hon'ble Supreme Court in CIT Vs. Excel Industries Ltd. 358 ITR 295 in which it was held that when the rate of tax remained the same in present A.Y. as well as in subsequent A.Y., the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect, there is no need for the Revenue to continue with the litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers. In view of the above, addition confirmed by the Ld. CIT(A) be directed to be deleted.

31. We have heard the rival contentions and perused the material available on record. The Id AR has contended that the amount of Rs.29,860/- has been reversed and offered to tax in AY 2016-17. Where the amount has been offered to tax in the subsequent year, the same amount cannot be brought to tax in the impugned assessment year. Hence, the addition is deleted and ground of appeal is allowed in favour of the assessee.

32. Regarding the 3rd ground of appeal, briefly the facts of the case are that the AO, based on review of the seized documents, observed that the assessee made certain payment exceeding Rs. 20,000/- in cash as mentioned at page 12 of the assessment order and accordingly, disallowed the same u/s 40A(3).

33. The Ld. CIT(A) after considering the explanation of the assessee and the evidence filed restricted the disallowance u/s 40A(3) to Rs. 82,200/- in respect of 3 payments of Rs.25,000/-, Rs. 28,000/- and Rs. 29,200/-. The relevant finding of the Id CIT(A) which is reproduced as under:-

"13. I have considered the facts of the case, gone through assessment order and submission of the appellant. It is seen that the AO made the disallowance only on the basis of the vouchers which indicates that payment is more than Rs. 20,000/- per day. He ignored the fact that this payment is made to various labours working at site and complete details of the payment to each labour is mentioned in the supporting details. From the supporting details it is found that payment to individual person is less than Rs. 20,000/- except in three cases i.e. Rs. 25,000/-, Rs. 28,000/- and Rs. 29,200/-. The provisions of section 40A(3) is not applicable where the payment is less than Rs. 20,000/- and therefore the disallowance made by the AO to the extent of Rs. 4,60,000/- (542200-25000-28000-29200) is deleted and the addition to the extent of Rs. 82,200/- is confirmed."

34. During the course of hearing, the Id AR submitted that though the payment in the above 3 cases is made exceeding Rs. 20,000/- but the same is made under exceptional circumstances as mentioned at page 25 of the order of CIT(A). Hence, the disallowance so confirmed by the Ld. CIT(A) be directed to be deleted.

35. We have heard the rival contentions and perused the material available on record. On perusal of the order of the Id CIT(A), in respect of payment of Rs 25,000, it has been stated by the assessee that the same was paid to Gikru Gadiwala for labour payment and since he came to office after banking hours and was in urgent need of funds, cash was paid to him. Regarding payment of Rs 28,000, it has been stated that the same was paid to Saijani Motors towards repair of machine breakdown at site. Regarding Rs 29,200, it was stated that the same was paid to two individual labourers and payment to each labourer is less than Rs 20,000. The fact that the payments have been made for the purposes of the assessee's business have not been doubted by the AO. Regarding the business exigency of making payment in cash, it has

been stated that first payment has been made after the banking hours for making labour payment, the second payment was necessitated on account of machine break down at site. Regarding the third payment, it has been stated that the said was paid to two labourers and payment to each is less than Rs 20,000 and in this regard, we find that the Id CIT(A) has in similar circumstances allowed the payment in cash to the labourers not exceeding Rs 20,000. In the entirety of facts and circumstances of the case, the disallowance made by the AO amounting to Rs 82,200 is hereby deleted. In the result, ground of appeal is allowed.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 29/12/2017.

Sd/-

(KUL BHARAT)

न्यायिक सदस्य/Judicial Member

Sd/-

(VIKRAM SINGH YADAV)

लेखा सदस्य/Accountant Member

Jaipur

Dated:- 29/12/2017

*Ganesh Kr

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

1. अपीलार्थी/The Appellant- M/s Bannalal Jat Constructions Pvt. Ltd., Bhilwara,
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-2, Ajmer
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No.720 /JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar