आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

माननीय श्री यस. यस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री गगन गोयल लेखा सदस्य के समक्ष
BEFORE HONOURABLE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER AND SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 3854/Chny/2026

निर्धारण वर्ष /Assessment Years: 2021-22

Deputy Commissioner of Income Tax, Central Circle-1(3), Chennai.	**v.**	**Shri Rakesh Kumar,** No.130/65, NSC Bose Road, Parrys, Chennai-600 001. [**PAN: AAFPK4365F**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ **Assessee by**	:	None
प्रत्यर्थी की ओर से /**Revenue by**	:	Mr. C. Sivakumar, CIT, Ld. DR
सुनवाईकीतारीख/Date of Hearing	:	07.10.2026
घोषणाकीतारीख /Date of Pronouncement	:	28.10.2026

आदेश **/ O R D E R**

PER GAGAN GOYAL, AM:

This is an appeal preferred by the Revenue against the order of Ld. Commissioner of Income Tax (A), (hereinafter referred to as the 'Ld. CIT(A)'), Chennai-18 dated 13.04.2026, for the Assessment Year (hereinafter referred as the 'AY') 2021-22.

GROUDS OF APPEAL

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld. CIT(A) erred while holding that the seized material relied on by the AO for making addition is uncorroborated when the same has been corroborated with the statement given u/s. 132(4) by Shri R. Sabapathy and Shri Antony Francis Julain.

3. The Ld. CIT(A) erred in not considering the decision of Hon'ble Madras High Court in the case of AJ Ramesh Kumar Vs DCIT 441 ITR 495 (Mad.) (HC)/ (2022) where in it was held that the mere fact that the appellant retracted the statement could not make the statement

unacceptable. The burden lay on the appellant to show that the admission made by him in the statement earlier at the time of Search/Survey was wrong. Such retraction, however, should be supported by strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion indicating that there was an element of compulsion for the appellant to make such statement.

4. The Ld. CIT(A) erred while deciding the disputed issue in favour of the assessee relying on the decision of the Hon'ble ITAT in the case of Shri P Palanichamy in ITA No.3015/Chny/2024 dated 29.04.2025, appreciating the fact that the Department has not accepted the decision of the Hon'ble ITAT and has filed further appeal which is pending decision in the Hon'ble High Court of Madras and therefore the issue has not reached finality.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

2. The brief facts of the case are that the assessee filed his return of income u/s. 139 of the Act on 31.02.2021 declaring total income at Rs. 7,42,79,050/-. It is pertinent to mention that there was a search and seizure u/s. 132 of the Act on 01.12.2021 on M/s. Saravana Store Tex, M/s. Saravana Store (Jewellery), M/s. Saravana Super LLP, Shri Sabapathy and its related group entities. The assessee under consideration is a partner of M/s. Swarna Shilpi and receives income from M/s. Swarna Shilpi, income from house property, income from M/s. Swarna Shilpi Jewellers Chennai Pvt. Ltd. And income from capital gains. The case of the assessee was selected for compulsory scrutiny and a notice u/s. 143(2) of the Act was issued. Ultimately, the case of the assessee was assessed after making an addition of Rs. 25 Cr. u/s. 69 r.w.s. 115BBE of the Act. The assessee being aggrieved with the same preferred an appeal before the Ld. CIT(A), who in turn allowed the appeal of the assessee. Now the revenue being aggrieved preferred the present appeal before us **with a delay of 7 days.**

3. We have gone through the order of the AO, order of the Ld. CIT(A) alongwith grounds taken before us. It is observed that the during the search on M/s. Saravana Store Tex, M/s. Saravana Store (Jewellery), M/s. Saravana Super LLP, Shri Sabapathy and its related group entities vide dated: 01.12.2021 certain revenue incriminating materials of cash loans received from the assessee to the tune of Rs. 25 Cr. was found and seized in a small notebook vide Annexure No. ANN/SK/SSSLP/B&D/S-2. On examination of the Notebook vide Annexure No.

ANN/SK/SSSLP/B&D/S-2, Shri Antony Francis Julian, AGM of M/s. Saravana Stores Group, in his response to Question 27, stated and explained that "SLP" in the notebook denotes the amount of loan taken from the party namely M/s. Swarna Shilpi and 25 denotes the amount of loan taken from the party in crores. In view of this statement the AO alleged the same to a loan taken by Mr. Sabapathy from M/s. Swarna Shilpi out of which an amount of Rs. 2 Crores has been repaid in cash during the year.

4. This version of statement of Shri Antony Francis Julian, AGM of M/s. Saravana Stores Group alongwith Annexure No. ANN/SK/SSSLP/B&D/S-2 was further confronted to Shri R. Sabapathy, MD of the Saravana Stores Group and he deposed vide his sworn statement dated: 04.12.2021, that he received cash loan of Rs. 25 Cr. from Shri Rakesh Kumar of M/s. Swarna Shilpi during December 2020. He had further deposed that the cash loans so received were used to pay as on-money payment for purchase of property during the F.Y. 2020-21.

5. When the assessee under consideration was enquired and confronted with the statement of Shri Antony Francis Julian, AGM of M/s. Saravana Stores Group and Shri R. Sabapathy, MD of the Saravana Stores Group alongwith Annexure No. ANN/SK/SSSLP/B&D/S-2, he categorically denied having any transaction of loan with Shri R. Sabapathy, MD of the Saravana Stores Group and also contents of Annexure No. ANN/SK/SSSLP/B&D/S-2.

6. It is observed that the entire case of the Revenue solely based on the statement of Shri Antony Francis Julian, AGM of M/s. Saravana Stores Group and Shri R. Sabapathy, MD of the Saravana Stores Group alongwith Annexure No. ANN/SK/SSSLP/B&D/S-2. Here section 292C of the Act comes into picture, which specifically introduced in the statute to deal with the situation under consideration before us and reproduced as below:

*"**Presumption as to assets, books of account, etc.***
292C.** (1) Where any books of account, **other documents**, money, bullion, jewellery or other valuable article or thing is or is **found in the possession or control of any person in the course of a search

under section 132 *or survey under section 133A, it may,* ***in any proceeding under this Act, be presumed*** –

(i) ***that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs or belongs to such person;***

(ii) ***that the contents of such books of account and other documents are true; and***

(iii) *that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.*

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.

7. Further, as pointed out by the Ld. CIT(A) "***that Shri R. Sabapathy had also subsequently retracted his statement on 21.03.2022, wherein he clarified that, the noting of Rs. 25 Cr. actually did not represent loan of Rs. 25 Cr. from Mr. Rakesh Kumar of M/s. Swarna Shilpi, but instead it represented proceeds of undisclosed sales of Rs. 25 Cr. which was parked with Mr. Rakesh Kumar of M/s. Swarna Shilpi to the tune of Rs. 17 Cr. and Rs. 8 Cr. was out of other undisclosed sales."*** On similar facts the Hon'ble Patna High Court in the case of [2019] 109 taxmann.com 388 (Patna) Dharmraj Prasad Bibhuti v. ITAT, Patna, held as under:

Section 132 (4A) provides that where any books of account other documents, money etc. is found in possession or control of any person in course of search, it may be presumed that the same belongs to such person. It is apparent from the facts of the instant case that not only has the seized cash been found from the house of DLS, father-in-law of the appellant the said DLS in his written statement has also claimed ownership of the said cash. Thus, even in law as per section 132 (4A) the cash seized at the residence of DLS would be presumed to belong to DLS and not the appellant. [Para 27]

On going through the materials available on the record of the case, in absence of any evidence present connecting the money seized with the appellant, the conclusions are drawn that the cash found and seized in course of search at the residential premises of DLS (father-in-law of the appellant) belongs to DLS alone and not the appellant, the respondent authorities in drawing presumption in terms of section 292C that the cash found and seized belongs to the appellant, have committed serious error in law as section 292C provides that if money is found in possession of any person in course of search under section 132, it may in any proceeding

under the Act be presumed that such money belongs to such person and, thus, in the instant case since the money/seized cash was found in possession of DLS, it could not have been presumed to belong to the appellant. *The cash was found at the residence where not only DLS was residing but he also claimed the said cash and thus it will necessarily have to be presumed to be his undisclosed income in terms of section 292C. In view of the fact that DLS filed return of income for block assessment along with the cash flow statement explaining the seized cash, there remains no doubt that the refusal of the respondents to not accept the entire cash found in course of search to be the undisclosed income of DLS, in absence of any material to the contrary, is illegal. [Para 29]*

[2019] 108 taxmann.com 437 (Bom.) PCIT, Central-2 *v.* Umesh Ishrani

*"**1.** This Appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration;*

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of cash payment for purchase of shops by holding that the seized papers were not found from the premises of the assessee and hence presumption u/s. 132(4A), u/s. 292C of the IT Act, 1961 are not applicable*, without appreciating that the seized papers were found during search in the premises of one of the partners Sri Laxmichand Rohira of the same firm for purchase of shops by the firm and in the said seized documents, amounts of cash paid by all the partners are noted and assessments made in the case of the said partner Shri Laxmichand Rohira relating to his share of cash payment has become final, and therefore, that evidence is also relevant for assessment of other partners, including the assessee?"*

2. *The Respondent-Assessee is an individual. He was the partner of the firm. The Income Tax Department had carried out search and seizure operation during which certain loose papers were collected. On the basis of loose papers additions were made in the hands of the individual partners and on protective basis on the hand of the firm. While deleting such addition in case of the present assessee the Tribunal noted that the documents nowhere show that any payments were made by same persons, no enquiry or verification was made with the seller of the shops or the developer. Tribunal therefore concluded that entries of the loose papers were not corroborated with any other evidence on record.*

3. *It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal noted that the loose papers entries were not clear and not corroborated by any independent evidence. No question of law therefore arises. Income Tax Appeal is dismissed.*

8. The presumption under section 132(4A) of the Act is available only regarding the proceedings for search and seizure under section 132 of the Act. Such presumption shall not be available for framing the regular assessment u/s. 143(3) of the Act. It may be clarified that though presumption under section 132(4A) of the Act is not available to authorities while framing the regular assessment yet the material seized can be used as a piece of evidence in any other proceedings under the Act but in the case of the assessee, in whose case search has conducted and **not in the case of any other person.**

9. The revenue has relied upon the decision of the Hon'ble Jurisdictional High Court in the case [2022] 139 taxmann.com 190 (Mad.) Thiru. A.J. Ramesh Kumar v. DCIT through the grounds taken before us. We have gone though the same and observed that the Hon'ble High Court has held as under:

*"**6.** On a careful reading of the findings rendered by the Tribunal, it could be seen that the assessing officer did not make assessment solely on the basis of the statement recorded under section 132(4) of the Income Tax Act, 1961, but also placed reliance on the material evidence seized during the course of search as well as at the time of assessment. After having found that the appellant gave different explanations at different stages, none of which was supported by any cogent material evidence to dislodge the presumption under section 132(4) and 132(4A) of the Income-tax Act, 1961, the Tribunal rightly set aside the order of the First Appellate Authority and restored the order of the assessing officer. Therefore, the plea of the appellant that assessment was made solely on the basis of the statement obtained under section 132(4) of the Income-tax Act, 1961, cannot be accepted by this court, as it is contrary to the facts of the case.*

***7.** Coming to the substantial questions of law relating to admissibility, relevancy and evidentiary value of statement obtained under section 132(4) of the Income-tax Act, 1961, this court is of the view that the same are no longer res integra. In the decision of the Supreme Court in the case of Banalal Jat Constructions (P.) Ltd. v. Asstt. CIT [2019] 106 taxmann.com 128/264 Taxman 5, after referring to the judgment of Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 0018, the legal position in relation to a statement under section 132(4) of the Income-tax Act, 1961 was set out as under:*

a. An admission is an extremely important piece of evidence though it is not conclusive.

b. A statement made voluntarily by the appellant could form the basis of assessment.

c. The mere fact that the appellant retracted the statement could not make the statement unacceptable.

d. The burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for appellant to make such statement.

e. However, a bald assertion to this effect at much belated stage cannot be accepted.

Applying the aforesaid legal proposition herein, we are of the opinion that once a statement is recorded, it is open to the assessing officer to rely and proceed on the basis that such statement is correct and represents the true state of affairs and the burden is on the deponent to demonstrate by letting cogent, convincing and material evidence that the statement was incorrect. Therefore, the statement made under section 132(4) of the Income-tax Act, 1961 has a strong evidentiary value and is binding on a person, who makes it.

***8.** Pertinently, the Tribunal after recording the explanations, affidavit and other documents filed by the appellant in support of his case, found that the same were not acceptable as the retraction was in the form of mere assertion and also belated. It was further pointed out by the Tribunal that there was no material evidence let in by the appellant to retract the statement made under section 132(4) and the affidavits of his mother-in-law were unreliable as they were interested and self-serving testimonies. We are of the view that any retraction by the appellant should be made at the earliest point of time with sufficient, credible and corroborative evidence to support his claim and not by mere assertion as done in this case. Therefore, we do not find any reason to differ with the findings so rendered by the Tribunal.*

9. *In view of the above discussion, we have come to a conclusion that the case projected by the appellant is only on the facts and the same does not give rise to any question of law much less substantial question of law. Hence, the substantial questions of law that have been admitted, are decided against the appellant."*

10. We have gone through the decision of the Hon'ble Jurisdictional High Court as reproduced (supra) and observed that rather it confirms our view discussed (supra) in the cases of Dharmraj Prasad Bibhuti v. ITAT, Patna and PCIT, Central-2 *v.* Umesh Ishrani, wherein it was held that the presumptions u/s. 132(4A) and 292C of the Act can't be applied on third party and is solely applicable to the person searched. In this case also, the Hon'ble Jurisdictional High Court discussed the matter in the context of person searched, hence can't be applied on a person other than a person searched. The seized documents, particularly those of uncertain authorship and provenance, cannot by themselves constitute conclusive evidence of undisclosed income. The notebook in question was admittedly not prepared by any the assessee himself but may be by somebody at the premises of the Saravana Group, an external party acting in their personal capacity. This fact assumes critical importance because it undermines the presumption under Section 132(4A) of the Act, which applies to documents found to 'belong to' the person searched for. The presumption under Section 132(4A) of the Act is 'a limited and rebuttable presumption applicable only in the context of seizure and custody, and cannot, by itself, revoke a preposition against a third party for chargeability of the tax, as happened in the matter before us.

11. In view of the factual findings by the Ld. CIT(A) and a question of law involved in this matter, thoroughly examined by this bench, we confirm the order of the Ld. CIT(A) and further confirmed the legal position in favour of the assessee as discussed above. The decision of the hon'ble Jurisdictional High Court as relied upon by the Revenue is found not to be applicable in the present appeal and wrongly placed by the Revenue, in the light of law as discussed by us w.r.t. sections 132(4A) and 292C of the Act. Resultantly, order of the Ld. CIT(A) is sustained and grounds raised by the Revenue are dismissed.

12. In the result, the appeal of the Revenue is dismissed in above terms.

Order pronounced on the 28th day of October 2026, in Chennai.

Sd/-	**Sd/-**
(यस. यस. विश्वनेत्र रवि)	**(गगन गोयल)**
(S.S. VISWANETHRA RAVI)	**(GAGAN GOYAL)**
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 28th October 2026.
KB

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai /Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF

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