

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 436 & 437/Asr/2018
Assessment Years: 2013-14 & 2014-15**

Shri Arun Narula S/o Ashok Narual, D-47, Ranjit Avenue, Amritsar. [PAN:AERPN7833F] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar. (Respondent)
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**I.T.A. Nos. 611 to 615 & 650/Asr/2018
Assessment Years: 2008-09 to 2010-11 & 2012-13 to 2013-14 & 2014-15**

Shri Ravi Narula Basti Guru Karam Singh, Guru Harsahai, Ferozpur. [PAN:AAVPK3042K] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar. (Respondent)
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**I.T.A. No. 618/Asr/2018
Assessment Year: 2012-13**

Smt. Seema Rani Narula Basti Guru Karam Singh, Guru Harsahai, Ferozpur. [PAN:AERPN7835D] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar. (Respondent)
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I.T.A. No. 647/Asr/2018
Assessment Year: 2014-15

Adeeksha Narula, D-47, Ranjit Avenue, Amritsar. [PAN:AXEPA5790Q] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar. (Respondent)
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Appellant by	Sh. Ashray Sarna, CA.
Respondent by	Sh. Anupam Kant Garg, CIT. DR.

I.T.A. No. 86/Asr/2017
Assessment Year: 2011-12

Bal winder Singh Kohli 10, Jyoti Nagar Near Income Tax Colony Jalandhar. [PAN:ADTPS2409R] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, -II Jalandhar. (Respondent)
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Appellant by	Sh. Ashray Sarna, CA.
Respondent by	Sh. Rahul Dhawan, CIT. DR.

Date of Hearing	23.06.2022
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I.T.A. Nos. 320 to 326/Asr/2017
Assessment Years: 2007-08 to 2013-14

M/s Pinku Batra W/o Sh. Rajan Batra, R/o 46, Chotti Baradari Part-I, Jalandhar. [PAN:AKTPB4005H] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, II Jalandhar. (Respondent)
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I.T.A. No.276/Asr/2019
Assessment Year: 2014-15

Sh. Kashmira Singh, H. No. 3 Rose Avenue, Ferozpur. [PAN:AEWPS9566D] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, I Jalandhar. (Respondent)
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I.T.A. No.277/Asr/2019
Assessment Year: 2014-15

Sh. Rahul Mittal, H. No. 15-17, Street No.4,Ferozpur Cantt. [PAN:ASPPM8787M] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, I Jalandhar. (Respondent)
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I.T.A. Nos. 583 to 585/Asr/2019
Assessment Years: 2012-13 to 2014-15

M/s Guru Nanak Milk Products Village Mallanwala Ferozpur, Cantt. [PAN:-AABFG1005G] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, I Jalandhar. (Respondent)
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I.T.A. No. 151& 183/Asr/2021
Assessment Year: 2011-12& 2010-11

M/s Bhagwati Lacto Vegetarian Exports Pvt. Ltd. Shop No. 18-1/2, Anaj Mandi Ferozepur Cantt. [PAN:AADCB4295Q] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, I Jalandhar. (Respondent)
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I.T.A. Nos. 41 to 43/Asr/2022
Assessment Years: 2009-10 to 2011-12

Smt. Sonali Batra, Jalandhar. 46, Chotti Baradari, Garha Road, Jalandhar. [PAN:AKTPB3999A] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, II Jalandhar. (Respondent)
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Appellant by	Sh. Ashray Sarna, CA.
Respondent by	Sh.Rahul Dhawan, CIT. DR.

Date of Hearing	18.05.2022 & 23.06.2022
Date of Pronouncement	11.08.2022

ORDER

Per Bench:

The instant appeals are directed against the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana [in brevity the CIT(A)]the order passed u/s

250(6) of the IT Act 1961, [in brevity the Act] for Assessment Years as mentioned above.

The impugned order was originated from the order of the Id. Dy.CIT, Central Circle, Amritsar (in brevity the AO) the order passed u/s 144 r.w.s. 153A of the Act. The bunch of appeals are instituted with common issue related to section 153A, 153D and 153C of the Act. The Id. Counsel only argued on the legal issue of the two bunches of appeals. The legal issues are adjudicated in following manners for all the appeals.

2. The Id. Counsel of the assessee first took the ITA No.618/Asr/2018 as lead case for the cases heard on 18.05.2022 and the ITA No. 86/Asr/2017, 41/Asr/2022 are the lead case for the cases heard on 23.06.2022.

2.1. Before us Mr. Ashray Sarna represented all the matters on behalf of the assessees. The appeal heard on 18.05.2022 was represented on behalf of revenue by Mr. Anupam Kant Garg, CIT DR and the appeal which were heard on 23.06.2022 was represented by Mr. Rahul Dhawan, CIT DR on behalf of the revenue.

3. The assessee took the following grounds before the ITAT which are extracted as follows:

“1. That the order passed u/s 153A/143(3) of the Act by the Hon’ble CIT(A) dated 10.09.2018 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A/143(3) of the Act is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.

3. That in any case and in any view of the matter, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.

4. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 15,52,000/- u/s 69 of the Act on account of unexplained investment in property without considering the submission of the assessee and ignoring the overwhelming evidence placed on record to substantiate the source of investment.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3.1 In the course of hearing before the Tribunal assessee took additional grounds vide its submission dated 21.12.2021 and prayed for its admission and adjudication. The additional grounds taken by the assessee is reproduced as under:

“Sub: Prayer for admission of additional grounds in the case of Smt. Seema Rani, Ferozpur in ITA No. 618/ASR/2018 for AY 2012-13

The appellant begs to move the following ground as additional ground:-

1. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 144 r.w.s. 153A of the Act and that too without complying with the mandatory requirements and conditions u/s 153D as envisaged under the Income Tax Act, 1961.

Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383”.

4. The brief fact of the case is that a search was conducted u/s 132(1) of the Act at the residence of the assessee and the family members. The proceeding u/s 153A was initiated. Further proceeding, ld. AO had obtained approval from the Ld. Additional Commissioner of Income tax, Central Range Jalandhar u/s 153D of the Act. For other party the satisfaction was noted u/s 153C of the Act. The ld. Counsel for the assessee challenged section 153A of the Act as there is no incriminating material during the assessment proceeding so the entire assessment proceedings is bad in law. The ld. Counsel challenged the approval u/s 153D which is in mechanical manner. So the entire approval U/s 153D of revenue is illegal and the assessments are liable to be quashed.

4.1. Related section 153C of the Act the ld. Counsel specifically mention that the order related section 153C is barred by limitation. The assessment order passed under section 153C/143(3) is time barred.

4.2. The assessee filed an appeal before the ld. CIT(A) with the following grounds which are reproduced hereunder:

“1. That the order passed by the ld. Assessing Officer dated 22.03.2016, is against the law and facts of this case.

2. That the ld. Assessing Officer is erred in law in making addition amounting to Rs.15,52,000/- u/s 69 of the Act on account of investment in property without giving proper opportunity of being heard to assessee.

3. That assessee request to add or amend any ground of appeal before the appeal is finally heard and disposed off”.

4.3. The ld. CIT(A) adjudicated the issue in favour of the revenue after calling remand report from the AO under Rule 46A of the IT Rule 1962. The appeal orders were passed accordingly. Being aggrieved the assessee filed an appeal before us.

Issue Related Section 153D

5. The ld. Counsel for the assessee, Mr. Sarna vehemently argued only on the legal grounds. The factual grounds are not pressed. During the hearing the ld. Counsel produced the copy of the approval u/s 153D of the Act by a letter dated 21.12.2021. The copy of the approval bearing F.No. Addl.CIT/CR/JAL/153D/15-16/1524, dated 21.03.2016 is reproduced here as under:-



भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / Ministry of Finance

कार्यालय

अपर आयकर आयुक्त,

केन्द्रीय मंडल, जालन्धर

दूरभाष/Telephone: 0181-2221092,

Office of the

Addl. Commissioner of Income Tax,
Central Range, Jalandhar.

फैक्स/Fax: 0181 - 2221092

16-SCF, New Jawahar Nagar Market, Jalandhar-144001

F. No. Addl.CIT/CR/JAL/153D/15-16/1524 Dated: 21.03.2016

To

The Dy. Commissioner of Income Tax,
Central Circle, Amritsar.

Sub: Approval u/s 153D of the Income Tax Act, 1961 - reg.-

Please refer to your letter No. DCIT/CC/Asr./2015-16/1055 dated 17.03.2016 respectively on subject cited above.

2. In this connection, proposed assessment orders in the following cases are hereby approved.

S. No.	Name of the assessee	A.Y.
1.	M/s. Narula Foods Pvt. Ltd., Guru Harsahai, Ferozpur	2008-09 to 2014-15
2.	M/s. Sat Kartar Solvex Pvt. Ltd., Vill. Sandhe Hasham, Ferozpur	2008-09 to 2014-15
3.	M/s. G.H. Agro Products Pvt. Ltd., Vill. Wadala Bhattewad, Amritsar	2008-09 to 2014-15
4.	M/s. Guru Sahal Foods Pvt. Ltd., Guru Harsahai, Ferozpur	2008-09 to 2014-15
5.	M/s. Narula Solvex Pvt. Ltd., Moga	2008-09 to 2014-15
6.	M/s. Narula Oil & Fats Pvt. Ltd., at Ladoriyal Valva Sanand Rd., Gujrat	2008-09 to 2014-15
7.	Sh. Ravi Narula, Guru Harsahai, Ferozpur.	2008-09 to 2014-15
8.	Sh. Ashok Kumar Narula, Guru Harsahai, Ferozpur	2008-09 to 2014-15
9.	Sh. Arun Narula, Ranjit Avenue, Amritsar	2008-09 to 2014-15
10.	Sh. Gaurav Narula, Bhopal Tehsil Daskroi, Ahmedabad.	2008-09 to 2014-15

5.1 The Id. Counsel further argued that the approval was made in mechanical manner related to the assessment. There is no application of mind of the revenue during the approval of assessment u/s 153D. The Id. Counsel further relied on the judgments which are discussed as follows.

i. In the case of **Sh. Ashok Narula vs. DCIT, Circle Amritsar ITA No. 616 and 617/Asr/2018 date of order 23.12.2021**. The following relevant part of the order is extracted as below: -

“i. These four appeals have been filed at the instance of the assessee are directed against the order of Commissioner of Income Tax, Appeals, [hereinafter called the CIT(A)] order no. 39/IT/CIT(A)-5/LDH/2016-17 order dated 11.10.2018 arising out of assessment order dated 22.03.2016. Since matters are common and grounds of appeals are also common and assessee has taken following additional legal grounds”.

Further the observation of the Hon’ble ITAT in page no. 4:

“8. We have gone through the relevant record and impugned order. The approval u/s 153D on file No. Addl.CIT/CR/JAL/153D/15-16/1523 dated 31.03.2016 was given in the case of all 4 assesseees including 10 more assesseees”.

5.2. The Id. Counsel further relied on the order of **Inder International vs. ACIT in ITA No.1573/Chd/2018 dated 07.06.2021** the relevant part of this order is extracted as below:

“15. From the above, it is clear that this is totally non application of mind by the Addl. CIT, who is the supervising authority of the AO, while granting statutory approval u/s153D of the Act, the issue stands covered in favour of the assessee by various decisions cited above. In the present case before us, we noted that the Addl. CIT did not mention anything in the approval memo towards his process of deriving satisfaction so as to exhibit his due application of mind. We noted that the Addl. CIT merely approved the letter and the relevant (sic-para) is noted in above paras. We noted that the relevant Para of the above approval letter merely says that "Necessary statutory approval u/s 153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith..."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 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 because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out”.

5.3. The Id. Counsel for the assessee also relied on the order of Anurag Mittal vs. DCIT, ITA No. 135 & 136/Agr/2018 order dated 06.11.2019, Dilip Construction Pvt. Ltd. Vs. ACIT, ITA No.66 to 71 & 292/CTK/2018 order dated 29.11.2019 and

Pr. CIT vs. Smt. Shrelekha Damani, High Court of Bombay (2019) 307 CTR (Bom) 218.

5.4. The ld. CIT DR Mr. Garg Vehemently argued and placed that all revenue authorities had discussed the case regularly before issuing the approval. All facts are under knowledge of Pr.CIT and the Additional CIT. The ld. AO had completed the observation and findings for assessment under the full guidance of higher authority. It is not a matter of single day for approval of the issues like search matter. He further argued that the approval order in case of assessee is F.No.Addl.CIT/CR/Jal/153D/15-16/1524 dated 21.03.2016 was issued before passing of assessment order. But in case of Ashok Narula ITA 616 and 617/Asr/2018 File No. Addl.CIT/CR/JAL/153D/15-16/1523 dated 31.03.2016. In any case there is no matching in the file Number with the assessee's case, please vide the order of Sh. Ashok Narula in page no. 4. In case of Inder International vs. ACIT in ITA No.1573/Chd/2018 dated 07.06.2021 in that case the approval was made in the same date. But in the case of assessee, the approval was completed on 21.03.2016 and the order was passed on 22.03.2016. Both the cases referred by the ld. Counsel are not coming under the factual matrix.

He further argued that during assessment there was no cooperation from the end of the assessee and none of the person was appeared before the AO and had not filed any objection before the Id. AO during the assessment proceeding. The Id AO had no other option but to pass the assessment order u/s 144 r.w.s 153A of the Act.

He argued that the assessee took the additional ground first time before the ITAT. The issue was not agitated before any of the lower authorities. So, this particular additional ground should be rejected as there was no deficiency or not any mechanical approval related to section 153D in case of assessee.

5.5. The case which was heard on 23.06.2022, was argued by Id. CIT DR Mr. Rahul Dhawan. Mr. Rahul Dhawan agitated the issue& relied on the following judgments which are as follows: -

- i. **Experion Developers P. Ltd. Vs. ACIT WP(C) 11302/2019 dated 13.02.2020 (Del).**
- ii. **Prem Chand Shaw (Jaiswal) vs. ACIT (Kol) 67 taxman.com 339**

the relevant part is extracted as below:-

“In the case of CIT -vs- T. O. Abraham & Co. reported in (2011) 333 ITR 182 (Ker.) the Kerala High Court held that the whole purpose of Section 292B is not to defeat on technicalities the object of the statute that is to assess and collect the tax legitimately due under the Act. The mere fact that the Additional Commissioner did not record his

satisfaction in so many words would not render invalid the sanction granted under Section 151(2) when the reasons on the basis of which sanction was sought for could not be assailed. Even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. We are supported in our view by the Judgment of the Apex Court in R.P. Bhatt v. Union of India, reported in AIR 1986 SC 1040. In R.P. Bhatt (supra) the Apex Court relied on judgment rendered by a Constitutional Bench in the case of Som Datt Datta v. Union of India reported in AIR 1969 SC 414 wherein their lordships held as follows.”

iii. Mazinda Singh Kanu vs. CIT (P & H) ITA No. 421/2010 date of order 13.09.2010.

iv. Baldevbhai Bhikhabhai Patel vs. DCIT (Guj) Spl Civil Application No.21092/2017.

5.6. We heard the rival submission and are adjudicating the issue after a thoughtful consideration of the submission of both the parties. The ld. Counsel relied of the judgments which are factually not similar with the assessee's issue. We respectfully observed the order of the Coordinate Bench, ITA No. 616 and 617/Asr/2018 date of order 23.12.2021 which is not under the factual matrix of the assessee's case. In the order of coordinate bench specifically mentioned that the order was passed on 22/03/2016 but the approval was granted on 31/03/2016. In assessee's case the approval U/s 153D had completed before passing of assessment order. So, we are respectfully not accepting ITA no 616 and 617/Asr/2018 which is

not under factual matrix. The approval was made on 21.03.2016 and the order was passed on 22.03.2016. Respectfully we observe the case, ITA No.1573/Chd/2018 dated 07.06.2021. The observation of the Additional CIT during approval in both the cases are not similar. All other cases are not factually same.

The ld. CIT DR referred the cases which are also not come under the factual matrix of the assesseees which is related to the approval to the notice u/s 148 of the Act. But the revenue authority had tried to explain the essence of the judicial pronouncement during the hearing before the ITAT. From the factual aspect, the approval was made with a list of assessee. The process of approval is a continuous process which was going by the AO with his senior officers. After a detailed discussion this approval was made. The approval was done on 21/03/2016 & assessment order was passed on 22/03/2016. We find no lacuna in the approval of the revenue authorities. Further in section 153D specifically mention about only for the approval. So, the grounds related to section 153D for mechanically approval is dismissed. We are dismissing the additional ground of the assessee.

5.7. In the result, the additional ground related mechanical approval u/s 153D is dismissed.

Section 153A, No Incriminating Documents

6. In this issue we have taken ITA No.86/Asr/2017 as the lead case. The assessee filed grounds of appeal which is extracted below:

- “1. That neither Id. A.O nor Id. CIT(A) has proved on record that these are the loans and advances received by appellant during the year before confirming the addition u/s 2(22)(e).*
- 2. That Id A.O, as well as, Id CIT(A) has not given telescopic benefit of the opening balance of Reserves & Surplus in the hands of the company for the year under consideration, if at all the addition is to be confirmed u/s 2(22)(e), amounting to Rs. 15,21,421 - 5500=Rs.15,15,921*
- 3. That neither Id A.O nor Id CIT(A) has provided sufficient opportunity to substantiate the credit of Rs. Seven lacs in the account of appellant on 02.08.2010 which is against the Principal of natural justice.*
- 4. That order of Ld A.O is bad in law, as well as, on facts.*
- 5. That appellant craves to add or amend any ground of appeal before the appeal is finally heard or disposed-off.*
- 6. That the order may kindly be modified or another consequential relief be allowed.”*

6.1. The Id. Counsel for the assessee further filed an additional ground on dated 21.04.2022 which is reproduced as below:

- “1. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A/143(3) of the Act is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.*
- 2. That in any case and in any view of the matter, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.*
- 3. That having regard to the facts and circumstances of the case, Hon’ble CTT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned*

assessment order u/s 153A/143(3) of the Act and that too without complying with the mandatory requirements and conditions u/s 1530 as envisaged under the Income Tax Act. 1961.

Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383."

6.2. The Id. Counsel for the assessee vehemently argued and took our attention in the assessment order. As per the assessment order the addition was made 15,21,421/- as deemed dividend in the hands of the assessee and taxed accordingly u/s 2(22)(e) of the Act. The assessment was completed u/s 153A/143(3) of the Act. The Id. CIT(A) adjudicated the issue and confirmed the order of the AO. During the appellate proceeding assessee did not take the ground related to assessment U/s 153A was made on non-incriminating material. In the additional ground the Id. Counsel agitated the issue before the ITAT first time.

6.3. The Id. Counsel for the assessee relied on the order of the same Co-ordinate Bench in the case of **Krishan Kumar Mittal vs. DCIT, Jalandhar ITA No.637/Asr/2018 order dated 23.12.2021**. Also relied on the judgment of the same bench in the case of **Sh. Rahul Mittal vs. DCIT, Jalandhar in ITA No.635/Asr/2018 order dated 10.05.2022**. In both the orders of the orders of

Revenue were dismissed due to orders were passed u/s 153A without any incriminating documents.

6.4. The ld. CIT DR Mr. Rahul Dhawan vehemently argued & first pointed out that in case of Rahul Mittal the return was filed and after that the search was conducted u/s 132 of the Act. In this case assessee's return was not processed & no intimation was issued before the search. But ld. Counsel for the assessee objected the fact and also placed intimation as proof of the return was processed u/s 143(1) of the Act.

6.5 Ld. CIT DR Mr. Dhawan further argued that the search took place on 05.12.2012 for assessment year 2011-12 and return was filed on 17.03.2012. As per Mr. Dhawan, CIT-DR this case is not abated, and the nature incriminating documents actually has not been defined in any of the Act. As per Mr. Dhawan all the documents of the of assessee are incriminating documents. The documents are unverified, un-assessed by the revenue authority during the processing of return u/s 143(1) of the Act.

6.6 Ld CIT-DR further argued & referred the order of Hon'ble Delhi High Court in case of CIT, Circle-3 vs. Kabul Chawla (2015) 61 taxman.com 412(Del):-

“37. iv. *Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

v. *In absence of any incriminating material, the completed assessment can be reiterated, and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.”*

6.7. The complete assessment can be reiterated and abated assessment or reassessment can be made. The word “assessed” in section 153A is relatable to abated proceeding i.e. “those pending date of search” and the word assessed to complete assessment proceeding. Mr. Dhawan further argued that in case of Kabul Chawla, supra the order of the Hon’ble Supreme Court in case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. Appeal Civil 2830/2007, 2007-TIOL-95-SC-IT was not considered. Mr. Dhawan CIT DR respectfully submitted that the order of the Delhi High Court in case of Kabul Chawla is per-incurium. He relied on the order of Hon’ble Supreme Court in case of **Punjab Land Development vs.**

Presiding Officer, Labour 4th May, 1990 Equivalent Citation 1990 SCR(3) 111

1990 SCC(3) 682:

“(9) Per Incuriam means through inadvertence. A decision can be said generally to be given per incuriam when the Supreme Court has acted in ignorance of its own previous decision or when a High Court has acted in ignorance of a decision of the Supreme Court. The problem of judgment per incuriam when actually arises, should present no difficulty as the Supreme Court can lay down the law afresh if two or more of its earlier judgments cannot stand together. Article 141, which embodies as a rule of law, the doctrine of precedents, was enacted to make the law declared by the Supreme Court itself. [136G; 138G; 137F] Re Dawson's Settlement Lloyds Bank Ltd. v. Dawson, [1966] 3 All ER 68 and Bengal Immunity Company Ltd. v. State of Bihar, [1955] 2 SCR 603, relied upon (10). The doctrine of ratio decidendi has also to be interpreted in the same line. To consider the ratio decidendi Court has to ascertain the principle on which the case was decided. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. [139G-H] State of Orissa v. Sudhansu Shikhar Misra, [1968] 2 SCR 154; F.A. & AB Ltd. v. Lupton (Inspector of taxes), [1972] A.C. 634; Osborne v. Rowlett. 13 Ch D 774 and Quinn v. Leathem. [1901] AC 495, relied on Griffiths v. J.P. Harrison

(Watford) Ltd., [1963] AC 1; Finsbury Securities Ltd. v. Inland Revenue Commissioners, [1966] 1 WLR 1402, referred to.116”

Also respectfully relied on in case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors, (SC), Criminal Appeal No-2271 of 2010, Date of Order-02/12/2010:**

“139. Now we deem it imperative to examine the issue of per incuriam raised by the learned counsel for the parties. In Young v. Bristol Aeroplane Company Limited (1994) All ER 293 the House of Lords observed that ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The ‘quotable in law’ is avoided and ignored if it is rendered, ‘in ignoratium of a statute or other binding authority. The same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

“..... In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp. 297-98, para 578) per incuriam has been elucidated as under:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction

which covered the case before it, in which case it must decide which case to follow (Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300.

In Huddersfield Police Authority v. Watson, 1947 KB 842 : (1947) 2 All ER

193.); or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

6.8. Further relied in the case of **Indo Swiss Time Ltd. Vs. Umrao And Ors. (P & H)AIR 1981 P H 213, Date of Order-23/02/1981:**

"39. On this question, my Lord the Chief Justice in his elaborate judgment has held that the Courts may follow the judgment which appears to them to state the law accurately and that mere incidence of time whether the judgment of the co-equal Benches of the superior Court are earlier or later is a consideration which appears to be hardly relevant. I have also given my thoughtful consideration to the entire matter and find myself in respectful agreement with the aforesaid observation of my Lord the Chief Justice."

6.9. The Id. Counsel further relied on order of Hon'ble Supreme Court in the case of CIT, (WB) vs. Vegetable Products Ltd. 80 ITR 192 (SC). The respectfully

observation of the Id. Counsel was that if the issues are debatable the preference should be given for assessee.

6.10. The Id. CIT DR mentioned that the vegetable Products Ltd. (supra) is related to tax payable and tax paid issue not a question of incriminating material but in case of Indo Swiss Time Ltd. (P & H) observed that out of two decisions mere should followed which was explained the law correctly.

6.11. We heard the rival submission and considered the documents available in the record. The moot point of this issue is that whether this assessment was made on basis of incriminating or non-incriminating material. The return of the assessee was filed u/s 139(1) which was processed u/s 143(1). Factually it is correct that the processing of return is only basis on same arithmetical adjustment and allowable deduction there is no such application of mind related to documents of the assessee. Respectfully observed the order of Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd, supra

“12. What were permissible under the first proviso to section 143(1)(a) to be adjusted were, (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction allowance or relief, which was prima facie admissible on the basis of information

available in the return but not claimed in the return and similarly (iii) those claims which were on the basis of the information available in the return, prima facie inadmissible, were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief.”

6.12. Respectful observation of this order which is stated that during processing of return u/s 143(1) there is no application of mind. In this factual interpretation the addition was made u/s 2(22)(e) related to deemed dividend such shares invested by the assessee to the company where he has the substantial interest. This particular investment is reflected in the books of account of the assessee. There is coherent relation in between company and assessee. The counsel of the assessee filed an additional ground which is under adjudication. The ld CIT-DR vehemently opposed & pointed out that assessee had never taken this additional ground anywhere before the any of the lower authorities. The acceptance of additional ground was not in question in Rahul Mittal, supra case. We accept the additional ground in light of judgment of Rahul Mittal, supra, respectfully considering the

judgment of Hon'ble Apex Court in the case of NTPC vs. CIT (1998) 229 ITR 383 (SC). The additional ground of the assessee is accepted related assessment U/s 153A of the Act and the appeals of the assessee are allowed.

7. In the result, In ITA No. 86/Asr/2017, ITA 320 to 326/Asr/2017, 276/Asr/2019 & 277/Asr/2019 ITA 583 to 585/Asr/2019 ITA 151/Asr/2021, ITA 183/Asr/2021 and ITA 41 to 43/Asr/2022 are allowed.

Issue related Section 153C of the Act

8. This issue is agitated by Id. Counsel of the assessee. The assessee is prayed for ITA No. 583/Asr/2019 is the lead case for this particular issue. The grounds of the assessee is reproduce hereunder:

“1. That the order passed by the Ld. Assessing Officer dated 27.12.2018 is against the law and facts of this case.

2. (a) That having regard to the facts and circumstances of the case, Ld. Assessing Officer has erred in law and on facts in assuming jurisdiction and framing the impugned assessment order u/s 153C/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.

(b) That in any case and in any view of the matter, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.

3. That the Ld. Assessing Officer has wrongly made an addition of Rs. 52,00,000/- on account of disallowed of interest paid on CC account without any basis.

4. That the Ld. Assessing Officer has wrongly made an addition of Rs. 1,42,892/- disallowed the expenses of loss on sale of car .

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

8.1 Also the assessee filed an additional ground during the hearing on the date 03.12.2021 before the bench. The Additional ground reproduced as under:

“Sub: Prayer for admission of additional grounds in the case of Ms Guru Nanak Milk Products, Ferozpur Cantt. in ITA No. 583 ASR/2019, 584/ASR/2019; 585/ASR/2019

The appellant begs to move the following ground as additional ground:-

1. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 143(3) r.w.s. 153C of the Act and that too without complying with the mandatory requirements and conditions u/s 153D as envisaged under the Income Tax Act, 1961.

Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383."

8.2. The appeal of the assessee was filed with delay of 3 days. The Id Counsel prayed for condonation of delay. The delay is condoned as the number of days are negligible.

9. During the hearing with the additional ground, the Id. Counsel for the assessee also filed the approval u/s 153D bearing no. F.No.JCIT/CR/Jal/2018-19/993 dated 26.12.2018:



GOVERNMENT OF INDIA

वित्त मंत्रालय --- Ministry of Finance

कार्यालय

संयुक्त आयकर आयुक्त

केन्द्रीय मंडल जालंधर

दूरभाष/Telephone: 0181-2233263

Office of the

Joint. Commissioner of Income Tax,

Central Range, Jalandhar 144001.

फैक्स/Fax: 0181 - 2233263

Email ID- jalandhar.addicit.cen@incometax.gov.in

25-27, Aytan's Tower, Civil Lines, Near Dilkhusa Market, Jalandhar.

F. No. JCIT/CR/Jal./2018-19/993

Dated: 26.12.2018.

सेवा में,

उप-आयकर आयुक्त,

केन्द्रीय वृत्त-1, जालंधर ।

Sub: Approval u/s 153D of the Income Tax Act, 1961 -regarding --

Please refer to your letter Nos.1736, 1737 dated 25.12.2018 and Nos. 1738,1739,1741& 1742 dated 26.12.2018 thereby submitting draft assessment orders in the following cases for approval.

S.No.	Name of the assessee	PAN	Asstt. Year
1.	Ms.Sukhbir Kaur, H.No.833, Urban Estate, Phase-I, Jalandhar	ALGPK1254M	2011-12 to 2017-18
2	Sh. Indermohan Singh (through legal heir Sh.Simerdeep Singh) H.No.833, Urban Estate, Phase-I, Jalandhar	ACIPS1029E	2011-12 to 2017-18
3	Sh.Mandhir Singh Jaswal382, Joginder Nagar, Rama Mandi, Jalandhar	AJKPS0229C	2011-12 to 2017-18
4	M/sBhagwati Lacto Vegetarian Exports Pvt. Ltd., Shop No.18-1/2 Anaj Mandi, Ferozpur Cantt.	AADCB4295Q	2016-17
5	Smt. Paramjit Kaur, 382, Joginder Nagar, Rama Mandi, Jalandhar	AGMPK9880A	2011-12 to 2017-18
6	M/s Guru Nanak Milk Products, Village Mallanwala, Ferozpur Cantt.	AABFG1005G	2010-11 to 2014-15

2. You are requested to complete the order-sheet before issuing notice. Order should be uploaded in the ITBA portal well in time.

3. Necessary approval u/s 153D is granted to pass the above assessment orders as such. Assessment Orders in all the years are returned herewith.

संलग्न : उपरोक्तानुसार

(ओम प्रकाश)

संयुक्त आयकर आयुक्त
केन्द्रीय रेंज, जालंधर

10. The Id. Counsel vehemently argued and mentioned that the date of order was completed on 27.12.2018 u/s 153C/143(3) of the Act for assessment year 2012-13.

The Id. Counsel referred the Page-8, paragraph 3.2 of the CIT(A) order.

“A perusal of the assessment order shows that the AO in the first para of the assessment order at pages 1 & 2, has discussed the issue regarding the initiation of proceedings u/s 153C after recording of reasons in cases/assesseees where assessment were framed u/s 153A and it is mentioned that in view of papers relating to assessee found and seized during the search, satisfaction was recorded by the Assessing Officer of the cases of the respective assessee's where assessment were framed u/s 153A and after analyzing these documents with respect to the returns of incomes filed by the assessee, a satisfaction was recorded that these documents have a bearing on determination of total income of the assessee and therefore the proceedings u/s 153C were initiated on 12.10.2017 by issuing notices to the assessee. In response to notice u/s 153C, the assessee filed return of its income and thereafter the notice u/s 143(2) of the Act was issued and the proceedings were duly attended by the Counsel of the assessee. In view of the facts mentioned by the AO in the assessment order, no infirmity is found in assumption of jurisdiction by the AO and passing the assessment order u/s 153C/143(3) after following due procedure as prescribed

according to law. The AR has also filed a copy of satisfaction note in the case of M/s. Bhagwati Lacto Exports Vegetarian Pvt. Ltd., Anaj Mandi, Ferozpur and Sh. Gurmeet Singh, 3 Rose Avenue Ferozpur, where the details of document seized pertaining to the assessee has been mentioned by the Assessing Officers of those assessees, recommending action u/s 153C against the assessee. The AR has also filed a copy of satisfaction note recorded in the case of the assessee M/s. Guru Nanak Milk Products where reference of documents found from various premises and their relevance in relation to action under section 153C in the case of the assessee has been duly recorded by the Assessing Officer of the assessee. In view of the above facts, the arguments of the AR on this ground are not found acceptable and assumption of jurisdiction by the AO is found valid as per law.

Accordingly, this ground of appeal is dismissed.”

The counsel of the assessee took the plea that the proceedings u/s 153C were initiated on 12.10.2017 by issuing notices to the assessee. The point is that the order was passed barred by the limitation. As per section 153C r.w.s. 153D of the Act.

10.1. The Id. Counsel also referred the judgment of Hon'ble Supreme Court in case of Super Malls P. Ltd. Vs. PCIT-8, New Delhi 115 taxman.com105 (SC).

10.2. The Id. CIT DR Mr. Rahul Dhawan further argued that limitation will start with the AO received seized material section 153C is initiated on 12.10.2017. He also referred the order of the Id. CIT(A) in page no. 8, as mentioned above. After the satisfaction of the AO the 153C will be issued. He respectfully argued that the order of Hon'ble Supreme Court in Super Malls P. Ltd. (supra) is not at all applicable in this issue. So the additional ground of the assessee should be rejected.

11. We heard the rival submission relied on the documents available on the record. The 153C will be applicable after the satisfaction noted by the Id. AO in relation to the related party. The notice U/s 153C was initiated on 12/10/2017 & the order of assessment had completed on dated 27/12/2018. In this point, the assessment not at all time barred. In the case of Super Malls (supra) is not come under the factual matrix of the assessee's submission. As per the Id. Counsel the Id. CIT(A) has also erred by confirming the action of the Id. AO in passing order u/s 153D. Further adjudication is required against this issue. We accept that the additional ground & set aside the issue before the Id. CIT(A) by considering the additional ground of the assessee. On the other hand the assessee should get reasonable opportunity being heard for the case.

12. In the result, the particular issue u/s 153C of the Act related in ITA No.583/Asr/2019 to 585/Asr/2019 is allowed for statistical purpose.

13. In the result the appeals of the assesseees are partly allowed.

Order pronounced in the open court on 11.08.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order