

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / IT(SS) A No. 01/RPR/2018  
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Riya Real Estates Private Limited  
308, 3<sup>rd</sup> Floor, Ceejay House,  
Dr. A.B. Road, Worli,  
Mumbai (MH)-400 018  
PAN : AADCR8769B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Asst. Commissioner of Income Tax,  
Central Circle-II, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 108/RPR/2021  
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Riya Real Estates Private Limited  
308, 3<sup>rd</sup> Floor, Ceejay House,  
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.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Asst. Commissioner of Income Tax,  
Central Circle-II, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, CA  
Revenue by : Smt. Ila M Parmar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 23.08.2023

घोषणा की तारीख / Date of Pronouncement : 01.11.2023

### **आदेश / ORDER**

#### **PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee company are directed against the order passed by the CIT(Appeals)-II, Raipur, dated 10.01.2018 and CIT(Appeals)-3, Bhopal, dated 06.10.2021, which in turn arises from the orders passed by the A.O. u/s. 153A r.w.s.143(3) of the Income-tax Act, 1961 (for short 'Act') AND u/s 143(3) of the Act, dated 08.11.2016 for A.Y. 2012-13 & A.Y. 2013-14, respectively. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in IT(SS)A No.01/RPR/2018 for the assessment year 2012-13, wherein the impugned order has been assailed on the following grounds of appeal before us:

#### **"Ground No. I**

That the ex-parte Appellate Order passed by the Learned Commissioner of Income Tax (Appeals) - 1 Raipur ("the Ld. CIT(A)") is highly unjustified, bad in law, without providing reasonable opportunity of being heard, against the principles of natural justice and not in accordance with the provisions of law. It is prayed that the Appellate Order passed under section 250 of the Act may please be cancelled on this ground alone.

**GROUND No. II**

On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has grossly erred in confirming an addition of Rs.459,92,50,000/- made by the Learned Assessing Officer invoking the provisions of section 56(2)(viia) of the Act which is highly unjustified, unwarranted, unsustainable, not proper on facts, dehors any incriminating material or documents seized in the course of search, based on presumptions & surmises, contrary to the principles of natural justice and not in accordance with the provisions of law.

Hence, it is prayed that the addition of Rs.459,92,50,000/- may please be deleted.

**GROUND NO. III**

That the appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal.”

Also, the assessee company has raised the following additional grounds before us:

“(I) That the Search Assessment Order framed u/s.153A r.w.s. 143(3) of the Act Dated 08.11.2016 by the Ld. AO and affirmation of the same by the Ld. CIT(Appeals) is highly illegal, invalid, void ab initio and bad in law in as much as the jurisdiction to frame the assessment could not have been validly assumed by the Ld. AO since, the assessment was made dehors any incriminating material or documents seized in the course of search ignoring the settled position of law that the assessment proceedings for the assessment year under reference were not pending on the date of initiation of search u/s.132 on 10.10.2012 in view of second proviso to Section 153A(1), accordingly, the Search Assessment Order is bad in law & legally unsustainable hence, it is earnestly prayed that the Assessment Order passed u/s.153A r.w.s. 143(3) of the Act may please be quashed and cancelled in limine.

(II) That the Search Assessment Order framed under section 153A r.w.s. 143(3) of the Act on the strength of purported approval granted u/s.153D by the Ld. Joint Commissioner of Income Tax, Range-Central is void ab initio, invalid, illegal and bad in law, hence, deserves to be quashed and declared a nullity since, the mandatory prior approval granted is no approval in the eyes of law as the same has not been obtained on the Final Assessment Order passed, is mechanical, mere empty formality, lacks due application of mind and further, the Search Assessment Order was passed based on invalid, inchoate and consolidated approval, accordingly, the Search Assessment Order is bad in law & legally unsustainable hence, it is earnestly prayed that the Assessment order passed u/s.153A r.w.s. 143(3) may please be quashed and cancelled in limine.”

3. Succinctly stated, the assessee company is engaged in the business of real estate investments and had filed its return of income for A.Y.2012-13 on 28.09.2012, declaring an income of Rs. Nil.

4. Search and seizure proceedings u/s.132 of the Act were conducted at the business and factory premises of various companies and concerns relating to “Crest Topworth Group” at Raipur, Mumbai, Pune, Nagpur, Ahmedabad and other places on 10.10.2012. Also, the residential premises of the directors and key persons of various concerns of this group were also covered u/s.132(1) of the Act. The business premises of the assessee were also searched on 10.10.2012. Notice u/s. 153A of the Act dated 20.03.2014 was, inter alia, issued to the assessee company for A.Y. 2007-08 to 2012-13 a/w. notice u/s. 142(1) of the Act for A.Y.2013-14. In response, the assessee company filed its return of income for the aforementioned assessment years, as under:

A.Y.	Date of filing of return u/s 139(1)	Returned income against u/s 139(1) (In Rs.)	Date of filing of return by the assessee against notice u/s 153A	Income declared in return u/s 153A (Rs.)	Additional income offered by the assessee (In Rs.)
2007-08	17/03/2008	Nil	28/08/2014	Nil	Nil
2008-09	29/09/2008	Nil	28/08/2014	Nil	Nil
2009-10	29/09/2009	Nil	28/08/2014	Nil	Nil
2010-11	14/10/2010	Nil	28/08/2014	Nil	Nil
2011-12	29/09/2011	Nil	28/08/2014	Nil	Nil
2012-13	28/09/2012	Nil	28/08/2014	Nil	Nil
2013-14	30/09/2014	Nil	NA	NA	Nil

5. During the assessment proceedings, the A.O observed that the assessee company had during the aforementioned years, i.e., A.Y.2012-13 & A.Y 2013-14, made investments towards the purchase of shares in its different group companies, as under:

A.Y.	Name of the Company	Listed/ Unlisted	No. of shares Purchase	Rates per share (Rs.)	Total value of share purchased (Rs)
2012-13	Akshata Mercantile Pvt. Ltd.	Unlisted	29,00,000	10	2,90,00,000
	Akshata Mercantile Pvt. Ltd.	Unlisted	2,00,000	100	2,00,00,000
	Akshata Mercantile Pvt. Ltd.	Unlisted	15,90,000	100	15,90,00,000
2013-14	Crest Steels & Power Pvt. Ltd.	Unlisted	6,10,65,000	10	61,06,50,000
	Topworth Pipes & Tubes Pvt. Ltd.	Unlisted	75,00,000	40	30,00,00,000

Observing that the assessee company had made investments in the aforementioned shares at the face value, whereas their apparent value was substantially higher, the A.O., in light of provisions of Section 56(2)(vii) of the Act, directed it to furnish details as regards the rate at which shares were allotted vis-à-vis. their Fair Market Value (FMV) as of the date of allotment. In reply, it was claimed by the assessee that the provisions of Section 56(2)(vii) of the Act were not applicable to the allotment of shares in its case. Elaborating on his aforesaid contention, it was the claim of the

assessee that as no property in existence was received by it at the time of allotment of shares, the provisions of Section 56(2)(vii) of the Act could not be triggered in its case. It was, thus, the claim of the assessee company that as the provisions of Section 56(2)(vii) of the Act presupposes the receipt of inadequate consideration on the transfer of shares, it would, thus, not be applicable in a case where there was a fresh issue of shares (allotment). Alternatively, it was submitted by the assessee that in case the provisions of Section 56(2)(vii) were to be triggered in its case, then the value as worked out after allotment deserved to be considered and not that before allotment, as the same would otherwise result to taxation of unreal and imaginary income which was against the basis scheme of taxation under the Act. However, the aforesaid explanation of the assessee did not find favor with the A.O. The A.O was of the view that as the assessee company had received the property on allotment of shares in lieu of inadequate consideration, therefore, the provisions of Section 56(2)(vii) of the Act were validly applicable in its case. Rejecting the claim of the assessee that the word "receive" used in Section 56(2) of the Act was to be construed as "to get by a transfer," the A.O was of the view that there was nothing available in the statute which would justify ascribing such a narrow interpretation.

6. After rejecting the aforesaid claim of the assessee company, the A.O. computed the amount of inadequate consideration for which the assessee company had purchased shares of its group entities and brought the same to tax in its hand u/s. 56(2)(vii) of the Act, as under:

**A.Y. 2012-13**

Share Issuing Company	Date of Issue	Number of shares Allotted	Type of Shares	Face Value per share	Premium Per Share	Issue Price Per Share	Book Value as on 31.03.2011	Differ	Taxable Amount in hands of shareholder 56(2)(vii)
Akshata Mercantile Pvt. Ltd.	01.12.2011	2900000	Equity	10	0	10	1025	1015	2,94,35,00,000
Akshata Mercantile Pvt. Ltd.	06.03.2012	200000	Equity	10	90	100	1025	925	18,50,00,000
Akshata Mercantile Pvt. Ltd.	30.03.2012	1590000	Equity	10	90	100	1025	925	1,47,07,50,000

**A.Y. 2013-14**

Share Issuing Company	Date of Issue	Number of shares Allotted	Type of Shares	Face Value per share	Premium Per Share	Issue Price Per Share	Book Value as on 31.03.2012	Differ	Taxable Amount in hands of shareholder 56(2)(vii)
Crest Steels & Power Pvt. Ltd.	07.06.2012	61065000	Equity	10	0	10	17	7	42,74,55,000
Topworth Pipes & Tubes Pvt. Ltd.	21.03.2013	7500000	Equity	10	30	40	51	11	8,25,00,000

Accordingly, the A.O., based on his aforesaid observations, worked out an addition under the head "income from other sources" u/s. 56(2)(vii) of the Act for both the aforementioned years, viz. (i) A.Y.2012-13: Rs. 459,92,50,000/-; and (ii) A.Y.2013-14: Rs.50,99,55,000/-. After making the aforesaid additions, the A.O. vide his consolidated order passed u/s. 153A r.w.s.143(3) AND u/s 143(3), dated 08.11.2016 for A.Y 2012-13 and A.Y.2013-14, assessed the income for the said years at Rs.459,92,50,000/- and Rs.50,99,55,000/-, respectively.

7. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. As is discernible from the order of the CIT(Appeals), the

assessee had repeatedly sought adjournment on four occasions, viz. 16.11.2017, 27.11.2017, 06.12.2017 & 27.12.2017. Ostensibly, as the assessee on the last date of hearing on 27.12.2017 had requested some time for obtaining material from Mumbai, the CIT(Appeals) had acceded to his said request and adjourned the matter on 10.01.2018 but with a word of caution that in case of failure on its part to make necessary compliance and furnish the necessary explanation on the next date, then the appeal will be disposed off on the basis of the material available on record. As the assessee on 10.01.2018 (supra) did neither put up an appearance nor filed any written submissions, the CIT(Appeals) proceeded with the appeal and dismissed the same. On a perusal of the CIT(Appeals)'s order, we find that he had observed that as the A.O. had discussed all relevant issues in connection with the addition made by him u/s.56(2)(vii) of the Act a/w. calculation of the aforesaid additions, which the assessee had not rebutted on the basis of any material; therefore, the addition of Rs.459,92,50,000/- did not merit any interference on his part.

8. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

9. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the plethora/host of judicial pronouncements that have been pressed into service by the Ld. AR to drive home his multi-facet contentions, i.e.,

both as regards the validity of jurisdiction assumed by the A.O. for framing the assessment as well as the sustainability of the addition qua the merits of the case.

10. As the assessee has, on the basis of two additional grounds of appeal, assailed the validity of the jurisdiction assumed by the A.O for framing assessment vide his order passed u/s.153A r.w.s 143(3) of the Act dated 08.11.2016, which being purely legal issues that would not require looking any further beyond the records, therefore, we have no hesitation in admitting the same. Our aforesaid view that where an assessee had raised, though for the first time, an additional ground of appeal before the Tribunal which involves purely a question of law and requires no further verification of facts, then the same merits admission finds support from the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

11. Shri Nikhilesh Begani, Ld. Authorized Representative (for short 'AR') for the assessee appellant has assailed the order passed by the A.O u/s.153A r.w.s. 143(3) dated 08.11.2016 on the ground that he had traversed beyond the scope of his jurisdiction on two-fold reasons, viz. (i) as during search proceedings conducted on the assessee company u/s.132 of the Act on 10.10.2012 no incriminating material or document was seized, therefore, no addition as regards the unabated assessment of the assessee company for the year under consideration could have been made by the A.O vide his order passed u/s.153A r.w.s. 143(3) of the Act dated 08.11.2016; and (ii) that as the Joint Commissioner of Income Tax, Range (central), Raipur had

granted his approval u/s.153D of the Act in a mechanical manner without any application of mind, therefore, the assessment order passed the A.O u/s.153A r.w.s. 143(3) dated 08.11.2016 on the basis of such invalid, inchoate, and consolidated approval could not be sustained and was liable to be quashed.

12. At the threshold of hearing of the appeal, the Ld. AR took us through an application dated 03.08.2022 filed by the assessee company requesting liberty for admission of the same as additional evidence. The Ld. A.R drew our attention to the additional documentary evidence filed by the assessee company to support its claim that as per Rule 11U/11UA r.w.s. 56(2)(vii) of the Act, the “balance sheet” of the share issuer company, viz. M/s. Akshata Mercantile Private Limited (for short, “AMPL”) was required to be drawn up as on the “valuation date” [Rule 11U(b)], i.e., on 01.12.2011/03.03.2012 (instead of Book Value of equity shares as on 31.03.2011 that was fallaciously adopted by the A.O). Referring to the additional evidence/documents, the Ld. AR submitted that the same was in the nature of the balance sheet of AMPL on the “valuation date” as per Rule 11U(b)/11U(j) as it stood at the relevant time’ Loan Sanction Letters from Banks and Financial Institutions along with Form 8 prescribed under the Companies Act, 1956 with respect to creation of charge against the sum borrowed by AMPL, which established the fact that the latter had availed the secured loan with a stipulation of corresponding increase in promoter contribution in the form of equity shares capital; Form 2 prescribed under the Companies Act, 1956 (Return of Allotment) evidencing allotment of share capital in the case of AMPL; a chart depicting the computation of FMV of equity shares

u/s.56(2)(vii) of the Act r.w. Rule 11UA, etc. On a perusal of the records, we find that the assessee had sought admission of the following documents as “additional evidence” before us:

“(i). List of Shareholders along with copy of Annual Return in Form No.20B as on the Date of AGM (28.09.2012).

(ii). List of Shareholders along with copy of Annual Return in Form No.20B as on the Date of AGM (30.09.2011).

(iii). Copy of Minutes of BOD approving the allotment of equity shares on 01.12.2011.

(iv) Copy of Form No.2 intimating the allotment of equity shares on 11.12.2011 to ROC along with the List of Share Allottees.

(v). Consolidated Chart depicting Calculation of FMV of Equity Shares of Akshata Mercantile Pvt. Ltd. on various 'Valuation Date(s)' as per Section 56(2)(viiia) r.w. Rule 11U/11UA.

(vi). Copy of Acknowledgment of Return of Income, Computation of Total Income, Annual Report & Audited Financial Statements of Akshata Mercantile Pvt. Ltd. for Asst. Yr. 2011-12.

(vii). Copy of Financial Statements (including Balance Sheet) of Akshata Mercantile Pvt. Ltd. as on the Valuation Date (01.12.2011).

(viii) Copy of Acknowledgment of Return of Income, Computation of Total Income, Annual Report & Audited Financial Statements and Tax Audit Report of Akshata Mercantile Pvt. Ltd. for Asst. Yr. 2012-13.

(ix). Copy of Sanction Letter increasing the sanctioned limits of Akshata Mercantile Pvt. Ltd. along with copies of Form No.8 for creation of charges with ROC along with Loan Agreements/ Hypothecation Agreements.

(x) Copy of Minutes of BOD authorising availment of loan & creation of charges.”

13. The Ld. AR took us through the assessee's application for admission of additional evidence dated 03.08.2022 and drew our attention to the reasons why the aforementioned documents/evidence could not be filed in the course of the proceedings before the CIT(Appeals). For the sake of clarity, the relevant extract of the aforesaid letter dated 03.08.2022 is culled out as follows:

"4. That the impugned appeal though filed before the Ld.CIT (Appeals)-3, Bhopal was transferred to the appellate jurisdiction of Ld.CIT(A) in the month of September, 2017 only and the first notice was issued on 02.11.2017 fixing the hearing on 14.11.2017 and pursuant to an Order issued by the Hon'ble Central Board of Direct Taxes Dated 12.10.2017 directing the disposal of pending appeals having tax effect of Rs.50 Crore or more till 31.12.2017, the appeals the impugned appeal in the case of appellant was disposed off within a very short span of time (about 2 months) without providing adequate opportunity of being heard & denuding the right of effective representation. That the ex-parte Appellate Order passed by the Ld.CIT(A) u/s.250 is highly illegal, bad in law, without providing reasonable opportunity of being heard thereby resulting into violation of the principles of natural justice. That, in response to the hearing notices issued in a span of nearly two months, the requisite written submissions with supporting evidences could not be furnished before the Ld.CIT(A) primarily for the reason that the Group is being controlled & managed from Mumbai and all other paraphernalia is concentrated with the Books of Accounts and other documents scrupulously maintained at Mumbai only with the counsels at Raipur were appointed very recently just before the commencement of appellate proceedings and further, at the relevant time, most of the Group Companies including inter alia the aforesaid Share Issuer Company viz. AMPL were reeling under great financial stringency/severe financial crisis and hence, incapable of honouring the borrowing commitments of various banks & financial institutions which thereafter initiated stern recovery proceedings hence, to obtain the documentary evidences to support the appeal cases was an onerous task.

Finally, insolvency proceedings were instituted by various financial creditors against most of the group companies including the aforesaid AMPL (treating them as "Corporate Debtor") under the provisions of section 7, 9 & 10 of the IBC, 2016 before the Benches of Hon'ble NCLT and subsequently, the Insolvency Petitions filed by the Financial Creditor(s) were 'admitted' and Resolution Professionals were appointed for initiation of Corporate Insolvency Resolution Process.

That, owing to severe financial crisis, at the relevant time, the skilled experienced accounts personnel left their jobs, leaving behind a few

employees who were still new to the nuances of assessment/appellate procedure and hence, there was complete lack of co-ordination between all the factions involved and time required for making compliances was also insufficient keeping in view the locational and personnel constraints and the said limitations acted as a deterrent factor for delay in making compliances at the appellate stage also. Pertinently, in order to establish the case before the Ld.CIT(A), in accordance with the provisions of Rule 11U/11UA r.w.s.56(2) (vii), Balance Sheet of the share issuer company viz. AMPL was required to be drawn up as on the 'Valuation Date' [Rule 11U(b)] 01.12.2011/03.03.2012 (instead of Book Value of equity shares as on 31.03.2011 fallaciously adopted by the Ld.AO) by the share issuer company which in view of the aforesaid limitations could not be accomplished thereby disabling the appellant from filing of written submissions.

With a view to substantiate its claim that there was a reasonable cause and due to extenuating circumstances beyond its control the appellant could not file the documentary evidences before the Ld.CIT(A) and the Ld.AO, the appellant has filed an 'Additional Paper Book' running into 173 Pages before this Hon'ble Bench with all the Documents and evidences with S.No.1 to 13 of the said Paper Book. It is further submitted that the documents and evidences at SLNo.1 to 5 & SL No. 8 to 13 are in the form of additional evidences which were not filed before the lower authorities being in the nature of the Balance Sheet of AMPL on the 'Valuation Date' strictly in accordance with the terms of Rule 11U(b)/11U(j) as it stood at the relevant time, Loan Sanction Letters from Banks & Financial Institutions along with Form No. 8 prescribed under the Companies Act, 1956 w.r.t. the creation of charge against the sum borrowed by AMPL thereby establishing the factum of availment of secured loan with a stipulation of corresponding increase in promoter contribution in the form of Equity Share Capital, Form No. 2 prescribed under the Companies Act, 1956 (Return of Allotment) evidencing allotment of share capital in case of AMPL and pertinently, the Chart depicting the Computation of Fair Market Value of Equity Shares u/s.56(2)(vii) r.w. Rule 11UA etc. and hence, are vital in order to appreciate the factual matrix and the judicious adjudication of the appeal by the Hon'ble Bench.

5. In view of the aforesaid compelling circumstances and in the interest of justice, it is earnestly beseeched that the aforesaid additional evidences may please be admitted exercising judicious powers vested in your honours under Rule 29 in order to impart justice to the appellant."

14. After considering the additional evidence/documents in the backdrop of reasons as had been stated by the assessee for not having filed the same before the CIT(Appeals), we are of the considered view that as the said documents have a strong bearing for disposing of the core issue involved in the present appeal, i.e.,

valuation of the shares, and could not be filed for justifiable reasons in the course of the proceedings before the CIT(Appeals), therefore, the same in all fairness merits admission.

15. Shri Nikhilesh Begani, Ld. AR focused on his contention that the A.O. had valued the shares of M/s. AMPL, at an unrealistic value, had drawn our attention to a chart, viz. "Calculation of FMV of shares u/s.56(2)(vii) r.w. Rule 11UA of the Income-tax Rules, 1962 on the valuation dates, i.e., on 01.12.2011, 06.03.2012, and 30.03.2012". The Ld. AR submitted that as per provisions of Section u/s.56(2)(vii) r.w. Rule 11U/ 1UA of the Income Tax Rules, 1962, as inserted vide Notification dated 08.04.2010 w.e.f. 01.10.2009, as stood at the relevant point of time, contemplated derivation of the intrinsic value per share on the basis of balance sheet (defined under Rule 11U(b)) prepared on the valuation date, i.e., the date on which property is received/date of allotment of equity shares. The Ld. A.R referring to the anomaly in the valuation carried out by the A.O., submitted that he had grossly erred in adopting the intrinsic value or the book value of the shares on the basis of the audited balance sheet of the share issuer company, viz. M/s. AMPL for the previous accounting year, i.e., on 31.03.2011. The Ld. AR drew our attention to the "chart" wherein the FMV of shares was valued on the respective dates of allotment, i.e., on 01.12.2011, 06.03.2012, and 30.03.2012. Apart from that, the Ld. AR submitted that the intrinsic value/net asset value per share was arrived at (-) Rs.91/- per share as against that wrongly worked out by the A.O at Rs.1,025/- per share. On the basis of his aforesaid contention, it was submitted by the Ld. AR that as the A.O had failed

to compute the value of the share of AMPL as per provisions of Section 56(2)(vii) of the Act r.w. Rule 11U/11UA, thus, it had resulted in taxation of notional, unreal, and imaginary income instead of real income, which could not be sustained and was liable to be vacated. The Ld. AR to support his aforesaid contention had relied on the following judicial pronouncements:

- (i). Bharat Hari Singhania Vs. CWT (1994) 207 ITR 1(SC)
- (ii). S. Viji Vs. CGT (1998) 229 ITR 421 (SC)
- (iii). Harry Inder Dhaul Vs. Addl. CIT, ITA No.3499/Mum/2016 dated 09.05.2018 (ITAT, Mumbai).
- (iv). Keva Industries (P) Ltd. Vs. ITO (2019) 112 Taxmann.com 137 (ITAT-Mumbai)
- (v). ITO Vs. Mystical Infratech Pvt. Ltd, ITA No. 4266/Mum/2017, dated 19.09.2022.

16. Adverting to the validity of the jurisdiction that the A.O. had assumed for framing the assessment vide order passed u/s. 153A r.w.s. 143(3), dated 08.11.2016, it was submitted by the Ld. AR that as no incriminating material was found in the course of search proceedings conducted on the assessee company u/s 132(1) of the Act on 10.10.2012, therefore, the A.O losing sight of the said material fact, had wrongly made addition with respect to the unabated assessment in the case of the assessee for the year under consideration, i.e., A.Y.2012-13. In support of his aforesaid contention, the Ld. AR relied on the following judicial pronouncements:

- (i) Pr. CIT Vs. Abhisar Buildwell P. Ltd. (2023) 474 ITR 212 (SC)
- (ii) Smt. Jami Nirmala Vs. Pr. CIT (2021) 132 taxmann.com 267 (Orissa HC)
- (iii) CIT Vs. SKS Ispat & Power Ltd. (2017) 398 ITR 584 (Bom. HC)
- (iv) CIT Vs. Gurindar Singh Bawa (2016) 386 ITR 483 (Bom. HC)

- (v) Pr. CIT Vs. Meeta Gutgutia (2017) 395 ITR 526 (Del. HC)
- (vi) CIT Vs. Kabul Chawla (2016) 380 ITR 573 (Del. HC)
- (vii) Pr. CIT Vs. Shiv Kumar Agrawal (2022) 6 NYPCTR 855 (Del. HC)
- (viii) Pr. CIT Vs. Alchemist Capital Ltd. (2022) 6 NYPCTR 951 (Del. HC)
- (ix) DCIT Vs. Mahavir Ashok Enterprise (P) Ltd. (2022) 36 NYPTTJ 1081 (ITAT, Raipur)
- (x) Vodafone Idea Ltd. Vs. ACIT (2020) 424 ITR 664 (SC)
- (xi) Pr. CIT Vs. Kimberly Clerk Lever Pvt. Ltd. (2023) 455 ITR 576 (Bom. HC).
- (xii) Smt. Pooja Jain & Ors Vs. DCIT, ITA No.885 to 891/Mum/2019 dated 31.03.2023 (ITAT Mumbai).

On a specific query by the Bench, that now when the time limit for issuance of notice u/s 143(2) of the Act to the assessee was available as on the date of search, i.e., on 10.10.2012 therefore, on what basis, the assessment proceedings in its case for the year under consideration were claimed to be unabated, the Ld. AR had drawn support from the order of the ITAT, Mumbai, in the case of Wind World India Infrastructure Pvt. Ltd. Vs. Pr. CIT-2, Mumbai, ITA Nos. 2370 to 2373/Mum/2017 dated 27.09.2017. Based on his aforesaid contention, it was submitted by the Ld. AR that as the assessment proceedings in its case on the date of the search were unabated, therefore, in the absence of any incriminating material having been seized in the course of the search proceeding, no addition could have justifiably been made by the A.O.

17. Apropos the challenge thrown by the Ld. AR to the validity of the jurisdiction assumed by the A.O. to frame the assessment u/s. 153A r.w.s. 143(3) dated

08.11.2016 for the reason that the Joint Commissioner of Income Tax, Range (Central), Raipur, had accorded his approval u/s. 153D of the Act in a mechanical manner and without application of mind, which, thus, had rendered the assessment order as invalid, inchoate, and bad in law, the Ld. AR had drawn our attention to the copy of approval bearing F No. JCIT(C)/RPR/153D/Crest-Topworth/2016-17/281 dated 08.11.2016, Page 37 of APB. The Ld. AR referred to the aforesaid approval u/s. 153D of the Act, and submitted, that it was a consolidated approval for eight group entities wherein the name of the assessee company figured at Sr. No.8, for A.Y. 2007-08 to A.Y.2013-14. The Ld. AR took us through the language used in the aforesaid approval dated 08.11.2016 (supra) and submitted that the same glaringly revealed that there was no application of mind by the Joint Commissioner of Income Tax, much the less any verification of the seized material/ record, and the approval was granted in a mechanical manner as an idle formality or an eye wash. The Ld. AR submitted that the Joint Commissioner of Income Tax (supra) had himself stated in the approval, viz. “.....*it is presumed that the A.O has*.....”. It was, thus, submitted by the Ld. AR that as there was no application of mind by the Joint Commissioner of Income Tax (supra) at the time of granting approval u/s. 153D of the Act; therefore, the assessment order on the said count itself could not be sustained and was liable to be vitiated. The Ld. AR, in support of his aforesaid contention had relied on the following judicial pronouncements:

(i) Pr. CIT Vs. Anuj Bansal, ITA No.368/2023 dated 13.07.2023 (Del. HC)

(ii) Pr. CIT Vs. Dilip Construction (P) Ltd. (2023) 7 NYPCTR 892 (Ori. HC)

- (iii) Pr. CIT Vs. Shilp Seema Construction (P) Ltd. (2023) 7 NYPCTR 893 (Ori. HC)
- (iv) Pr. CIT Vs. Smt. Ritanjali Khatai, ITA No.60 of 2022 dated 13.07.2023 (Ori. HC)
- (v) Pr. CIT Vs. Subodh Agrawal (2023) 149 taxmann.com 373 (All. HC)
- (vi) ACIT Vs. Serajuddin And Co. (2023) 454 ITR 312 (Ori HC)
- (vii) M/s. Askhata Realtors Pvt. Ltd. Vs. ACIT, Central Circle-2, Raipur IT(SS)A No.09/RPR/2018 dated 27.03.2023 (ITAT Raipur)
- (viii) M/s. Goyel Energy & Steel Pvt. Ltd. Vs. ACIT, CC-2, Raipur, ITA No.240 to 243/RPR/2019 dated 17.09.2021 ( ITAT Raipur)
- (ix) Arch Pharmalabs Ltd. Vs. ACIT (2021) 62 CCH 9 (ITAT Mumbai)
- (x) Pr. CIT Vs. Smt. Shreelekha Damani, 2018-TIOL-2516-HC-Mum ( Bom. HC)
- (xi) Inder International Vs. ACIT (2021) 35 NYPTTJ274 ( ITAT Chandigarh)
- (xii) DCIT Vs. Amolak Singh Bhatia, CO Nos. 126 to 130/Del/2022 dated 18.04.2023 (ITAT Delhi).

Backed by his aforesaid submission, it was the claim of the Ld. AR that as the Joint Commissioner of Income Tax (supra) had failed in his statutory duty and granted approval u/s.153D of the Act in a most mechanical and perfunctory manner without application of mind, therefore, the assessment order was liable to be struck down on the said count itself.

18. Also, the Ld. AR, carrying his contention qua the impugned addition made by the A.O., submitted that even otherwise notional, unreal, and imaginary income determined by the A.O. by wrongly construing Section 56(2) (vii) had resulted in absurdity and unintended consequence. Apart from that, the Ld. AR averred that as Section 56(2)(vii) is a counter-tax evasion or anti-tax abuse measure, the same, thus,

would not apply to genuine and bonafide cases of business exigency. Once again, the Ld. AR had emphasized the contention that the assessee had raised before the lower authorities, i.e., Section 56(2)(vii) does not apply to initial allotment or issuance of fresh equity shares directly by the company.

19. Apropos the claim of the assessee company that the CIT(Appeals) had erred in disposing off the appeal by an ex-parte order, the Ld. AR submitted that the said action on the part of the first appellate authority was invalid and bad in law as the same had resulted in sustaining an unrealistic addition without providing a reasonable opportunity of being heard to the assessee, which was a clear violation of the principle of natural justice and not in accordance with the provisions of law. The Ld. AR drew our attention. AR to the reasons due to which necessary compliance a/w. supporting documents/ explanation could not be made/filed with the CIT(Appeals) on 10.01.2018, i.e., the date on which the case was fixed for hearing. He submitted that the appeal, which was filed with the CIT(Appeals)-3, Bhopal, was transferred to CIT(Appeals)-II, Raipur, in the month of September 2017, and the first notice was issued by the latter on 02.11.2017 fixing the hearing of the appeal on 14.11.2017. The Ld. AR submitted that pursuant to the direction of the CBDT circular dated 12.10.2017, as per which all pending appeals involving tax effect of Rs.50 Crore or more were to be disposed of by 31.12.2017, the appeal of the assessee company was disposed of within short span of two months (approx.) without providing adequate opportunity of being heard to the assessee company and denuding the right of effective representation.

20. Elaborating on the reasons as to why the requisite written submissions/explanation a/w. supporting documents could not be furnished by the assessee company before the CIT(Appeals), the Ld. AR submitted that the same was for the reason that the group was being controlled and managed from Mumbai and all other paraphernalia, i.e., books of accounts and other documents, was being maintained in Mumbai, but the counsels at Raipur were appointed recently before the commencement of appellate proceedings. Apart from that, the Ld. AR submitted that as at the relevant point in time, the group companies, including the aforesaid share issuer company, viz. AMPL were reeling under great financial stringency/severe financial crisis; thus, for the said reason, the requisite documents could not be obtained from them within the time. The Ld. AR drew our attention to the fact that various financial creditors had also initiated insolvency proceedings against most of the group companies, including the aforesaid AMPL, under the provisions of Sections 7, 9 & 10 of the IBC, 2016 before the Benches of the Hon'ble NCLT and subsequently, the insolvency petition filed by the financial creditors were admitted and Resolution Professionals were appointed for initiation of Corporate Insolvency Resolution Process (CIRP).

21. Based on the aforesaid financial crisis faced by the group entities, it was submitted by the Ld. AR that skilled, experienced accounts personnel had left their jobs, leaving behind a few employees who were still new to the nuances of assessment/appellate procedure, which, thus, had resulted in a complete lack of co-

ordination resulting in delay in making compliances by the assessee at the appellate stage. The Ld. AR submitted that as the balance sheet of the share issuer company, viz. AMPL was required to be drawn up as on "valuation date," i.e., on 01.12.2011, 06.03.2012, and 30.03.2012; the same, however, in the absence of requisite details forthcoming from the share issuer company could not be compiled and filed before the CIT(Appeals).

22. The Ld. AR, on the basis of the aforesaid facts, submitted that there was no justification for the CIT(Appeals) to have disposed of the appeal on the basis of a non-speaking order without affording reasonable opportunity of being heard to the assessee company.

23. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities. Rebutting the claim of the Ld. AR that the A.O. had grossly erred in making the impugned addition with respect to the unabated assessment of the assessee company despite the fact that no incriminating material/document was found in the course of the search proceedings, the Ld. DR submitted that as of the date of search proceedings, i.e., on 10.10.2012, the time limit for issuance of notice u/s. 143(2) of the Act was available with the A.O, therefore, it was incorrect on the part of the Ld. AR to claim that the assessment proceedings in its case had remained unabated.

24. Apropos the claim of the Ld. AR that the Joint Commissioner of Income Tax, Range (Central), Raipur, had granted approval u/s. 153D of the Act in a mechanical

manner and without application of mind, the Ld. DR submitted that the same was factually incorrect. The Ld. DR submitted that the Joint Commissioner of Income Tax (supra) had accorded his approval dated 08.11.2016 after carrying out thorough verifications and discussing various facets of the case with the A.O.

25. Apropos the merits of the case, it was submitted by the Ld. DR that as the A.O had rightly valued shares u/s. 56(2)(vii) of the Act, therefore, no infirmity did emerge therefrom. Regarding the claim of the Ld. AR that provisions of Section 56(2)(vii) of the Act were not applicable to the fresh allotment of shares by a company, the Ld. DR relied on the orders of the lower authorities.

26. As regards the claim of the Ld. AR that the CIT(Appeals) had violated the principles of natural justice in disposing off the appeal within a short span of time i.e., two months, without providing adequate opportunity of being heard to the assessee, the Ld. DR submitted that as the assessee, despite having been afforded sufficient opportunities, failed to place on record the requisite details/explanation, the CIT(Appeals) had on the last occasion, i.e., on 27.12.2017 had in all fairness adjourned the case for 10.01.2018 but with a word of caution to the assessee to file his explanation/documents, etc. on the said latter date failing which the matter would be disposed on the basis of the material available on record. The Ld. DR submitted that though the CIT(Appeals) had aforesaid sufficient opportunity for the assessee company to come forth with its explanation/supporting documents, it had, however, failed to avail the same. It was, thus, the claim of the Ld. DR that the contention of

the assessee's counsel that the CIT(Appeals) had hushed through the hearing of the appeal and disposed of the same without affording any reasonable opportunity of being heard to the assessee company was devoid and bereft of any merit.

27. We have thoughtfully considered the multi-faceted issues involved in the present appeal in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. Admittedly, the assessee has assailed the validity of the jurisdiction that the A.O. had assumed for framing assessment vide its order u/s. 153A r.w.s. 143(3) dated 08.11.2016, as well as had challenged the huge addition of Rs.459,92,50,000/- alleging anomalies in the method of valuation adopted by the A.O. As the challenge thrown by the Ld. AR qua the quantification of addition, which, as per him, is based on an incorrect approach and wrong construing of the provisions of law by the A.O, is based on additional evidence that has been filed before us for the first time and admitted by us, therefore, in all fairness, it would be premature to adjudicate the same without affording a sufficient opportunity of perusing and verifying the correctness of the same by the A.O. Apropos the claim of the Ld. AR that no incriminating documents/material was found and seized in the course of the search proceedings conducted u/s. 132 of the Act on 10.10.2012 on the assessee company, the same cannot be summarily accepted on the very face of it and would require to be vetted by the A.O by referring to the seized record/material.

28. As stated by the assessee, and rightly so, there were justifiable reasons on its part for not filing the requisite details/documents, which have been filed before us

as additional evidence, in the course of the proceedings before the CIT(Appeals). Also, it is a matter of fact borne from the record that the CIT(Appeals) had merely referred to the observations of the A.O. and disposed off the appeal by approving the same. We, thus, in the totality of the facts involved in the present case before us, read a/w. multi-facet contentions that have been raised by the assessee before us wherein adjudication of the majority of those would require a reference of the additional documentary evidence that the assessee has placed before us, restore the matter to the file of the CIT(Appeals) with a direction to him to re-adjudicate the same after taking cognizance of the additional documentary evidence and also addressing the additional grounds of appeal that have been raised by the assessee in the course of the proceedings before us. Needless to say, the CIT(Appeals) shall, in the course of set-aside proceedings, afford a reasonable opportunity of being heard to the assessee company, which shall remain at liberty to substantiate its contentions on the basis of fresh documentary evidence.

29. In the result, the appeal of the assessee company in IT(SS)A No.01/RPR/2018 for A.Y.2012-13 is allowed for statistical purposes in terms of our aforesaid observations.

**ITA No.108/RPR/2021**

**A.Y.2013-14**

30. In the captioned appeal, the assessee has assailed the impugned order of the CIT(Appeals)-3, Bhopal, dated 06.10.2023 on the following grounds of appeal before us:

“GROUND NO. I

1. That the ex-parte Appellate Order passed by the Learned Commissioner of Income Tax(Appeals)-3, Bhopal ("the Ld.CIT(A)) under section 250 of the Income Tax Act, 1961 ("the Act") is highly unjustified, bad in law, without providing reasonable opportunity of being heard, against the principles of natural justice and not in accordance with the provisions of law. It is prayed that the Appellate Order passed under section 250 of the Act may please be cancelled/set-aside on this ground alone.

GROUND NO.II

2. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming an addition of Rs.50,99,55,000/- made by the Learned Assessing Officer invoking the provisions of section 56(2)(vii) of the Act which is highly unjustified, unwarranted, unsustainable, not proper on facts, dehors any incriminating material or documents seized in the course of search, based on presumptions & surmises, without providing adequate opportunity of being heard,' contrary to the principles of natural justice and not in accordance with the provisions of law.

Hence, it is earnestly prayed that the addition of Rs.50,99,55,000/- may please be deleted.

GROUND NO. III

3. That the Approval accorded by the Learned Joint Commissioner of income Tax, Range Central, Raipur under section 153D of the Act to the Search Assessment Order framed under section 143(3) r.w.s. 153B of the Act is without application of mind, in a ritualistic manner, granted in a most mechanical manner, merely empty formality, illusory and hence, no approval in the eyes of law therefore, the same is invalid, illegal, non est and bad in law and hence, the consequential search assessment order passed u/s.143(3) on the basis of such invalid approval is also invalid, illegal, non-est and bad in law and deserves to be annulled on this ground alone.

GROUND NO. IV

4. That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal.”

Also, the assessee has assailed before us the impugned order on the basis of an additional ground, which reads as follows:

“That the Search Assessment Order framed under section 143(3) r.w.s. 153B of the Act on the strength of purported approval granted by the Ld. joint

Commissioner of Income Tax, Range—Central is void ab initio, invalid, illegal and bad in law hence, deserves to be quashed and declared a nullity since, the mandatory prior approval granted is no approval in the eyes of law as the same has not been obtained on the Final Assessment Order passed, is mechanical, mere empty formality, lacks due application of mind and further, the Search Assessment Order was passed based on invalid, inchoate and consolidated approval, accordingly, the Search Assessment Order is bad in law & legally unsustainable hence, it is earnestly prayed that the Assessment Order passed u/s.153A r.w.s. 143(3) may please be quashed and cancelled in limine.”

31. In this case also, the assessee has filed an application seeking liberty for admission of additional evidence vide its letter dated 03.07.2023 and had reiterated the contentions as had been advanced by him in IT(SS)A No.01/RPR/2018 for A.Y.2012-13. As contentions advanced by both parties are the same as regards the admission of additional evidence, our observations rendered in IT(SS)A No.01/RPR/2018 for A.Y.2012-13 shall mutatis mutandis apply in this case also.

32. Apropos the issue of grant of approval u/s 153D by the Joint Commissioner of Income Tax, Range (Central), Raipur, as the facts relating to the same in the captioned appeal remain the same as were there before us in the immediately preceding year, i.e., A.Y.2012-13 in IT(SS)A No.01/RPR/2018, therefore, our decision rendered in IT(SS)A No.01/RPR/2018 shall mutatis mutandis apply in this case also.

33. Apropos the merits of the case, as the facts leading to the impugned addition of Rs. 50,99,55,000/- qua the valuation of shares of AMPL u/s. 56(2)(vii) remains the same as were there before us in the immediately preceding year, i.e., A.Y.2012-13

in IT(SS)A No.01/RPR/2018, therefore, our decision rendered in IT(SS)A No.01/RPR/2018 shall mutatis mutandis apply in this case also.

34. As regards other multi-facet contentions, on the basis of which, the impugned addition qua merits of the case as had been assailed by the assessee company before us remains the same as were there before us in the immediately preceding year, i.e., A.Y.2012-13 in IT(SS)A No.01/RPR/2018, therefore, our decision rendered in IT(SS)A No.01/RPR/2018 shall mutatis mutandis apply in this case also.

35. We, thus, in the totality of the facts involved in the captioned appeal, read a/w. multi-facet contentions that have been raised by the assessee before us wherein adjudication of the majority of those would require a reference of the additional documentary evidence that the assessee has placed before us, restore the matter to the file of the CIT(Appeals) with a direction to him to re-adjudicate the same after taking cognizance of the additional documentary evidence and also addressing the additional ground of appeal that has been raised by the assessee in the course of the proceedings before us. Needless to say, the CIT(Appeals) shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee company, which shall remain at liberty to substantiate its contentions on the basis of fresh documentary evidence.

36. In the result, the appeal of the assessee in ITA No.108/RPR/2021 for A.Y.2013-14 is allowed for statistical purposes in terms of our aforesaid observations.

37. Resultantly, both the appeals of the assessee are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 01<sup>st</sup> day of November, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 01<sup>st</sup> November, 2023

\*\*##SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT (Central), Bhopal (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.