IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

SHRI R.P. TOLANI, JUDICIAL MEMBER
and
BEFORE SHRI B.C. MEENA, ACCOUNTANT MEMBER

ITA No.671/Del/2012
(ASSESSMENT YEAR : 2007-08)

ACIT, Central Circle 25, New Delhi.	vs.	Shri Dharam Pal Gulati, 9/44, Kirti Nagar Indl. Area, New Delhi. **(PAN : AAHPG1791R)**
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : S/Shri Vinod Bindal & Sanjeev Bindal, CAs
REVENUE BY : Dr. Sudha Kumari, CIT DR

ORDER

PER B.C. MEENA, ACCOUNTANT MEMBER :

This appeal filed by the revenue emanates from the order of CIT (Appeals)-I, New Delhi dated 01.11.2011.

2. A search and seizure operation was carried out at the premises of the assessee on 22.11.2006. Assessee is an individual filed the return of income at Rs.5,88,06,735/- on 02.09.2008. This amount included undisclosed investment in jewellery of Rs.12,85,777/- and undisclosed cash found during search of Rs.24,86,000/-. The Assessing Officer made an addition of Rs.15 crores on the basis of statement recorded u/s 132(4) of the Income-tax Act,

1961 during the search operation. The CIT (A) has deleted the addition by holding as under :-

> "3.6 The submission given by the appellant as well as the objections of the Assessing Officer has been considered. The reliance placed by the Assessing Officer in the case of Kunhambu (V.) and Sons Vs. CIT [1996] 219 ITR 0235 involved the valuation of stock and the valuation of a cinema theatre whereas the addition in the value of stock was upheld, the addition made on account of unexplained investment in the case of cinema theatre was deleted. In this judgment, there is no adjudication regarding retraction of statement. It is further observed that the search in this case was conducted because the assessee could not furnish the details of opening stock. In fact the Hon'ble High Court observed that "on the other hand, it was found that the search was resorted to only because of the failure of the assessee to produce the opening stock inventory. Shri Raman and a writer of the firm were examined in this connection on July 16, 1981, about nine days before the search. The search was conducted only when it was found that there was no chance of getting the opening stock inventory". Whereas in the case of Mrs. Aanisa Batool GHani Vs. ACIT, C.C. 18, New Delhi [2008] 21 SOT 323 (Delhi), the addition was sustained because the assessee could not explain the credit entries pertaining to cash deposits in the bank. Thus, the addition was· sustained because there was evidence against the assessee. The second issue in the later case was' regarding the valuation of house property where the Hon'ble Tribunal observed that the assessee divulged the facts voluntarily without any specific query being put in that regard by the department. Thus in both the cases the additions was sustained because there was incriminating evidence against the assessee on the basis of which the additions were made. In the first case the assessee could not reconcile the opening stock and thus he surrendered on this account whereas in the second case there were credit entries in the bank which the assessee could not explain. Thus, the judgments cited by the Assessing Officer are entirely different from the facts of this case.
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> 3.7 It is further seen that the Assessing Officer has stated with regard to Annexure A-3/02, page 40 of the diary but has

nowhere quantified any amount anywhere in the assessment order. In the remand report, there is a mention about the huge cash being handled by the assessee but nowhere has the Assessing Officer quantified any undisclosed income either.

3.8 In para 4.4 of the remand report, the Assessing Officer has stated that there was material evidence showing an unaccounted income from Commodity Trading, activities in share and jewellery etc. To this, it is seen that the appellant has himself offered income on account of unexplained jewellery as well as the cash generated from Commodity Trading. The contention of the appellant that had the assessee generated an income of Rs 15,00,00,000/-during the last eight months than the same would have been reflected somewhere in the assets found from the assessee is acceptable. Apart from the reliance placed by the appellant on the Board Instruction, he has also given a reasonable justification regarding the improbability of earning such a huge amount within a calendar year.

3.9 The various Court decision are also in favour of the assessee. In the case of CIT, Ranchi Vs. Ravindra Kr. Jain [2011] 12 taxmann.com 257 it has been held that "Whether when amount, which assessee stated to have been deposited in bank, was not found in any bank and, thus, part of alleged admission of assessee was not found correct, Assessing Officer was duty bound to collect more evidence in respect of undisclosed income of assessee -Held, yes - Whether, therefore, Tribunal was Justified in deleting addition -Held, yes"

The Hon'ble Madras High Court in the case of M. Narayanan & Bros. Vs. ACIT, Special Investigation Circle, Salem [2011] 13 taxmann.com 49 (Mad.) has held that "Whether when assessee had explained his statement as not correct in context of materials produced, amount of Rs 4 lakhs could be added to assessee's income on basis of his statement - held, no". Similarly, in the case of ACIT Vs. Jorawar Singh M. Rathod [2005] 148 taxman 35 (Ahd.) (Mag.), it has been held by ITAT, Ahmedabad 'B' Bench that "addition made by the Assessing Officer merely on the basis of retracted statement u/s 132(4) could not be sustained in the absence of any evidence, material or recovery of any movable or immovable assets at the time of search to

corroborate the disclosure made by the assessee. " Further, reliance is being placed on the following decisions :

i) Kailashben Mangarlal Chokshi Vs. CIT [2008] 174 Taxmann 466 (Guj.) / (2008) 14 DTR 257 (Guj.)
ii) Arun Kumar Bhansali Vs. DCIT [2006] 10 SOT 46 (Bang.) (URO)
iii) Shree Chand Soni Vs. DCIT [2006] 101 ITJ (JD) 1028
iv) Rajesh Jain Vs. DCIT [2006] 100 ITJ (Del) 929
v) The Hon'ble Supreme Court in Vinod Solanki Vs. Union of India
vi) India Seed House V s. ACIT [2000] 69 TTJ (Delhi) (TM) 241

3.10 Even the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd Vs. State of Kerala and another 91 ITR 18 has held that "Such admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of account do not disclose the correct state of facts." The assessee has further pointed out that in one of its group cases the Hon'ble ITAT has already upheld the retraction because no corroborative evidence could be produced regarding the admission made by the assessee. In this case namely She Prem Arora Vs. ACIT, C.C. 25, New Delhi in ITA No. 4520, 4521,4522, 4523, 4524 & 4525 (Del.) of 2010 dated 13/09/2011, the Hon'ble ITAT has observed that "As regards, the contention of the Revenue that assessee had not retracted the surrender of Rs.5 crore, we may like to mention here that assessee by not disclosing income of Rs.5 crore in returns of income filed in response notice u/s 153A has retracted from the statement given u/s 132(4) and Assessing Officer has accepted such retraction as he has chosen not to make any addition based on statement recorded u/s 132(4) but on the basis of seized material. Moreover, the statement recorded does not give any indication of any concealment found during the course of search which was surrendered nor the question put to assessee suggest that the authorized officer has quantified any specific concealment based on seized material in respect of which the assessee made surrender of Rs.5 crore. Such a statement is rebuttable presumption which can be rebutted with evidence.

Since no undisclosed was worked out by the authorized officer during the course of search the surrender made is neither supported by concealed income nor by investment or by undisclosed expenditure. Hence, no adverse inference can be drawn on the basis of statement given u/s 132(4) particularly when assessee had offered undisclosed income based on seized material."

3.11 As regards, the contention of the appellant that he was under pressure at the time of giving the statement and the counter argument of the Assessing Officer that two neutral witness were present to oversee the search proceedings. It is my view that such a issue shall not go to determine whether the assessee can retract the statement or not, for the fact remains that the surrendered income has to be quantified on the basis of the incriminating material found during the search or on the basis of any other evidence collected during the assessment proceedings. Neither in the assessment proceedings nor in the remand report has any such quantification of concealed income has taken place.

3.12 The further argument given by the Assessing Officer that huge cash was found from the premises does not imply that it can form the basis of making an addition without any evidence. If the expenditure on advertisement was unvouched as stated in the remand report then the amount of unvouched expenditure can be made the basis of addition in the hands of the person to whom the advertisement pertains but it cannot be made the basis for making estimated addition in the hands of all the persons in the said group. The Assessing Officer in the remand report has further stated that the appellant had made earnings from speculative activities in agricultural commodities. However, nowhere has the Assessing Officer quantified such income to show that it is commensurate with the surrendered amount.

3.13 In the statement recorded u/s 132(4) in reply to question no. 24, the assessee had replied that he had invested this money in shares and has also purchased gold out of it. However, during the search no investment in shares or gold was found to the extent of Rs.14,75,00,000/- which itself goes to show that the statement given by the appellant was without any basis. Thus, additions cannot be made on basis of hypothetical income and corresponding hypothetical expenditure.

3.14 Considering the above discussions and the legal position as stated in the various judgments cited supra, the addition of Rs.15,00,00,000/- cannot be sustained because no incriminating material justifying such an addition has been found during the search from the assessee. Further, the appellant had retracted the statement within a period of six days on 28/11/2006, therefore, if the investigation wing had any grievance, it was free to carry out further investigation in this regard for the search was carried on till 18/01/2007, the date on which the last locker was operated. Neither the Assessing Officer nor the investigation wing could pin point any concealment of this amount, therefore, the addition of Rs.15,00,00,000/- is hereby deleted."

3. Now, the revenue is in appeal before us by taking the following grounds :-

"On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:-

"1. The order of the CIT(A) is not correct in law and facts.

2. On the facts and circumstances of the case, the Id. CIT(A) has erred in law as well as in facts in deleting the addition of Rs.15 crores made by the Assessing Officer in respect of surrendered amount at the time of search. Reliance is placed on the decision of the Hon'ble Supreme Court of India dated 25/10/1996 in Special Leave Petition (e) NO.14028 of 1996 in the case of Surjeet Singh Chhabra Vs. Union of India and Others wherein the Apex Court has held that the Revenue officials are not Police officers and the confession, though retracted, is an admission and binds the petitioner.

Further reliance is placed on the decision of the Punjab and Haryana High Court in the case of Rakesh Mahajan vs. CIT cited at 642 of 2007 (Taxpert) and 214 CTR 218 wherein it has been held that "It is well settled that admissions constitute best price of evidence because admission are self-harming statements made by the maker

believing it to be based on truth. It is well known that no one will tell a lie especially harming one's own interest unless such a statement is true."

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law as well as in facts in ignoring the fact that the assessee has not filed any evidence in the present case which could prove that the statement was made under any threat or coercion. For the retraction to be valid, threat or coercion has to be proved.

4. The order of Ld. CIT(A) is perverse in law and on facts.

5. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

4. While pleading on behalf of the revenue, the ld. DR relied on the order of Assessing Officer and also submitted that the statement recorded during the search operation has evidentiary value as held by Hon'ble Supreme Court in the case of Surjeet Singh Chhabra vs. UOI in SLP(C) No.14028/96 that revenue officers are not police officers and confession, though retracted, is an admission and binding on petitioner. The ld. DR also relied on the order of the Hon'ble Punjab & Haryana High Court in the case of Rakesh Mahajan vs. CIT reported in 214 CTR 218 for the proposition that admissions constitute best piece of evidence because admissions are self-harming statements made by the maker believing it to be based on truth. The ld. DR submitted that no one will tell a lie especially harming one's own interest unless such a statement is true. He further submitted that assessee has not brought out any evidence that statement was recorded under the duress and threat. Ld. DR also

submitted that during June and August 2003, assessee earned income of Rs.5,08,085/- in Vaida Commodity Trading. This shows that assessee was doing speculative business of Vaida Commodity Trading. He relied on Assessing Officer order.

5. On the other hand, the ld. AR relied on the order of CIT (A) and submitted that the assessee was a more than 83 years old at the time of the search. The search was started at 8.00 AM on 22.11.2006 and it carried on up to 11.57 AM of 23.11.2006. The statement of the assessee continued to be recorded till 23.11.2006 which is evidenced from the statement recorded itself. Assessee's house is a two storied in an area of 425 sq.yds. and 9 search party officials continued to search the premises for 28 hours. The assessee was tired and frustrated when the statement was recorded and under this intimidating tactics, coercive or by force, assessee surrendered the amount which was not at all representing the income on the basis of any seized valuable or incriminating documents. The assessee earned some profit in the earlier year, financial year 2003-04, by trading in Vaida commodity trading which had been duly declared in books of accounts. In the year under consideration, without any evidence how the existence of the speculation and commodity trading by the assessee can be presumed or assumed by the Assessing Officer. There was no incriminating document found and seized with regard to any such trading by the assessee. Ld. AR further submitted that

assessee immediately retracted from the statement (within six days) and the Assessing Officer has accepted this fact, as he has not encashed the cheques given by the assessee. No incriminating documents or evidence was found during the search operation which could support the statement recorded during the search operation for making disclosure of Rs.15 crores and utilization thereof. The authorized officer had not worked out undisclosed income on the basis of documents/assets found and seized during the search operation. No question was asked about the papers seized as per panchnama. The statement of doing Vaida Trading in past 8 months only itself suggests that the statement was far from truth. Nothing has borne out of the facts of the case. All these things were based on the hearsay. Ld. AR pleaded that no addition can be made merely on the basis of surrender without any existence of corroborative evidence found or seized during the search operation. No material even was gathered in post search inquiries to disprove the retraction by assessee. Ld. AR also relied on case laws. In the case of Kailashben Mangarlal Chokshi vs. CIT – [2008] 174 Taxman 466 (Guj.) or (2008) 14 DTR 257 (Guj.), the Hon'ble Court held that merely on the basis of admission, the assessee could not have been subject to additions, unless and until some corroborative evidence is found in support of such admission. Further, statement recorded at such odd hours (at midnight) could not be considered voluntary statement, it was subsequently retracted and necessary

evidence was led contrary to such admission and addition was deleted. The ld. AR submitted that in assessee's case, similar facts are involved and no corroborative or incriminating documents were found and seized during the search operation. The disclosure was not based on any corroborative evidence. The assessee was a 83 old person and search continued for 28 hours. When statement was recorded the assessee was tired and frustrated. The ld. AR also relied on the decision of Hon'ble ITAT, Bangalore Bench in the case of Arun Kumar Bhansali vs. DCIT – [2006] 10 SOT 46 (Bang.) wherein it was held that while computing the undisclosed income of the assessee, Assessing Officer should take cognizance of such correct income as depicted in the books of account as well as in the seized material and it should not adopt a figure merely as per admission of the assessee. In the assessee's case, no corroborative evidence was found and seized, therefore, the CIT (A) was justified in deleting the addition which was merely based on the statement recorded when the assessee was tired and frustrated on account of continuing search for 28 hours and being at the age of 83 years during the relevant time. The ld. AR also relied on the decision of Shree Chand Soni vs. DCIT – [2006] 101 TTJ (JD) 1028 wherein it was held that statement recorded u/s 132(4) of Income-tax Act, 1961 does not tantamount to unearthing any incriminating evidence during the course of search, therefore, no addition can be made only on the basis of such statement. Ld. AR also

relied on the decision of Delhi Bench, ITAT in the case of Rajesh Jain vs. DCIT – [2006] 100 TTJ (Del.) 929 wherein also addition made solely on the basis of confessional statement of the assessee wherein statement was retracted and addition made on that account was held to be illegal. He also relied on the decision of ITAT in the case of Group Company, M/s. Mahashian Di Hatti Ltd. in ITA No.4576, 4577 & 4578/Del/2010 wherein also, the addition made on account of confession about the speculation business was deleted. Ld. AR also submitted that CBDT, the Apex Body for Direct Tax, had also issued circular where confession of additional income not based upon credible evidence during the course of search and seizure and survey operation which are later retracted had been considered as not serving any useful purpose. The Apex Body, CBDT, had also warned the revenue officers not to obtain confession to the undisclosed income, rather concentrate on collection of evidence of income which lead to information on what has not been disclosed or is not likely to be disclosed by the Income-tax authorities. Thus, confession without any incriminating or credible evidence is useless. Ld. AR pleaded to sustain the order of CIT (A) and dismiss revenue's appeal.

6. We have heard both the sides on the issue. We have also perused the records available. The return was filed by the assessee declaring income of Rs.5,88,06,735/- which included an amount of Rs.12,85,777/- on account of

undisclosed investment in jewellery and amount of Rs.24,86,000/- on account of cash found during the search. The assessee has not included the amount of Rs.15 crores which was surrendered u/s 132(4) of the Act. This amount was added back to the income of the assessee by the Assessing Officer. This statement recorded u/s 132(4) on 22.11.2006 was retracted by the assessee on 28.11.2006. As per the statement, this amount was earned from speculative business carried out by the assessee from 01.04.2006 till the date of search. The Assessing Officer made the reliance for the existence of such business on account of income declared by the assessee from such business in the months of June and August, 2003 for which the assessee received profit earned by the cheques. There was no incriminating document or supporting document found or seized during the search operation carried out at the premises of the assessee which could suggest that assessee was doing the business of speculation in commodities during the relevant period stated in statement. No incriminating document was found and seized which could put a light in respect of the speculative business stated by the assessee in its statement. This statement was recorded when the search was continuing for 28 hours from 8.00 AM on 22.11.2006 to 11.57 AM on 23.11.2006. We also find that although there was seizure of some papers/documents as per panchnama, annexure A-1 to A-11, however, no question was asked pertaining to these papers or documents. This fact shows that the disclosure was not based on

any calculation of undisclosed income on the basis of seized papers/documents. The disclosure so made was also not based on any unaccounted assets/valuables. The assessee was 83 years old person and the long duration of the search might have tired out and frustrated him and the revenue was able to extract the surrender which has been retracted within 6 days where two holidays were in between. The CBDT has issued instructions with regard to the confession of additional income during the course of search and seizure and survey operations. Instruction No.F.No.286/2/2003-IT (Inv.II) dated 10.03.2003 give some reflections about such confession of additional income without any credible evidence during the course of search and seizure which is quoted as under :-

> "Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if, not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.
>
> Further, in respect of pending assessment proceedings also, Assessing officers should rely upon the evidences/materials

> gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

In the assessee's case also, this admission of additional income is not based upon any credible evidence and the same has been retracted within 6 days from the search. Non-asking any question regarding seized papers/documents from the premises of the assessee clearly shows that there was no focus and consideration of the search party on the collection of evidence of income which lead to information on what has been disclosed or is not likely to be disclosed before the revenue authorities. There is no evidence found and seized that assessee has carried out speculation trading during the relevant period. No document in this regard was seized from the premises of the assessee. The documents seized from the residence of Shri Prem Arora was related to the financial year 2003-04 and the income earned in those transactions has been received by the assessee through banking channels and not by cash and the same has been duly accounted for. In such a situation, the presumption that assessee might have carried out speculation business during the year on the basis of such document seized is completely untenable and unsustainable and additions based on such presumption cannot be sustained. The inference that Shri Prem Arora was in possession of the cash and being the close person of the assessee, assessee might have been indulging in the speculation business of the commodity trading is also unsustainable

presumption. No adverse inference can be drawn about the assessee on such presumption. The Assessing Officer's reliance that assessee has also narrated about the investment of the undisclosed speculative income in the purchase of gold and jarau jewellery, investment in shares and investment in vaida bazaar and advances given to the parties trading in agricultural field is also not supported by any document. Nothing has been found during the search and no such assets had been recovered. Therefore, such additions made only on the basis of a statement which has been retracted immediately thereafter are not sustainable. The pattern of the questions put to the assessee during the search of the premises shows that whatever recorded in these statements is not true. Only on the basis of presumption that large scale construction was going on at the school building of the trust and hospital of the trust cannot be made a basis for addition. The Assessing Officer should have ascertained the investment by way of referring the case to the DVO if he has any doubt in this regard. No evidence regarding any anonymous donation by the trust was found and seized and nothing has been made out by the Assessing Officer in the assessment. The other assessments u/s 153A of the Act in assessee's case for Assessment Year 2001-02 to 2006-07 have been made without any addition. Thus, in our considered view, no incriminating evidence was found against the assessee which could suggest or show that unexplained investment has been made to the tune of Rs.15 crores and such income has been utilized

or invested as stated by the assessee in the retracted statement. Nothing of such sort borne out of the facts. In our considered view, no addition can be made merely on the basis of surrender without existence of any corroborative evidence found against the assessee. For this propositions, reliance is placed on the following case laws :-

> "a. Kailashben Mangarlal Chokshi Vs CIT (2008) 174 Taxmann 466 (Guj.) / (2008) 14 DTR 257 (Guj.)
>
> Merely on the basis admission, the assessee could not have been subjected to additions, unless and until some corroborative evidence was found in support of such admission. Further statement recorded at such odd hours (at midnight) could not be considered to be voluntary statement, it was subsequently retracted and necessary evidence was led contrary to such admission. Addition was deleted.
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> b. Arun Kumar Bhansali Vs DCIT (2006) 10 SOT 46 (Bang) (URO)
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> Block period 1990-91 to 1999-2000 - Whether while computing undisclosed income of assessee, Assessing Officer should take cognizance of such correct income as depicted in books of account as well as in seized material, and should not adopt a figure merely as per admission of assessee - Held, yes.
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> c. Shree Chand Soni Vs DCIT (2006) 101 TTJ (JD) 1028
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> Search and seizure – Block assessment – consumption of undisclosed income – Addition based on the assessee's statement under s. 132 (4) – Admittedly, no incriminating document was found to support the impugned addition regarding bogus capital - Statement recorded under s. 132(4) does not tantamount to unearthing any incriminating evidence during the course of search - Therefore, no addition could be made only on the basis of such statement.
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> d. Rajesh Jain Vs DCIT (2006) 100 TTJ (Del) 929

> Search and seizure - Block assessment - Retraction of statement - Addition of Rs.25 Lakhs made solely on the basis of confessional statement of assessee that he earned the said amount in the last Ten years was not justified - Confessional statement should be corroborated with some material to show that assessment made is just and fair - Conduct of affairs by the revenue authorities shows that good amount of psychological pressure was built on the assessee to make the said statement, which was retracted - Further, the addition was illegal as while the assessee spoke of earning the said income over a period of 10 years, total addition was made in two asst. yrs. 1999-2000 and 2000-2001 - All material found during search was duly explained by assessee on which no adverse comment was made by AO - Assessee to be assessed on the income returned by him for the block period.

Further reliance is also placed whether no addition can be made simply on the basis of surrender without any cogent and valid reasons and which the assessee has subsequently retracted. For this proposition, the reliance is placed on the following case laws :-

> "a. <u>India Seed House V s Asstt. CIT (2000) 69 TT J (Delhi) (TM) 241</u>
>
> In case of block assessment no addition can be made merely on the basis of statement recorded at the time of search which stands fully proved to be incorrect in view of the material itself which was seized at the time of search.
>
> b. Pranav Construction Co. Vs Asstt. CIT (1998) 3 DTC 719 (Mum-Trib) (1998) 61 TTJ (Mum.-Trib) 145
>
> It was held that the admission cannot be read as an Act of Parliament and that it has to be read in the context fairly and reasonably. The burden of incurring the expenditure can be discharged either by direct evidence or if such evidence is not available the assessee can always point out to circumstantial

evidence supporting the claim. Thus, statement recorded under section 132(4) cannot be made use for purpose of precluding assessee from claiming expenditure for earning income which assessee forgot to claim while making statement disclosing income.

c. Ganga Saran & Sons (P) Ltd. Vs ITO (1981) 130 ITR 1 (SC) : ITO Vs Nawab Mir Barkat AU Khan Bahadur (1974) 97 ITR 239 (SC)

Belief should not be arbitrary or irrational but based on relevant and material reasons.

d. S. Narayanappa Vs CIT (1967) 63 ITR 219 (SC)

Belief must be in good faith, and cannot merely be a pretence.

e. Madhya Pradesh Industries Ltd. Vs ITO (1970) 77 ITR 268 (SC)

Absence of evidence to prove existence of ITO's belief that income has escaped assessment, will invalidate reassessment.

f. Mayank Poddar (HUF) Vs WTO (2003) 181 CTR (Cat) 362

If in law an item is not taxable, no amount of admission or misapprehension can make it taxable. The taxability or the authority to impose tax is independent of admission. Neither there can be any waiver of the right by the assessee. The Department cannot rely upon any such admission or misapprehension if it is not otherwise taxable."

We would also like to state that assessee retracted by filing a written submission before the DIT, Inv.-I, New Delhi on 28.11.2006 which is 6 days after the search. There was sufficient time with the Investigation Wing to carry on the investigation and to collect the evidence against the retraction.

However, records show that nothing has been done in this regard. In such a situation, the retraction of the assessee can not be said to be invalid in absence of any incriminating documents. In view of these facts, we uphold the order of the CIT (A).

7. In the result, the appeal of the revenue stands dismissed.

Order pronounced in open court on this 20th day of June, 2013.

Sd/-	**sd/-**
(R.P. TOLANI)	**(B.C. MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 20th day of June, 2013
TS

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-I, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.