Admission and Retraction of Statement under Search

Statement under search are recorded under section132(4)

Section 132(4) says that “The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act”.

Analysis of Section 132(4)

The provisions of section 132(4) provides that statement under section 132(4) may be used in evidence. That means the discretion is vested with Assessing Officer, to use it as evidence. It is not incumbent on him to make addition solely on the basis of such statement. Even otherwise, in our opinion, mere admission, without any corroboration, is not enough for making addition.

The Explanation to sub-section (4) was introduced by Finance Act, 1987 with effect from 1-4-1989 and is clarificatory in nature because it starts with "for removal of doubts". It provides that examination of any persons may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also on any related matters. Sub-section (4) is not confined to examination of any person in respect of money, bullion, jewellery or assets. Sub-section itself quotes that if a person is found to be in possession of any document, books of account, money, bullion or other valuable article or thing. Therefore, it is incorrect to suggest that examination of a person and recording of his statement under section 132(4) will be confined to merely to assets found in the search and not in respect of books of account or documents found therein. Thus, the assessee can always declare undisclosed income found as a result of documents found/seized by the officers during the course of search

The explanation to Section 132(4) of the Act conveys that the assessing officer can rely upon the statement obtained under section 132(4) as a piece of evidence, but not as the sole basis for imposing additional financial liability upon an assessee either in the form of denial of benefits which an assessee is otherwise entitled to, or subjecting him to prosecution. To be more precise, if there exists any other supportive material, the statement recorded under Section 132(4) can certainly be taken aid of. Conversely, in the absence of other supporting material, a statement of that nature cannot constitute the basis to burden an assessee.

In **case of Gajjam Chinna Yellappa V Income Tax Officer [2015] (Andhra Pradesh and Telangana) wherein the Hon'ble high court held** as under:

If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under section 164 of the Code of Criminal Procedure. The evidentiary value of a retracted statement becomes diluted and it loses the strength, to stand on its own. Once the statement is retracted, the assessing authority has to garner some support, to the statement for passing an order of assessment.

Recommendation in final Report Para 3.27 of Task Force on Direct Taxes Chaired by Dr. Vijay Kelkar

•The CBDT must issue immediate instruction to the effect that no raiding party should obtain any surrender whatsoever.

•Where, a taxpayer desire to voluntarily make a disclosure, he should be advised to make so after the search.

•All cases where surrender is obtained during the course of the search in violation of the instruction of the CBDT, the leader of the raiding party be subjected to vigilance enquiry.

•All statements recorded during the search should be Video recorded.

Importance of Admission as Evidence under other Acts

In the celebrated book titled 'Administrative Law' by Sir William Wade (eighth edition by Wade and Forsyth - Oxford University Press), the legal position has been explained at p. 242 as under :

"The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong. Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As a principle of common law it applies only to representations about past or present facts".

In Evidence Act also, it is clearly laid down in section 115 thereof, that when one person has by his declaration or act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. Section 115 of the Evidence Act also incorporates a statutory principle of common law that a person alleging contradictory facts should not be heard.

It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statements.

Retraction of Statement under Income Tax Act

A statement given under section 132(4) may be retracted depending on the facts and circumstances of the case. It is settled law that the statement recorded during the course of search including confession may be a best piece of evidence, but that by itself would not be conclusive evidence unless such statement is further supported by evidence in the form of incriminating material found during the course of search.

The statement recorded under Section 132(4) by the officer as well as the documents seized would come within the purview of evidence under the Income-tax Act read with Section 3 of the Evidence Act. The necessary corollary is that such an evidence should be admissible for the purpose of search assessments too.

However, it is pertinent to mention that statement recorded on oath u/s 132(4) of the act is significant both from the point of view department as well as the assessee who is subjected to search. From the departmental point of view, such a statement enables the department to bring on surface the tax evasion, to examine the nature of incriminating documents, assets etc. found during the course of search and record the assessee's version with the regard to the contents of such incriminating documents and assets, its source, mode and manner of earning/application and its accountability in the books of accounts whether disclosed or not. Such a statement recorded on oath carries a significant evidentiary value which may be used by the Assessing Officer during the course of assessment proceedings as a corroborative evidence along with documentary evidences material unearthed during the course of search and seizure action.

The statements made u/s 132(4) can be retracted if the maker contends that earlier admissions:

(i) were untrue; or

(ii) were on a mistaken understanding, misconception; or

(iii) were not voluntary; or

(iv) were under mental stress, undue influence, pressure

Judicial Pronouncements on retraction of Statement recorded in Late Hours

The Hon'ble Gujarat High Court in the case of **Kailashben MangarlalChokshi vs. CIT reported in 220 CTR 1381147 para 26 (Gujarat**) held 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. The court further held that the statement recorded at 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 that the retraction made by the Assessee and explanation is duly supported by the evidence. Thus, the court held that Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the AO under section 132(4) of the Act.

Retraction of statement against which no corooborative evidence is found

ACIT(1) vs. Sudeep Maheshwari in ITA No.524/IND/2013 vide order dated 13.02.2019

The Hon'ble Indore Tribunal held in para 6 of its judgement that during the course of **the search and seizure no incriminating material or undisclosed income or investments were found. Under the mental pressure the assessee declared 3 crores but retracted from the admission**. It is a settled position of law that the addition cannot be sustained merely on the basis of the statement. **There has to be some material corroborating contents of the statements. The A.O. failed to correlate the disclosure made in the statement with the incriminating** material gathered during the search. Therefore, no addition can be made on this account.

CIT v K.Bhuvanendra& Others reported at 303 ITR 235

The Court held that admittedly, no material was found during the course of search operation. Also, the statement recorded from the assessee was subsequently retracted and rebutted. The registered sale deed does not show any payment more than above what was disclosed. In the absence of any material, in our opinion, there cannot be any addition as undisclosed income. During the statement recorded during the search, the assessee admitted to payment of on-money for purchasing a property. However the statement was subsequently retracted.

Addition was however, made by the AO on the basis of the statement.

The Court observed that no material was found during the course of search to indicate transaction of on-money, that the statement recorded from the assessee was subsequently retracted and rebutted and that the registered sale deed did not show any payment more than what was disclosed.

The Court further held that addition could not be made on the basis of the statement when it was not relatable to seized material and where the Revenue had not brought on record any material to show that on-money had been paid.

Retraction of statement given under coercion and mistaken of belief

The **Hon'ble Gujarai High Court** in the case of **S.R.** Koshti **Vs. CIT 1276 ITR 165]** relying upon various judgements have held that if an assessee under a mistake, misconception or on not being properly instructed is over assessed, the authorities under the Act, are required to assist him and ensured that only legitimate taxes due are collected.

Satinder Kumar (HUF) v. CIT [1977] 106 ITR 64 (SC)

It was held that it is true that an admission made by an assessee constitutes a relevant piece of evidence but if the assessee contends that in making the admission he had proceeded on a mistaken understanding or on misconception of

facts or on untrue facts **such an admission cannot be relied upon** without first considering the aforesaid contention.

CIT V s. Radhakishan Goel reported in 278 ITR 454/460- para 11 (All)

The Allahabd High Court held that "It is a matter of common knowledge, which cannot be ignored that the search is being conducted with the complete team of the officers consisting of several officers with the police force. Usually telephone and all other connections are disconnected and all ingress and egress are blocked. During the course of search, person is tortured harassed and put to a mental agony that he loses his normal mental state of mind and at that stage it cannot be expected from a person to pre-empt the statement required to be given in law as a part of his defence.

Admission cannot be the sole basis of addition under Search

In the case of Awad Kishore Dass AIR 1979 SC 861, the Hon'ble Apex Court held that "it is true that the admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong. "

CIT Vs. Chandra kumar Jethmal Kochar (2015) (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, Admission could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such evidence. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement.

CIT V Harjeev Aggarwal,

The Delhi High Court held that **"**It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read

with the explanation to Section132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search.

However in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under **Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment**."

ACIT v Expresso Investments (2006) 8 SOT 287 (ITATMumbai)

"The principles of res judicatta are also not applicable in income-tax proceedings particularly the cases relating to applicability of section 68. Each loan is independent in itself. In each case, the assessee has the onus to prove the identity of the creditor, his creditworthiness and the genuineness of the transaction. In some cases, the assessee might be able to prove and the authorities concerned may be satisfied with the evidence furnished by the assessee but that does not lead to the inference in all cases either in the same year or in subsequent years or in the case of other assessees that onus is deemed to have been discharged as required under section 68."

The ITAT also held that discretion is vested with assessing officer, to use statement under section 132(4) as evidence. However, it is not incumbent on him to make addition solely on the basis of such statement. Even otherwise, in our opinion, mere admission, without any corroboration, is not enough for making addition. In the statement under section 132(4), the assessee merely stated that some of the cash creditors may not be genuine. It is on the basis of such doubt that addition was made. In these circumstances of cash creditors, the assessing

officer should not come in the way of assessee. In the present case, assessing officer merely got restricted himself to the statement under section 132(4). He had chosen to make enquiries regarding genuineness of the cash creditors by asking the assessee to prove the genuineness of such cash credits. Having done so, he could not make addition on the basis of statement under section 132(4) alone. Rather, he should have dealt with each credit with reference to the materials on the record. Accordingly, the order of Commissioner (Appeals) was set aside and matter was restored to the file of assessing officer for fresh adjudication after giving reasonable opportunity of being heard.

Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC) Their Lordships while observing that **admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect.**

A*CIT v. Anoop Kumar [2004]*, TTJ 094, 288, ITAT Amritsar

In this case all the additions made by the AO was based on the documents and evidence found during the search stand confirmed. It is also a fact that total income so computed by the AO falls below the income disclosed under section 132(4). It is not the case of the Department that difference in the income assessed and **income disclosed under section 132(4) represents some other concealed income. Therefore, it is clear that there is no material available with the department to justify the addition so far as the difference between the income computed by the Assessing Officer and income disclosed under section 132(4).** In other words, the **so-called disclosure under section 132(4) is bald and has no legs to stand and in such a case retraction is justified.** There could be a case where income disclosed under s. 132(4) was on the lower side than the income based on material and evidence found during the course of search or post-search enquiry. In such a case, the AO would be fully justified in

completing the assessment on higher income, as such additions would be backed by evidence and material on record.

Avadh Kishore Das v. Ram Gopal [AIR 1979 SC 861]

It was held that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them. The Supreme Court further held that unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.

Evidence can be produced during the course of assessment proceedings

CIT v. Rakesh Ramani [2018] 168 DTR 356 (Bombay High Court)

In this case,the addition is made on the basis of statement made on the date of the seizure. Also, voluminous evidence filed by the respondent during the course of the assessment proceedings has been completely ignored on the ground that the same was not produced when the seizure was made. The Hon'ble High Court held that there is no requirement in law that evidence in support must be produced only at the time when the seizure has been made and not during the assessment proceedings. As per the evidence led by the respondent during the assessment proceedings establish that the jewellery belonged to his employer.Therefore**, the Bombay High Court held that the view taken by the two Authorities namely the Commissioner (Appeals) as well as the Tribunal is a possible view on the facts as existing. Therefore, the Court held that the question of law does not arise to any substantial question of law and the appeal of the Revenue was dismissed.**

Judicial Pronouncements where retraction of statement is partly accepted

Bannalal Jat Constructions (P.) Ltd. v. Assistant Commissioner of Income-tax [2019] (SC)

In this case admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the person, who made admission to show that it is incorrect. The assessee should be given proper opportunity to show the correct state of affairs. There is no gainsay the fact that admission made during the search can be disputed by the assessee and at the same time however it is equally well settled that the statement made voluntarily by the assessee could form the basis of assessment.

Mere fact that the assessee retracted the statement at later point of time could not make the statement unacceptable. The burden lay on the assessee 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 a 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 assessee to make such statement.

A bald assertion to this effect at much belated stage cannot be accepted. The assessee indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting. The assessee, while filing the return of income, has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of search. Subsequent retraction from the surrender without having evidence or 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. Thus, the case is decided in favour of Revenue.

Narayan Bhagwantrao Gosavi, Balajiwale v. Gopal Vinayak Gosavi[AIR 1960 SC 100]

In this case, the Hon'ble Supreme Court held that an **admission is the best evidence that an opposite party can rely upon and, though not conclusive, yet could be decisive of the matter unless successfully withdrawn or proved erroneous.**

Hotel Kiran v ACIT [2002] 82 ITD 453 ITAT(Pune)

It is held that the statement under section 132(4) was voluntarily made and there was no coercion or threat whatsoever. The contents of the statement are clear and unambiguous and the same are binding on the assessee. The assessee has been able to show that a part of statement regarding payment of Rs.50,000/- was given under mistaken belief of fact while there was no such belief with reference to other part of the statement regarding payment of Rs.4.00 lakhs. However, since the source of payment of Rs.4.00 lakhs is the suppressed profits of the assessee firm, the assessee is entitled to set off against the suppressed business profits of the firm relating to the years ending 31-3-1991 to the extent the addition is ultimately sustained. The Assessing Officer is therefore, directed to set off the aforesaid addition against the suppressed business profits of the firm relating to assessment years 1986-87 to 1991-92 to the extent it is finally sustained. Though this plea was not raised before us**, we are allowing the set off because in law, the person cannot be taxed twice over the same income, One cannot be taxed merely because of his ignorance in the pleadings.**

Judicial Pronouncement in Department Favour

In the case *Manmohansingh Vig v Deputy Commissioner of Income Tax, Circle 1(1), [2006] 6 SOT 18 (Mumbai),*

The Hon'ble tribunal laid down following important points:

1) What was retracted subsequently was only a denial. No material evidence was furnished so as to discharge onus cast on the assessee by virtue of statement recorded under sections 132(4) and 131(1A).
2) Presumption raised under section 132(4A) is not rebutted by the assessee by submitting cogent evidence. Hence, the statement given under sections 132(4) and 131(1A) hold their evidentiary value.
3) No material has been submitted to show that there any pressure or coercion was exercised while recording the statements under sections 132(4) and 131(1A). No complaint was filed immediately after search or recording of statement under section 131(1A) to show that there was any pressure or coercion. Statement under section 132(4) was recorded before witnesses. **Hence, there is a presumption that there was no pressure/coercion unless proved.**
4) Disclosure was enhanced during statement under section 131(1A) as compared to be given under section 132(4). Hence, the theory of pressure or coercion applied during recording of statement under section 132(4) is not acceptable.
5) The assessee is silent for about 11 months. No letter/correspondence was sent immediately after recording of statement under section 132(4). Hence, Theory of pressure or coercion is only an after- thought.
6) Disclosure of several items were based on documents found in the search. These documents were explained under sections 132(4) and 131(1A). Hence, there is a strong reason to believe that statement under section 132(4)/131(1A) reveal correct state of affairs and retraction has to be ignored.

The Hon'ble bench of ITAT further held that the retraction or rather denial is not established by any material/evidence and hence the same cannot be substituted for admission made by the assessee under sections 132(4) and 131(1A) and

supported by documentary evidence found in the search. This is the position in respect of all the impugned additions made by the Assessing Officer. Hence, the additions made are confirmed.

Retraction after obtaining copy of Statement on ground of mistaken belief either of fact or law

Amritsar ITAT Bench in Asstt. CIT v Janak Raj Chciuhan [2006] 102 TTJ 316 (Asr.), observed that admission made at the time of search action is an important piece of evidence, but the same is not conclusive. It is open to the assessee who made the admission to show that it is incorrect and same was made under mistaken belief of law and fact.

Principles of Natural Justice

ITAT, Jodhpur Bench in *Maheshwari Industries v Assistant CIT [2005] 148 Taxman 74 (Jodhpur)* has held that additions should be considered on merits rather than on the basis of the fact that the amount was surrendered by the assessee. It is settled legal position that unless the provision of statute warrant **or there is a necessary implication on reading of section that the principles of natural justice are excluded, the provision of section should be construed in manner incorporating principles of natural justice and quasi-judicial bodies should generally read in the provision relevant section a requirement of giving a reasonable opportunity of being heard before an order is made which will have adverse civil consequences for parties effected.**

Mode and Manner of Retraction

The following aspects should be kept in mind:

a) A retraction should be made on **an affidavit along** with supporting evidences, if any,

b) The **statement of the witnesses** present holds good value and may aid the assessee in getting relief.

c) **force, coercion, intimidation or any mistake of fact/law**, whatever may be the case.

d) In case of a mistake of fact or law, it must clearly lay down as to what statement was recorded, **what mistake took place** in making such a statement

e) In addition to Authorised Officer {who conducted the Search), a retraction should be made through affidavit or otherwise should also be **communicated to higher authorities.**

f) **The** retraction should be done at the **earliest without any delay**

The **Allahabad High Court in Dr. S.C. Gupta Vs. Commissioner of Income-Tax, supra, in para 7 of the report, held as under:-**

"7. As regards the assessee's contention that the statement having been retracted the Assessing Officer should have independently come to a conclusion that there was additional income as sought to be assessed and that there was no material to support that there was such income, this contention in our view is not correct. As held by the Supreme Court in Pullan-gode Rubber Produce Co. Ltd. v. State of Kerala, (1973) 91 ITR 18 an admission is an extremely important piece of evidence though it is not conclusive. Therefore, 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 at the time of survey was wrong and in fact there was no additional income. This burden does not even seem to have been attempted to be discharged.

Abdul Qayume *v.* CIT [1990] 184 ITR 404

The Allahabad High Court held that **an admission or an acquiescence cannot be the foundation for an assessment where the income was returned under**

an erroneous impression or misconception of law. It is always open to an assessee to demonstrate and satisfy the authority concerned that **a particular income was not taxable in his hands and that it was returned under an erroneous impression of law. The principle can be applied in a case where the disclosure made under section 132(4) did not match with the material collected in search and seizure operation.** In this case, during the course of survey under section 133A the **assessee surrendered an additional income over and above the normal income for the year under consideration. In return of income, the assessee declared such surrendered income as business income. And it was held that from the surrender letter it was apparent that the assessee had made surrender as additional income over and above the normal profits of the concern and since the income has been declared as business income,** the same has to be assessed under the head business income **and not as deemed income under the provisions of section 69A.**

Kim Pharma (P.) Ltd. v. CIT [2013] the court came to the conclusion that the amount surrendered during survey was not reflected in books of account and no source from where it was derived was declared by assessee, it was assessable as deemed income of assessee under section 69A and not business income. The court further observed that the opening words of section 14 **'save as otherwise provided by this Act' clearly leave scope for 'deemed income' of the nature covered under the scheme of ss. 69, 69A, 69B and 69C being treated separately,** because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' because the provisions of ss. 69, 69A, 69B and 69C **treat unexplained investments, unexplained money, bullion etc. and unexplained expenditure as deemed income** where the nature and source of investment, acquisition or expenditure, as the case may be, **have not been explained or not satisfactorily explained.** Therefore, in these cases, the source

not being known, **such deemed income will not fall even under the head 'Income from other sources'.**

In ***Fakir Mohammad Haji Hasan's case CIT [2002] 247 ITR 290 (Guj)*** it was held that value of gold in question was liable to be included in assessee's income as deemed income under sec. 69A as source of investment as its acquisition was not explained.

Burden of proof is on the assessee

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 at the time of survey was wrong. Though it is a clear and settled law that admission by a person is good piece of evidence though not conclusive and the same can be used against the person who makes it. The reason behind this is a person making a statement stops the opposite party from making further investigation****. However, the statement is not conclusive and the person giving the statement can retract the same under certain circumstances.*

(i) The first circumstance, **if where the statement is not given voluntarily but it was obtained under coercion, threat or undue influence.** But the burden is upon the person making the statement to prove that the statement given by him was not voluntary. **The assessee can discharge this burden by giving a direct evidence of coercion or threat by the Authorised officer or by circumstantial evidence in this regard.**

(ii) The time gap between the statement and the retraction of statement should also one of the important points to be taken into account while deciding whether the statement was voluntary or not.

(iii) ***The other circumstances is where the statement was given under the mistaken belief of either fact or law.*** *Here again the burden is upon the person giving the statement to prove that the statement given by him was factually incorrect or was untenable in law.*

Cogent and sufficient material have to be placed on record for retraction.

The **Hon'ble Delhi High Court in case of CIT V. Sunil Aggarwal 379 ITR 367**(Delhi) held that wherein the assessee was assessed to tax on the basis of the statement made by him during the course of search under Section 132(4) of the Act. This without having considered the subsequent retraction with an explanation for retraction. This particularly when the explanation offered in the retraction was supported by evidence in the form of books of account maintained by the assessee. Further, reliance was placed upon the statement by a third party without having given an opportunity of cross examination to the assessee therein. It was in the aforesaid context that the Court held that the additions made in the hands of the assessee could not be justified.

Judicial Pronouncements on Retraction should be done at earliest point of time

CIT, Bikaner V. Ravi Mathur

It is held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and it cannot be discarded in a summary and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place**. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating**

that the earlier statement was recorded under pressure, coercion or compulsion. 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. 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.

The **Hon'ble Chhattisgarh High Court in the case of *ACIT vs. Hukum Chand Jain* [2010]** held that when assessee did not retract his statement immediately after search and seizure was over and in return also no explanation was offered for surrender of undisclosed income at time of search and seizure operations under Section 132(4), it could be said that assessee had failed to discharge onus of proving that confession made by him under Section 132(4) was as a result of intimidation, duress and coercion or that same was made as a result of mistaken belief of law or facts.

Kantilal C. Shah v ACIT [2011] 133 ITD 57 (Ahemdabad)

In this case it is held that retraction of statement made u/s 132(4) will not be permissible if the retraction has been made after a lapse of ample time and not done immediately. In this case, a search was conducted on 12.12.1995 and on that very day a statement u/s. 132(4) of the Act was recorded, however, after a lapse of around nine and a half months, i.e., 01/10/1996 a retraction was made through

an Affidavit. The said retraction was not immediately submitted before the AO but it was submitted through a covering letter dated 19/11/1996. This was pointed out by Learned Departmental Representative that the retraction in the form of an Affidavit dated 1/10/1996 was kept with the assessee for one and a half months and on 19/11/1996 it was submitted before the AO. According to his pleadings the said delay thus demonstrated that the assessee was not confident about filing of the retraction**.** There must be some convincing and effective evidence in the hands of the assessee through which he could demonstrate that the said statement was factually incorrect**.** An assessee is under strict obligation to demonstrate that the statement recorded earlier was incorrect, therefore, on the basis of those specific evidences later on retracted. Further there should also be some strong evidence to demonstrate that the earlier statement recorded was under coercion. In the present case, the retraction is general in nature and lacking any supportive evidence. Rather assessee took several months to retract the initial statement, which by itself created a serious doubt.

PCIT V Shri Roshan Lal Sancheti, in D. B. ITA No. 47/2018 vide its judgement dated 30.10.2018, the Hon'ble Rajasthan High Court has affirmed its above referred earlier judgement in the case of Banna Lal Jat and held as under:

"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or **by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence**. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or

immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days. Thus the case is decided in favour of revenue.

The **Hon'ble Delhi High Court in the case of *PCIT vs. Avinash Kumar Setia* [2017] (Delhi**) held that where assessee surrendered certain income by way of declaration and withdraw the same after two years without any satisfactory explanation, it could not be treated as bona fide and, hence, addition would sustain.

The **Hon'ble Delhi High Court in the case of *CIT vs. M.S. Aggarwal* [2018] (Delhi) held** that where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under section 132(4) admitting that said gift was bogus, impugned addition was to be confirmed. The relevant part of the judgment is reproduced as below:

"32. Confessions are important for when voluntarily made there is a presumption that no person would make a statement against his interest unless it is true. Therefore, courts have to be cautious and careful that the confession recorded are voluntarily and not obtained under coercion and by force and wrongful inducement. Force and coercion are not synonymous and cannot be mixed and equated with mere anxiety and stress due to search and seizure operations, or inducement propelled by remorse and atonement to make an admission and confess a wrong. Motive of the person making the admission to gain indulgence, advantage or avoid evil of a temporal nature, cannot be treated as equivalent to inducement, coercion or fraud. Whether a confession is voluntary or induced by force, threat, coercion and wrongful inducement would primarily be one of fact, albeit any judicial verdict and decision on the issue must take all relevant facts

and circumstances of the case into consideration and should not be guided by mere pre-ordained impressions. Factors like time of retraction, nature and manner of retraction etc. are relevant. Mere retraction does not make or proves that the admission was obtained by inducement, threat etc. Further, prudence requires that the court would examine the truthfulness and correctness of the admission when admissions are accepted and relied. Corroboration by attending circumstances may be justified."

Conclusion

Thus, while making initial admissions by way of statement or otherwise, the assessee should speak only true facts as per his knowledge, it is most important that the assessee should understand the questions and the facts properly so that he can present the true facts regarding the issue under consideration. The assessee should not make any wrong admissions in order to stop the search party from further search or in a casual manner because, subsequent to search it can be the case the authorities might not accept his retraction and the assessee has to bring on record cogent reasons or evidences failing which he will not be able to retract from his earlier statement. Also, after making admissions, he should review that whether the facts had been recorded correctly by the authorised officers. Also, the authorised officers conducting search should make enquiries or further investigation regarding the submissions by Assessee u/s 132(4).