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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 143/2022

PRINCIPAL COMMISSIONER OF INCOME TAX

CENTRAL 3

.....Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Parth Semiwal, Ms.
Nupur Sharma, JSC Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha & Mr. Muskan Goel,
Advs.

versus

KUBER KHADYAN PVT LTD

.....Respondent

Through: Mr. Ruchesh Sinha, Adv.

75

+ ITA 144/2022

PRINCIPAL COMMISSIONER OF INCOME

TAX DELHI CENTRAL 3

.....Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Parth Semiwal, Ms.
Nupur Sharma, JSC Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha & Mr. Muskan Goel,
Advs.

versus

KUBER KHADYAN PVT LTD

.....Respondent

Through: Mr. Ruchesh Sinha, Adv.

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+ ITA 136/2023

PCIT-7, DELHI

.....Appellant

Through: Mr. Sunil Agarwal, SSC with
Mr. Shivansh B. Pandya, Mr.
Viplav Acharya, JSCs & Mr.
Utkarsh Tiwari, Adv.



versus

M/S SANJIVANI INDUSTRIES PVT LTDRespondent

Through: Mr. Ruchesh Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

29.07.2024

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1. We had admitted the instant appeals in terms of our order of 19 July 2023 and framed the following questions of law:

“(i) Whether the Tribunal was right in law in holding that the statement of Mr. Mulchand Malu recorded under Section 132(4) of the Income Tax Act, 1961 (in short, “Act”) would not constitute incriminating material?

(ii) Whether the impugned order dated 26.3.21 passed by the Tribunal is perverse in law and on facts?

2. On facts it is not disputed that the additions which were sought to be made in the course of search assessment rested solely on a statement of an individual which came to be recorded in terms of Section 132(4) of the Income Tax Act, 1961 [“Act”]. It is in the aforesaid backdrop that the respondent-assessee appears to have assailed the said subject additions.

3. We note that the issue of relevancy of a statement under Section 132(4) and whether the same could on a standalone basis constitute material justifying additions in case of a search assessment was an issue which was duly examined by us in **Principal Commissioner of Income Tax (Central)-3 vs. Pavitra Realcon Pvt. Ltd** [2024 SCC OnLine Del 4012], and where ultimately, we had held as follows:

“20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material



corroborating the content of the statements.

21. In the case of *Kailashben Manharlal Chokshi v. CIT*¹, the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow:—

26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. **We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission.** We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.

[Emphasis supplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of *CIT v. Harjeev Aggarwal*², wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:—

“20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. **The words “evidence found as a result of search” would not take within its sweep statements recorded during search and seizure operations.** However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. **However, such statements on a stand alone basis without**



reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.

[Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.”

4. Following the aforesaid decision, we answer the question which stands posited in the negative and against the appellant. The appeals shall, consequently, stand dismissed.

YASHWANT VARMA, J

TARA VITASTA GANJU, J

JULY 29, 2024/kk