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. No.22/Asr/2020: A.Y. :2008-09
I.T.A. No. 23/Asr/2020: A.Y.: 2009-10
I.T.A. Nos.17/Asr/2020 to 21/Asr/2020
A.Ys.: 2010-11 to 2014-15

M/s G.H. Agro Products Pvt. Ltd. Vill. Wadla, Bhittewad, Ram Tirath Road, Amritsar. [PAN: AAACG5814B] **(Appellant)**	**Vs.**	Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Respondent)**

I.T.A. No. 24/Asr/2020: A.Y. :2010-11
I.T.A. No. 16/Asr/2020: A.Y.: 2011-12
I.T.A. No. 25/Asr/2020 :A.Y.:2012-13
I.T.A. No. 26/Asr/2020: A.Y. :2013-14
I.T.A. No. 27/Asr/2020: A.Y.: 2014-15

M/s Sat KartarSolvexPvt. Ltd. Vill.SandheHasham Zira Road, Ferozepur. [PAN: AAECS9537M] **(Appellant)**	**Vs.**	Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Respondent)**

I.T.A. No.32/Asr/2020: A.Y. :2009-10
I.T.A. No. 33/Asr/2020: A.Y.: 2010-11
I.T.A. No. 34/Asr/2020 :A.Y.:2011-12
I.T.A. No.35/Asr/2020: A.Y. :2012-13
I.T.A. No. 36/Asr/2020: A.Y.: 2013-14
I.T.A. No. 37/Asr/2020: A.Y.: 2014-15

M/s Narula SolvexPvt. Ltd. Vill.Focal Point, Khosa Pando Zira Road, Moga. [PAN: AABCN8394A] **(Appellant)**	**Vs.**	Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Respondent)**

I.T.A. No.63/Asr/2020: A.Y. :2008-09
I.T.A. No. 64/Asr/2020: A.Y.: 2009-10
I.T.A. No. 65/Asr/2020 :A.Y.:2010-11
I.T.A. No. 68/Asr/2020: A.Y. :2011-12
I.T.A. No. 69/Asr/2020: A.Y.: 2012-13
I.T.A. No. 66/Asr/2020: A.Y.: 2013-14
I.T.A. No. 67/Asr/2020: A.Y.: 2014-15

M/s Narula Oil & Fats Pvt. Ltd. LadoriyaBavla Sanand Road, Gujrat. [PAN: AACCN0415D] **(Appellant)**	**Vs.**	Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Respondent)**

I.T.A. No. 58/Asr/2020: A.Y.: 2012-13
I.T.A. No. 59/Asr/2020: A.Y.: 2013-14

Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Appellant)**	**Vs.**	M/s Narula Oil & Fats Pvt. Ltd. LadoriyaBavla Sanand Road, Gujrat. [PAN: AACCN0415D] **(Respondent)**

I.T.A. No.74/Asr/2020: A.Y. :2008-09
I.T.A. No. 75/Asr/2020: A.Y.: 2009-10
I.T.A. No. 76/Asr/2020 :A.Y.:2010-11
I.T.A. No. 77/Asr/2020: A.Y. :2011-12
I.T.A. No. 78/Asr/2020: A.Y.: 2012-13
I.T.A. No. 79/Asr/2020: A.Y.: 2013-14
I.T.A. No. 80/Asr/2020: A.Y.: 2014-15

M/s Narula Foods Pvt. Ltd. Ferozepur. [PAN: AABCN8311R] **(Appellant)**	**Vs.**	Dy. Commissioner of Income Tax, Central Circle, Amritsar. **(Respondent)**

Appellant by	**Sh. Ashray Sarna, CA.**
Respondent by	**Sh. Girish Bali, CIT. DR**

Date of Hearing	**18.05.2023**
Date of Pronouncement	**09.06.2023**

ORDER

Per: Bench:

A batch of 34 appeals were filed by both the assessees and the revenue against the order of the ld. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act]. The impugned order was emanated from the order of the ld. Dy. Commissioner of Income Tax, Central Circle, Amritsar, (in brevity the AO) order passed u/s 144 r.w.s. 153Aof the Act.

2. At the outset all the appeals of the assessees and revenue are under a common issue and have the same factual bac. The revenue has also filed appeals for AY 2012-13&- 2013-14. All the appeals are taken together, heard together and adjudicated together. With the consent of both the parties, we taken ITA No. 22/Asr/2020 is a lead case.

ITA No.22/Asr/2020 A.Y. 2008-09.

2.1 The assessee has taken the following grounds which are extracted as below:

"1. That the order passed by the Hon'ble CIT(A) dated 14.10.2019 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. Assessing Officer in framing the impugned assessment order u/s 144 r.w.s 153A 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.

3. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in partly confirming the action of Ld. AO in making an addition on account of disallowance of depreciation on plant & machinery and investment in UTI funds, by ignoring the facts of the case and submissions of assessee and without observing the principles of natural justice.

4. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in partly confirming the action of Ld. AO in making an addition of Rs 8,00,000/- on account of share application money pending allotment, by ignoring the facts of the case and submissions of assessee and without observing the principles of natural justice.

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. The assessee has filed appeal with delay of 02 days which is minimal delay and the delay of 02 days is condoned.

ITA No.58/Asr/2020 A.Y. 2012-13.

3.1 The revenue has taken the following grounds which are extracted as below:

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the addition of Rs. 6,62,27,272/- to Rs. 2,73,53,991/- on account of suppression of sales.

2. Whether on the facts and circumstances of the case in law, the Ld.CIT(A) has erred in allowing relief to the assessee on the ground that only cash of Rs. 2,73,53,991/- was remitted to the bank account of M/s Narula Foods Pvt. Ltd. without appreciating the implication of seized documents evidencing suppression of sales.

3. Whether on the facts and circumstances of the case in law, the Ld.CIT(A) has erred in ignoring evidence of clear instance of suppression of sales on regular basis and restricting the addition only with reference to the deposits of cash in the bank account.

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that the assessee had, despite repeated opportunities, failed to

explain the incriminating documents in the assessment proceedings and even remand proceedings and was therefore not justified in allowing relief.

5. The appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off."

4. Brief fact of the case is thatsearch was conducted in the assessee's premises. The assessment was initiated u/s 153A. The assessee filed appeal against the order of the ld. AO with the ground that there are no such any incriminating documents related to the addition made in the assessment order. So, the provision of section 153A would not be applicable for the assessee. On the other hand, the assessee has taken the grievance that the approval passed by the revenue in a mechanical manner u/s 153D withoutproper application of mind. The ld. CIT(A) upheld the order of the ld. AO and rejected the appeal of the assessee.

On the other hand the revenue has agitated on the part relief granted by the ld CIT(A) in relation to addition made by the ld AO.

Being aggrieved assessee & revenue filed an appeal before us.

We proceed to dispose of the legal issue first related to the jurisdiction of assessing officer for completing assessment U/s 153A of the Act.

5. The ld. AR first argued and submitted written submission which is kept in the record. As per the submission of the ld. AR thecomparative chart of addition and related argument of assessee is filed before bench which is extracted as below:-

A.Y 2008-09

Addition made by Ld. A.O	Addition upheld by Worthy CIT(A)	Submission of assessee
Rs. 15,00,000/- on account of disallowance of expenses	Partly upheld by the Worthy CIT(A), wherein depreciation of plant and machinery and disallowance on account of investment in UTI u/s 14A of the Act	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 15,00,000/- on account of share application pending allotment	Partly upheld by the worthy CIT(A), wherein the worthy CIT(A) allowed benefit of Rs. 7,00,000/- and remaining amount of Rs. 8,00,000/- was upheld.	Sir, it is submitted that this addition is made purely on the basis of amount recorded in books of account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company introduce fake share application money, so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.

A.Y 2009-10

Addition made by Ld. A.O	Addition upheld by Worthy CIT(A)	Submission of assessee
Rs. 50,00,000/- on account of disallowance of expenses	Partly upheld by the Worthy CIT(A), wherein disallowance on account of investment in UTI calculated as per rule 8D and benefit of remaining disallowance is allowed u/s 14A of the Act	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 1,71,15,000/- on account of	Rs. 1,71,15,000/- upheld by the	Sir, it is submitted that this

share application pending allotment	worthy CIT(A)	addition is made purely on the basis of amount recorded in books of account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company introduce fake share application money, so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.

A.Y 2010-11

Addition made by Ld. A.O	**Addition upheld by Worthy CIT(A)**	**Submission of assessee**
Rs. 50,00,000/- on account of disallowance of expenses	Rs. 50,00,000/- upheld by the Worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 43,00,000/- on account of share application pending allotment	Rs. 19,00,000/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of amount recorded in books of account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company introduce fake share application money, so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.

A.Y 2011-12

Addition made by Ld. A.O	**Addition upheld by Worthy CIT(A)**	**Submission of assessee**

Rs. 50,00,000/- on account of disallowance of expenses	Rs. 50,00,000/- upheld by the Worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 1,20,52,893/- on account of purchases made during the year treated as bogus purchases u/s 69C	Rs. 1,20,52,893/- upheld by the worthy CIT(A)	Sir, it is submitted that during the year under consideration assessee company made purchases from several suppliers and there is no incriminating document found during search which suggest that assessee company indulge in bogus purchases. Further the Ld. Authorities accepted the sales made corresponding to that purchases, opening and closing stock has been accepted and creditors and debtors has been accepted, which has duly been recorded in the books of assess company and reflected in the P&L Account and Balance sheet of assessee company, so, it is requested that addition made on the basis of books of accounts and P&L account may kindly be deleted.
Rs. 99,65,000/- on account of share application pending allotment	Rs. 27,65,000/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of amount recorded in books of account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company introduce fake share application money, so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.

Addition made by Ld. A.O	Addition upheld by Worthy CIT(A)	Submission of assessee
Rs. 50,00,000/- on account of disallowance of expenses	Rs. 50,00,000/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 1,97,50,000/- on account of cash deposit in bank.	Rs. 1,97,50,000/- upheld by the worthy CIT(A)	Sir, it is submitted that cash deposit in bank duly recorded in the books of assessee company and all the bank account duly reflected in the balance sheet of assessee company filed before the department at the time of filing of return of income. Moreover, no such incriminating material was found and seized during search which suggest that cash was generated from some other sources then the business income/transactions of assessee company. It is therefore requested that addition made by Ld. AO and upheld by the worthy CIT(A) may kindly be deleted.
Rs. 3,69,51,273/- on account of purchases made during the year treated as bogus purchases u/s 69C	Rs. 3,69,51,273/- upheld by the worthy CIT(A)	Sir, it is submitted that during the year under consideration assessee company made purchases from several suppliers and there is no incriminating document found during search which suggest that assessee company indulge in bogus purchases. Further the Ld. Authorities accepted the sales made corresponding to that purchases, opening and closing stock has been accepted and creditors and debtors has been accepted, which has duly been recorded in the books of

		assess company and reflected in the P&L Account and Balance sheet of assessee company, so, it is requested that addition made on the basis of books of accounts and P&L account may kindly be deleted.
Rs. 51,56,950/- on account of disallowance u/s 40A(3) of the Act	Rs. 51,56,950/- upheld by the Worthy CIT(A)	Sir, it is submitted that the impugned addition made purely on the basis of books of accounts and during the year under consideration assessee company has not made any cash purchases from the parties mentioned in the impugned order, copy of ledger account was also filed on record. So, it is requested that addition made by the Ld. AO upheld by the worthy CIT(A) may kindly be deleted.

A.Y 2013-14

Addition made by Ld. A.O	**Addition upheld by Worthy CIT(A)**	**Submission of assessee**
Rs. 55,79,282/- on account of return income arrived after claiming depreciation	Rs. 55,79,282/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of return of income. There was no incriminating material was found & seized during the time of search which suggest that assessee company made any evasion in return of income so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 50,00,000/- on account of disallowance of expenses	Rs. 50,00,000/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 24,59,60,590/- on account	Rs. 24,59,60,590/- upheld by	Sir, it is submitted that cash

of cash deposit in bank.	the worthy CIT(A)	deposit in bank duly recorded in the books of assessee company and all the bank account duly reflected in the balance sheet of assessee company filed before the department at the time of filing of return of income. Moreover, no such incriminating material was found and seized during search which suggest that cash was generated from some other sources then the business income/transactions of assessee company. It is therefore requested that addition made by Ld. AO and upheld by the worthy CIT(A) may kindly be deleted.
Rs. 53,25,440/- on account of purchases made during the year treated as bogus purchases u/s 69C	Rs. 53,25,440/- upheld by the worthy CIT(A)	Sir, it is submitted that during the year under consideration assessee company made purchases from several suppliers and there is no incriminating document found during search which suggest that assessee company indulge in bogus purchases. Further the Ld. Authorities accepted the sales made corresponding to that purchases, opening and closing stock has been accepted and creditors and debtors has been accepted, which has duly been recorded in the books of assess company and reflected in the P&L Account and Balance sheet of assessee company, so, it is requested that addition made on the basis of books of accounts and P&L account may kindly be deleted.

A.Y 2014-15

Addition made by Ld. A.O	**Addition upheld by Worthy CIT(A)**	**Submission of assessee**
Rs. 75,00,000/- on account of disallowance of expenses	Rs. 75,00,000/- upheld by the worthy CIT(A)	Sir, it is submitted that this addition is made purely on the basis of expenses claimed in books of account and reflected

		in the P&L account of assessee company. There was no incriminating material was found & seized during the time of search which suggest that assessee company inflate the expenses so, addition made by Ld. AO upheld by worthy CIT(A) may kindly be deleted.
Rs. 11,90,78,000/- on account of cash deposit in bank.	Rs. 11,90,78,000/- upheld by the worthy CIT(A)	Sir, it is submitted that cash deposit in bank duly recorded in the books of assessee company and all the bank account duly reflected in the balance sheet of assessee company filed before the department at the time of filing of return of income. Moreover, no such incriminating material was found and seized during search which suggest that cash was generated from some other sources then the business income/transactions of assessee company. It is therefore requested that addition made by Ld. AO and upheld by the worthy CIT(A) may kindly be deleted.
Rs. 1,99,38,775/- on account of purchases made during the year treated as bogus purchases u/s 69C	Rs. 1,99,38,775/- upheld by the worthy CIT(A)	Sir, it is submitted that during the year under consideration assessee company made purchases from several suppliers and there is no incriminating document found during search which suggest that assessee company indulge in bogus purchases. Further the Ld. Authorities accepted the sales made corresponding to that purchases, opening and closing stock has been accepted and creditors and debtors has been accepted, which has duly been recorded in the books of assess company and reflected in the P&L Account and Balance sheet of assessee company, so, it is requested that addition made on the basis of books of accounts and P&L account may

		kindly be deleted.
Rs. 36,27,678/- on account of disallowance u/s 40A(3) of the Act	Rs. 36,27,678/- upheld by the Worthy CIT(A)	Sir, it is submitted that the impugned addition made purely on the basis of books of accounts and during the year under consideration assessee company has not made any cash purchases from the parties mentioned in the impugned order, copy of ledger account was also filed on record. So, it is requested that addition made by the Ld. AO upheld by the worthy CIT(A) may kindly be deleted.
Rs. 2,39,00,000/- on account of stock	Rs. 2,39,00,000/- on account of stock	Sir, it is submitted that during the time of assessment and appellate proceeding assessee submitted that at the time of search assessee made disclosure of Rs. 75,00,000/- on account of stock further assessee filed list of purchases at the time assessment which were not recorded in the books at the time of search but the LD. AO and worthy CIT(A) allowed benefit of Rs. 75,00,000/- from Rs. 3,14,00,000/- and upheld the remaining addition of Rs. 2,39,00,000/-. It is therefore requested that considering the facts of the case addition made by the Ld. A.O upheld by the worthy CIT(A) may kindly be deleted.

5.1 The ld. AR argued that the approval U/s 153D was executed in mechanical manner. In evidence, the ld. AR submitted the letter of approval bearing F.No. Addl.CIT/CR/JAL/153D/15-16/1524 dated 21.03.2016 which is reproduced as below:

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

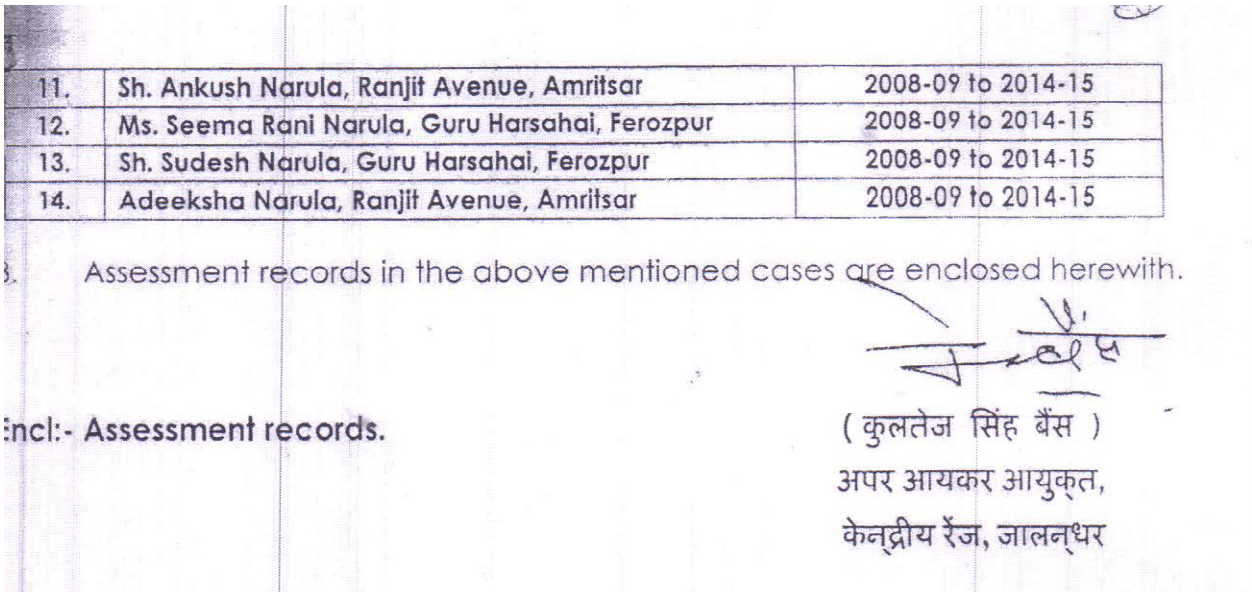
The Dy. Commissioner of Income Tax,
Central Circle, Amritsar.

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 Bhittewad, Amritsar	2008-09 to 2014-15
4.	M/s. Guru Sahai 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 Daskrol, Ahmedabad.	2008-09 to 2014-15



11.	Sh. Ankush Narula, Ranjit Avenue, Amritsar	2008-09 to 2014-15
12.	Ms. Seema Rani Narula, Guru Harsahai, Ferozpur	2008-09 to 2014-15
13.	Sh. Sudesh Narula, Guru Harsahai, Ferozpur	2008-09 to 2014-15
14.	Adeeksha Narula, Ranjit Avenue, Amritsar	2008-09 to 2014-15

Assessment records in the above mentioned cases are enclosed herewith.

Encl:- Assessment records.

(कुलतेज सिंह बैंस)
अपर आयकर आयुक्त,
केन्द्रीय रेंज, जालन्धर

6. The ld. DR fully relied on the assessment order as well as appeal order and placed that in ITA No.18/Asr/2020 for A.Y. 2011-12 there in incriminating documents are produced in assessment order page 8 para 5 which is extracted as below:

> *"v. Page Nos. 51 and 52 of annexure A-33 seized from the business premises of M/s Narula SolvexPvt. Ltd., Moga (Premise code B-4) is the details of purchases of rice bran from some unspecified party and payments made in respect of the same. This is practically a running copy of account for the period 02.05.2012 to 26.06.2012. This contains, on the one side the details of no. of bags, weight, rate, result and amount and on the other side the details of payments made in respect of these purchases have been given. A careful perusal of this account shows that the amount of purchase is arrived at by multiplying weight, rate and result. This shows that the rice bran purchased by the assessee is first got tested for its oil content and the*

payment is made on the basis of it. This is different from the practice adopted by the assessee in the books of account, where the purchase is shown at some predetermined rate. On the other hand the above papers contained the details of payment made in respect of these purchases, in cash. Whereas the purchases begin from 02.05.2012, the cash payments begin from 25.05.2012. Page No. 51 is a complete summary of the purchases and payments for the period of less than 2 months. It shows clearly that the amount of purchases from this party for this period is Rs. 22,13,148/- against which payments amounting to Rs. 21,82,346/- have been made and balance of Rs. 30,802/- has been struck. This single page makes the actual state of affairs of the assessee quite clear. It clearly shows that rice bran is purchased and cash payment is made against the same within a period of 20 to 25 days. The name of the party has not been specified. Apparently these purchases and cash payments are not part of the regular books of account. In the regular books of account the purchases are shown on credit of much longer period from bogus and paper concerns. M/s Narula Solvex P Ltd. is a sister concern of the assessee company, operates in same line of business, managed by common management and accordingly it is natural that similar practice is adopted by the assessee also."

6.1 Related argumentby challenging the maintainability of section 153D, the ld. DR fully relied on the CBDT Instruction No. 286 dated 22/12/06. The ld. DR argued that there is no lapse in the approval for assessment U/s 153D.

7. The ld. AR argued that the two specific issues are originated from the appeal. First issue is the challenging the jurisdiction of assessment u/s 153A and the grievance related mechanical approval u/s 153D by revenue. The ld. AR had not specifically taken the grounds related to mechanical section 153D. But the assessee was agitated before the bench verbally. The ld. DR had not made any objection against this ground.

7.1 First, we disposed the issue related to jurisdiction of assessment u/s 153A. The ld. AR draw our attention in remand report duly inserted by the ld. CIT(A) in appeal order page 11 onwards which are reproduced as below:

> *"3.4 A copy of the above submission was sent to the AO under Section 250(4) to carry out necessary enquiries to verify the genuineness of the claim made by the assessee and copy was also marked to the assessee to co-operate with the AO in the matter and to get the expenses etc. and source of share capital verified before the AO. in response to the above, the AO submitted report as under:-*
>
> *Sub: Submission of Remand Report in Appeal No. 90/IT/CIT-(A)-5/Ldh./2016-17 in the case of M/s G.H. Agro Product Pvt. Ltd. Vi11-Wadala Bhittewad, Ram Tirath Road, Amritsar for the A.Y. 2008-09-(PAN- AAACG5814B) - Regarding- kindly refer to your office letter No. 2177 dated 05.02.2019 on the subject cited above.*
>
> *2. In this connection, it is submitted the assessment in this case was completed u/s 144 of the Act by the then AO as the assessee remained non-cooperative throughout the assessment proceedings. The*

assessment was completed by the then AO after examining the appraisal report along with seized documents/material and issues emanating from the return of income filed by the assessee.

The major issues involved in this case are as follows:-

i) Addition of Rs. 15,00,000/- on account of unverified expenses along with disallowance of unaccounted investment in UTI infrastructure bonds and disallowance of depreciation claimed on new Plant & Machinery.

ii) Addition on account of unaccounted investment in the capital to the tune of Rs. 15,00,000/-.

During the course of assessment proceedings, the then AO had given various opportunities to the assessee to furnish its submissions on the above mentioned issues and other issues, as well. However, the assessee did not furnish any submission on the issues at the time of assessment proceedings. Since, despite several reminders, no information was furnished by the assessee the then AO made the additions on the basis of facts and material available on record."

7.2 The ld. AR respectfully relied on the orders of Hon'ble Apex Court and Hon'ble High Courts which are reproduced as below: -

7.2.1.**Judicial parlance related Section 153A**

7.2.1.1. Hon'ble **High Court of Delhi**

PCIT, Central -2, New Delhiv.MeetaGutgutia, [2017] 82 taxmann.com 287 (Delhi)-

"69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in Smt. Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

Conclusion

72. To conclude:

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04?

(ii) Question (ii) is answered in the affirmative i.e., in favour of the Assessee and against the Revenue. It is held that with reference to AY 2004-05, the ITAT was correct in confirming the orders of the CIT (A) to the extent it deleted the additions made by the AO to the taxable income of the Assessee of franchise commission in the sum of Rs. 88 lakhs and rent payment for the sum of Rs. 13.79 lakhs?

73. The appeals are accordingly dismissed but, in the circumstances, no orders as to costs."

7.2.1.2. The SLP of revenue against the order of MeetaGutgutia is dismissed by the Hon'ble **Supreme Court of India** in the case of **PCIT, Central IT, New Delhiv.MeetaGutgutia [2018] 96 taxmann.com 468 (SC)**

"Section 153A of the Income-tax Act, 1961 - Search and seizure (General principles) - Assessment years 2001-02 to 2003-04 and 2004-05 - High Court in impugned order held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year - Whether SLP against said decision was to be dismissed - Held, yes"

7.2.1.3. Hon'ble**High Court of Delhi**

Commissioner of Income-tax (Central)-III v. Kabul Chawla, [2015] 61 taxmann.com 412 (Delhi):-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

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.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

39. The question framed by the Court is answered in favour of the Assessee and against the Revenue.

40. The appeals are accordingly dismissed but in the circumstances no orders as to costs."

7.2.1.4. Hon'ble**High Court of Bombay Commissioner of Income-tax-II, Thane v. Continental Warehousing Corporation (Nhava Sheva) Ltd, [2015] 58 taxmann.com 78 (Bombay)**

"30. Even otherwise, we agree with the Division Bench when it observes as above with regard to the ambit and scope of the powers conferred under section 153A of the Act. Since we are not required to trace out the history and we can do nothing better than to reproduce the observations and conclusions as above that we are not repeating the same. Even if the exercise of power under section 153A is permissible still the provision cannot be read in the manner suggested by Mr. Pinto. Not only the finalised assessment cannot be touched by resorting to those provisions, but even while exercising the power can be exercised where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st March, 2003. There is a mandate to issue notices under section 153(1)(a) and assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, the crucial words "search" and "requisition" appear in the substantive provision and the provisos. That would throw light on the issue of applicability of the provision. It being enacted to a search or requisition that its construction would have to be

accordingly. That is the conclusion reached by the Division Bench in Murli Agro Products Ltd. (supra) with which we respectfully agree. These are the conclusions which can be reached and upon reading of the legal provisions in question.

31. We, therefore, hold that the Special Bench's understanding of the legal provision is not perverse nor does it suffer from any error of law apparent on the face of the record. The Special Bench in that regard held as under :

"48. The provision under section 153A is applicable where a search or requisition is initiated after 31.5.2003. In such a case the AO is obliged to issue notice u/s 153A in respect of 6 preceding years, preceding the year in which search etc. has been initiated. Thereafter he has to assess or reassess the total income of these six years. It is obligatory on the part of the AO to assess or reassess total income of the six years as provided in section 153A(1)(b) and reiterated in the 1st proviso to this section. The second proviso states that the assessment or reassessment pending on the date of initiation of the search or requisition shall abate. We find that there is no divergence of views in so far as the provision contained in section 153A till the 1st proviso. The divergence starts from the second proviso which states that pending assessment or reassessment on the date of initiation of search shall abate. This means that an assessment or reassessment pending on the date of initiation of search shall cease to exist and no further action shall be taken thereon. The assessment shall now be made u/s 153A. The case of Ld. Counsel for

the assessee is that necessary corollary to this provision is that completed assessment shall not abate. These assessments become final except in so far and to the extent as undisclosed income is found in the course of search. On the other hand, it has been argued by the Ld. Standing Counsel that abatement of pending assessment is only for the purpose of avoiding two assessments for the same year, one being regular assessment and the other being assessment u/s 153A. In other words these two assessments coalesce into one assessment. The second proviso does not contain any word or words to the effect that no reassessment shall be made in respect of a completed assessment. The language is clear in this behalf and therefore literal interpretation should be followed. Such interpretation does not produce manifestly absurd or unjust results as section 153A (i)(b) and the first proviso clearly provide for assessment or reassessment of all six years. It may cause hardship to some assesses where one or more of such assessments has or have been completed before the date of initiation of search. This is hardly of any relevance in view of clear and unambiguous words used by the legislature. This interpretation does not cause any absurd etc. results. There is no casus omissus and supplying any would be against the legislative intent and against the very rule in this behalf that it should be supplied for the purpose of achieving legislative intent. The submissions of the Ld. Counsels are manifold, the foremost being that the provision u/s 153A should be read in conjunction with the provision contained

in section 132(1), the reason being that the latter deals with search and seizure and the former deals with assessment in case of search etc, thus, the two are inextricably linked with each other.

49. Before proceeding further, we may now examine the provision contained in sub-section (2) of section 153, which has been dealt with by Ld. Counsel. It provides that if any assessment made under sub-section (1) is annulled in appeal etc., then the abated assessment revives. However, if such annulment is further nullified, the assessment again abates. The case of the Ld. Counsel is that this provision further shows that completed assessments stand on a different footing from the pending assessments because appeals etc. proceedings continue to remain in force in case of completed assessments and their fate depends upon subsequent orders in appeal. On consideration of the provision and the submissions, we find that this provision also makes it clear that the abatement of pending proceedings is not of such permanent nature that they cease to exist for all times to come. The interpretation of the Ld. Counsel, though not specifically stated, would be that on annulment of the assessment made u/s 153(1), the AO gets the jurisdiction to assess the total income which was vested in him earlier independent of the search and which came to an end due to initiation of the search.

50. The provision contained in section 132 (1) empowers the officer to issue a warrant of search of the premises of a person where any one or more of conditions

mentioned therein is or are satisfied, i.e. - (a) summons or notice has been issued to produce books of account or other documents but such books of account or documents have not been produced, (b) summons or notice has been or might be issued, he will not produce the books of account or other documents mentioned therein, or (c) he is in possession of any money or bullion etc. which represents wholly or partly the income or property which has not been and which would not be disclosed for the purpose of assessment, called as undisclosed income or property. We find that the provision in section 132 (1) does not use the word "incriminating document". Clauses (a) and (b) of section 132(1) employ the words "books of account or other documents". For harmonious interpretation of this provision with provision contained in section 153A, all the three conditions on satisfaction of which a warrant of search can be issued will have to be taken into account.

51. Having held so, an assessment or reassessment u/s 153A arises only when a search has been initiated and conducted. Therefore, such an assessment has a vital link with the initiation and conduct of the search. We have mentioned that a search can be authorised on satisfaction of one of the three conditions enumerated earlier. Therefore, while interpreting the provision contained in section 153A, all these conditions will have to be taken into account. With this, we proceed to literally

interpret to provision in 153A as it exists and read it alongside the provision contained in section 132(1).

52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter. The assessment has now to be made u/s 153A (1)(b) and the first proviso. It also means that only one assessment will be made under the aforesaid provisions as the two proceedings i.e. assessment or reassessment proceedings and proceedings under this provision merge into one. If assessment made under sub-section (1) is annulled in appeal or other legal proceedings, then the abated assessment or reassessment shall revive. This means that the assessment or reassessment, which had abated, shall be made, for which extension of time has been provided under section 153B.

53. The question now is - what is the scope of assessment or reassessment of total income u/s 153A (1) (b) and the first proviso ? We are of the view that for answering this question, guidance will have to be sought from section 132(1). If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and found in the course of search in our humble opinion such books of account or other documents have to be taken into account while making assessment or reassessment of total income under the aforesaid provision. Similar position will obtain in a case where undisclosed income or undisclosed property has been found as a consequence of search. In other words, harmonious interpretation will produce the following results :-

(a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the AO,

(b) In respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search.

54. It may be mentioned here that Ld. Counsel for All Cargo Global Logistics Ltd. was questioned about the scope of pending assessments as it was his contention that all six assessments are to be made, if necessary, on the basis of undisclosed income discovered in the course of search. He was specifically questioned about the jurisdiction of the AO to make original assessment along with assessment u/s 153A, merging into one. However he took an evasive view submitting that this question need not be decided in his case although the question of jurisdiction u/s 153A was vehemently pressed on account of which ground No.1 in the appeal for assessment year 2004-05 was admitted as additional ground. He also wanted the additional ground to be retained in case of any future contingency."

32. We would be failing in our duty if we do not note the reliance placed by Mr. Pinto on the judgments rendered by the High Court of Delhi at New Delhi and the High Court of Karnataka. Mr. Pinto would submit that the above observations and conclusions of the Special Bench and reproduced by us are specifically disapproved in CIT v. Anil Kumar Bhatia [2012] 24 taxmann.com 98/211 taxman 453 (Delhi) by the Delhi High Court. We do not find this argument to be accurate. In Anil Kumar Bhatia (supra) as well the assessment involved the years 2000-01, 2002-03 and 2005-06. One of the questions and which was termed as substantial question of law was the correctness of the Tribunal's order holding that the Assessing Officer wrongly invoked section 153A of the IT Act. The facts as noted

were that in the case of an individual assessee and who was carrying on business in the name and style of M/s. A.K. Traders, there was a search of his residence and business premises on 13th December, 2005 under section 132 of the Act. Pursuant to the search, the Assessing Officer issued notice under section 153A of the IT Act and called upon the assessee to file the return of income for the six years as envisaged in that section. Notices under section 142(1) and 143(2) alongwith a detailed questionnaire were issued in response to which the assessee submitted an explanation. After consideration thereof, the Assessing Officer made additions to the income returned in respect of the assessment years under consideration which included an amount of Rs.1,50,000/- given by the assessee as a loan to Smt. Mohini Sharma on 10th December, 2003. This information was made available but the loan was not reflected in the return of income filed by the assessee for the assessment year 2003-04. The Assessing Officer, therefore, concluded that this loan was given out of unaccounted income of the assessee. Accordingly, the same was added in the income of the assessee for the assessment year 2003-04 and an order was made to that effect. Against this addition, the appeal was preferred before the Commissioner of Income Tax contending, inter alia, that the seized paper on the basis of which the addition was made did not contain the signature of the assessee; that no loan was given to Mohini Sharma. There was no admission of the statement of Mohini Sharma to that effect and there was only a proposal. The

Commissioner of Income Tax confirmed this addition in the Assessing Officer's order. In respect of assessment years 2004-05 and 2005-06 there were appeals before the Commissioner of Income Tax (Appeals) questioning the additions made in the assessment orders for those years. While disposing of these appeals, the Commissioner of Income Tax directed the Assessing Officer to assess the notional interest on the loan given to Mohini Sharma which addition he confirmed in his appellate order. These two orders of the Commissioner were carried in appeal to the Tribunal and thereafter the Delhi High Court noted the Tribunal's conclusions. It noted the arguments before the Tribunal and thereupon the Tribunal having deleted these additions and the notional interest, the matter was taken in appeal to the High Court of Delhi under section 260A of the IT Act by the Revenue.

33. The arguments, therefore, have been noted and from paragraphs 16, section 153A was analysed."

7.2.1.5.Hon'ble**Supreme Court of India Principal Commissioner of Income-tax, Central-3v.AbhisarBuildwell (P.) Ltd, [2023] 149 taxmann.com 399 (SC)**

"*11. As per the provisions of Section 153A, in case of asearch under Section 132 or requisition under Section132A, the AO gets the jurisdiction to assess or reassessthe 'total income' in respect of each assessment yearfalling within six assessment years. However, it isrequired to be noted that as per the second proviso toSection 153A, the assessment or re-assessment, if any,relating to any assessment*

year falling within the period ofsix assessment years pending on the date of initiation ofthe search under Section 132 or making of requisitionunder Section 132A, as the case may be, shall abate. Asper sub-section (2) of Section 153A, if any proceedinginitiated or any order of assessment or reassessmentmade under sub-section (1) has been annulled in appealor any other legal proceeding, then, notwithstandinganything contained in sub-section (1) or section 153, theassessment or reassessment relating to any assessmentyear which has abated under the second proviso to subsection (1), shall stand revived with effect from the date ofreceipt of the order of such annulment by theCommissioner. Therefore, the intention of the legislationseems to be that in case of search only the pendingassessment/reassessment proceedings shall abate andthe AO would assume the jurisdiction to assess orreassess the 'total income' for the entire six yearsperiod/block assessment period. The intention does notseem to be to re-open the completed/unabatedassessments, unless any incriminating material is foundwith respect to concerned assessment year falling withinlast six years preceding the search. Therefore, on trueinterpretation of Section 153A of the Act, 1961, in case ofa search under Section 132 or requisition under Section

132A and during the search any incriminating material isfound, even in case of unabated/completed assessment,the AO would have the jurisdiction to assess or reassessthe 'total income' taking into consideration theincriminating material

collected during the search andother material which would include income declared in thereturns, if any, furnished by the assessee as well as theundisclosed income. However, in case during the searchno incriminating material is found, in case ofcompleted/unabated assessment, the only remedyavailable to the Revenue would be to initiate thereassessment proceedings under sections 147/48 of theAct, subject to fulfilment of the conditions mentioned insections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case ofblock assessment under section 153A and in case ofunabated/completed assessment and in case noincriminating material is found during the search, thepower of the Revenue to have the reassessment undersections 147/148 of the Act has to be saved, otherwisethe Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that incase of search even where no incriminating material isfound during the course of search, even in case ofunabated/completed assessment, the AO can assess orreassess the income/total income taking intoconsideration the other material is accepted, in that case,there will be two assessment orders, which shall not bepermissible under the law. At the cost of repetition, it isobserved that the assessment under Section 153A of theAct is linked with the search and requisition underSections 132 and 132A of the Act. The object of Section153A is to bring under tax the undisclosed income whichis found during the course of search or pursuant to searchor requisition. Therefore, only in

a case where theundisclosed income is found on the basis of incriminatingmaterial, the AO would assume the jurisdiction to assessor reassess the total income for the entire six years blockassessment period even in case of completed/unabatedassessment. As per the second proviso to Section 153A,only pending assessment/reassessment shall standabated and the AO would assume the jurisdiction withrespect to such abated assessments. It does not providethat all completed/unabated assessments shall abate. Ifthe submission on behalf of the Revenue is accepted, inthat case, second proviso to section 153A and subsection (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible underthe law.

13. For the reasons stated hereinabove, we are incomplete agreement with the view taken by the Delhi HighCourt in the case of Kabul Chawla (supra) and theGujarat High Court in the case of Saumya Construction(supra) and the decisions of the other High Courts takingthe view that no addition can be made in respect of thecompleted assessments in absence of any incriminating material.

14. In view of the above and for the reasons statedabove, it is concluded as under:

i) that in case of search under Section 132 orrequisition under Section 132A, the AO assumes thejurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall standabated;

iii) in case any incriminating material isfound/unearthed, even, in case of unabated/completedassessments, the AO would assume the jurisdiction toassess or reassess the 'total income' taking intoconsideration the incriminating material unearthedduring the search and the other material available withthe AO including the income declared in the returns;

and

iv) in case no incriminating material is unearthed duringthe search, the AO cannot assess or reassess takinginto consideration the other material in respect ofcompleted assessments/unabated assessments.Meaning thereby, in respect of completed/unabatedassessments, no addition can be made by the AO inabsence of any incriminating material found during thecourse of search under Section 132 or requisition underSection 132A of the Act, 1961. However, thecompleted/unabated assessments can be re-opened bythe AO in exercise of powers under Sections 147/148 ofthe Act, subject to fulfilment of the conditions asenvisaged/mentioned under sections 147/148 of the Actand those powers are saved. The question involved in the present set of appealsand review petition is answered accordingly in terms ofthe above and the appeals and review petition preferredby the Revenue are hereby dismissed. No costs."

7.2.2.**Judicial parlance related Section 153D**

7.2.2.1. Hon'ble**High Court of Allahabad**

Principal Commissioner of Income-tax v. Siddarth Gupta, 2023] 147 taxmann.com 305 (Allahabad)

"18. The careful and conjoint reading of section 153A(1) and section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment orders under section 153A.

19. In the instant case, the draft assessment orders in 123 cases, i.e. for 123 assessment years placed before the Approving Authority on 30-12-2017 and 31-12-2017 were approved on 31-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.

20. As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeals being in the nature of second appeal. No substantial question of law arises for consideration before us.

21. The Appeals are dismissed being devoid of merit."

7.2.2.2. **ITAT Amritsar Bench Madan Lal vs DCIT, 112 to 118/ Asr/2018 date of decision 16/08/2021**

29. Our view has recently been followed by the Hon'ble Coordinate Bench in the matter of Arch Pharmalabs Ltd. vs. ACIT ITA No.6656/Mum/2017 dated 07.04.2021 wherein it was held as under:-

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 prompt 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 asssessee 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 non-est 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) initiated 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 travelled 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 showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw light on objectivity appliedowing 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 12.03.2008that 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 coordinate 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."

30. In the light of the above said discussion, when the Assessment Order was passed by the Assessing Officer,than there was no prior approval in the record of the Assessing Officer, from the Addl. CIT. Further, the approval granted after passing of the order was non-est in the eyes of law as it was granted in the mechanical, stereotype manner, without assigning any reasons and without considering the draft assessment order and the assessment record. On the basis of the above, we are of the opinion that ground 11 which is common in all the appeal, is required to be allowed and the assessment order and the subsequent orders passed by the CIT appeal are required to be set aside.

*31. As we have allowed the ground 11 of the assessee appeal and thereby set aside the assessment order, we deem it appropriate not to adjudicate the remaining grounds of appeal raised by the Assessee in the present set of appeals. 32. In the result, all the appeals of the Assessee are allowed."***(Emphasissupplied)**

8. We heard the rival submission and relied on the documents available in the records. We have noticed that there is no dispute that the issue in the appeal is squarely covered by the judgments of the Hon'ble Apex Court and High Court, in favour of the assessee, and, to that extent, the legal position is that in the absence of any incriminating material, no addition can be made in the assessment proceedings under section153A read with section 143(3). Whatever may be ld. Departmental Representative's vehement submission against the merits of this legal position and the support that his arguments canvass from the scheme of the Income-tax Act, 1961, he has been gracious enough to accept that while there isno conflicting decision stands after the Judgment of Hon'ble Apex Court in case of **Abhisar Buildwell (P.) Ltd,***supra*, the issue in favour of the assessee. As long as the binding judicial precedent holds good in law, as it does unless it is upturned or reversed by a higher judicial forum, it binds the lower judicial forums. The ld. DR in argument indicated the seized documents as mentioned in assessment order. But in remand report U/R 46A and in assessment order there is no formation of nexus with additions and incriminating documents. The grievance was agitated before the ld. CIT(A) but issue was not properly adjudicated. The ld. DR was unable to submit any contrary judgment against the submission of the ld. AR.

8.1. In view of these discussions, as also bearing in mind the entirety of the case, we uphold the plea of the assessee, and respectfully following the Hon'ble High

Court's judgments in the cases of **MeetaGutgutia**, (supra),**Continental Warehousing Corpn**. (supra) and binding judgment of Hon'ble Apex Court **AbhisarBuildwell (P.) Ltd** hold that the impugned additions, other than incriminating material is non maintainable under Section 153A of the Act. We, therefore, delete the impugned additions. The assessee gets the relief accordingly.

8.2. As this appeal has been decided on the short ground of jurisdiction in the assessment under section153A r.w.s. 143(3), we see no need to deal with the merits of the additions and the issue involved U/s 153D of the Act. That aspect of the matter is academic as of now. ITA No 22/Asr/2020 is mutatis mutandis applicable to other appeals and follows accordingly.

9. In the result, the appeals of the revenue are dismissed and appeals of assessee are allowed in the terms indicated above.

Order pronounced in the open court on 09.06.2023

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**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