

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**BEFORE HON’BLE JUSTICE P. P. BHATT, PRESIDENT  
&  
HON’BLE SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6656/Mum/2017 (AY: 2011-12)  
आयकरअपीलसं./ I.T.A. No. 7595/Mum/2011 (AY: 2005-06)  
आयकरअपीलसं./ I.T.A. No. 7597/Mum/2011 (AY: 2008-09)  
आयकरअपीलसं./ I.T.A. No. 3752/Mum/2012 (AY: 2007-08)  
Cross Objection No. 06/Mum/2021 (AY: 2004-05)  
Cross Objection No. 07/Mum/2021 (AY: 2005-06)

Arch Pharmalabs Ltd. H-Wing, 4 <sup>th</sup> floor, Tex Centre, Off. Saki Vihar Road, Chandivali, Andheri (E), Mumbai-400 072	<b><u>बनाम/</u></b> Vs.	ACIT CC-32, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCM0306Q		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

आयकरअपीलसं./ I.T.A. No. 8089/Mum/2011 (AY: 2004-05)  
आयकरअपीलसं./ I.T.A. No. 8090/Mum/2011 (AY: 2005-06)  
आयकरअपीलसं./ I.T.A. No. 6807/Mum/2017 (AY: 2011-12)

ACIT CC-32, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b><u>बनाम/</u></b> Vs.	Arch Pharmalabas Ltd. H-Wing, 4 <sup>th</sup> floor, Tex Centre, Off. Saki Vihar Road, Chandivali, Andheri (E), Mumbai-400 072
--	----------------------------	---

**I.T.A. No. 6656/Mum/2017 & others  
Arch Pharmalabs Ltd & Arch Impex P. Ltd.**

&

आयकरअपीलसं./ I.T.A. No. 3748/Mum/2012 (AY: 2006-07)  
आयकरअपीलसं./ I.T.A. No. 3749/Mum/2012 (AY: 2007-08)  
आयकरअपीलसं./ I.T.A. No. 3750/Mum/2012 (AY: 2008-09)  
आयकरअपीलसं./ I.T.A. No. 3751/Mum/2012 (AY: 2009-10)

M/s Arch Impex P. Ltd. H-Wing, 4 <sup>th</sup> floor, Tex Centre, Narayan Properties, Chandivali, Andheri East, Mumbai 400072	<b>बनाम/ Vs.</b>	ACIT CC-32, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCA9190Q		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Neelkanth Khandelwal, AR
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Shri Rajeev Harit, DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	19.01.2021
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	07.04.2021

**आदेश / ORDER**

**Per Bench:**

The captioned 3 appeals for the captioned assessee 'M/s Arch Pharmalabs Ltd.' for Assessment Year 2004-05, 2005-06 & 2011-12 have been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) in short referred as 'Ld.

CIT(A)', Mumbai. At the same time, the assessee has also filed 4 appeals for Assessment Year 2005-06, 2007-08, 2008-09 & 2011-12 against the order of Ld. CIT(A) and Cross Objections for Assessment Year 2004-05 & 2005-06 against the respective appeals filed by revenue.

2. Similarly appeals have been filed by the assessee in the case of another connected assessee captioned above namely M/s Arch Impex Ltd. raising similar grievance on an identical legal issue.

3. Since the legal issue of legitimacy of approval under S. 153D raised in all the appeals/ cross objections of both the assessee are similar, hence, all the matters were heard together and is being disposed off by this consolidated order.

4. At the commencement of hearing, Ld. AR representing both the assessee pointed out that both assessee captioned above have also filed the additional grounds of appeal whereby legality of approval granted by the designated superior authority u/s 153D have been challenged. It was further submitted that assessee M/s Arch Pharmalabs Ltd. has also filed the cross objection for Assessment Year 2004-05 & AY 2005-06 in revenues appeal and has also invoked Rule 27 of the ITAT Rules to seek remedy on legal fatality committed by the designated authority under S. 153D of the Act. It was submitted that all

relevant facts for adjudication of legal issue are available on record and hence it was urged that the additional ground raised by the Assessee under Rule 11 of IT(AT) Rules, 1963 may kindly be admitted for adjudication.

4.1 On the other hand, Ld. DR opposed the legal objection raised belatedly and submitted before us written submission, which is reproduced below:-

*5. The assessee has not offered any explanation for raising this ground earlier, though he has been seeking adjournments for over six years.*

*6. In the letter dated 12.10.2020 submitted before the Hon'ble Tribunal, the Jt. CIT, Central Range-5, Mumbai has submitted that the Approval Folder in the Range Office is not readily available and appears to have been **misplaced while shifting of office to Air India**. The draft assessment orders in the case of M/s Arch Pharma Ltd. For AYs. 2004-05, 2005-06, 2007-08 & 2008-09 alongwith screenshot of properties gathered from computer backup, were submitted before the Hon'ble Tribunal to prove that draft assessment were indeed submitted to the Range Head. The Draft Assessment Orders in the case of Arch Impex Pvt. Ltd. were also submitted earlier. It may be added here that the assessment records for A.Y. 2005-06 were subjected to Internal Audit and no procedural lapse was detected by the Audit Team. The assessee have not explained what prompted them to raise such objection after almost seven years of filing the appeal. Apparently, the assessee have raised the issue as an after-thought when they became sure that the department is handicapped by the non-availability of the relevant records.*

*7. The Hon'ble High Court of Allahabad in Dr. V.S. Chauhan v. Director of Income-tax, Investigations [2011] 336 ITR 533 (Allahabad) / [2011] 245 CTR 145*

(Allahabad) / [2011] 200 Taxman 413 (Allahabad) / [2011] 12 taxmann.com 230 (Allahabad) has held that the petition was **liable to be dismissed on ground of laches** since facts revealed that **assessee was not serious in challenging search operation and on smelling out that block assessment proceedings might go against him sought to stall proceedings** by filing writ petition and obtained stay order **after two years from search.**

8. The above view also finds support from the decision of the Hon'ble High Court of Bombay in the case of **Kishore Jagjivandas Tanna v. Joint Director of Income Tax (Inv.)** [2018] 98 taxmann.com 235 (Bombay) that **"if people like wherein it is the petitioner, who is a businessman and prudent enough to know as to how monies, allegedly retained illegally, have to be recovered promptly and expeditiously. He does nothing despite a favourable order from this Court for more than a decade. Such a litigant does not deserve any relief in our discretionary and equitable jurisdiction."**

9. Further, it is held by the Hon'ble High Court of Bombay in the case of **Ultratech Cement Ltd. Vs. Additional Commissioner of Income Tax (2017) 298 CTR 0437 (Bom) : (2017) 157 DTR 0253 (Bom) : (2018) 408 ITR 0500 ((Bom)** that **before an additional ground is allowed to be raised, the appellate authority must be satisfied that the ground raised could not have been raised earlier for good reasons (Para 23).**

10. And it is held by the Hon'ble High Court of Punjab and Haryana in **Commissioner of Income-tax (Central), Ludhiana v. S.A. Builders Ltd.** [2013] 38 taxmann.com 255 (Punjab & Haryana) that **"The Tribunal, thus, cannot permit a party to raise an entirely new plea for the first time for which no factual foundation has been laid before the Assessing Officer or CIT(Appeals)."**

11. Identical is the view held by the Hon'ble High Court Of Calcutta in **Indian Steel and Wire Products Ltd. v. Commissioner of Income tax** [1994] 208 ITR 740 (CAL.) wherein it is held that **"such additional plea which altogether changes the complexion of the case as**

*originally brought before the Commissioner of Income-tax (Appeals) and the Tribunal in second appeal is not permissible to be raised at the stage of hearing."*

*We consider that such additional plea which altogether changes the complexion of the case as originally brought before the Commissioner of Income-tax (Appeals) and the Tribunal in second appeal is not permissible to be raised at the stage of hearing. In the first instance, if permitted, such a course would defeat the scheme of the appellate forums conceived by the Legislature. The Tribunal is supposed to decide only issues which were the subject-matter of the first appeal. Otherwise, the Tribunal would be reduced to the first appellate authority. Such a situation was never in contemplation in the scheme of relief by way of appeal. It is a settled principle that such a course goes to abridge the statutory benefit of two adjudications contemplated by the statute. The first appeal would then get telescoped into the second appeal. Secondly, if permitted, the limitation as prescribed by section 253 for filing second appeal would get defeated, a situation which cannot be countenanced. Thirdly, it is fraught with the risk of being over-indulgent to a party reproachable for laches. Fourthly, where the ground canvassed as additional ground enlarges the claim of relief beyond what was claimed in assessment*

*12. Further, distinguishing the judgment of the Apex Court in the case of National Thermal Power Co. Ltd. the Hon'ble ITAT Mumbai Bench<sup>V</sup> 'J' in case of *Jay Bharat Co-op. Housing Society Ltd. v. Income-tax Officer, Ward 15(2)(4), Mumbai [2010] 125 ITD 90 (MUM.) / [2011] 11 ITR(T) 717 (Mumbai)/[2009] 125 TTJ 552 (Mumbai)*, has held as under*

*7. So far as judgment of the Apex Court in the case of National Thermal Power Co. Ltd. (supra) is concerned, it was rendered on those facts where during the course of appellate proceedings, the legal position on an issue was changed on account of judgment of the appellate*

*authorities and in these circumstances, assessee was allowed to raise a new ground before the Tribunal and the Tribunal can admit the same, if all facts relating to that issue are available before the Tribunal and **no investigation or verifications of the facts are required.***

*13. In the present case the records have been misplaced. Some of the records have been recovered partially. Therefore, it requires fresh investigation and enquiries for investigation or verifications of the facts. No adverse inference can be drawn against the revenue, for records being untraceable. In this regard Reliance is placed on the decision of the Hon'ble High Court of Rajasthan Commissioner of Wealth-tax v. Balu Ram Raghunath Kalla [1993] 69 TAXMAN 540 (RAJ.) wherein it is held that **"There maybe number of reasons for not challenging the judgment and it maybe negligence, carelessness, connivance, mistake or the like on the part of the authorities in not taking timely action....."***

*14. In view of the aforesaid, it is humbly submitted that the Additional Grounds of Appeal shall not be admitted.*

4.2. In rejoinder, Ld. AR submitted that additional grounds of appeal purely bear legal issue which goes to the root of the matter and thus the assessee should not be prevented to raise such legal question on the grounds of estoppel. It was reiterated that material available on record would demonstrate that the Addl. Commissioner (Authority giving approval to search assessments u/s. 153D of the Act) has granted approval in a casual and mechanical manner and without any application of mind. These fundamentally flawed approval renders the search assessment passed, in effect, without approval under S. 153D and consequently makes the whole assessment void and bad in law

and hence, the legal objection may be admitted and adjudicated in the interest of justice.

4.3 We have considered the rival submission on admission of additional ground. Ld. DR objects on the pretext that the relevant documents were misplaced in the department. Further, the argument of the revenue that assessee has raised the legal grounds belatedly, alone cannot be reasons to deny the legal right of the assessee to raise the additional grounds. The Courts have consistently held that Income tax proceedings are not strictly adversarial in nature. It is trite that a fundamental error of law can be pointed out at any stage. There cannot be any estoppel available to Revenue on the ground that the assessee did not make the legal question before lower authorities. The legal issue is capable of being adjudged on the basis of material on record. An assessee in a pending proceeding, is entitled to raise legal grounds where relevant facts are discernible from the existing records. We, therefore reject the objections of the revenue in this regard.

5. In short, the prayer for admission of additional ground noted above which are not set forth in memorandum of appeal deserves to be entertained and thus are being admitted for adjudication in terms of Rule 11 of Income Tax (Appellate Tribunal) Rules 1963 owing to the fact that objections raised in additional ground is legal in nature for which relevant facts are

stated to be emanating from existing records. Similarly, the cross objections filed by the Assessee seeking to inter alia challenge the legal sustainability of search assessments are also admitted for adjudication as such issue is cardinal and goes to the root of the search assessments impugned in this appellate proceedings.

6. To begin with, we shall take up the appeals of the assessee and revenue relatable to M/s Arch Pharmalabs Ltd. as noted below for adjudication purposes.

**ITA No. 8089/M/2011 [ AY 2004-05-Revenue appeal] and CO/6/M/21 of the Assessee – Arch Pharmalabs Ltd. thereon; ITA No. 8090/M/2011 [AY 2005-06-Revenue appeal] and CO no. 7/M/21 of assessee thereon ; ITA No. 7595/M/2011[ AY 2005-06-Assesee Appeal]; 3752/M/2012[AY 2007-08-Assessee appeal]; 7597/M/2012[AY 2008-09-Assessee appeal]**

7. As noted in the preceding para, the assessee, by way of additional grounds and cross objections has called in to question the validity, efficacy & maintainability of search assessments carried out by the AO which is cardinal and goes to the root of the matter. Therefore, the legal objection by way of additional grounds/ cross objections raised by the respective assessee requires to be adjudicated at the threshold.

8. Turning to the background facts briefly, a search and seizure operation was carried out on the assessee under section 132 of the Act in connection with Arch group of cases on 24.04.2008. Consequently, proceedings under S. 153A were initiated and assessment was framed under S. 153A r.w.s 143(3) of the Act relevant to assessment year 2003-04 to 2008-09 and assessment order under S. 143(3) was passed relevant to AY 2009-10. An approval dated 31.12.2010 from the Additional Commissioner of Income Tax (designated authority) was obtained by the AO under section 153D of the Act in respect of search assessment i.e. AY 2003-04 to 2009-10 in pursuance of his communication to the designated authority dated 29.12.2010. The assessment orders for various assessment years were consequently passed on the basis of such prior approval. As the legal controversy has cropped up on the legality of approval and consequent maintainability of respective assessments, it will be pertinent to reproduce the communication of AO and approval of designated authority for a ready reference.

8.1 The content of forwarding letter of AO dated 29/12/2010 to the designated authority seeking approval of draft assessment orders for various assessment years is reproduced hereunder;

***“OFFICE OF THE  
ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLEC-***

***32***

***R. N. 32(3), AAYKAR BHAVAN, M K ROAD, MUMBAI-400 020.***

(022) 22030602

---

No. ACIT-32/Appr. u/s 153D/2010-11  
29.12.2010

---

Dated:

**To,**

**Addl. Commissioner of Income tax,  
Central Range -VIII, Mumbai.**

Sir,

**Sub : Draft assessment orders under section 143(3) rws  
153A in the case of M/s Arch Pharma Labs Ltd. For A.Ys  
2003-04 to 2008-09 and 143(3) for A. Y. 2009-10 - reg.  
(Arch Group)**

*Kindly refer to the above.*

2. *I am submitting herewith a draft assessment order u/s 143(3)/153A for A.Ys. 2003-04 to 2008-09 and 143(3) for A.Y. 2009-10 in the case of M/s Arch Pharma Labs Ltd*

3. *Further, it is submitted that all seized materials and data on electronic devices copied during the search operation have been considered while framing assessment order.*

4. *Your kind approval is solicited as per provision of section 153D of the IT. Act, 1961 for completing the search assessments in the above mentioned case*

**Yours faithfully,**

**Asstt. Commissioner of  
Income tax Central Circle-32,  
Mumbai**

**Encl: As above:"**

8.2 The approval memo of the designated authority on such draft assessment orders, which is subject matter of serious challenge, is also reproduced hereunder:

**OFFICE OF THE  
ADDL. COMMISSIONER OF INCOME-TAX  
CENTRAL RANGE -VIII,  
Room No.3, Ground Floor, Aayakar Bhavan,  
M.K. Marg, Mumbai - 400 020.**

**(022) 22030602**

---

*No.Addl. CIT/CR. VIII/153D./2010-11  
31/12/2010*

---

*Dated:*

**To,**

***The Asstt. Commissioner of Income-tax,  
Central Circle-32,  
Mumbai.***

***Sub : Approval u/s,153D of the I.T. Act in the cases of  
of Arch Group - Order u/s 143(3) r.w.s. 153A for  
A.Ys. 2003-04 to 2008-09 & Order u/s 143(3) for  
A.Y.2009-10 - Reg.***

***Ref.: letter No.ACIT-32/Appr. u/s. 153D/2010-11 dated  
29.11.2010.***

**\*\*\***

*Please refer to the above.*

2. Approval is hereby accorded u/s.153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders for the A.Ys. 2003-04 to 2008-09 and A.Y. 2009-10 u/s. 143(3) forwarded by you, vide your letter No.ACIT-32/Appr. u/s. 153D/2010-11 dated 29-12-2010:

**I.T.A. No. 6656/Mum/2017 & others  
Arch Pharmalabs Ltd & Arch Impex P. Ltd.**

<b>Sr. No.</b>	<b>Name of the Assessee</b>	<b>A.Y.</b>	<b>Section under which order passed</b>
1.	M/s. Arch Pharma Labs Ltd.	2003-04 to 2008-09	143(3) rws 153A

3. Approval is also accorded to complete the assessment u/s.143(3) of the I.T. Act in the above case for A.Y. 2009-10.

4. You are requested to ensure that suitable office notes are prepared and put on record in each case where necessary and also remedial action or consequential action in the form of passing on the relevant information to other Assessing Officers / agencies (if any) is taken expeditiously in each case.

*Addl. Commissioner of  
Income-tax,  
Central Range-VIII, Mumbai”*

9. On the validity of approval under section 153D, Ld. AR adverted our attention to the communication letter dated 29.12.10 forwarded by the AO (reproduced *supra*) addressed to the Addl. CIT and pointed out that the AO in the said letter neither makes any iota of reference as to what are the seized materials of incriminating nature found nor does he forwards any such material for consideration and reference of the Addl. CIT so as to apply his mind to such material enable him to grant statutory approval of search assessments in terms of section 153D of the Act. It was pointed out that all that the AO mentions in the said letter is that ‘*all seized materials and data on electronic devices seized during the search operation have been considered while framing assessment order*’ and thus contended that the

designated authority has acted in oblivion while granting a consolidated & combined approval for all search assessment years in a summary manner and without the assessment records and without seized material placed before him/her and thus acted merely on the basis of an undertaking from the AO that all seized material has been considered while framing assessment order. Learned AR thus assailed the action of Addl.CIT for relegation of task to AO which was entrusted to him/her.

9.1 He next submitted that no draft assessment order has been prepared by the Assessing Officer inasmuch as though in the said letter, it is mentioned '*Enc: As above*' but, the same was not given/produced by the Ld. DR, nor are they available in the files that were inspected in the course of earlier hearing dated 13.10.2020.

9.2 The ld. AR further brought to our notice, a letter dated 31.12.2010 of the Addl. CIT to the AO granting statutory approval in which he mentioned in point no 1 that '*Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961...*' He submitted that it clearly shows that the Additional Commissioner of Income-tax has approved the assessment order in a mechanical manner without looking into the complex facts of the search assessments. The seized materials were never placed before him by the AO and there is no draft assessment order available on record that has been purportedly forwarded to him. These facts

show that it is only a ritualistic approval to comply with the provisions of law. It was contended that the whole procedure adopted by the revenue clearly defeats the intent and purpose behind insertion of section 153D brought in the statute by the Finance Act, 2007.

9.3 To support the proposition that a mechanical approval by the superior authority is only illusory and cannot be equated with statutory approval contemplated under section 153D of the Act, it was submitted that several decisions have been rendered by the co-ordinate benches to this effect and have also been vetted by the Hon'ble High Courts. The Ld. AR referred to the decisions of Jurisdictional High Court in the case of *Pr. CIT vs. Smt Shreelekha Damani 307 CTR 0218 (Bom)* to assert the legal objection. The decision of Tribunal in *Shreelekha Damani vs. DCIT (2015) 173 TTJ 0332 (Mum.)* was also referred to and relied upon. Another decision of co-ordinate bench in the case of *The Navbharat Refrigeration & Industries Limited vs. DCIT in ITA No 136/Mum/2013 and ors. dated 01.10.15* was referred wherein also mechanical exercise of statutory approval under section 153D was disapproved. It was thus contended that text and tenor of approval by designated authority read in conjunction with the communication letter of AO clearly reveals an abstract approval without any underlying seized material and without assessment records being made available for approval of so called draft assessment order. It was submitted that the Addl. CIT

has approved the assessments of all 7 assessment years in consolidated manner, hurriedly and without application of mind in respect of each assessment separately. The designated authority has merely acted on the basis of an assurance and undertaking of the AO that all material has been taken into account by him while making the draft assessment orders. It was pointed out that the draft assessment orders spanning over 7 assessment years running into voluminous pages were purportedly sent vide communication letter dated 29/12/2010 which was approved summarily on 31/12/2010 i.e. before it could barely reach the office of the designated authority. It was thus contended that the assessment orders passed on the basis of such empty and illusory approval does not stand the test of law and requires to be quashed.

10. The Ld. DR for the revenue on the other hand, sought to justify the action of revenue authorities in the context of alleged legal infirmity in approval of search assessments under section 153D of the Act. A written submission was filed in this regard, the content of which is reproduced hereunder:-

*15. The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. In this regard, the Hon'ble High Court of Allahabad in **Ram Ratan v.***

*Commissioner of Income-tax [1983] 13 Taxman 309 (All.)  
has held that*

**8. ....The fact that the department has not been able to make a definite assertion that the notices of demand were served on the assessee cannot help the assessee or the petitioners in this case. The failure of the respondent to make a positive assertion is not sufficient in view of the peculiar facts of the instant case, to lead to the conclusion that the assertion made by the assessee is true and worthy of reliance. It is neither a rule of prudence nor a rule of law that the statements made in an affidavit which remains uncontroverted, must invariably be accepted as true and reliable. Ordinarily, in the absence of denial, the statements may be accepted as true but if there are circumstances which suggest that the statements on affidavit should not be accepted as true, the absence of denial by the other side, would not by itself be sufficient to clothe the statements on affidavit with truthfulness and reliability. In view of the special facts and circumstances of this case, we are not inclined to accept the statement of the karta made on oath in the affidavit that the notices of demand in respect of the assessment years in question were not served on him before the commencement of recovery proceedings. As said earlier, this statement is clearly an after-thought and was made when the deponent became sure that the department is handicapped by the non-availability of the relevant records. The normal and natural course for the ITO is to send the assessment order along with notice of demand and tender for deposit of the amount due in treasury or bank to the assessee. This course must have been followed in the instant case as well. There is no reason for us to think that the ITO would have departed from this well-known and well-established practice of the department when an order of assessment was made and it was found that certain amount of income-tax was due from the assessee.**

*In the present case the assessment records were subjected to Internal Audit and the Audit Team has not pointed out*

*any procedural defect. Therefore, any doubts about the procedure as regards the submission of draft assessment order, assessment records or seized material are unfounded.*

*16. There is a Presumption of Regularity expressed by the maxim of law "omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium" implying that all judicial and official acts are presumed to be having been rightly and regularly done. **Neither motive can be presumed nor bad faith nor abuse of power.** This maxim is codified in Section 114(e) of the Indian Evidence Act, 1872 too.*

*[Hon'ble ITAT New Delhi Bench 'C in **Indian Farmers Fertilizers Cooperative Ltd. v. Pr. CIT-II, New Delhi [2016] 51 ITR(T) 162 (Delhi -Trib.) / [2017] 81 taxmann.com 288 (Delhi - Trib.)**]*

*17. There is a presumption in law (section 114(e) of the Evidence Act) that all official and judicial acts were regularly performed. It is not open to any judicial or quasi-judicial authority to lightly assume that the contents of any judicial or quasi-judicial order or the observation or findings made therein are untrue or incorrect.*

*> [Hon'ble High Court of Calcutta in **CIT, Kolkata-III v. Trimline Vyapaar (P.) Ltd. [2015] 370 ITR 373 (Calcutta) / [2015] 274 CTR 156 (Calcutta) / [2014] 224 Taxman 324 (Calcutta) / [2014] 45 taxmann.com 145 (Calcutta)**]*

*18. And, the presumption attached to the correctness of official records cannot be taken away merely by assumptions or suggestions raising doubts.*

*> [Hon'ble High Court of Orissa Capital Talkies v. CIT SJ.CS. Nos. 40 and 41 of 1978 decided on April 20, 1981]*

***19. Whenever the proceedings of the court are disputed, it should be supported by an affidavit as there is presumption u/s 114(e) of the Indian Evidence Act that***

*judicial act have been regularly performed. Since the facts recorded in the order sheet have not been controverted by filing an affidavit, the judicial proceedings recorded on 08/02/2013 are correct in view of the provisions of section 114(e) of the Indian Evidence Act, 1872 and the contentions raised in the application are highly misconceived, wrong and contemptuous.*

> [Hon'ble ITAT Lucknow Bench 'SMC in **Omkar Nagreeya Sahkari Bank Ltd.v.DCIT- ^ Kanpur**[2013] 143 ITD 703 (Lucknow - Trib.)/[2013] 156 TTJ 491 (Lucknow - Trib.) / [2013] 34 taxmann.com 283 (Lucknow -Trib.)]

**20. It is well known that a presumption can also be raised that in terms of section 114(e) of the Evidence Act, judicial and official acts have been regularly performed.**

> [Hon'ble ITAT Delhi Bench 'D' in **Smt. Manisha Sharma v. Income-tax, Officer, Ward 1(2), Muzaffarnagar** [2010] 35 SOT 37 (DELHI)]

21. Further, reliance was placed on the decision of **Hon'ble Bombay High Court** in the case of **Asteroids Trading & Investments (P.) Ltd. v. Dy. CIT** [2009] **308 ITR 190**, in which a reference was made to the decision of Full Bench of Hon'ble Delhi High Court in the case of **CIT v. Kelvinator of India Ltd.** [2002] 256 ITR 11, in which the Hon'ble Court observed that **when a regular order of assessment is passed in terms of section 143(3), a presumption can be raised that such an order has been passed after application of mind.**

21. Further it has been held by the Hon'ble Supreme Court of India in the case of **Director General of Income-tax (Investigation) v. Spacewood Furnishers (P.) Ltd.** [2015] 374 ITR 595 (SC) that "the requirement to obtain administrative approval is prompted by the need to provide an additional safeguard to the taxpayer." and that **"Suspicion ought not to be the basis of any judicial order .....**"

22. Under identical circumstances the Hon'ble ITAT Mumbai in **Pratibha Pipes & Structural Ltd. & Anr. Vs. DCIT & Anr(2018) 52 CCH 0701** in ITA No. 3874 / Mum / 2015, 3875 / Mum / 2015, 3876 / Mum / 2015, 7120 / Mum / 2016 (CO No.100 / Mum / 2018, 101 / Mum / 2018, 102 / Mum / 2018, 254 / Mum / 2018) ) dated 10th April, 2019 has dismissed the additional ground raised by the assessee with following observations.

17. In the above factual background, if we examine the claim of the assessee by way of additional ground, we find that **there is a serious suspicion raises about the conduct of the assessee in taking additional ground challenging the issue of approval u / s 153D of the IT Act, 1961, for the first time, before the Tribunal. The assessee never disputed this issue before the lower authorities. The assessee has taken this issue for the first time before the Tribunal after ascertaining the fact in connection with its RTI application that no such approval was available in the assessment folder. When the assessee has not raised the issue before the CIT (A), then there is a serious doubt arise in the mind about the intent of the assessee to take a legal ground before the Tribunal. ....**

.....Further, the approval granted in other group cases is very much available in the assessment folder. Therefore, it cannot be said that no approval had been taken. **Further, the approval u / s 153D is an administrative procedure** which requires to be complied with by the officers, is who is discharging the assessment functions. The administration action of the department not very much relevant for the assessee to justify its case, on merits. **Therefore, when assessee goes to question the administrative procedure, rather contending its case on merits, that too, after a lapse of 4 to 5 years, then obviously, a doubt arises about intent of the assessee in taking this ground and such an attempt is derail the issue on merits and to escape on technical ground.** Therefore, we are of the considered view that there is no merit in the additional ground taken by the assessee challenging validity of assessment order

**I.T.A. No. 6656/Mum/2017 & others  
Arch Pharmalabs Ltd & Arch Impex P. Ltd.**

*passed by the AO u / s 143 (3) r.w.s. 153A of the Income - tax Act, 1961. Although, the assessee has relied upon certain judicial precedents, we find that those case laws were rendered under different set of facts, where the assessee had taken the ground challenging validity of the assessment before the CIT (A) and also the fact that there was no specific observation in the assessment order for taking approval required to be taken u / s 153D of the Income tax Act, 1961. In this case, the AO has categorically recorded at para 7 of his assessment order in respect of approval taken u / s 153D and such reference has been further strengthened by the affidavits of two officers, who were part of assessment proceedings. Therefore, the case laws relied upon by the assessee cannot be considered as applicable to the facts of the assessee case.*

**22. Judgement of Hon'ble Bombay High Court in the case of Pr. CIT vs. Smt. Shreelekha Damani (2019) 307 CTR 0218 (Bom): (2019) 174 DTR 0086 (Bom) is distinguishable on facts.** In this case the draft order was submitted and approved on the same day i.e. 31.12.2010 and the Addl. CIT has himself admitted that "no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted", whereas in the present case the Drafts submitted on 29.12.2010, were approved on 31.12.2010.

**23. Further, assuming without admitting that some infirmity is there, it is curable under law, as held by the Hon'ble ITAT Delhi Bench 'A' (Special Bench) in Kailash Moudgil v. DCIT[2000] 72 ITD 97 (Delhi) (SB)/[2000] 67 TTJ 145 (Delhi) (SB)**

13. ....Then, what is the role of the Commissioner while granting approval to the assessment order prepared by the A.O. and putting it before him for approval. We have already seen what is meant by 'approval'. The word 'approval' means to be satisfied with, to sanction officially, to ratify, to pronounce good, think or judge well of; admit the propriety or excellence of; be pleased with;

*distinguishable from 'authorize', meaning to permit a thing to be done in future. Therefore, the ordinary meaning of the word approval can never be synonymous to satisfaction which is derived from out of judicial proceedings. On the other hand, it means that the Commissioner is administratively satisfied with the assessment. It means to confirm, ratify, sanction or consent to some act or thing done by another, to sanction officially. The meaning of the word 'approve' does not carry meaning of authorisation. In order to satisfy himself, the Commissioner can go through the assessment and after going through, he can confirm, ratify, sanction or give consent or give sanction officially. Therefore, the intendment of the word 'approve' is only to give official sanction and nothing more. There is no scope that the word 'approve' admit of any judicial proceeding. When there is no judicial proceeding, there is no question of audialteram partem rule to apply. We are inclined to think that under the facts and circumstances and the set up in which proviso under 158BG was obtaining, 'approve' means exercise of an administrative authority. (Para 13)*

*.....that the approval of the Commissioner without recording any reasons in writing for approving the order would not render the order of the Assessing Officer void ab initio and would not invalidate the assessment order. Assuming without admitting that some infirmity is there, it is curable under law, since the order of assessment passed under section 158BC is made appealable under section 253(1)(£) of the Income-tax Act in which the assessee is entitled to canvass all the points available to invalidate any part of the assessment and thus the defect, if any, existing previously would be completely cured. (Para 31)*

24. Further, the Hon'ble ITAT, Mumbai "B" Bench has passed an order in the case of *The Navbharat Refrigeration & Industries Ltd. Simplex Realty Ltd. vs. The DCIT- (OSD - 1), CR-7, Mumbai in ITA No.136, 137, 147, 148, 149, 150, & 151 / Mum / 2013 dated 01-10-2015 wherein it is held that in search cases if the order is annulled as done in the*

*present case the AO is at liberty to take any course of action as per the provisions of the law. The relevant para of the said order is re-produced herewith:*

*4. We have heard the rival submissions and perused the material before us. We find that in the case of Smt. Shreelekha Damani (supra) the assessee had raised following additional grounds:*

*1. On the facts and in the circumstance of the case and in law the CIT(A) ought to have held that the AO had not complied with the provisions of Sec. 153D of the Act and hence the assessment under section 153A of the Act is bad in law.*

*2. On the facts and in the circumstance of the case and in law the CIT(A) ought to have held the assessment order u/s. 153A is non est and not in accordance with law and ought to have set aside the assessment." If we compare the additional grounds raised by the assessee in the present appeal, we find that there is no difference in the additional grounds raised in both the appeals. We find that the Tribunal had dealt the issue as under:*

*15. Before parting with the issues, there was a apprehension in our mind as to what will happen in search cases if the order is annulled as done in the present case. Our apprehension is answered by the provisions of Sec. 153A(2) "If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in subsection (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner": Thus the AO is at liberty to take any course of action as per the provisions of the law. In the result, the appeal filed by the assessee is allowed."*

*Respectfully following the above we allow the appeal filed by the assessee. As stated in paragraph no. 15 of the above*

*order of the Tribunal, the AO would be at liberty to take any action as per the provisions of law.*

25. *The above observation may be kindly be considered while deciding the issue.*

26. *As regards the additional ground raised by the assessee challenging the assessment order on the ground that notice u/s 143(2) is beyond the time limit prescribed under the Act, this ground deserve to be rejected in view of the decision of the Hon.ble High Court of Delhi in the case of **Ashok Chaddha K Income-tax Officer [2011] 337 ITR 399 (Delhi)**, wherein distinguishing *CIT (Asst.)v. Hotel Blue Moon [2010] 321 ITR 362 (SC)* it is held that a specific notice is required to be issued under clause (a) of sub-section (1) of section 153A calling upon the persons searched or requisitioned to file return, that being so, no further notice under section 143(2) can be contemplated for assessment under section 153A.*

11. We have carefully considered the rival submissions and material placed on record and case laws cited. The legal objection of transgression of requirements of approval under section 153D is in controversy. Pursuant to search carried out in the premises of the Assessee and other connected group cases, the assessment was carried out under S. 153A/ 143(3) of the Act. The Assessing officer has forwarded the draft assessment orders for 7 years ( AY 2003-04 to AY 2009-10) for endorsement and approval of the superior authority at the fag end of the limitation period on 29/12/2010 to meet the legal requirement imposed by section 153D of the Act. The Addl. CIT i.e. the superior authority has, in turn, granted a combined and consolidated approval for all 7 assessment years *in promptu* on 31/12/2010.

11.1 It may be pertinent to observe at this stage that the impugned assessment orders were passed u/s. 143(3) rws 153A of the Act for the AY 2003-04 to AY 2008-09 and for the AY 2009-10 u/s. 143(3) of the Act pursuant to search carried out under s.132 of the Act. For passing such assessment orders, the Assessing Officer is governed by s.153D of the Act whereby the Assessing Officer should complete the assessment proceedings and prepare a draft assessment order which need to be placed before the approving authority i.e. Joint / Addl. Commissioner (designated authority giving approval to search assessments u/s. 153D of the Act). The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/ her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law. The AO is obligated to pass the assessment order exactly, as per approval/ directions of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of the assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

11.2 In the backdrop of facts narrated in the preceding paras, it is the contention on behalf of the assessee that approval granted under S. 153D does not meet the requirement of law and hence assessment orders passed in consequence of such *non-est*

approval is a nullity in law. The assessment orders thus passed is vitiated in law which illegality cannot be cured. In support of charge of nonest approval, several contentions have been raised viz (i) the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind (ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 7 assessment years and thus only a symbolic exercise to meet the requirement of law (iii) Total lack of objectivity in drawing satisfaction on objective material while giving a combined approval for 7 assessments and also without evaluating the nuances of each assessment year involved (iv) the mundane action of Addl. CIT under S. 153D in a cosmetic manner gives infallible impression of approval on dotted line and thus defeats the purpose of supervision of search assessments (iv) initialed draft assessment orders not available in office records.

11.3 As observed, Section 153D bestows a supervisory jurisdiction on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirement in letter and spirit. It is evident from the communication of AO and consequent approval

thereon under S. 153D that no assessment record for any assessment year in question or any seized material had traveled to the authority concerned for his objective consideration of the same *qua* the draft assessment orders. No reference in this regard is made in the approval note either which may discard such allegation as untrue. No other material or order sheet in assessment proceedings etc. were placed before us either to establish otherwise. Except these two documents namely, a solitary communication from AO to the Addl. CIT dated 29/12/2010 and an in turn approval by Addl. CIT dated 31/12/2010, there is nothing else before us to gauge the facts differently. A bare glance at the approval so accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the 7 assessment years. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record which allegation has not been rebutted. The draft assessment orders showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw light on objectivity applied

owing to total silence on any delineation on these aspects in the approval memo. The records before us are totally muted.

11.4 Based on solitary communication placed before us, it is ostensible that draft assessment orders were placed before the Addl. CIT on 29.12.2010 for the first time. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to 29.12.2010. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of

mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.

11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "*Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders...*" which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing

respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and can not be countenanced in law.

11.6 There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) and approved by jurisdictional High Court subsequently as reported in 307 CTR 218 affirms the plea of the Assessee.

11.7 Very recently, the co-ordinate bench in Sanjay Duggal & ors (ITA 1813/Del/2019 & ors; order dated 19.01.2021 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assessee against maintainability of hollow approval under S. 153D totally devoid of any application of mind. The approval so granted under the shelter of section 153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence quashed.

12. In view of *prima facie* merits found in the legal objections, We do not consider it expedient to look into the aspects on merits of additions/ disallowance.

13. The cross objection memo captioned above of the Assessee *inter-alia* includes legal objection under section 153D in addition to other grounds on merits. As the legal objections on S. 153D has been answered in favour of the assessee, other objections raised in the respective cross objections of the Assessee are infructuous and does not need any separate adjudication.

14. As a result, the captioned appeals of revenue in ITA No. 8089/M/2011 & 8090/M/2011 are dismissed whereas the CO/6/M/21 & CO/7/21 of the Assessee are allowed. Similarly, the appeal of assessee in 7595/M/2011;3752/M/2012; 7597/M/2012 stands allowed.

**ITA No. 6656/M/17- Arch Pharmalabs Ltd.- Assessee appeal & 6807/Mum/2017 –Revenue appeal –AY 2011-12**

We shall now take up the cross appeals of the assessee & Revenue in ITA no. 6656/M/21 & 6807/Mum/2017 respectively relevant to AY 2011-12 for adjudication.

15. Briefly stated, the assessing officer, while framing assessment for the Assessment year 2011-12, made disallowances of whole of the amount alleging purchases made from certain parties to be non-genuine. In the first appeal, the CIT(A) revisited the entire disallowances and having regard to the facts of the case, resorted to estimated disallowances @ 12.5% on purchases made. Both assessee and revenue has challenged the action of the CIT(A). Whereas, the assessee is aggrieved by sustenance of disallowance of 12.5% of such purchases, the Revenue is aggrieved by the partial relief granted by the CIT(A).

16. At the time of hearing, it was submitted on behalf of the Assessee at the outset, that the issue is covered in own case of assessee concerning AY 2010-11 in ITA no. 3114/Mum/2016 order dated 23.08.2017 wherein the disallowance was restricted to 4% of such alleged unsupported purchases. The Ld. AR for the Assessee accordingly sought suitable relief in the matter.

17. With regard to cross appeals for Assessment Year 2011-12 on the issue of bogus purchases, we notice that the identical ground raised in the present appeals have already been decided by the Coordinate Benches of ITAT in assessee's own case for Assessment Year 2010-11 in ITA No. 1248 & 3114/Mum/2016 on merits. For the sake of clarity, the operative para is extracted hereunder:-

*15. We heard the parties and perused the record. We notice that the AO has made the impugned addition only on the basis of information received from Sales tax authorities. We also notice that the AO did not make any independent enquiry to disprove the factum of purchases. At the same time, we notice that the assessee has also failed to furnish evidences to prove the transportation of materials.*

*16. In the case of Kamal P Agarwal and others (supra), the co-ordinate bench considered the decision rendered in the case of ITO Vs. Sanjay V Dhruv (ITA No.5089/M/2014 dated 29-02-2016), wherein the addition was deleted fully. In the case of Sharad Construction P Ltd (ITA Nos.2812-14/M/2015 dated 30-09-2016), another co-ordinate bench had also fully deleted the addition by observing that the addition has been made on conjectures and surmises. The co-ordinate bench also considered the decision rendered by Hon'ble Bombay High Court in the case of Nikung Eximp*

*Enterprises (P) Ltd (372 ITR 619), wherein the Hon'ble High Court had also confirmed the deletion of the addition of alleged bogus purchases by observing that the nonproduction of suppliers before the AO cannot be considered to draw adverse inferences. However, since the assessee has purchased the goods locally and in the absence of transportation bills, the co-ordinate bench directed the AO to restrict the addition in the range of 3.5% to 4% of the value of purchases.*

*17. In the instant case also, we notice that the assessee has reconciled the purchases with sales. There should not be any doubt that the sales could not be made without making corresponding purchases. The AO has also accepted the purchases as well as sales. However, since the assessee did not furnish evidences for transportation of goods, the AO presumed that the assessee would have made extra profit and accordingly estimated the same at 10% of the value of purchases. We have noticed that the AO has made the addition without making any independent enquiries. The decision relied upon by the assessee (supra) also considers certain decisions wherein identical addition made by the AO has been deleted for want of proper enquiries. However, we have noticed that the assessee has also failed to prove the transportation of goods. During the course of arguments, the Ld A.R submitted that the materials might have been directly transported from the suppliers place to the customers place, but no evidence in that regard was furnished. Under these set of facts, we are of the view that the AO was justified in estimating extra profit, if any, made in the purchases. However, we are of the view that the estimation @ 10% appears to be on the higher side. The assessee also contends that it has already declared 4.16% on the above said transactions. We also notice that the co-ordinate bench has estimated the profit in the range of 3.50% to 4% in the case of Kamal P Agarwal & others (supra).*

*18. Accordingly, considering the facts and circumstances of the case, we are of the view that the disallowance of purchases may be made @ 4% to meet the anomalies, if any, and in our view, the same would meet the ends of*

*justice. We order accordingly. The order of Ld CIT(A) stands modified accordingly and the AO is directed to restricted the addition to 4% of the value of alleged bogus purchases.*

*19. In the result, the appeal of the assessee for AY 2009-10 is allowed and the appeal relating to AY 2010-11 is partly allowed.*

18. The revenue could not bring any cogent distinction for departure with the view already taken in the matter in the matter of estimation. Hence, in parity, the findings of the co-ordinate bench in assessee's own case in earlier would apply *mutatis mutandis* in the present cross appeals. Accordingly, the AO is directed to restrict the disallowance/ addition to 4% of the alleged bogus purchases similar to Assessment Year 2010-11.

19. Resultantly, the appeal of the Assessee in ITA no. 6656/M/17 is partly allowed whereas the appeal of the revenue in ITA no. 6807/Mum/17 is dismissed.

**ITA No. 3748-3749-3750-3751 /M/12- Arch Impex P. Ltd.-  
Assessee appeal –AY 2006-07 to 2009-10**

20. The Assessee 'Arch Impex Pvt. Ltd.' has raised similar contentions on mechanical exercise of powers by designated authority under S. 153D while granting the approval of draft assessment orders for AY 2003-04 to 2009-10.

21. The communication made by the AO to the Addl. CIT seeking approval of draft assessment orders in relation to search assessments is reproduced hereunder for ready reference;

**“OFFICE OF THE  
ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-  
32  
R. N. 32(3), AAYKAR BHAVAN, M K ROAD, MUMBAI-400 020.**

**(022) 22030602**

---

*No. ACIT-32/Appr. u/s 153D/2010-11  
14.12.2010*

*Dated:*

*To,*

*The Addl. Commissioner of Income tax,  
Central Range -VIII,  
Mumbai.*

*Sir,*

***Sub : Draft assessment orders under section 143(3) rws  
153A in the case of M/s. for A.Ys. Arch Impex Pvt.  
Ltd. 2003-04 to 2008-09 and 143(3) for A. Y. 2009-  
10  
Approval – reg. –***

\*\*\*\*\*

*Kindly refer to the above.*

2. *I am submitting herewith a draft assessment order u/s. 143(3)/153A for A.Ys. 2003-04 to 2008-09 and u/s. 143(3) for AY 2009-10 in the case of M/s. Arch Impex Pvt. Ltd.*

3. *Further, it is submitted that all seized materials and data on electronic devices copied during the search operation have been considered while framing assessment order.*

4. *Your kind approval is solicited as per provisions of section 153D of the I.T. Act, 1961 for completing the search assessments in the above cases.*

*Yours faithfully,*

*Asstt. Commissioner of Income  
tax Central Circle-32, Mumbai*

*Encl: As above."*

22. Similarly, the approval accorded by the Addl. CIT to AO on the draft assessment orders in relation to search assessments is reproduced hereunder;

**OFFICE OF THE  
ADDL. COMMISSIONER OF INCOME-TAX  
CENTRAL RANGE -VIII,  
Room No.3, Ground Floor, Aayakar Bhavan,  
M.K. Marg, Mumbai - 400 020.**

**(022) 22030602**

---

*No.Addl. CIT/CR. VIII/153D./2010-11  
31/12/2010*

*Dated:*

**To,**

**The Asstt. Commissioner of Income-tax,  
Central Circle-32,  
Mumbai.**

**Sub : Approval u/s,153D of the I.T. Act in the cases of  
of Arch Group - Order u/s 143(3) r.ws. 153A for  
A.Ys. 2003-04 to 2008-09 & Order u/s 143(3) for  
A.Y.2009-10 - Reg.**

**Ref.: letter No.ACIT-32/Appr. u/s. 153D/2010-11  
dated 14.12.2010.**

**\*\*\*\***

*Please refer to the above.*

**I.T.A. No. 6656/Mum/2017 & others  
Arch Pharmalabs Ltd & Arch Impex P. Ltd.**

2. Approval is hereby accorded u/s.153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following cases on the basis of draft assessment orders for the A.Ys. 2003-04 to 2008-09 and A.Y. 2009-10 u/s. 143(3) forwarded by you, vide your letter No.ACIT-32/ Appr. u/s. 153D/2010-11 dated 14-12-2010:

<b>Sr. No.</b>	<b>Name of the Assessee</b>	<b>A.Y.</b>	<b>Section under which order passed</b>
1.	M/s. Arch Pharma Labs Ltd.	2003-04 to 2008-09	143(3) rws 153A
	M/s. Arch Phytochemicals Pvt. Ltd.	2003-04 to 2008-09	143 rws 153A

3. Approval is also accorded to complete the assessment u/s.143(3) of the I.T. Act in the above case for A.Y. 2009-10.

4. You are requested to ensure that suitable office notes are prepared and put on record in each case where necessary and also remedial action or consequential action in the form of passing on the relevant information to other Assessing Officers / agencies (if any) is taken expeditiously in each case.

*Addl. Commissioner of  
Income-tax,  
Central Range-VIII, Mumbai”*

23. On a bare glance of communication of AO and approval of designated authority, it is self-evident that the facts and issue is identical to the legal challenge posed in group co. Arch Pharmalab supra. Hence, our observations and findings in Arch Pharmalabs shall apply *mutatis mutandis* to these appeals as well. In parity, the assessment orders passed by the AO in relation to AY 2006-07 to 2009-10 are quashed on the ground that the approval accorded under S. 153D is mechanical and without

application of mind and thus assessment orders passed as sequel to such mechanical approval is rendered nonest and vitiated.

24. In the result, appeal of the assessee in ITA No. 3748/M/12; 3749/M/12; 3750/M/12 & 3751/M/12 concerning AY 2006-07 to AY 2009-10 are allowed.

*Orders pronounced in the open court on 07-04-2021.*

*Sd/-*

(S. Rifaur Rahman)  
Accountant Member

मुंबई Mumbai; दिनांक Dated : 07/04/2021  
Sr.PS. Dhananjay

*Sd/-*

(Justice P. P. Bhatt)  
President

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**