

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

**ITA No.5643/DEL/2024
(Assessment Year: 2020-21)**

**ITA No.5644/DEL/2024
(Assessment Year: 2021-22)**

M/s. LSL Tools (P) Ltd.,
Plot No.394, UdyogVihar,
Phase 3,
Gurugram - 122 016 (Haryana).

vs.

ACIT, Central Circle 1,
Faridabad.

(PAN :AABCK7484L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Ankit Kumar, Advocate
REVENUE BY : Ms. Amisha S. Gupt, CIT DR

Date of Hearing : 06.08.2025
Date of Order : 30.10.2025

ORDER

PER ANUBHAV SHARMA, JM:

These appeals filed by the assessee are against the order of the Id. Commissioner of Income-tax (Appeals)-3, Gurgaon [for short 'Id. CIT (A)]dated 11.11.2024& 25.11.2024 for Assessment Years 2020-21 & 2021-22 respectively.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take

the appeal for AY 2021-22 as lead wherein assessee has taken the following grounds of appeal :-

“1. That the learned Commissioner of Income Tax (Appeals)-3, Gurgaon has erred both in law and, on facts in upholding the determination of income made by the learned Assistant Commissioner of Income Tax, Central Circle, DCIACIT, Cent Farida 1, New of the appellant at Rs.36,16,45,640/- as against declared income of Rs.35,67,35,640/- by the appellant in an order of assessment dated 30.12.2022 u/s 143(3) of the Act.

2. That notice dated 28.6.2022 u/s 143(2) of the Act issued by the learned Assistant Commissioner of Income Tax, Central, Circle-I, Gurgaon was without jurisdiction since the jurisdiction was only transferred to him on 16.9.2022 in pursuance to order dated 16.9.2022 u/s 127 of the Act by the learned Pro Commissioner of Income Tax, Delhi-7, New Delhi and therefore the assumption of jurisdiction was illegal and void-ab-initio and consequently the order of assessment dated 30.12.2022 u/s 143(3) of the Act deserves to be quashed as such.

3. That since no valid approval has been obtained u/s 153D of the Act, order of assessment made u/s 143(3) of the Act is invalid and not in accordance with law.

4. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining a disallowance of Rs.44,10,000/- representing salary paid by the appellant company to its director Smt. PritiSingla by invoking section 40A(2)(b) of the Act.

4.1 That the learned Commissioner of Income- Tax (Appeals) has failed to appreciate that the director is qualified person and once salary paid stands assessed to tax at maximum marginal rate in the hands of director, no disallowance could validly be sustained by invoking section 40A(2)(b) of the Act.

4.2 That various adverse findings recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect, legally misconceived and wholly untenable.

4.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the submissions made by the appellant company and, evidences placed on record and, therefore, the disallowance upheld is not in accordance with law.

5. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs.5,00,000/- representing normal profit @ 10% of assumed unaccounted cash sales between appellant company and MIs Kashif M.K. Traders.*

6 *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the addition in absence of rejection of books of accounts of the appellant company under section 145(3) of the Act.*

7. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the levy of interest of Rs.12,64,092/- u/s 234C of the Act which is not leviable on the facts of the appellant company.*

Prayer : It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed. It be further held that disallowance/addition made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.”

3. Brief facts of the case as extracted from AY 2021-22 are, a search and seizure operation under section 132 of the Income-tax Act, 1961 (for short ‘the Act’) was conducted on 10.11.2021 at the residential as well as office premises of LSL Tools Group of Companies and others including the assessee. Cases were centralized in central charge by PCIT, Delhi-7.

4. Assessee filed its return of income declaring income of Rs.35,67,35,640/- on 20.11.2022. The case was selected for compulsory scrutiny and notices u/s 143(2) and 142(1) of the Act were issued and served through ITBA Portal. In response, assessee filed relevant information as called for.

5. At the time of hearing, Id. AR of the assessee stressed Ground Nos.4 to 4.3 and Ground No.5 only. All other grounds are not pressed nor made any

submissions.

6. The facts relating to the above grounds are, during search proceedings, PritiSingla has admitted that she did not have any knowledge of the business of the entities in which she is appointed as an employee and receiving income in the form of salaries from it. On perusal of both submissions of PritiSingla and financial data year-wise, she has received salary over the years and the same are listed by the AO in his order. The AO also reproduced the statement recorded on oath dated 10.11.2021 u/s 132(4) of the Act at page 2 of the assessment order. The AO observed that the statement given by her on oath is evident that salary received by her is without necessary qualification or experience or any active involvement in the functioning of the entity of which she is an employee. He further observed that it is practice of Singla family to appoint their family members as employees in their group companies just for claiming expenditure in the deduction of salaries and commissions by the concerned entities. This is in order to reduce the tax liability. A notice was issued to the assessee to submit the details/purpose of appointing as Director in the company even though PritiSingla has no knowledge of the functioning of the company. In response, assessee submitted its reply on 19.11.2022 and AO has rejected the same. Further Id. AR submitted that the statement of PritiSingla has no evidentiary value as her statement was recorded u/s 132(4) of the Act without reference to any material detected as a result of search. AO rejected the same and observed

that the statement recorded on oath were that she has given her statement without any pressure and true to the best of her knowledge also, she has accepted that salary received by her is without any experience or without any involvement in the functioning of the entity of which she is an employee. Based on the above information, AO invoked the provisions of section 40A(2)(b) of the Act and disallowed the same.

7. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A) and filed detailed submissions objecting to the additions made under section 40A(2)(b) of the Act. After considering the same, Id. CIT (A) sustained the addition made by the AO.

8. Aggrieved assessee is in appeal before us raising ground nos.4 to 4.3 and Ground no.5.

9. At the time of hearing, Id. AR of the assessee brought to our notice detailed findings of the AO and Id. CIT (A) and made detailed submissions as under :-

“31 DOUBLE TAXATION

32 It is submitted that Smt. PritiSingla has duly offered the remuneration received from the appellant, in her return of income filed during the year under consideration (pages 146-156 of Paper Book). It is submitted that even the same learned Assessing Officer i.e. learned Assessing Officer of the appellant, has duly taxed the amount under consideration, in the hands of Smt. PritiSingla under the head "Income from Other Sources", therefore the addition made by disallowing the director remuneration in the hands of the appellant, would lead to double taxation,

which is not permissible in law. Reliance is placed upon following judgments:

- i) 42 ITR 427 (SC) CIT vs. DharamdasHargovandas
- ii) 72 ITR 291 (SC) LaxmipatSinghaniavs.CIT
- iii) 118 ITR 50 (SC) State of U.P. vs Raja Buland Sugar Co.Ltd
- iv) 404 ITR 738 (SC) Mahaveer Kumar Jain v. CIT
- v) 258 ITR 717 (Del) ITO v. Vinod Kumar Soni
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36. It is further submitted that it is settled law that no addition/disallowance can be made on the basis of surmises, suspicion and conjectures. Reliance for this proposition is placed on 37 ITR 271 (SC) VmaCharan Shaw & Bros. Co. v. CIT. It has been further held in the following cases that suspicion howsoever strong cannot take the place of proof:

- i) 37 ITR 151 (SC) Omar Salay Mohammad Sait v CIT (extracted at page 266 of Paper Book)
- ii) 26 ITR 736 (SC) DhirajlalGirdharilal v CIT, Bombay (extracted at page 266 of Paper Book)
- iii) 26 ITR 775 (SC) Dhakeshwari Cotton Mills ltd. v CIT (extracted at page 266 of Paper Book)
- iv) 37 ITR 288 (SC) Lal Chand BhagatAmbica Ram v CIT (extracted at page 266 of Paper Book)

37 Even otherwise, it is submitted that the statement recorded u/s 132(4) of the Act in absence of any incriminating material unearthed during search shall have no evidentiary value; Reliance is placed upon following judicial pronouncements:

- i) 2024 SCC OnLine Del 4012 PCIT (Central)-3 vs. PavitraRealcon Pvt. Ltd. (pages 51-64 of JPB)

"19. Undisputedly, during the period of search. no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements or the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section I 53C of the Act making additions under Section 68 of the Act.

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*, 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*, 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(I) 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."

ii) ITA 645/2019 (Del) dated 23.9.2024 Pr.CIT V. M/s Moon Beverages Ltd.

"10. It is thus found on facts that the additions which were made by the Assessing Officer were not based on any incriminating material unearthed in the course of the search and rested solely on the statement that had been recorded under Section 132(4) of the Act.

11. We note that the significance of a solitary statement and whether that would be sufficient to sustain an addition being made absent any incriminating material was one which had directly fallen for our consideration in Principal Commissioner of Income Tax (Central)-3 vs. PavitraRealcon Pvt. Ltd.

12. We had in PavitraRealcon while answering the aforesaid questions observed as follows :-

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13. We find that the Tribunal has on facts found that but for the statement, no other material had been borne in consideration to sustain the additions which were made. This becomes further apparent from a reading of the following observations which appear in para 37 of the order impugned herein:

"37. We further find from the order of the Id. CIT(A) that there was no surrender of income for the impugned assessment year and the surrender was only for the assessment year 2008-09 which too was retracted within two months. He has also observed that the statement was non descriptive

and vague and subject to cross checking of fact to be explained after access to books of accounts. We, therefore, find merit in the submissions of the Id. counsel for the assessee that the addition made by the Assessing Officer u/s 68 of the LT. Act is not based on any incriminating material and is based on statements recorded during search u/s 132(4) and post-search enquiries."

14. On an overall conspectus of the above the Tribunal has ultimately found that the addition which rested solely on a statement recorded under Section 132(4) would not sustain."

iii) 397 ITR 82 (Del) dated 25.05.2017 Pr. CIT v. Best Infrastructure (India) (P) Ltd. (extracted at pages 268-269 of Paper Book)

iv) 432 ITR 384 (Del) PC IT vs Anand Kumar Jain (HUF) (extracted at pages 269-271 of Paper Book)

v) 451 ITR 364 (Del) dated 28.07.2022 Pr. CIT vs. Ms. Suman Agarwal (extracted at pages 271-272 of Paper Book)

vi) 457 ITR 1122 (Del) PCIT dated 28.07.2022 vs. Kavita Agarwal

vii) 289 Taxman 278 (Del) dated 28.07.2022 PCIT vs. Shiv Kumar Agarwal

viii) ITA o. 358/2022 (Del) dated 26.9.2022 Pr. CIT v. M/s JPM Tools Ltd. (extracted at page 272 of Paper Book)

ix) 457 ITR 437 (Del) dated 19.10.2022 Pr. CIT vs. Pilot Industries Ltd. (extracted at page 272 of Paper Book)

x) 457 ITR 607 (Del) dated 14.11.2022 Pr. CIT VS. PGF Ltd. (extracted at pages 272-273 of Paper Book)

xi) ITA No. 1426/2018 dated 20.02.2024 PCIT vs. VirSenSindhu (extracted at pages 273-274 of Paper Book)

xii) ITA No. 678/2019 (Del) dated 11.03.2024 PCIT vs. M L Singhi & Associates (P) Ltd.

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39 In view thereof, it is submitted that the disallowance of Rs. 44,10,000/- made and upheld by the learned Commissioner of Income Tax (Appeals) may kindly be deleted.

40 Ground 5 and 6 are regarding addition made of Rs.5,00,000/- representing normal profit @ 10% assumed unaccounted cash sales between appellant company and M/s Kashif M.K. Traders.

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47 It is submitted that during the course of assessment proceedings, appellant has furnished following replies in respect of issue under consideration:

- i) Reply dated 19.11.2022 (page 95 of Paper Book and extracted at page 280 of Paper Book)
- ii) Reply dated 08.12.2022 (pages 139 -144 of Paper Book and extracted at pages 280-281 of Paper Book)”

10. On the other hand, ld. DR of the Revenue submitted that with regard to proceedings u/s 147/148 may have been dropped. The proceedings u/s 153A and 147 are two separate proceedings. In this case, he submitted that PritiSingla has accepted that she has received salary without there being any knowledge nor experience and also did not have any knowledge of the business. Therefore, the salary income is taxable in the hands of PritiSingla as well as the assessee has claimed the same as bogus salary, therefore, tax is payable in both the hands. Therefore, he relied on the findings of the lower authorities.

11. Both the parties agreed that the issue involved of salary paid to PritiSingla is similar issue in AY 2020-21.

12. With regard to ground no.5, the relevant facts are, during post search analysis of evidence found from the Whatsapp chat between Kashif and VikashSingla (who looks after the sale in the company. The AO observed that regular cash sales are made with this group apart from the sales made through

other modes. The relevant Whatsapp chat is reproduced at pages 4 & 5 of the assessment order. During assessment proceedings, notice u/s 142(1) of the Act was issued to the assessee to explain the source of such cash with documentary evidence and accounting treatment of the same. In response, assessee submitted the reply as under :-

“The detail of chat as mentioned in the show cause notice under consideration has been totally misunderstood as the assessee company is not making any cash sales to any of the party including the party named as Sh. Kashif MK Traders and the director of the assessee company in the chat was rather insisting on advance payment and was not interested on credit sales at that very moment which is wrongly understood as cash sales.”

13. After considering the submissions of the assessee, AO rejected the same and observed that there is no resemblance with the facts and strong circumstantial evidence gathered through in depth investigation. On the basis of facts available on record, the AO observed that it is assumed that the assessee must have made sales out of books of account profit on it. Hence, normal profit ratio @10% of total sales made in cash which is not recorded in the books of account during the year were added to the income of the assessee i.e. Rs.5 lakhs.

14. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A) and filed detailed submissions. After considering the detailed submissions, Id. CIT(A) sustained the same.

15. Aggrieved the assessee is in appeal before us and at the time of hearing, Id. AR brought to our notice findings of the AO on pages 4 to 6 of the

assessment order and para 4.2 of the appellate order. With reference to above, he submitted that it is evident from aforesaid finding of Assessing Officer that for making the addition, he relied upon the WhatsApp chat between Sh. Kashif MK Traders and Sh. VikasSingla, apart thereof he has not made any independent enquiries during the course of assessment proceedings. He further submitted that said chat has not been supplied by Assessing Officer during the course of assessment proceedings, only the extract as reproduced in impugned order has been confronted to assessee, therefore could not be relied upon against the assessee. It is further submitted that it is evident from said chat, that Sh. VikasSingla has never confirmed about any cash sales, on the contrary even the Kashif MK Traders also stating that assessee is denying the cash sales. Further, he submitted that it is also evident from question 27 of statement of Sh. VikasSingla as extracted in impugned order, reproduced hereunder:

"Q.27 I am showing you the exhibit-S which is the whatsapp chat screenshot taken from your mobile black colour I phone II dated 11.11.2021 of conversation with Kasif MK traders in which taken it has been clearly stated that you have doubly confirmed sale of INR 50 lacs worth of goods in cash. Please elaborate the exhibit C of the above conversation that is being shown to you.

Ans. The trader Kasif MK trader has been dealing with my company i.e. LSL Tools (P) Ltd. since the last 5 years and knows our ways of trading. The trader asked for cash deal but we have not given the same. This needs to be confirmed from my books of accounts lying at the office of LSL Tools Pvt. Ltd."

16. Ld. AR further submitted that Chat was dated 11.11.2021, not for period under consideration and even otherwise Sh. VikasSingla has denied about any

cash sales categorically and the Assessing Officer has failed to make any enquiry even from Sh. Kashif MK Traders by issuing notice u/s 133(6) or 131 of the Act, on the contrary has proceeded to made addition on surmised and conjecture that too on estimated basis. It is submitted that during the course of assessment proceedings, assessee has categorically denied from any cash sales with Sh. Kashif MK Traders, in these circumstances, burden is on revenue to establish by bringing positive evidence on record that there was any cash sales between assessee and Sh. Kashif MK Traders and, such burden has not been discharged by Assessing Officer, therefore addition is not in accordance with law. He further submitted that during the course of assessment proceedings, appellant has furnished following replies in respect of issue under consideration:

- i) Reply dated 19.11.2022 (page 95 of Paper Book and extracted at page 280 of Paper Book)
- ii) Reply dated 08.12.2022 (pages 139 -144 of Paper Book and extracted at pages 280-281 of Paper Book)

17. He submitted addition is therefore not in accordance with law in view of following contentions in brief:-

Sr.No.	Contentions in Brief	Paras of this submission	Paras of Paper Book	Pages of order of learned CIT (A)
i)	That burden is on revenue to establish that there is unaccounted sales, which has not been discharged by learned Assessing Officer, therefore addition made is not in accordance with law.	49 – 50	281 – 284	43 – 45
ii)	Lack of enquiry by the learned Assessing officer from Sh. Kashif MK Traders by issuing notice u/s	51	284	46

	133(6) or 131 of the Act to establish that claim of the appellant since from the beginning i.e. during investigation proceedings and during the course of assessment proceedings that there is unaccounted cash.			
iii)	Even otherwise in Whatsapp Chat, there is nothing adverse stated by assessee to even assume that there is unaccounted cash sales, therefore could not be relied against appellant	52	284	46
Iv	Burden of proof lies on appellant has been discharged by it	53	284 – 285	46 - 47
V	That unauthorized electronic data in absence of certificate u/s 65B of Evidence Act, in electronic form recovered from mobile phones; is inadmissible in the eye of law	54 – 58	286 – 287	48 - 50
vi	The books of accounts so maintained by the appellant are not disputed and, profit declared stands accepted as such, thus addition made is not in accordance with law.	59 – 67	285 – 286	47 - 48

18. Ld. AR submitted that burden is on revenue to establish that there is unaccounted sales, which has not been discharged by Assessing Officer, therefore addition made is not in accordance with law.

19. He further submitted that before making addition, burden lies on revenue to establish with positive evidence that there is unaccounted cash sales as alleged by Assessing Officer which is not recorded in the books of account. It is submitted that in the absence of the burden having not been discharged, it was not permissible in law to draw adverse inference against the assessee. Reliance is also placed on the following judgments:

- a) 237 ITR 570 (SC) CIT vs. Smt. P. K. Noorjahan (extracted at page 282 of Paper Book)
- b) 107 ITR 938 (SC) Roshan Di Hatt vs. CIT (extracted at pages 282-283 of Paper Book)
- c) 261 ITR 664 (Del) CIT vs. NareshKhattar (HUF) (extracted at page 283 of Paper Book)
- d) 328 ITR 513 (SC) Sargam Cinema vs. CIT
- e) 328 ITR 516 (Del) CIT vs. Naveen Gera
- f) 131 ITR 597 (SC) K.P. Varghese vs. ITO
- g) 316 ITR 46 (Del.) CIT vs. Shakuntala Devi
- h) 335 ITR 572 (Del.) CIT vs. BajrangLal Bansal

20. Ld. AR further submitted that lack of enquiry by the Assessing officer from Sh. Kashif MK Traders by issuing notice u/s 133(6) or 131 of the Act to establish that claim of the assessee since from the beginning i.e. during investigation proceedings and during the course of assessment proceedings that there is unaccounted cash. Reliance is placed upon the following judgments:

- i) 361 ITR 10 (Del) CIT v. Gangeshwari Metal (P) Ltd.
- ii) 357 ITR 146 (Del) CIT vs. Fair Finvest Ltd
- iii) ITA No. 212/2012 dated 11.4.2012 (Del) CIT v. Goel Sons Golden Estate (P) Ltd.
- iv) 342 ITR 169 (Del) Nova Promoters &Finlease (P) Ltd
- v) ITA No. 645/2012 dated 13.1.2015 (Del) Funnay Time Finvest Ltd
- vi) 361 ITR 220 (Del) CIT vs. MisKamdheni Steel and Alloys Ltd.
- vii) ITA No. 71/2015 dated 12.8.2015 (Del) CIT v. Vrindavan Farms (P) Ltd.
- viii) ITA No. 3342/D/20 13 ITO v. XO Infotech Ltd.

21. He further submitted that even otherwise in Whatsapp Chat, there is nothing adverse stated by assessee to even assume that there is unaccounted cash sales as is evident from Chat extracted at para 40 above, therefore could not be relied against assessee. It is apart thereof there is no adverse material gathered and brought on record in any shape to make impugned addition, thus addition made is not in accordance with law.

22. With regard to burden of proof lies on assessee has been discharged, ld. AR submitted that assessee has placed on record ledger account of M/s Kashif MK Traders in audited books or assessee having been accepted and assessed in impugned order (pages 223-224 of Paper Book); alongwith invoices (pages 225-235 of Paper Book) placed on record, then no adverse action can be validly made against assessee without falsifying the evidence placed on record by appellant, which in respectful submission of assessee has not been done by revenue and having not done so no addition is permissible in law.

23. With regard to that unauthorized electronic data in absence of section 65B of Evidence Act, the documents in electronic form recovered from mobile phones; the document is inadmissible in the eye of law, ld. AR submitted that in any case 'electronic data' in absence of valid certificate under section 65B of Evidence Act' 1872 is inadmissible in the eye of law. It is submitted that the Hon'ble Apex Court in the case of Anvar P.V v. P.K. Basheer reported in [2014]

10 SCC 473 has held that wherever a person is seeking to rely upon an electronic record, for the same produced in the evidence, a certificate u/s 65B of the Indian Evidence Act is mandatory which must satisfy the following preconditions:

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer out-put, depends on the satisfaction of the four conditions under Section 65-8(2). Following are the specified conditions under Section 65-8(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity."

24. Further, ld. AR submitted that the Hon'ble Apex Court in the case of Arjun Pandirao Khotkar reported in 2020] 7 SCC 1 has held that "section 65B(4) of the Indian Evidence Act is mandatory. According to the Hon'ble Court, when documents from ITA No.5689 and 5073/MUM/2024 Prashant Prakash Nilawar, AY 20021-22 electronic records are produced by authorities and are sought to be used in evidence, in order to ensure the source and authenticity of the said documents, it is not only mandatory to obtain a certificate u/s.65B(4) of the Indian Evidence Act, but despite efforts if the person seeking such a certificate is unable to do so, he can apply to the court for its production and the Judge conducting the trial must require that such certificate be given.

25. On the other hand, ld. DR of the Revenue relied on the findings of the lower authorities and submitted that Whatsapp chat is an incriminating material found during the search.

26. Considered the rival submissions and material placed on record. In regard to first issue which is common to both the years before us, we observe that PritiSingla is a Director in the assessee company and received salary from AY 2017-18 onwards as under :-

S.No.	F.Y.	Salary received	Commission received	From concerned entity
1	2021-22	28,00,000	----	LSL Tools Pvt. Ltd.
2.	2020-21	44,10,000	----	LSL Tools Pvt. Ltd.
3.	2019-20	61,10,000	----	LSL Tools Pvt. Ltd.
4.	2018-19	26,00,000	----	LSL Tools Pvt. Ltd.
5.	2017-18	39,10,000	----	LSL Tools Pvt. Ltd.
6.	2016-17	---	----	---
7.	2015-16	---	----	---

8.	2014-15	---	----	---
	Total	1,28,30,000		

26.1 It is also brought to our notice that in proceedings u/s 148A of the Act were initiated and subsequently dropped with previous approval of Id. PCIT, Delhi 4. The same is placed at paper book. Therefore, as per the record produced before us, PritiSingla is in receipt of salary regularly from the assessee company. However, a search was conducted on the premises of the assessee and a statement was recorded u/s 132(4) of the Act in which PritiSingla has recorded her statement under oath and in her statement recorded on 10.11.2021 wherein at question no.7, she was asked to explain the role and designation and justify a salary received by her. In response, she answered that, *"I do not have any specific role in M/s. LSL Tools Pvt Ltd. neither do I own anything regarding functioning of the company nor have I ever participated in the operation. The salary received from the company is for my expenses."* We further observe that Id. AR submitted that since there was no material found during the search, the statement recorded u/s 132(4) has no relevance and the same cannot be applied to make addition in search proceedings. After considering the findings of the lower authorities and detailed submissions of the assessee, we observe that the proceedings initiated u/s 148A and subsequently drop of the proceedings u/s 148A cannot be said to be irrelevant but where law requires principles of consistency to be maintained in tax matters then such conclusions drawn in quasi judicial proceedings after due application of mind, in previous years, then

same cannot be disturbed on the basis of any statement recorded u/s 132(4) of the Act, being uncorroborated by any substantive evidences. At the same time we find that retracting her statement PritiSingla she has filed an affidavit subsequently on 23.11.2022 that she is a Director, is a graduate in commerce, she is graduate in computer application and was involved in various activities of the company including personnel management, administrative matters, assistance to other directors in carrying out various functions etc. Copies of Emails sent and received by Smt. PritiSingla as director of appellant company on behalf of company were provided in response to notice /s 142(2) of the Act. It is a case of oath against oath so that certainly needs some cogent material to hold that statement u/s 132(4) of the Act is more trustworthy. This view is supported by Hon'ble High Court decision in the case of PCIT (Central)-3 vs. PavitraRealcon Pvt. Ltd. reported in 340 CTR 225, wherein Hon'ble Court has held as under:

“19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.

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 **KailashbenManharlalChokshi v. CIT**, 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**, 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.”

26.2 Further Hon’ble High Court of Delhi in the case of **Pr. CIT v. M/s Moon Beverages Ltd.** in ITA 645/2019 (Del) dated 23.9.2024 has held as under:

“10. It is thus found on facts that the additions which were made by the Assessing Officer were not based on any incriminating material unearthed in the course of the search and rested solely on the statement that had been recorded under Section 132(4) of the Act.

*11. We note that the significance of a solitary statement and whether that would be sufficient to sustain an addition being made absent any incriminating material was one which had directly fallen for our consideration in **Principal Commissioner of Income Tax (Central)-3 vs. PavitraRealcon Pvt. Ltd.***

12. We had in PavitraRealcon while answering the aforesaid questions observed as follows:-

....

13. We find that the Tribunal has on facts found that but for the statement, no other material had been borne in consideration to sustain the additions which were made. This becomes further apparent from a reading of the following observations which appear in para 37 of the order impugned herein:

“37. We further find from the order of the ld. CIT(A) that there was no surrender of income for the impugned assessment year and the surrender was only for the assessment year 2008-09 which too was retracted within two months. He has also observed that the statement was non descriptive and vague and subject to cross checking of fact to be explained after access to books of accounts. We, therefore, find merit in the submissions of the ld. counsel for the assessee that the addition made by the Assessing Officer u/s 68 of the I.T. Act is not based on any incriminating material and is based on statements recorded during search u/s 132(4) and post-search enquiries.”

14. On an overall conspectus of the above, the Tribunal has ultimately found that the addition which rested solely on a statement recorded under Section 132(4) would not sustain.”

27. Then, we find that once Smt. PritiSingla has included the director's remuneration in her return of income for year under consideration and it is evident from comparative chart placed at page 152 of Paper Book that in situation when remuneration is paid to her, tax burden is higher in comparison to tax saving in the hands of appellant company by making deduction of director's remuneration, then the allegation of department of making fictitious payments to reduce liability loses ground. Infact there is no loss to revenue, on the contrary there is higher tax collection. Making it a revenue neutral situation. Thus relevant ground to this issue in both the AY stand sustained.

28. As with regard to ground no.5, which is specific to AY 2021-22, we observe that during search, some Whatsapp chats were found and the information exchanged between Kashif and VikasSingla. We have taken same into consideration and same do not make out a crystal clear transaction.Ld. CIT (A) has sustained the addition on the basis of findings of the AO that assessee is involved regularly making cash sales without recording the same in their books of account. On careful reading of the Whatsapp chat, we observe that one of the chat found mentioned that *"Sir Rs.13 lac transferkardiyeand Rs.6,57,943/- kalneftkardunga"* and subsequently it is recorded that *"Sir jimene 50 lac kamaal cash me maanga tha aapse double confirm karke dost ko bhi boldiyauska profit abaapmaalkam de rahe he kyakaru me sirji*, reproduced at page 1 of the chat. It clearly shows that there is discussion about transfer and

NEFT clearly indicate that it is a banking transaction and a discussion about new transaction of Rs.50 lakhs was discussed and it was disclosed that it is a transaction of cash and a discussion about some other transaction involving profit. This Whatsapp chat was presumed to be of cash sales made by the assessee without recording the same in their books of account. Even the AO has recorded that he assumes that assessee must have made a profit @ 10%. The provision of Evidence Act and specifically necessity of certificate u/s 65B(4) of the Indian Evidence Act may not be mandatory but certainly to make an addition exclusively on basis of electronic evidences like whatsapp chat, the authenticity of source and extraction of such evidences must be reflected in the assessment order. The Digital Evidence Investigation Manual, 2014 (hereinafter called 'the Manual') of the Central Board of Direct Taxes makes specific and extensive provisions for collection, extraction and validation of electronic evidences. The relevant para 9.1 and 9.6 of the Manual provide as follows:-

“9.1 Reporting of Analysis of Digital Evidence in the Assessment Order should be done in a simple lucid manner, so that any person can understand. The report should give description of the items, process adapted for analysis, chain of custody on the movement of digital evidence, hard and soft copies of the findings, glossary of terms etc. The presentation and use of digital evidence in assessment order and presentation of the same in court of the law in matters of appeal involves stating the credibility of the processes employed during analysis for testing the authenticity of the data.

Some guidelines that assessing officer need to follow when using the Digital Evidence Analysis in the assessment order etc, are as follows:

- *Brief description of the case, details/description of the objects, date and time of collection of the objects, Status of the objects when collected (On or Off), Seized from - person, organization, location etc should be included in the Assessment Order.*
- *Digital Evidence Collection Form, Mobile Phone Evidence Collection Form should be enclosed in the order to show the initial state of the Digital Evidence.*
- *Digital Forensic Report(Given by Forensic Examiner) containing details of hash value and the details of all mahazar drawn to open the digital evidence at various times to gather further evidences should be included as an annexure to the assessment order. If the chain of custody form is present, the same can be annexed to the assessment order. This will establish the integrity of the data before any court of law.*
- *The Key digital evidences retrieved if deleted along with the description of the same, in case of business application software, a note on how the business application software is and the technical details of all critical components.*
- *Whether these digital evidences have been confronted to the assessee under any section of the law? The relevant portions of the statement under various sections of Income Tax Act should be included in the order.*
- *Circumstantial evidences and other key physical evidences seized/impounded should be linked to the digital evidence. Usually the physical evidences like loose papers, sheets gives details of one particular transaction, while the .digital evidences may help in unearthing the entire consolidated data for the whole year. Such digital evidences should be linked to the physical evidences seized during the course of search to establish the genuineness of the data and also to quantify to the total unaccounted income.*

“9.6 Handling the digital evidence at a later stage

In the Income Tax Department, the digital evidence stored is used in the assessment proceedings and at later stages in case of legal tangles. In order to maintain the sanctity of data stored/seized, there is a need to maintain a chain of custody while handling the digital evidence during the course of assessment proceedings and at later stages. Due to the lengthy legal proceedings involved, it may be needed to retain evidence indefinitely.

Hence, a chain of custody of digital evidence should be created in order to know the details of who is accessing data, if anyone who accessed the data had tampered with the data etc.”

29. We are of considered view that these instructions and directions of Board in the Manual do have strong persuasive value on the authorities to show that digital evidence is duly collected and relied in assessment order. Same is not the case here as nothing comes up from the assessment order in that regard. Hon’ble Supreme Court decision in ***Addl. Director General Adjudication vs. Suresh Kumar and Co. Impex Pvt. Ltd. & Ors. In Civil Appeal Nos.11339-11342 of 2018 dated 20th August, 2025*** very recently, has dealt with the case of relevancy and admissibility of electronic evidences in the proceedings under the Customs Act, 1962 wherein the provisions of section 138C of the Customs Act, 1962 regarding admissibility of electronic evidences has been accepted subject to availability of certificate to be obtained in accordance with the sub-section (4) of section 138C of this Act of 1962. The Hon’ble Supreme Court observed that section 65B(4) of Indian Evidence Act is *parimateria* to section 138C(4) of the Act of 1962 and, further relied the decision of the Hon’ble Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others (2020) 7 SSC 1***, and observed that in the said decision the Hon’ble Supreme Court, while explaining the mandatory nature of section 65B(4) of the Indian Evidence Act applied following two Latin maxims :- (i) *impotentia excusat legem*; (ii) *lex non cogit ad impossibilia*, and thereafter held that these two maxims are the

foundation with regard to admissibility of electronic evidences and though section 65B(4) of the Evidence Act is mandatory, yet, it would all depend on the facts of each case, how the same could be said to have been duly complied with. Accordingly, in the said case of ***Suresh Kumar (supra)***, the Hon'ble Supreme Court considered the 'substantial compliance' of section 138C(4) to be sufficient and, therefore, we can firmly conclude that if, in the case of the Income-tax Act, 1961, there are no specific provisions with regard to admissibility of electronic evidences, then, the Manual issued by the Board would substantially hold the ground and the tax authorities are suppose to ensure that there is at least substantial compliance of the Manual to make the electronic evidence relevant and admissible under the law and thus pass judicial scrutiny in appellate jurisdictions. Therefore, conclusion being based on mere whatsapp chats which do not have self contained information of transaction but need interpolation could not be basis for making such sort of additions of profit earned. We are inclined to allow ground no.5 raised by the assessee in AY 2021-22.

30. In the result, both the appeals are allowed.

Order pronounced in the open court on this day of 30th October, 2025

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Dated: 30.10.2025
dk/TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI