

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

Sl. No.	Appeal/CO No.	Name of Appellant	Name of Respondent	Asst. Year
1-2.	IT(SS)A No. 06/RPR/2021 CO No. 12/RPR/2022	The ACIT (Central)-2, Raipur (C.G.)	M/s. N.R Ispat & Power Pvt. Ltd. C/o. Omprakash Agrawal Padampur Road, Basna, Dist- Mahasamund (C.G.) PAN : AACCN6591Q	2010-11
3-4.	IT(SS)A No. 07/RPR/2021 CO No. 13/RPR/2022	The ACIT (Central)-2, Raipur (C.G.)	M/s. N.R Ispat & Power Pvt. Ltd. C/o. Omprakash Agrawal Padampur Road, Basna, Dist- Mahasamund (C.G.) PAN : AACCN6591Q	2011-12
5-6.	IT(SS)A No. 08/RPR/2021 CO No. 14/RPR/2022	The ACIT (Central)-2, Raipur (C.G.)	M/s. N.R Ispat & Power Pvt. Ltd. C/o. Omprakash Agrawal Padampur Road, Basna, Dist- Mahasamund (C.G.) PAN : AACCN6591Q	2012-13
7-8.	IT(SS)A No. 09/RPR/2021 CO No. 15/RPR/2022	The ACIT (Central)-2, Raipur (C.G.)	M/s. N.R Ispat & Power Pvt. Ltd. C/o. Omprakash Agrawal Padampur Road, Basna, Dist- Mahasamund (C.G.) PAN : AACCN6591Q	2013-14

9.	ITA No. 04/RPR/2021	M/s. NR Ispat & Power Pvt. Ltd. House No.286, C/o. Omprakash Agrawal, Padampura Road, Basna (C.G.) PAN : AACCN6591Q	The DCIT (Central)-2, Raipur (C.G.)	2018-19
10.	ITA No. 10/RPR/2021	The DCIT (Central)-2, Raipur (C.G.)	M/s. NR Ispat & Power Pvt. Ltd. House No.286, C/o. Omprakash Agrawal, Padampur Road, Basna Dist. Mahasamund(C.G.) PAN : AACCN6591Q	2018-19

Assessee by : S/shri Vijay Mehta, Sunil Kumar Agrawal,
Vimal Kumar Agrawal & Smt. Laxmi Sharma,
CAs

Revenue by : Shri S.L Anuragi, CIT-DR

सुनवाई की तारीख / Date of Hearing : 03.06.2024

घोषणा की तारीख / Date of Pronouncement : 30.08.2024

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals (mentioned at Sl. No.1 to 8) filed by the revenue are directed against the consolidated order passed by the Commissioner of Income-Tax (Appeals)-3, Bhopal, dated 16.08.2021, which in turn arises from the common order passed by the A.O under Sec.143(3) r.w.s. 153A of the Income-tax Act, 1961 (in short 'the Act')

dated 30.12.2019 for the A.Ys.2010-11 to 2013-14. Also, the assessee company is before us as a cross-objector for the aforementioned years.

The captioned cross-appeals (mentioned at Sl. No.9 & 10) filed by the assessee company and the revenue are directed against the consolidated order passed by the Commissioner of Income-Tax (Appeals)-3, Bhopal, dated 16.08.2021, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act'), dated 30.12.2019 for the A.Y.2018-19. As the issues involved in the present appeals are inextricably interlinked or in fact interwoven, 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 revenue in IT(SS)A No.06/RPR/2021 and the corresponding cross-objection filed by the assessee in CO No.12/RPR/2022 for A.Y.2010-11 as the lead matter for adjudication.

IT(SS)A No.06/RPR/2021
CO. No.12/RPR/2022
A.Y.2010-11

3. The revenue has assailed the impugned order passed by the CIT(Appeals)-3, Bhopal on the following grounds of appeal:

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.5,75,00,000/- made by the

Assessing Officer on account of bogus share application money and share capital received from Kolkata based paper companies."

4. Also, the assessee company is before us as a cross-objector for the aforementioned year by raising the following grounds:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) ought to have considered the legal issue raised for AY10-11 that the Id. AO was not having jurisdiction to reopen the assessment u/s.153A for AY10-11 (i.e. extended period of 7th year to 10th year) in absence of any undisclosed asset of Rs.50 lakhs or more in his possession, as per 4th proviso to sec. 153A, Expl.2, where search u/s.132 has been initiated on 24-10-17 which is after the amendment made by the Finance Act, 2017 wef.1-4-17; assessment made u/s.153A rws.143(3) would be invalid, bad in law & non-est and is liable to be quashed.

2. On the facts and circumstances of the case an in law the Id. CIT(A) ought to have considered the legal issue for AY 10-11 that if there is no incriminating material/documents found during the course of search from premises of the assessee, qua the assessee, qua the year & qua the addition, for an unabated/concluded year which is not pending on the date of search (i.e.24-10-17), by applying Kabul Chawla (2015) (Del HC) & Meeta Gutgutia (2017) (Del HC); addition is liable to be deleted.

3. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in denying the legal issue raised that approval granted u/s. 153D dt.30.12.19 by Jt. CIT is in mechanical & routine manner without application of mind by the Jt. CIT in a hasty manner, merely a formality, an empty ritual & without considering the 4th proviso to Sec.153A, Expl.2, where search u/s. 132 has been initiated on 24.10.17 which is after the amendment made by the Finance Act, 2017 w.e.f. 1-4-17; in absence of a valid approval as mandated by law u/s. 153D as per Section 153B(1)(a); assessment made u/s. 153A r.w.s. 143(3) would be invalid, bad in law & non-est and is liable to be quashed.

The assessee company has filed before us a letter dated 28.03.2023 (filed on 30.03.2023), wherein he has revised the Ground of cross objection No.3, which reads as under:

Revised Gr. No. 3. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in denying the legal issue raised that approval granted u/s.153D dt.30-12-19 by the Jt.CIT is in mechanical & routine manner without application of mind by the Jt.CIT in a hasty manner, merely a formality, an empty ritual in absence of a valid approval as mandated by law u/s.153D as per sec. 153B(1)(a); assessment made u/s.153A rws. 143(3) would be invalid, bad in law & non-est and is liable to be quashed."

5. The captioned cross-objections filed by the assessee respondent involves a delay of 9 days. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee company elaborated on the reasons leading to the delay in filing the cross-objections. It was submitted by him that the same had occasioned for the reason that though the orders/documents were dispatched by the assessee company on 27.09.2022 through courier but the same were received in his office only as on 06.10.2022. Carrying his contention further, the Ld. AR submitted that as the delay had occasioned not for any lapse on the part of the assessee company which had forwarded the orders/documents to it's counsel within the stipulated time period but because of delayed delivery of the same by the courier, therefore, the same in all fairness be condoned. The Ld. AR in support of his aforesaid contention had submitted an application a/w. an "affidavit" of Shri Sanjay Agrawal, director of the assessee company. Also, the Ld. AR had drawn our attention to the tracking sheet of the courier, viz. Sky King courier which fortified his aforesaid claim.

6. The Ld. CIT-DR objected to the assessee's request for seeking of condonation of the delay involved in filing the cross objections. It was submitted by him that there was no justifiable reason regarding the delay of 9 days involved in filing of the cross-objection by the assessee company.

7. We have given a thoughtful consideration and are of the view that as the delay involved in filing of the captioned cross-objection, which is not inordinate, had occasioned because of reasons beyond the control of the assessee, i.e. delay on the part of courier agency in delivering the orders/documents to the assessee's counsel, therefore, the same merits to be condoned.

8. The assessee company has filed before us a preliminary objection under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 vide an application dated 26.09.2022 (filed on 07.09.2022) which, thereafter, had been revised by him vide another letter dated 28.03.2023 (filed on 30.03.2023). Shri Sunil Kumar Agrawal, Ld. AR at the threshold submitted that he seeks to withdraw the aforementioned application. The Ld. AR had placed on our record a letter dated 28.05.2024 wherein liberty has been sought to withdraw the preliminary objections. For the sake of clarity, relevant contents of the aforesaid letter dated 28.05.2024 (supra) are culled out as under:

"The respondent-assessee-Co has filed an application under Rule-27 of ITAT Rules, 1963 for the AY10-11 on 7-10-22 and thereafter, revised on 30-3-23; it is humbly requested that, we withdraw the above application made under Rule-27 for the AY10-11 before your Honor; kindly consider the same and obliged."

The Ld. DR did not raise any objection to the seeking of withdrawal of the application filed by the assessee company. Considering the aforesaid concession of the Ld. AR the preliminary objection filed by the assessee company under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 vide its application dated 26.09.2022 (filed on 07.10.2022) and 28.03.2023 (filed on 30.03.2023) are dismissed as withdrawn.

9. The Ld. AR at the threshold submitted that as per instructions he seeks liberty to withdraw the ground of cross objection No.1. The Ld. DR did not raise any objection to the seeking of withdrawal of the ground of cross objection No.1. Considering the concession of the Ld. AR the **Ground of cross objection No.1** is dismissed as withdrawn.

FACTS:

10. Succinctly stated, the assessee company which is engaged in the business of manufacturing of sponge iron and MS Ingots/Billets had filed its original return of income for A.Y.2010-11 on 01.10.2009, declaring an income of Rs.15,17,820/-. The assessee company was, thereafter, subjected to search proceedings u/s.132 of the Act on 24.10.2017. The assessee company in compliance to the notice issued by the A.O u/s. 153A

of the Act had, inter alia, filed its return of income for A.Y.2010-11 on 25.12.2019, declaring its income as was originally returned at Rs. 15,17,820/-.

11. Assessment was, thereafter, framed by the A.O vide a consolidated order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 for the subject year, i.e. A.Y.2010-11 and the succeeding years, i.e. upto A.Y.2018-19. The A.O qua the subject year, i.e. A.Y.2010-11, held the share application money of Rs.5.75 crore received by the assessee company from 2 Kolkata based companies as unexplained cash credit u/s. 68 of the Act, as under:

Sl No.	Sl. No.	Name of the Investor company	F.Y.	A.Y.	Amount of share capital/premium received
2.	1.	Prithvi Dealcom Pvt. Ltd.	2009-10	2010-11	34500000
	2.	Shri Shyam Ply Traders Pvt. Ltd.	2009-10	2010-11	23000000
Total					57500000

Thereafter, the A.O vide his order passed u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 determined the income of the assessee company at Rs.6,08,26,561/-.

12. Aggrieved, the assessee company carried the matter in appeal before the CIT(Appeals). The assessee company assailed the assessment order before the CIT(Appeals) on four major grounds, viz. **(i)** that the Ld. AO in

absence of any undisclosed asset had erred in reopening the assessment proceedings for A.Y.2010-11, i.e. beyond a period of six years; **(ii)** that the Ld. A.O without having any incriminating/positive document on record had erred in making additions for the subject year, wherein the assessment proceedings were unabated on the date on which search and seizure proceedings were conducted on the assessee company, i.e. on 24.10.2017; **(iii)** that the Ld. AO had erred in making assessment u/s.153A of the Act without obtaining a valid approval u/s.153D of the Act from the Joint CIT, Range-Central, Raipur; and **(iv)** that the Ld. AO had erred on merits in treating the share application money of Rs.5.75 crore received by the assessee company as unexplained cash credit u/s. 68 of the Act.

13. The CIT(Appeals) after deliberating at length on the contentions advanced by the assessee company, had though accepted its claim that there was no justification for the A.O to have held the share application money of Rs.5.75 crore received during the subject year as unexplained cash credit u/s. 68 of the Act, but rejected its multi-facet contentions as regards the validity of the jurisdiction that was assumed by the A.O for framing the assessment/making additions vide his order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019. For the sake of clarity, the observations of the CIT(Appeals) qua the multi-facet contentions that were raised by the assessee company before him are culled out as under:

(A) ON ABSENCE OF INCRIMINATING MATERIAL: -**"4.1 Ground No. 1 to 3 for AYs 2010-11 & 2011-12, Ground No 5 for AY 2014-15 and Ground No 1 for AY 2012-13, 2013-14 & 2015-16:-**

Through these grounds of appeal, the appellant has challenged legality of assessment order passed by the AO. I have perused the submissions of the learned AR, the various decision cited, and the assessment order. Once the search has taken place and notices u/s.153A has been issued the jurisdiction is conferred on the assessing officer to pass assessment order to 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. The assessing officer has specifically mentioned in para 3 of the assessment order that various books of accounts, documents, loose papers were seized. The appellant assessee has filed the returns of income in response to notice u/s. 153A issued for A.Y 2009-10 to 2017-18 and the assessee filed returns of income for A.Y 2012-13 to 2017-18 on 26.10.2019 and AYs 2009-10 to 2011-12 on 25.12.2019. Shri. Amit Maloo C.A and authorized representative attended the assessment proceedings before the A.O from time to time and filled written submissions with supporting documents which were placed on record by the A.O. Regular books of accounts were also produced and checked with seized material by the A.O. Inspection and copies of all seized documents was provided by the A.O.

4.1.1 Once the assessee has participated in assessment proceedings before the A.O the appellant assessee cannot claim that issue of notice u/s.153A for A.Ys 2010-11 to 2015-16 is not in order. Once the assessee has been put to notice and has filed returns in response to the notices and has attended the assessment proceedings, it cannot be said that issue of notice u/s 153A is not in order. It is seen that the issue of notice u/s 153A by the A.O for A.Ys. 2010-11 to 2015-16 is in order. A perusal of the assessment order shows that during search and seizure operations books of account, document, loose papers etc. were seized. Photocopies of the seized material was also provided to the assessee by the A.O. The seized documents and papers are the incriminating material on the basis of which the additions have been made. In view of the above, the ground taken by the appellant that no incriminating material is found and the issue of notices u/s 153A for A.Y 2010-11 to 2015-16 is not justified, has no merit and is, therefore, rejected. Therefore, appeal on these grounds is **Dismissed.**"

(B). ON ABSENCE OF VALID APPROVAL OF JT.CIT U/S. 153D OF THE ACT:**"4.2 Ground No. 8 for AYs 2010-11 & 2011-12, Ground No 6 for AYs 2012-13 & 2015-16, Ground No 7 for AY 2013-14 and Ground No 11 for AY 2014-15:-**

Through these grounds of appeal the appellant has challenged the legality of assessment order passed by the AO stating that no approval was taken u/s 153D of the Act. On perusal of assessment order it is seen that the AO has taken approval from competent authority u/s 153D of the Act and the JCIT, Central, Raipur vide letter F.No JCIT(C)/RPR/153D/2019/348 dated 30.12.2019 has given his approval. Therefore, the plea raised by the appellant has no merit and is therefore, rejected. Therefore, appeal on this ground is **Dismissed.**"

(C). ON MERITS :

14. As is discernible from the order of the CIT(Appeals), we find that he had based on his exhaustive deliberations placed at Para 4.3 (Page No. 370) to Para 4.3.6 (Page No. 456) after drawing support from a plethora of judicial pronouncements (relevant extracts culled out in his order), found favour with the contentions advanced by the assessee company that the A.O had grossly erred in law and facts of the case in treating the share application money of Rs.5.75 crore which it had received during the subject year as unexplained cash credit u/s.68 of the Act.

15. To sum up, the CIT(Appeals) had dealt with the multi-facet contentions of the assessee company, as under:

- The CIT(Appeals) had found favour with the contentions that were advanced by the assessee company qua the merits of the addition of

Rs.5.75 crore that was made by the A.O, wherein the latter had held the share application money that was received by the assessee company from two share applicant companies during the subject year as unexplained cash credit u/s. 68 of the Act. Accordingly, the CIT(A) had vacated the addition of Rs.5.75 crore (supra) that was made by the A.O u/.s. 68 of the Act.

- The CIT(Appeals) did not find favour with the claim of the assessee company that in absence of any incriminating document for the subject year found in the course of search proceedings conducted on 24.10.2017, no addition could have been made in its unabated assessment for the year under consideration, i.e. A.Y.2010-11, and had rejected the same. The CIT(Appeals) had observed that as the assessee company had participated in the assessment proceedings before the A.O, therefore, it could not thereafter claim that issuance of notice u/s. 153A of the Act for the subject year, i.e. A.Y.2010-11 was not in order. Also, the CIT(Appeals) observed that the A.O in the assessment order had referred to books of account, documents, loose papers etc. that were seized in the course of the search proceedings. It was observed by him that the documents/loose papers which were seized in the course of the search proceedings were incriminating material, based on which, the addition was made in the hands of the assessee company. Accordingly, the CIT(Appeals) had observed that there was no merit in the contention of the assessee company that as no incriminating material was found in the course of the search proceedings, therefore, there was no justification for the A.O to have framed the assessment u/s. 153A of the Act.

- The CIT(Appeals) did not find favour with the assessee's claim that the A.O had erred in framing assessment u/s.153A of the Act in absence of a valid approval of the Jt. CIT, Range-Central, Raipur u/s.153D of the Act.

Although, it was the claim of the assessee company that the Jt. CIT had granted the approval without any application of mind, i.e. in a mechanical and hasty manner, which, thus, rendered the assessment order passed u/s. 153A of the Act as invalid but the same did not find favour with the CIT(Appeals). The CIT(Appeals) observed that a perusal of the assessment order revealed that the A.O had taken approval u/s. 153D of the Act from the Jt.CIT (Central), Raipur vide letter No. JCIT(C)/RPR/153D/2019/348, dated 30.12.2019. Accordingly, the CIT(Appeals) held a firm conviction that now when the Jt.CIT (Central), Raipur had given his approval, therefore, the statutory obligation cast upon the A.O u/s. 153D of the Act was duly complied with.

16. The revenue being aggrieved with the order of the CIT(Appeals) to the extent he had vacated the addition of Rs.5.75 crore made by the A.O u/s. 68 of the Act has carried the matter in appeal before us.

17. On the other hand, the assessee company has assailed the rejection of its claim by the CIT(Appeals) that the A.O had wrongly assumed jurisdiction and made the impugned additions u/s.153A of the Act, viz. **(i)** that in absence of any incriminating material for the subject year found during the course of search proceedings conducted on the assessee company on 24.10.2017, no addition could have been made by the A.O as regards the unabated assessment for the year under consideration ; and **(ii)** that in absence of any valid approval u/s.153D of the Act by the Jt. CIT, the assessment order passed by the A.O u/s. 143(3) r.w.s.153A of the

Act, dated 30.12.2019 was liable to be quashed for want of valid assumption of jurisdiction.

18. As the assessee company has assailed the validity of the jurisdiction assumed by the A.O for framing the assessment vide his order passed u/s.153A r.w.s. 143(3) of the Act, dated 30.12.2019 in absence of a valid approval u/s. 153D of the Act of the Jt. CIT, Raipur-Central, Raipur; and also, the sustainability of the additions made by the A.O in absence of any incriminating material found in the course of the search proceedings qua the subject year, wherein, the assessment proceedings were unabated on the date of search, i.e., 24.10.2017, therefore, we shall first deal with the same.

(A). Re: Addition made by the A.O in absence of any incriminating material found during the search proceedings in the unabated assessment for the subject year:

19. Apropos the ground of cross-objection No.2, the assessee company has assailed the order of the CIT(Appeals), who had rejected it's claim that in absence of any incriminating material found in the course of the search proceedings for the subject year, i.e. A.Y.2010-11, no addition as regards the unabated assessment proceedings of the assessee company for the subject year could have been made.

20. S/shri Vijay Mehta and Sunil Kumar Agrawal, the Ld. Authorized Representatives (for short 'AR') for the assessee company, submitted that

as the assessment in the case of the assessee company for the subject year, i.e. A.Y.2010-11 was unabated on the date of search, i.e. 24.10.2017, therefore, the A.O in absence of any incriminating material found in the course of search proceedings could not have made the addition of Rs.5.75 crore u/s.68 of the Act. The Ld. AR in support of his contention had drawn our attention to the submissions that were filed by the assessee company in the course of proceedings before the CIT(Appeals).

21. Apropos the amount of share application money of Rs.5.75 crore (supra) that was received by the assessee company during the subject year from the aforementioned 2 investor companies, the Ld. AR had drawn our attention to Page 9 of the assessment order. The Ld. AR submitted that the A.O. had taken two documents within the meaning of incriminating material, viz. (i) Page No.44 of LPS-1 seized from the office of M/s. NR Ispat and power Pvt. Ltd.; and (ii) Page 20 of LPS-1 seized from the office of M/s. NR Ispat and power Pvt. Ltd. Also, the Ld. AR had drawn our attention to the contents of the aforementioned documents as had been culled out by the A.O in the body of the assessment order (scanned extracts).

22. The Ld. AR rebutting the claim of the departmental representative that the contents of the aforesaid seized document, viz. Page No.44 of LPS-1 that was seized from the office of M/s. NR Ispat and power Pvt. Ltd. during the course of search proceedings was incriminating, submitted that

the amounts therein mentioned were the duly recorded details of infusion of fresh share capital and share premium that was received by the assessee company during the subject year. The Ld. AR to fortify his aforesaid contention had taken us through Page 16 of the assessee's paper book (APB). The Ld. AR had specifically drawn our attention to the relevant extract of the "balance sheet" of the assessee company for the year under consideration, which revealed the share capital as of 31.03.2010 at Rs.1,90,70,000/-. Elaborating further, the Ld. AR submitted that the infusion of fresh capital during the year was Rs.91,60,000/-, i.e. Rs.1,90,70,000/- (as of 30.03.2010) [minus] Rs.99,10,000/- (as of 31.03.2009). The Ld. AR submitted that the amount of Rs.10,53,40,000/- mentioned in the aforesaid chart was the amount of share premium that was received by the assessee company during the subject year. It was submitted by him that the fresh receipt of share premium of Rs.10,53,40,000/- during the subject year was disclosed by the assessee company in its financial statements as "Securities Premium Account" under the parent head "Reserves and surplus", Page 19 of APB. The Ld. AR to support his contentions had drawn our attention to Page 16 & 19 of APB, i.e. the relevant extracts of the "balance sheet" of the assessee company for the year under consideration, i.e. A.Y.2010-11, which revealed that the assessee company had received "Security premium" of Rs.10,53,40,000/- during the subject year, i.e. A.Y.2010-11.

23. The Ld. AR submitted that now when the amounts mentioned in the aforesaid seized document, viz. Page No.44 of LPS-1 were the details of the fresh infusion of share capital and share premium that were received by the assessee company during the subject year, which were duly disclosed in its audited "balance sheet" for the said year, it was incomprehensible that as to how the same could be dubbed as incriminating by the department's counsel.

24. Apropos, Page 20 of LPS-1 that was seized from the office of M/s. NR Ispat and power Pvt. Ltd, the Ld. AR submitted that the transactions therein mentioned were the investments made by the five investor companies towards share application money with the assessee company during F.Y.2009-10 to F.Y.2013-14. The Ld. AR referring to the subject year, i.e. F.Y.2009-10 submitted that the seized document, viz. Page No.20 of LPS-1, referred to the share application money (gross amount) that was received by the assessee company during the subject year from two investor companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd.: Rs.4,05,00,000/-; and (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : Rs.2,30,00,000/-. The Ld. AR submitted that the investments made by the aforementioned investor companies were duly recorded in the books of account of the assessee company. It was, thus, the Ld. AR's contention that as the respective investments made by both the abovementioned investor companies were recorded in the books of account of the assessee

company, therefore, it was beyond understanding that as to how the same could be brought within the meaning of "incriminating material" as was canvassed by the Ld. DR. The Ld. AR in order to fortify his contention that the amount of share application money of Rs.5.75 crore (supra) received by the assessee company from the investor companies was duly recorded in the books of account of the assessee company had taken us through the observations of the A.O at Page 5, Para 4.1 of the order. The Ld. AR averred that the A.O had observed that the amount of share application money that was received by the assessee company during the block period, i.e. A.Y.2009-10 to A.Y.2018-19 were recorded in the books of account of the assessee company. The Ld. AR submitted that now when the share application money of Rs.5.75 crore (supra) received by the assessee company from the subject investor companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.45 crore; and (ii) M/s Shri Shyam Ply Traders Pvt. Ltd. : 2.30 crore were recorded in its books of account which, thereafter, were audited and formed part of its financial statements that were enclosed along with its original return of income filed on 01.10.2009, therefore, it was difficult to fathom as to how the same could be brought within the meaning of "incriminating material" found in the course of search proceedings conducted on 24.10.2017. The Ld. AR to fortify his contention that the respective amounts received by the assessee company during the subject year, i.e. A.Y.2010-11 were recorded in the books of account,

submitted that the said details were filed by the assessee company in its reply filed on 24.12.2019 with the A.O pursuant to the queries that were raised by him vide his notice u/s. 142(1), dated 03.09.2019. The Ld. AR had drawn our attention to Page 254-261 of APB, wherein in reply to Question No.26 (Page 260 of APB), the respective details as regards the investments made by the subject share applicant companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd.: Rs.3.45 crore; and (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : Rs.2.30 crore were mentioned. The Ld. AR submitted that the A.O while framing the assessment for the year under consideration, i.e. A.Y.2010-11 had not rebutted the aforesaid factual position but had rather accepted the same, at Page 5, Para 4.1. of his order.

25. As the investments made during the subject year by one of the investor company, viz. M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.45 crore as was mentioned by the assessee company in its reply dated 24.12.2019 (supra), addition of which had thereafter been made by the A.O, Page-6 of assessment order (i.e. as per the "Chart") was found to be at variance with the amount of Rs.4.05 crore mentioned in the seized document, viz. Page 20 of LPS-1 against the name of the said investor company for the year under consideration, i.e. A.Y.2010-11, therefore, the Ld. AR was called upon to put forth an explanation as regards the same. In reply, the Ld. AR submitted that though the assessee company had received an amount of

Rs.4.05 crore from M/s. Prithvi Dealcom Pvt. Ltd. (supra) during the subject year but out of the same an amount of Rs.60 lacs was refunded, which, thus, left an amount of Rs.3.45 crore [Rs.4.05 crore (-) Rs.60 lacs] in the account of the said investor company. The Ld. AR submitted that the A.O considering the said factual position had held the amount (net) of Rs.3.45 crore received by the assessee company from the said investor company as an unexplained cash credit u/s. 68 of the Act.

26. Based on his aforesaid contentions, the Ld. AR submitted that now when no incriminating material was seized in the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017, the A.O could not have made any addition while framing the assessment for the year under consideration, i.e. A.Y.2010-11, wherein the assessment proceedings were unabated as on the date of search. The Ld. AR in support of his aforesaid contention had relied upon the judgment of the Hon'ble Apex Court in the case of Pr. CIT, Central-3 Vs. Abhisar Buildwell (P) Ltd, (2023) 454 ITR 212 (SC).

27. Per contra, the Ld. Departmental Representative (for short 'DR') submitted that as "incriminating material" for the subject year was found and seized in the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017, therefore, the CIT(Appeals) had rightly rejected the assessee's claim that no addition as regards its

unabated assessment for the subject year was called for. The Ld. CIT, DR in support of his contention regarding the aforementioned issue had relied upon the consolidated report filed by the ACIT, Bilaspur, dated 08.09.2023, which reads as under:

NR Ispat & Power Pvt. Ltd. AY 2010-11

Report on Ground of Appeal raised by the appellant M/s N.R. Ispat & Power Pvt. Ltd regarding Incriminating material / documents found during the course of search from premises of M/s N.R. Ispat & Power Pvt. Ltd.

1. The assessee company is mainly engaged in the business of manufacturing and trading of sponge iron and mild steel (MS) ingots under the flagship entity M/s. N. R. Ispat and Power Pvt., Ltd., Raigarh. The head of the business group is Sanjay Kumar Agrawal, who is one of the director of the assessee company.
2. Search and seizure action u/s 132 of the IT Act, 1961 was conducted at the business premises of M/s N. R. Ispat and Power Pvt., Ltd. on 24/10/2017.
3. Consequently, notice u/s 153A of the Act dated 18/07/2019 was issued. Subsequently, assessment order under section 153A read with section 143(3) of the Income Tax Act, 1961 was passed on 30/12/2019 for the A.Ys. 2009-10 to 2017-18 and under section 143(3) of the Act for A.Y. 2018-19.
4. The AO made addition of Rs.5,75,00,000/- in AY 2010-11 on account of bogus share capital/premium received from Kolkata based shell companies in the books of assessee M/s N. R. Ispat and Power Pvt., Ltd. This addition was made on the basis of incriminating material (Page 20 & 44 of LPS-01, statement of investor company director, evasive reply of assessee company director, insignificant financials of investor companies etc.) found and seized during the course of search proceedings.
5. The assessee has raised following ground of appeal before Hon'ble ITAT in the cross appeal as under:-

"On the facts and circumstances of the case and in law, the Id CIT(A) ought to have considered the legal issue raised for the AY 2010-11 that if there is no incriminating material /documents found during the course of search from premises of the assessee, qua the assessee, qua the year & qua the

addition, for an unabated/concluded year which is not pending on the date of search (i.e. 24.10.2017) by applying *Kabul Chawla (2015) (Del HC)* & *Meeta Gutgutia (2017) (Del HC)*; addition is liable to be deleted."

Assessment Order

6. As per assessment order, the A.O. had made the addition of Rs. 5,75,00,000/- for A.Y.2010-11 on account of share capital/premium received from two company i.e. M/s Prithvi Dealcomm Pvt Ltd and Shri Shyam Ply Traders Pvt. Ltd. based on following findings:
7. A search and seizure action were carried out on 24/10/2017 at the business premise of the assessee. It is found that during the block period from A.Y. 2009-10 to 2018-19, assessee M/s NR Ispat & Power Pvt. Ltd. has introduced its huge unaccounted money into the books in the form of share capital/ application money from various Kolkata Based shell companies. The details of such investment in assessee company during the A.Y. 2010-11 from following investors is as under:-

Prithvi Dealcomm Pvt Ltd	Rs.3,45,00,000
Shri Shyam Ply Traders Pvt. Ltd	Rs.2,30,00,000
Total:	Rs.5,75,00,000

In respect of these investor companies it was noticed by the AO that they were involved in rotation of money through various bank accounts and these companies being managed by entry operator. An entry operator is the person who is in the business of giving accommodation entries in lieu of commission.

8. Shri Sanjay Agrawal (director in assessee company) on behalf of entire NR group during his post search statement on 29/01/2018, vide Quest. No. 8, was confronted with page No. 44 of LPS-1 seized from the office premises of M/s N.R. Ispat & Power Pvt. Ltd.. The scan copy of this seized sheet is as under:-

M/S N.R.ISPAT & POWER PVT.LTD.
DETAILS OF INFUSION OF CAPITAL

YEAR	Paid- up Capital	Share Premium	Total
2007-08	300000	0	300000
2008-09	9610000	22690000	32300000
2009-10	9160000	105340000	114500000
2010-11	0	0	0
2011-12	12648000	145152000	157800000
2012-13	6578940	62770958	69349898
2013-14	3192470	32882441	36074911
2014-15	2384800	26232800	28617600
2015-16	154150	1695650	1849800
Total	44028360	396763849	440792209

As per the above documents in different years, the total paid up capital is shown at Rs.4,40,28,360/- and that of Share premium received at Rs.39,67,63,849/-, totalling both at Rs.44,07,92,209/- received during the F.Y. 2017-18 to F.Y. 2015-16. Similarly, page No. 20 of LPS-1 seized from the said office premises of M/s N.R. Ispat & Power Pvt. Ltd. was also confronted to him. The scan copy of this sheet is as under:-

S. No.	F.Y.	Prithvi Deal Comm Pvt. Ltd. Amount	Shri Shyam Ply Traders Pvt. Ltd. Amount	Umant Commodities Pvt. Ltd. Amount	Chitralood Infonet Pvt. Ltd. Amount	Staruby Commercial Pvt. Ltd. Amount	Total
1	2009-10	40500000	23900000				64400000
2	2010-11	38500000	13700000	12000000			64200000
3	2011-12	22300000	54200000	9000000			85500000
4	2012-13	12750000		69350000	15300000	13000000	98925000
5	2013-14					6500000	6500000
Grand total		102575000	90900000	90350000	15300000	19500000	310625000

As per this sheet, share capital/premium received from the Kolkata based companies during the F.Y. 2009-10 to F.Y. 2013-14 was Rs.31,86,25,000/- which includes share capital/premium of Rs.10,25,75,000/- received from Prithvi Dealcomm Pvt. Ltd in these years.

Shri Amit Chanda who was the previous Director of Prithvi Dealcomm Pvt. Ltd. whose statement was recorded by DDIT(Inv.), Unit-IV (2), Kolkata on 05/06/2014. In answer to Quest. No. 3 he admitted that that he is engaged in the job of dummy Director in this company on instructions of entry operator Shri Amit Dalmia who established many entry providing entities which provide accommodation entries to various beneficiaries in lieu of commission. In answer to Quest No. 9, it is also admitted by him that he is only a working staff in the office of entry provider Shri Amit Dalmia since 2006 and he used to get salary of Rs.5,000/- from Shri Amit Dalmia. Statement of Shri Amit Chanda was also verified from RoC portal and it was found that he is director in M/s Prithvi Dealcomm Pvt Ltd., the same is proved from the entry No. 12 in the screen shot below-

Ministry of Corporate Affairs

User ID: BIKASH9433

Companies/LLPs in which a person is/ was a director/ designated partner

DIN/DPIN: 01769010

Date: 08/08/23 11:28:31 P.M.29/08/14
04:31:36 P.M.

Name: AMIT CHANDA

S.No.	CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Category/ LLP Status	Defaulting status
1	U31100WB2005PTC10671	INDUSTRIAL SWITCHGEAR & CABLES CO. PRIVATE LIMITED	Director	07/11/2007	07/11/2007	26/03/2016	Active	NO
2	U51100WB2005PTC10671	AMUSHI WINERY PVT LTD	Director	07/11/2007	07/11/2007	07/12/2010	Active	NO
3	U51100WB2005PTC10692	STATEFIELD MERCHANTS PVT LTD	Director	07/11/2007	07/11/2007	26/03/2016	Active	NO
4	U51100WB2005PTC105283	RUDRAGENCES PVT LTD	Director	07/11/2007	07/11/2007	15/10/2010	Active	NO
5	U51100WB2005PTC106217	KANCHERU WINERY PRIVATE LIMITED	Director	07/11/2007	07/11/2007	15/10/2010	Active	NO
6	U51100WB2005PTC104782	FANTASTIC VYAPAAR PRIVATE LIMITED	Director	07/11/2007	07/11/2007	22/07/2012	Active	NO
7	U51100WB2005PTC105291	ADHUNK DEALERS PVT LTD	Director	07/11/2007	07/11/2007	22/07/2012	Active	NO
8	U51100WB2005PTC106292	AMBU WINERY PVT LTD	Director	07/11/2007	07/11/2007		Incorporated	NO
9	U51100WB2005PTC127905	PIXEL COMMERCIAL PRIVATE LIMITED	Director	23/01/2008	23/01/2008	13/06/2011	Active	NO
10	U72200WB2005PTC122180	SPECTRUM INFONET PRIVATE LIMITED	Director	23/01/2008	23/01/2008	06/04/2011	Active	NO
11	U51100WB2005PTC122169	RUDRASH DEALCOM PRIVATE LIMITED	Director	23/01/2008	23/01/2008	26/03/2016	Active	NO
12	U51100WB2005PTC129498	PRITHVI DEALCOM PRIVATE LIMITED	Director	22/02/2008	22/02/2008	08/12/2012	Active	NO
13	U51100WB2005PTC118815	SHYAM DEALCOM PRIVATE LIMITED	Director	29/12/2008	29/12/2008	26/03/2016	Active	NO
14	U51100WB2005PTC131681	FASTGROW SUPPLIERS PRIVATE LIMITED	Director	01/01/2009	01/01/2009	26/03/2016	Active	NO
15	U51100WB2005PTC131927	SHRUTI SUPPLIERS PRIVATE LIMITED	Director	01/01/2009	01/01/2009	08/06/2011	Active	NO
16	U00000WB2005PTC140068	HCRA FINANCE AND INVESTMENT PRIVATE LIMITED	Director	23/02/2009	23/02/2009		Active	NO
17	U74900WB2005PTC133127	PUSHPAJALI EMPORIUM PRIVATE LIMITED	Director	24/02/2009	24/02/2009	19/11/2011	Active	NO
18	U74900WB2005PTC133113	SARVOTIAM DESIGNS PRIVATE LIMITED	Director	24/02/2009	24/02/2009	01/06/2010	Active	NO

Considering this, statement of this entry operator Shri Amit Dalmia was also recorded by Investigation wing Kolkata on 05.06.2014 & also on 31.03.2015 who on both occasions admitted his involvement in providing the accommodation entries and through dummy

director Shri Amit Chanda. He endorsed statement of Shri Amit Chanda. The relevant portion of the statement of Shri Amit Chanda as recorded by DDIT(Inv.), Kolkata is as under:-

Q.1 Please identify yourself.

Ans. I am Amit Chanda, son of Sri Ganesh Chanda, aged about 30 years, resident of Agarpara South Station Road, Matangini Hazra Pally, Kolkata-700109. My PAN is AIFPC0814M.

Q.2. What is your educational qualification?

Ans. My education qualification is H.S.

Q.3. What is your source of income?

Ans. I am engaged in the job of dummy director for Sri Amit Dalmia an established accommodation entry operator who provides accommodation entries to various beneficiaries in lieu of commission.

The relevant portion of the statement of Shri Amit Dalmia recorded by DDIT(Inv.), Kolkata is as under:-

Q.6 Please state your sources of income.

Ans. I have income from business and profession and salary income from Director's remuneration. Other than these incomes, I wish to state that I earn commission income from providing accommodation entry through share capital, unsecured loan and long term capital loss/gain from the jamkharaji companies.

9. From the above statements it is proved beyond doubt that M/s Prithvi Dealcomm Pvt Ltd was mainly a paper and shell company used by the operators/brokers Shri Amit Dalmia for their cause by appointing dummy director such as Shri Amit Chanda.
10. These statements of dummy director and entry operator were put up before the assessee company director Shri Sanjay Agrawal for his comments who then in response to Q No. 7 of statement dated 29.01.2018 admitted that the share capital/premium had been received through these Kolkata based entities and investment is made through banking channel only. In fact reply of Shri Sanjay Agrawal remained evasive in respect of various queries raised in statement dated 24.10.2017 u/s 132(4) of the Act when the impounded material from premise

of CA of assessee company Shri Amin khatri was confronted to him wherein the name of few shell companies were written which have purchased shares of assessee company M/s N R Ispat & Power P Ltd at huge premium of Rs. 115/- per share. Surprisingly he replied that he has no knowledge of this. Further, in response to Q No. 32,33,34 of the same statement which contained queries related to investments received by assessee company & the same being highlighted on some seized documents, he again stated that he has no knowledge. Reply of Shri Sanjay Agrawal director of assessee company & key person, itself is highly incriminating in nature.

11. It is also noticed that to justify infusion of share capital/premium, assessee company acquired the paper company M/s Prithvi Dealcomm Pvt Ltd and changed its name to M/s NR TMT India Pvt Ltd and got its address changed from RoC Kolkata to RoC Raipur so that the investor company doesn't seem to be a Kolkata based entity. Similarly, in case of other investor company M/s Shri Shyam Ply Traders Pvt Ltd, this paper company was acquired by assessee in 2010 and RoC was changed from Kolkata to Raipur. However, Assessee director could never explain how he met Shri Shivang Chaudhary & Shri Vinayak Chaudhary (earlier directors of M/s Shri Shyam Ply Traders Pvt Ltd) to acquire this paper investor company. However the nature and character of shell company doesn't change by adopting such type of camouflaging techniques-

Sl. No.	Company Name	Address	City	State	Pin Code	Company Type	Company ID	Company Status
9290	POSTNET RETAIL PRIVATE LIMITED	LANE Address 2 : CITY : KOLKATA State : West Bengal	KOLKATA	West Bengal	700029	Private Limited	9092790	Active
9291	PROKNEER DEALMAKER PRIVATE LIMITED	91A RAJANVATI BUDHI LANE Address 1 : CITY : KOLKATA State : West Bengal	KOLKATA	West Bengal	700029	Private Limited	9092791	Active
9292	PRATIBHA ALCOHOL PRIVATE LIMITED	FLAT 303 IN CELESTINYA NAGAR Address 1 : CITY : BANGALORE State : Karnataka	BANGALORE	Karnataka	560075	Private Limited	9092792	Active
9293	PROKAPT VANITA PRIVATE LIMITED	911 LAI SAVER STREET Address 1 : BUILDING : HOCKADY 2ND FLOOR CITY : KOLKATA State : West Bengal	KOLKATA	West Bengal	700029	Private Limited	9092793	Active
9294	PUREPACALI EXPORTS	7A Banket Street Address 1 : 004 New - 2nd floor	KOLKATA	West Bengal	700029	Private Limited	9092794	Active

12. During the course of assessment proceedings, in order to verify the identity, creditworthiness and genuineness of the transactions related from where share capital/application money came in assessee company, notices u/s 133(6) was issued to the Kolkata based investor shell companies. The query asked are as under:-

1. Please furnish the details of investments made, if any by you in the share capital/share application money of above related company(s) till date.
2. Please furnish copy of share certificates, if any, issued by above related company(s) to you till date. Please also state the date and the mode by which these certificates have been received by you.
3. Copies of all correspondences (letters, applications, etc.) made by you and received by you from above related company(s) till date.
4. A copy of the statement of the bank account from which money has been transferred to above related company(s) for the period 01.04.10 to 31.03.17.
5. Please state if any notice/letter for attending the Annual General Meeting or any other meeting of above related company(s) has/have been received by you till date. If so, a copy of the said notice along with the date and mode of receipt may be sent.
6. Please state if any meeting of above related company(s) was attended by any of your representatives. If so, please name the person who attended the meeting along with the date, time and place of meeting.
7. Please state if any of your representatives ever visited the office or factory of above related company(s). If so, please name the person along with the date and time of visit.
8. Please state how did you come to know about the above company.
9. Please state whom did you or your representative contact above company. Please also mention the mode of contact (i.e. personal meeting, telephonic conversation, letter or any other).
10. Please supply the list of offices/godowns/factories/workshops & others premises along with Telephone & Mobile No. used by you for your business activities during the period 01.04.2010 till date. Acting
11. Please submit a list of all your directors during the F.Y. 2010-11 to 2016-17.
12. Please supply a copy of your Audit Report, Profit and Loss account and Balance Sheet along with all Annexures for the F.Y. 2010-11 to 2016-17.
13. Please give a brief note on the nature of business carried out by you during the F.Y. 2010-11 to 2016-17.
14. Please supply the names of your directors at present along with their present postal address/telephone/mobile number along with a copy of the latest return of income filed by them.
15. Please furnish copy of Acknowledgment of Return of Income Tax filed by your company for the F.Y. 2010-11 to 2016-17 along with computation of Total Income for all A.Ys.
16. Please state if you have received any dividend from the above company till date. If so, please furnish details thereof.
17. Please submit list of all employees as on 31.03.2010 to 31.03.2017.
18. Please submit all the list of companies along with their address wherein you have made investment till date.
19. Please submit details of your share holding pattern as on 31/03/2010 to 31/03/2017 along with the address of all the share holders.
20. Please submit your contact number (Telephone No. & Mobile No.). Also furnish the residential telephone number and mobile number of all your directors and other key officials.
21. Please state your nature of possession of your office premises. Kindly also furnish a copy of rent/lease agreement, if any, in respect of these premises.
22. Any other document you may like to supply in support of your identity, credit worthiness & genuineness of transaction for the transactions mentioned in S. No. (1) above.
23. Any other information you would like to furnish on above points. Acting

The subscriber filed only copy of share certificates, bank statements evidencing subscription, copy of ITR, audited financial statements. From the perusal of the reply it is seen that-

- They have not visited the investee company:
- No dividend has been received:
- Transactions have been placed through some common links:
- No due diligence has been done – only casual information before investing :
- In spite of so huge investment in assessee company, neither key position was offered nor participation in AGMs was ensured

In view of the facts and circumstances that the share capital and premium, introduced from Kolkata based companies, are not genuine and these jamakharchi investor company not in existence in real but only appear on paper having business of providing entry to the beneficiaries by liquidating their bogus investments.

The identity, creditworthiness or genuineness of the transaction of these paper companies was attempted to be established by the assessee director merely by submitting that the transactions were through banking channels or by account payee instruments. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stand discharged in all cases if payment is made through banking channels.

13. Further, creditworthiness of the investor companies is also found to be insufficient for making such huge investment. perusal of the returns of income and Profit & Loss account and Balance Sheet of the investor companies, it is found that no business activity were taken by the companies from the date of creation of the companies. The details are as under :-

(i) Profit and Loss Account :-

d. Prithvi dealcom Pvt. Ltd.

Particulars	Mar'18	Mar'17	Mar'16	Mar'15	Mar'14	Mar'13	Mar'12
I. Revenue from operations	1113579659	58420930	94800	0	0	0	0
II. Other Income	2591520	3998141	356926	0	0	0	6285
III. Total Revenue	1118171119	62419871	451726	0	0	0	6285
V. Total Exp.	1081684381	58307798	151140	45000	7379	17266	64885
VI. Profit before Tax (III-V)	36486738	4111273	240586	-45000	-7579	-17266	-57800

e. Shree Shyam Ply Traders Pvt. Ltd

FINANCIAL STATEMENT
A.Y. 2012-13 to 2018-19

Particulars	Mar'18	Mar'17	Mar'16	Mar'15	Mar'14	Mar'13	Mar'12
I. Revenue from operations	-	42934579	-	-	-	-	-
II. Other Income	4205306	2883487	551039	-	-	-	6478
III. Total Revenue	4205306	45818016	551039	-	0	-	6478
IV. Exp.	-	43308992	63251	34000	7883	16926	51728
VI. Profit before Tax (III-V)	3747098	2512024	487788	0	0	0	0

(ii) Balance Sheet :-

d. Prithvi dealcom. Pvt. Ltd.

EQUITY AND LIABILITIES	Mar'18	Mar'17	Mar'16	Mar'15	Mar'14	Mar'13	Mar'12
a) Share Capital	3744000	3744000	3744000	3744000	3744000	3744000	3744000
b) Reserves and Surplus	87456000	87456000	87456000	87456000	87456000	87456000	87456000
(2) Share application Money pending allotment	0	0	0	0	0	0	0
(d) Current Liabilities	487609	53941645	84521	307500	315000	129857	19304000
(b) Non-current Investment	11870625	11870625	11870625	91244000	91244000	92344000	110244000
(d) Long term loans and advances	84375769	53421460	0	0	0	0	0
(d) Cash and cash equivalents	43736	104107	44034	110095	151535	142675	165344
(e) Short-term loans and advances	0	81529816	79445939	0	0	0	0

e. Shree Shyam Ply Traders Pvt. Ltd

EQUITY AND LIABILITIES	Mar'18	Mar'17	Mar'16	Mar'15	Mar'14	Mar'13	Mar'12
a) Share Capital	3744000	3744000	3744000	3744000	3744000	3744000	3744000
b) Reserves and Surplus	87456000	87456000	87456000	87456000	87456000	87456000	87456000
(d) Current Liabilities	487609	53941645	84521	307500	315000	129857	19304000
(b) Non-current Investment	11870625	11870625	11870625	91244000	91244000	92344000	110244000
(d) Long term loans and advances	84375769	53421460	0	0	0	0	0
(d) Cash and cash equivalents	43736	104107	44034	110095	151535	142675	165344
(e) Short-term loans and advances	0	81529816	79445939	0	0	0	0

From the above, it is clear that the above companies have no business activity as per the company's objects. Hence no income has been found for both the investor companies till March 2015. In the Balance Sheet, except the amount of share capital, reserve & surplus, current liabilities, non-current

assets, no business activities were found. It indicates that the above companies are running only in papers without actual genuine business activity. The companies did not have their own profit making apparatus. If these investor companies were having only meager income without sufficient assets till 2015 how they were able to afford such huge investment in assessee company during FY 2009-10 when in fact no activity was shown to have been started by these paper entities. Such position in itself is incriminating as the documents justifying the financials/investments by these investor companies were not available with the assessee company neither during search proceedings nor during time of assessment proceedings and the assets (in form of huge banking credits in assessee account) as investments remained unexplained in terms of section 68 of the act.

In above background, it is submitted that there is presence of sufficient incriminating evidences which justify the addition made by the AO wrt Rs. 5,75,00,000/- on account of bogus Share capital/ premium received by the assessee from paper entities in AY 2010-11.

"Incriminating material"

14. The assessee has raised ground of appeal before the Hon'ble ITAT in the cross appeal that for the AY 2010-11, there is no incriminating material /documents found during the course of search from premises of the assessee, hence addition is liable to be deleted.

In the statement of director Shri Sanjay Kumar Agrawal recorded on oath u/s 132(4) of the act which has confronted with the specific reference of documents seized as page No. 20 & 44 of LPS- 1 from office premise of M/s N.R. Ispat & Power Pvt. Ltd. From the above documents it was established that the assessee company has received share capital/premium from Kolkata based shell companies during the F.Y. 2009-10. Hence, page No. 20 & 44 of LPS-1 seized from the office premises are incriminating documents as the details mentioned on them are not fully justified by the assessee.

15. In a recent judgment delivered on 24/04/2023, the Hon'ble Supreme Court in Civil Appeal No.6580 of 2021 in the case of Abhisar Buildwell P. Ltd., it has been held that:

"(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns."

16. Hon'ble Supreme Court has held that incriminating material is a prerequisite for the Revenue to assume jurisdiction to assess or reassess the 'total income' for the entire six years block assessment period in case of completed / unabated assessments. If incriminating material is found, then the Revenue has the power to reassess the assessee not only for the undisclosed income which is found during the search but also with regard to material that is otherwise available.

17. In the instant matter, the ground of appeal raised by assessee before the Hon'ble ITAT that there is no incriminating materials/documents found during the course of search from premise of assessee is not correct in light of discussion made in subsequent paras.

What constitutes incriminating material

18. What constitutes incriminating material has not been defined under the Income Tax Act nor has it been elaborated by the courts in the context of Income Tax Act. However, perusal of certain sections of Income Tax Act, will throw some light on what constitutes incriminating for purposes of section 153A of Income Tax Act.

19. The word "incriminating", as used by the courts in context of section 153A/C, needs to be understood in the context of events of misreporting and under reporting as defined u/s 270A for purpose of levy of penalty in these sections. The provisions of section 153A/153C are not the normal assessment provisions like 143(3); rather they are curative provisions to plug the mischief of misreporting or under-reporting of taxable income

based on evidence found in pursuance to search. Therefore, the situations/actions which can lead to levy of penalty under Income Tax Act, will necessarily constitute incriminating for purposes of 153A/C of Act also.

20. Section 270A(9) defines under reporting and misreporting as under:

270A (9): *The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:-*

- (a) *misrepresentation or suppression of facts;*
- (b) *failure to record investments in the books of account;*
- (c) *claim of expenditure not substantiated by any evidence,*
- (d) *recording of any false entry in the books of account;*
- (e) *failure to record any receipt in books of account having a bearing on total income; and*
- (f) *failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.*

21. Thus, if on account of search, the facts and circumstances suggest that any entry already appearing in books or accepted in earlier assessments based on documents submitted at that point of time, are camouflaged or manipulated or misrepresented or suppressed in value or reflected to be in the nature or from a source which is different from the real nature or source as appearing from the evidences found during a subsequent search resulting in misreporting as defined u/s 270A(9), then such material/ facts coming to fore will definitely constitute an incriminating material.

22. Therefore, if during assessment proceedings, the AO finds existence any of the above facts as mentioned u/s 270A(9), the incidence of misreporting will be triggered thereby making the earlier recorded entries / earlier admitted documents and evidence itself to be incriminating in nature on account of such entries being hit by misreporting. Thus, the event of misreporting itself is incriminating. If it were held not to be so, then the purpose of 153A/153C would be defeated as it would fail to prevent the mischief of misreporting despite search having being carried, which it

sought to prevent just because the entries were already recorded in the books or some documents had already been accepted. In short, any fact / evidence which could suggest that the documents / transactions claimed or submitted in any earlier proceedings were not genuine, being only a device / make belief based on non-existent facts or suppressed / misrepresented facts, would also constitute an incriminating material sufficient to make assessment for the purposes of the Act.

In fact in this case only, due to the search operation and after considering the seized material, the assessee voluntarily offered amount of Rs. 70 Lacs and Rs. 26.76 lacs respectively as its undisclosed income for AY 2017-18 & AY 2018-19 respectively. This event of offering the amount and AO initiating penalty proceedings is itself incriminating which is a consequence of search action only wherein some incriminating evidences were found which led the assessee to disclose the income.

23. The next question how the existence of incriminating material has to be recognized emanating on account of search. One needs to appreciate that the 'incriminating material' can be in any form such as evidence in the nature of:

- a document, content of any document;
- an entry in books of account;
- an asset;
- a statement given on oath;
- absence of any fact claimed earlier but coming to notice during search;
- absence of books being noticed during search; or
- absence of the office/ business premises as claimed in returns or any other documents, etc filed earlier.

24. Thus, the incriminating material/evidence can be documentary or testamentary or fixed to earth or a place or even the absence of any fact or asset at a claimed place can be itself be called incriminatory as it indicates

that the earlier claim made in books of accounts/ returns etc. were false and contrary to real situation on ground.

25. In short, any fact / evidence which could suggest that the documents / transactions claimed or submitted in any earlier proceedings were not genuine, being only a device / make belief based on non-existent facts or suppressed / misrepresented facts, would constitute an incriminating material sufficient to make assessment for the purposes of the Act.

26. Even a statement recorded during search & survey operation shall also constitute incriminating material to dislodge any earlier finding for the purpose of making an assessment under section 153A of the Act.

27. The apex court in **PCIT Vs Best Infrastructure (India) P Ltd 94 Taxmann.com 115 (SC)** has admitted an SLP by revenue against the order of High Court wherein the High Court had held that the statement offering income for one year would be incriminating for the year for which disclosure has been made and not the six years for the purpose of section 153A.

28. A mere statement u/s 132(4) is an evidence for making an assessment as also held by apex court in **B Kishore Kumar Vs DCIT 234 Taxman 771(SC)** as under:

"High Court by impugned order held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes"

29. In short, any fact / evidence which could suggest that the documents/ transactions claimed or submitted in any earlier proceedings were not genuine, or recorded unsubstantiated facts/ transactions being only a device/ make belief based on non-existent facts or suppressed/ misrepresented facts, would constitute an incriminating material sufficient to make assessment for the purposes of the Act.

30. During the course of search proceedings and during assessment proceedings, on the basis of statement of Shri Amit Chanda, previous director of Prithvi Dealcomm Pvt. Ltd., it is established that he was engaged in the job of Dummy director for Shri Amit Dalmia, an established Kolkata based entry operator who provides accommodation entry to various beneficiaries in lieu of commission. Again, in the statement, Shri Amit Dalmia has admitted that he was engaged in providing accommodation entry through share capital, unsecured loans and long term capital gain/loss through Jama Kharch Companies. These facts in itself are incriminating.

31. In the instant case, share capital/premium of Rs. 3,45,00,000/- received from Prithvi Dealcomm Pvt. Ltd. which is shell/paper company as proved from the statement of the Shri Amit Chanda and Shri Amit Dalmia. The fact that assessee director Shri Sanjay Agrawal could not furnish all the documentary evidences related to such investment received and offered evasive reply in his statement. Absence of statutory documents (related to increase in Share capital/premium as per Income Tax & Company Act) which were mandatorily supposed to be found at assessee premise during course of search proceedings, is nothing but incriminating. Thus, it may be seen that the statement of assessee director in light of statements of dummy director Amit Chanda and entry operator Shri Amit Dalmia itself becomes the incriminating material, in view of the above judicial pronouncements.

32. Conclusion

In view of all the facts & circumstances of the case, the ground of appeal raised by the assessee company for the A.Y. 2010-11 that there is no incriminating material/documents found during search from the premise of the assessee is not acceptable as from the above discussion it is clear that the documents found in LPS-1 bearing page No. 20 & 44 and also the statement recorded of Shri Amit Chanda and Shri Amit Dalmia alongwith the dubious financials of investor companies are incriminating in nature-

1. The assessee received share capital/premium from Kolkata based shell companies and the primary onus to establish the identity, creditworthiness and genuineness of the transactions in respect of the investor companies was not discharged by the assessee specially when the investigation by the department bringing sufficient evidences about the investor companies being shell/bogus entities.
2. The assessee has raised grounds of appeal in the cross examination that there was no incriminating material. The phrase "incriminating material" is neither defined in sec 153A nor defined in the Income tax act and hence the implications of this term were required to be understood in the context of misreporting and / or under reporting along with intent and purpose of the provisions of Search & Seizure provisions under Income Tax Act, which clearly revealed the existence of incriminating material to initiate the proceeding u/s 153A of I T Act in the present case.
3. The statements recorded during the search were the incriminating material, in light of **B Kishore Kumar Vs DCIT 234 Taxman 771(SC)**, which provided appropriate jurisdiction for purpose of framing assessment u/s 153A.
4. The AO have made additions of RS.5,75,00,000/- for the A.Y. 2010-11 on account of share capital/premium on the basis of incriminating material as discussed above. The assessee failed to allude to relevant facts on record, including in relation to -
 - (i) assessee not having discharged its primary onus of establishing the identity of the investors & their creditworthiness as well as genuineness of the transactions;
 - (ii) The legal documents related to increase in share capital/premium in assessee company as per requirements of Income Tax/company Act not found during search
 - (iii) The very fact that assessee company offered amount of Rs. 70 Lacs and Rs. 26.76 lacs respectively as its undisclosed income for AY 2017-18

& AY 2018-19 respectively on account of search action while filing return u/s 153A of the Act, this is incriminating.

(iv) When the director of assessee company during his statement was asked to quantify the undisclosed income brought into books through the share capital/premium in its books then Shri Sanjay Agrawal stated that He along with other directors of his group companies voluntarily disclosed unexplained income to the tune of Rs. 15.01 crore during IDS 2016 in September 2016.

(v) their being "incriminating material" which provided appropriate jurisdiction for purpose of framing assessment u/s 153A.

Submitted.

Handwritten signature and date: 08-09-2023

(Pradeep Kumar Swarnakar)
Assistant Commissioner of Income-tax
Central Circle, Bilaspur (C.G.)

(B). Re: In absence of a valid approval u/s. 153D r.w.s. 153B(1)(a) of the Act, the assessment order passed by the A.O u/s. 143(3) r.w.s. 153A of the Act dated 30.12.2019 was invalid and bad in law:

28. Apropos the ground of cross objection No.3 (revised), we find that the assessee company has assailed the order of the CIT(Appeals) to the extent he had rejected its claim that in absence of a valid approval as mandated u/s.153D r.w.s. 153B(1)(a) of the Act, the assessment order passed by the A.O u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 was invalid and

bad in law and was liable to be struck down/quashed on the said count itself.

29. S/shri Vijay Mehta and Sunil Kumar Agrawal, the Ld. ARs for the assessee company had at the threshold drawn our attention to the "draft assessment order" that was forwarded by the DCIT, Central Circle-2, Raipur, dated 26.12.2019 to the Jt. CIT (Central), Raipur for approval u/s.153D of the Act, (Page 1 of APB). Also, our attention was drawn towards the approval u/s.153D of the Act, dated 30.12.2019 that was granted by the Jt. CIT, Range-Central, Raipur, Page 2 of APB. The Ld. AR submitted that the approval by the Jt. CIT, Range-Central, Raipur dated 30.12.2019 in itself revealed that the same was granted in a mechanical and routine manner without any application of mind, i.e. as an idle formality/empty ritual on the part of the approving authority. Elaborating on his contention, the Ld. AR averred that a common approval in 33 cases was granted by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019 for four different assessees. Apart from that, the Ld. AR submitted that a perusal of the approval dated 30.12.2019 in itself revealed that the Jt. CIT had not looked into the "draft assessment order" in the backdrop of the seized records and had merely presumed that the needful would have been done by the A.O. The Ld. AR to fortify his aforesaid contention had drawn our attention to Para 3 of the approval u/s. 153D of the Act, dated 30.12.2019. The Ld. AR submitted that a

similarly worded approval that was granted by the Jt. CIT, Range-Central, Raipur had been quashed by the Tribunal, for the reason that the perfunctory approval of the Jt. CIT suffered from non-application of mind and was left dependent on a presumption of proper performance of duty by the A.O. Our attention was drawn to the orders passed by the Tribunal in the cases of, viz. (i) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA No.244, 245/RPR/2019 dated 27.03.2023, Page No.155 to 165 of APB; (ii) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA No.246/RPR/2019 dated 17.09.2021, Page No. 155 to 165 of APB; (iii) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA Nos. 240 to 243/RPR/2019 dated 27.03.2023, Page No. 166 to 176 of APB; and (iv) Akshata Realtors P. Ltd. Vs. ACIT, IT(SS)A No.9/RPR/2018 dated 27.03.2023, Page No.131 to 154 of APB.

30. Apart from that, the Ld. AR submitted that as per Section 153D of the Act, the approving authority is required to apply independent mind to the seized material for "each assessment year" in respect of "each assessee" separately. The Ld. AR took us through Section 153D of the Act. The Ld. AR in support of his aforesaid contention had relied upon the judgments of the Hon'ble High Court of Allahabad in the case of Pr. CIT Vs. Sapna Gupta (2023) 147 taxmann.com 288 and Pr. CIT Vs. Siddharth Gupta (2023) 450 ITR 534 (All. HC), and that of the Hon'ble High Court of Delhi in the case of Pr. CIT Vs. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Del.HC). Also, the Ld. AR in support of his contention that in case

approval was granted in a mechanical manner without application of mind by the Addl./Jt. CIT, then the same vitiated the assessment order, had relied upon the judgment of the Hon'ble High Court of Orissa in the case of ACIT Vs. Serajuddin & Co. (2023) 454 ITR 312(Orissa). The Ld. AR further submitted that a mechanical approval without application of mind by the Addl./Jt. CIT would be invalid in the eyes of law. The Ld. AR in support of his contention had relied on the judgment of the Hon'ble High Court of Delhi in the case of Pr. CIT-(Central)-2 Vs. Anuj Bansal (2024) 165 taxmann.com 2 (Del.). The Ld. AR further submitted that the "Special Leave Petition" (SLP) filed by the revenue in the aforementioned case had been dismissed by the Hon'ble Apex Court vide its order passed in the case of Pr. CIT Vs. Anuj Bansal (2024) 165 taxmann.com 3 (SC).

31. Elaborating further on his contention, the Ld. AR submitted that as in the present case the approval u/s.153D of the Act was mechanically granted by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019 without any independent application of mind, and on a presumption of proper performance of duty by the A.O, thus, such perfunctory approval so granted by him could not be termed as legitimate. The Ld. AR once again had drawn our attention to the contents of the approval letter dated 30.12.2019 (supra), wherein the Jt. CIT, Range-Central, Raipur by referring to an office letter No. F No. Jt.CIT(Central)/RPR/Draft Assessment order/2016-17, dated 09.09.2016,

had stated that it is presumed that the A.O had, viz. (i) given proper opportunity of hearing to the assessee; (ii) thoroughly verified the seized material; and (iii) satisfied himself on all the issues emanating from the record and additions wherever required had been proposed; therein granted the impugned approval and directed the A.O to act accordingly. The Ld. AR submitted that the aforesaid letter dated 30.12.2019 (supra) revealed beyond doubt that the Jt.CIT without carrying out any verification of the seized material and independently applying his mind to the records before him, had based on a presumption that whatsoever needful was required to be done by the A.O must have been done by him granted the approval u/s. 153D of the Act.

32. Apart from that, the Ld. AR submitted that the final assessment order passed by the A.O u/s. 143(3) r.w.s. 153A, dated 30.12.2019 was not the one that was proposed by the A.O vide his "draft assessment order", and was forwarded by him vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur for approval u/s.153D of the Act, and was approved by the latter vide his letter 30.12.2019. Elaborating on his contention, the Ld. AR submitted that the A.O after forwarding the "draft assessment order" on 26.12.2019 had thereafter continued with the assessment proceedings. Carrying his contention further, the Ld. AR submitted that the A.O had received a letter dated 27.12.2019 from the Registered/Department Valuer, viz. M/s. Frontline Consultants Pvt. Ltd.,

Raipur, wherein the latter had commented on the objections to his valuation as were earlier filed by the assessee company. Further, the A.O on 27.12.2019 had issued a letter to the assessee company and directed it to submit its reply regarding the comments of the Registered/department Valuer, viz. M/s.Frontline Consultants Pvt. Ltd. by 28.12.2019 (upto 02.00 pm). Also, a "Show Cause Notice" ("SCN"), dated 27.12.2019 was issued by the A.O to the assessee company therein calling upon it to put forth an explanation that as to why an addition of Rs.1,61,42,749/- towards difference in value of stock may not be made in its case u/s. 69 of the Act by 28.12.2019 (upto 2.00 pm). The Ld. AR submitted that the assessee company in response to the letter dated 27.12.2019 (supra) of the A.O had submitted its reply on the same date, i.e. on 27.12.2019. Referring to the aforesaid facts, the Ld. AR submitted that now when the A.O had forwarded the impugned "draft assessment order" for approval to the Jt. CIT, Range-Central, Raipur on 26.12.2019, therefore, it is incomprehensible that as to how he had thereafter continued with the assessment proceedings. The Ld. AR submitted that it is not the case of the department that another "draft assessment order" incorporating the facts, viz. (i) receipt of report of the departmental valuer on 27.12.2019 ; (ii) letter dated 27.12.2019 issued by the A.O to the assessee company therein calling upon it to file its reply on the same date, i.e. 27.12.2019 (upto 5.00 pm); (iii) "Show cause Notice" (SCN), dated 27.12.2019 issued by the A.O to

the assessee company directing it to submit its reply as to why an addition of Rs.1,61,42,749/- towards difference in value of stock may not be made in its case u/s. 69 of the Act by 28.12.2019 (upto 2.00 pm); and (iv) the reply filed by the assessee company on 27.12.2019, was once again forwarded by the A.O to the Jt. CIT, Raipur, Range-Central, Raipur for his approval u/s. 153D of the Act. The Ld. AR to fortify the aforesaid factual position had drawn our attention to the relevant papers of the assessee's "Paper Book" filed for A.Y.2018-19, viz. receipt of report of the government valuer on 27.12.2019 (Page 160 of APB for A.Y.2018-19), letter dated 27.12.2019 issued by the A.O calling upon the assessee company to file its reply regarding the comments/letter of the registered/department valuer, viz. M/s. Frontline Consultants Pvt. Ltd. by 27.12.2019 (upto 5.00 pm), Page 159 of APB for A.Y.2018-19, "Show Cause Notice" dated 27.12.2019 issued by the A.O to the assessee company directing it to file its reply to the letter/comments of the registered/government valuer, viz. M/s. Frontline Consultants Pvt. Ltd. dated 27.12.2019 till 28.12.2019 (upto 2.00 pm), (Page 159A of APB for A.Y.2018-19); and the reply filed by the assessee company to the valuation report on 27.12.2019 (Page 157-158 of APB for A.Y.2018-19). Also, the Ld. AR had drawn our attention to Page 173 of APB/Page 156-158 of the CIT(Appeals)'s order, wherein the chronology of the events/developments subsequent to forwarding of the impugned assessment order on 26.12.2019 was charted out by the

assessee company in the course of proceedings before the first appellate authority, as under:

'Table-A'

Sequence of events	Submission/ reply/ compliance made by the assessee-Co
8-11-18	Copy of audited financial statement for AY12-13 to 18-19 (copy enclosed.....)
10-12-19	Reply for AY12-13 to 18-19- against notice u/s142(1) dt.3-9-19 (copy enclosed.....)
12-12-19	Written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.15-10-19; (copy enclosed.....)
16-12-19	Written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.15-10-19; (copy enclosed.....)
24-12-19	Written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.15-10-19; (copy enclosed.....)
25-12-19	ROI u/s153A filed for AY09-10 to AY11-12; (copy enclosed.....)
26-12-19	On 26-12-19, AO has issued notice u/s143(2) for AY09-10 to AY11-12; and time allowed to the assessee up to 5.00 PM on the same date on 26-12-19; (copy enclosed.....)
26-12-19	On 26-12-19, AO has sent copy of 'draft assessment order' for AY09-10 to AY18-19 to the office of the Jt.CIT, Central, Raipur vide a letter dt.26-12-19; (copy enclosed.....)
26-12-19	On 26-12-19, that letter dt.26-12-19 has been received at the office of the Jt.CIT, Central, Raipur; (copy enclosed.....)
27-12-19	On 27-12-19, the 'Departmental Valuer' (M/s. Frontline Consultants P.Ltd, Raipur) has submitted reply for the valuation report of P&M; valuation of inventories at different location of the assessee-Co, before the DCIT, Central-2, Raipur (i.e., the AO); (copy enclosed.....)
27-12-19	On 27-12-19, the Id AO (the DCIT, Central-2, Raipur) has issued a letter to the assessee-Co to give/ submit reply with time allowed up to 28-12-19 2.00PM with respect to the alleged 'valuation report' submitted by the Departmental Valuer (M/s. Frontline Consultants P.Ltd, Raipur) to the Id AO on 27-12-19 itself; means, the Id AO has issued notice/query on 27-12-19 and given an opportunity to the assessee to submit reply/ explanation up to 28-12-19 against the 'valuation made' by the 'Departmental Valuer', of the P&M & Inventories of the assessee-Co as on the date of search on 24-10-17, (copy enclosed.....)
27-12-19	On 27-12-19, the assessee-Co has submitted counter reply/ written submission as against the letter/ query dt.27-12-19 by the Id AO in respect of the 'valuation report of P&M & inventories' as submitted by the 'Departmental valuer' (M/s. Frontline Consultants P.Ltd, Raipur) before the AO on 27-12-19 itself; (copy enclosed.....)
	How it is possible to send the 'draft assessment order' for AY09-10 to AY18-19 on 26-12-19 to the Office of the Id Jt.CIT as alleged by the Id AO/ Id Jt.CIT, when the 'valuation report' has been submitted by the 'Departmental valuer' (M/s. Frontline Consultants P.Ltd, Raipur) before the

M/s.NR Ispat & Power Pvt Ltd
AY10-11

	<p>ld AO only on 27-12-19, and thereafter, the ld AO, on that basis, <u>issued query on 27-12-19</u> to the assessee to explain his case up to <u>28-12-19</u> and thereafter, the assessee <u>has submitted replies</u> before the ld AO on 27-12-19, it means, the assessment proceedings before the ld AO <u>was certainly going on at least up to the 28-12-19</u>, and <u>thereafter only</u>, the ld AO <u>would be able to prepare a consolidated 'draft assessment order'</u> for the <u>AY09-10 to 18-19</u> and <u>then only</u>, it would be sent to the ld Jt.CIT for his approval; these all things clearly prove that the 'draft assessment order' has been approved by the ld Jt.CIT <u>without application of mind and in a most mechanical manner; in hasty manner without even going through the records; on merely office formality;</u></p>
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Carrying his contention further, the Ld. AR submitted that the subsequent developments which in turn were based on the proceedings carried out by the A.O from 27.12.2019 till 28.12.2019, i.e. after forwarding the impugned "draft assessment order", had resulted to a final assessment order, dated 30.12.2019 that was substantially different from the "draft assessment order".

33. The Ld. AR to fortify his contention had carried out a conjoint reading of the "draft assessment order" vis-à-vis the final assessment order, dated 30.12.2019. The Ld. AR had placed on record his written submissions dated 05.06.2024, wherein he had pointed out the detailed instances of difference between the consolidated "draft assessment order" that was forwarded by the A.O to the Jt. CIT, Range-Central, Raipur under his covering letter dated 26.12.2019 and the consolidated final assessment

order passed by him u/s. 143(3) r.w.s. 153A/143(3) of the Act, dated 30.12.2019.

34. The Ld. AR submitted that as there were glaring differences between the "draft assessment order" (copy of which was provided by the Ld.CIT-DR in the course of hearing of the appeal) and the final assessment order passed by the A.O u/s. 143(3) of the Act, dated 30.12.2019, therefore, it could safely be concluded that the consolidated final assessment order passed by the A.O, i.e. DCIT, Central Circle-2, Raipur for A.Y.2009-10 to 2018-19 was the not the one that was approved by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019. The Ld. AR submitted that as the final assessment order, dated 30.12.2019 was not the same that was approved by the Jt. CIT, Range-Central, Raipur vice his letter dated 30.12.2019, therefore, the assessment framed by the A.O could not be sustained and was liable to be struck down for want of valid assumption of jurisdiction. The Ld. AR in support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013, wherein the Hon'ble High Court had observed that in a case where the Jt.CIT had no occasion to consider changes that were incorporated by the A.O in the final assessment order, then it was to be held that the impugned assessment order had been passed without approval of the concerned authority as required per the mandate of law.

Also, the Ld. AR had drawn support from the order of the ITAT, Pune in the case of BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023. The Ld. AR submitted that the Tribunal in its aforesaid order taking cognizance of the fact that the A.O after obtaining approval of the Jt. CIT u/s.153D of the Act, had carried out certain rectification /improvements and passed the final assessment order, observed that the same was to be held as having been passed without obtaining the approval as per the mandate of law.

35. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the CIT(Appeals), to the extent he had rejected the assessee's claim that the order of assessment passed by the A.O stood vitiated in absence of a valid approval u/s. 153D of the Act. The Ld. DR submitted that as the Jt. CIT, Range-Central, Raipur had granted a valid approval u/s. 153D of the Act, dated 30.12.2019, therefore, the final order of assessment that was passed by the A.O after satisfying the said statutory obligation did not suffer from any infirmity. Rebutting the Ld. AR's contention that as the Jt. CIT had mechanically granted the approval without any independent application of mind on the seized material, the Ld. DR submitted that as the Jt. CIT had granted the approval, therefore, it could safely be concluded that the order of assessment passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 did not suffer from any infirmity. The Ld. DR in support of his aforesaid contention had relied on

the order of the Hon'ble High Court of Chhattisgarh in the case of Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur, TAXC No.88 of 2024, dated 16.04.2024. The Ld. DR had further relied on the consolidated report of the A.O dated 08.09.2023 on the aforesaid issue, wherein he had rebutted the assessee's claim that the A.O in absence of a valid approval having been granted by the Jt. CIT, Range-Central, Raipur had wrongly assumed jurisdiction and framed the impugned assessment vide his order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019, which reads as under:

NR Ispat & Power Pvt. Ltd. (PAN- AACCN6591Q) AY 2010-11

Report on Ground of Appeal raised by the appellant M/s N.R. Ispat & Power Pvt. Ltd regarding legal issue raised that JCIT has granted approval in mechanical and routine manner without application of mind in hasty manner.

1. The assessee company is mainly engaged in the business of manufacturing and trading of sponge iron and mild steel (MS) ingots under the flagship entity M/s. N. R. Ispat and Power Pvt. Ltd., Raigarh. The head of the business group is Sanjay Kumar Agrawal, who is one of the directors of the assessee company.
2. Search and seizure action u/s 132 of the IT Act, 1961 was conducted at the business premises of M/s N. R. Group on 24/10/2017.
3. Consequently, notice u/s 153A of the Act dated 18/07/2019 was issued. Subsequently, assessment order under section 153A read with section 143(3) of the Income Tax Act, 1961 was passed on 30/12/2019 for the A.Ys. 2009-10 to 2017-18 and under section 143(3) of the Act for A.Y. 2018-19.
4. The AO made addition of Rs.5,75,00,000/- in AY 2010-11 on account of bogus share capital/premium received from Kolkata based shell companies in books of assessee M/s N. R. Ispat and Power Pvt. Ltd. And passed assessment order with the prior approval of the Joint Commissioner of Income Tax (Central), Raipur (C.G) communicated vide letter in F.No.JCIT(C)/RPR/153D/2019/348 dated 30-12-2019.
5. Approval granted u/s 153D of the IT Act has been challenged by the appellant on the ground that JCIT has granted approval in mechanical and routine manner without application of mind in hasty manner. The ground of appeal of the assessee is as under :-

“On the facts and circumstances of the case and the in law, the Ld CIT(A) has erred in denying the legal issue raised that **approval granted u/s 153D** by the Jt. CIT is in mechanical & routine manner without application of mind by the Jt CIT in a hasty manner, merely a formality, on empty ritual & without considering the 4th proviso to 153A, Expl.2, in absence of a valid approval as mandated by law u/s 153D as per sec.

152B(1)(a): assessment made u/s 153A rws 143(3) would be invalid, bad in law & non-est and is liable to be quashed."

Approval in terms of the provisions of Section 153D of the Act

1. The approval by the Joint CIT, Central, Raipur, has not been granted on the same/very next day of submission of draft assessment order thus challenging by the assessee that JCIT has granted approval in mechanical and routine manner without application of mind in hasty manner is not acceptable. In the letter approving the draft assessment order, it is mentioned that *"Further, in view of this office letter No. JCIT(C)/RPR/153D/2019-20/348 dated 30-12-2019 it is presumed that the AO has*
 - *"Given proper opportunity of hearing has been given to the assessee*
 - *Thoroughly verified the seized material and that there are no adverse findings*
 - *Satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed"*

this itself shows that the Range Head was specifically supervising the Assessing officer in this case and just two months back JCIT central as part of supervision, issued the letter to AO. Further the approval letter dated 30-12-2019 (last para) of Range head clearly shows that case record (which comprises various notices issued, replies of assessee, seized material etc) were returned to the AO after approval". From records, it is clear that approval was granted by the range head on 30-12-2019 i.e. after 04 days of letter dated 26-12-2019 written by the AO seeking approval. Hence, challenge made by the assessee before the Hon'ble ITAT that the approval has been granted in mechanical and routine manner without application of mind in hasty manner is not correct.
2. As regards the non-application of mind before going through the entire material & case records, it needs to be emphasized that every income tax officer in general is

very used to critically analysing hundreds of pages of dense legal material on a daily basis & in central charges specially going through the huge record, data, material is a routine matter on daily basis. In present case context, a range head is a senior officer and is eminently capable of carefully considering several hundred pages in a day. In fact, it a primary requirement of his / her job.

3. So far as the consultation / monitoring with the Range head is concerned, the approval by the Range head u/s 153D in all search cases, is merely administrative in nature. While giving such administrative approval, the Range head does not act as an appellate authority to allow or disallow the additions proposed by AO.
4. The CBDT Circular No. 3 of 2008 dated 12.3.2008, vide which the legislative intent may be gathered for enactment of new Sec. 153D, has only prescribed that assessment of search cases orders of assessment and reassessment are to be approved by the Joint Commissioner. Nowhere under the scheme of Sec. 153D, has the procedure and manner of granting approval u/s 153D been prescribed. Therefore, the approval u/s 153D by supervisory authority is merely administrative in nature to safeguard internal checks and balances without affecting the quasi-judicial powers of the AO or creating any prejudice to assessee.
5. Approval u/s 153D is therefore purely an administrative function performed by Joint CIT, which is also borne out from the fact that the Joint. CIT can give directions to make assessment in a particular manner only u/s 144A of I T Act, which has not been invoked in this case. Both provisions u/s 153D and u/s 144A operate in different domains and are for different purposes, which further strengthens the position of law that 153D approval is only administrative in nature intended to ensure that there was no jurisdictional error or illegality or violation of principles of natural justice and that the procedural requirements are duly met before the assessment order is passed by AO.

6. In the Sahara Credit Cooperative IT(SS)A No.09/RPR/2018 23 Society Ltd. Vs DCIT/ACIT (supra) adjudicated by Hon'ble Allahabad High Court as this case discusses about the communication of approval in whatever mode. On the other hand, in the instant case, approval was granted by Ld JCIT (Central) Raipur not only in written mode but also in oral mode from time to time.
7. In the realm of administrative approval as contemplated u/s 153D, the preliminary satisfaction of Range Head requires only to the extent that the AO has looked into all seized material and has given opportunity to assessee by confronting the evidences and the additions proposed are based on one of the plausible interpretations. The Range Head here does not enter into the realm of deciding whether the additions proposed by AO is legally sustainable or not as Range Head does not enter into the role of adjudication of merits of the addition as he does u/s 144A or as appellate authority, which has been separately provided under the Act.
8. The fact that judicial review of administrative function is limited and applicable only if the decision suffer from the vice of illegality, irrationality or procedural impropriety has been held by the Hon'ble Supreme court in the judgment of **Municipal Council, Neemuch vs Mahadev Real Estate & Others (Civil Appeal Nos. 7319-7320 of 2019)**. Therefore, there was no jurisdictional error or illegality or violation of principles of natural justice while giving approval u/s 153D as it did not further worsen the case of assessee than what was proposed by AO in the draft assessment order after giving due opportunity by the AO.
9. Hon'ble Supreme court of India in **Deepak Agro Foods Vs State of Rajasthan &Ors (2008)** observed that in the light of the settled law, the assessments orders could not be held to be null and void on account of the stated irregularities and in case of an irregularity in assessment proceedings by the officer, at best, it was an illegality, which defect is capable of and can be set aside the order. The Hon'ble court also added that Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit in as much as the

assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not stricto sensu apply to assessment proceedings. There is a clear distinction between a "null and void" order and an "illegal or irregular" order. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal.

In the instant case also the approval of JCIT Central Raipur doesn't make the assessment order itself invalid, bad in law & non-est and is liable to be quashed as challenged by the assessee.

10. In **Commissioner of Income Tax vs Bharatkumar Modi (2000)**, Hon'ble Bombay High court opined that a proceeding is a nullity when the authority taking it has no power to have seize in over the case. The omission of the assessing officer, in the present case, to confront the assessee with the material in his possession does not affect the ab initio jurisdiction enjoyed by the assessing officer in respect of the above proceedings.

11. Courts have even approved the service of notices / orders through emails or even social media such as WhatsApp etc. Hence, there can be no specific requirement for Range Head also to be physically present at the station where assessment records are physically available to be able to apply his / her mind on relevant material before granting the approval u/s 153D to the draft assessment order proposed by the AO. It is also not the case that the supervisory authority comes to know of the facts / details of assessment proceedings in any case only at the time when it receives the draft order from AO seeking approval u/s 153D. The entire process of monitoring is a continuous process even before the receipt of draft order seeking the final approval u/s 153D.

This aspect has indeed been emphasized in the approval in the present case where the approval letter states that **"the cases have also been discussed with you (AO) from time to time"**. From the above, it may be seen that it was not

merely one time approval of the assessment order, but it was the result of constant monitoring, supervision and discussion regarding the progress made in the assessment proceedings, which finally resulted in approval of the order.

12. Approval by Joint CIT Central range Raipur was in "normal course of duty" as the range head and assessing officer of Central charge (where only search related assessment are done) discuss the cases on a routine basis and continuous & regular monitoring of assessment proceeding is done by range head from day one. Thus, the word 'Presumed' mentioned in approval letter dated 30-12-2019 should be interpreted in that context only.
13. Perusal of the approval letter dated 30-12-2019 also shows that range head returned the case record of the case along with the impugned approval letter which shows that the range head after applying his mind & going through the case records granted approval as desired by DCIT(C) - 2 Raipur with his letter dated 26-12-2019 (i.e. 04 days before) granting approval to the A.O.
14. Above logic also gets strength from the fact that since the day assessment proceedings starts, not only the A.O. but the range head also is given one original copy of appraisal report by the Inv. authorities so that the range head officer going through the same supervises and guides the A.O. on regular basis. Appraisal report, questionnaire & draft assessment order on record also discuss the seized material in detail which were with the range head for considerable period.
15. In the instant case, Approval of JCIT(Central)Raipur which is only administrative in nature and is open for Judicial review in a limited way. Such judicial review is applicable only if the decision suffers from the vice of illegality, irrationality or procedural impropriety has been held by the Hon'ble Supreme court in the judgment of **Municipal Council, Neemuch vs Mahadev Real Estate & Others (Civil Appeal Nos. 7319-7320 of 2019)**.
16. The challenge of the assessee regarding approval granted mechanical and routine manner without application mind while granting approval u/s 153D to the draft

assessment order is not correct, since the approval u/s 153D was only administrative in nature to ensure that order approved did not suffer from any vice of illegality, irrationality or procedural impropriety and such approval has duly met the requirement of law”.

17. Therefore, in view of all the facts & circumstances of the case, the ground of appeal raised by the assessee company for the A.Y. 2010-11 that JCIT has granted approval in mechanical and routine manner without application of mind in hasty manner is not acceptable.

42/15
04-09-2023
(Pradeep Kumar Swarnakar)
Assistant Commissioner of Income-tax
Central Circle, Bilaspur

(C) RE: On merits:

36. The Ld. DR has assailed the order of the CIT(Appeals) on the ground that the latter had grossly erred in law and facts of the case in deleting the addition of Rs.5.75 crore made by the A.O u/s. 68 of the Act regarding bogus share capital/premium received by the assessee company from Kolkata based paper/shell companies. Elaborating on his contention, the Ld. DR submitted that as the assessee company during the subject year had allegedly received share application money/share capital/share premium of Rs.5.75 crore from two investor companies, viz. (i) M/s. Prithivi Dealcom Pvt. Ltd. : Rs.3.45 crore; and (ii) Shri Shyam Ply Traders Pvt. Ltd. : Rs.2.30 crore, which were proved to be paper/shell companies

not actively engaged in any business, therefore, there was no justification for the CIT(Appeals) to have vacated the said addition. The Ld. DR submitted that Shri Amit Chanda, director of M/s. Prithvi Dealcom Pvt. Ltd. in his statement recorded by the DDIT (Inv.), Unit-IV (2), Kolkata on 05.06.2014, had admitted in reply to Question No.3 that he was engaged in the job of a dummy director as per the dictates of Shri Amit Dalmiya, an infamous accommodation entry provider. Also, the Ld. DR submitted that Shri Amit Dalmiya (supra) had in his statement recorded by the DDIT (Inv.), Unit-IV (2), Kolkata on 05.06.2014 and 31.03.2015, inter alia, admitted that he was involved in the business of providing accommodation entries in lieu of commission income. Also, Shri Amit Dalmiya (supra) had in his statement admitted that Shri Amit Chanda (supra) as per his dictates was providing services as a dummy director in various companies that were managed by him for providing accommodation entries. The Ld. DR had further drawn our attention to the financial statements of the aforementioned investor companies which revealed that the same over the years, i.e. F.Y.2011-12 to F.Y. 2017-18 were not engaged in any business activities. Also, the Ld. DR submitted that the aforementioned investor companies had disclosed very nominal income under the head "miscellaneous"/"other incomes" in their respective returns of income. Apart from that, the Ld. DR submitted that nominal expenses were claimed by the said companies in a routine manner over the years under the head

audit fees, consultancy fees, ROC expenses and other expenses etc. Referring to the balance sheets of the investor companies, the Ld. DR submitted that the same revealed the peculiar features of paper/shell companies. Elaborating on his contention, the Ld. DR submitted that the balance sheets of the investor companies revealed substantial amounts of share capital, reserves and surplus, current liabilities which were found invested in non-current or current assets. Also, the Ld. DR had drawn our attention to the fact that the beneficiaries of the aforementioned investor companies were the group entities of the assessee company. The Ld. DR submitted that the onus cast upon the assessee company as regards proving the identity and creditworthiness of the investor companies as well as the genuineness of the transactions of receipt of share application money/share capital/share premium from them was not discharged. The Ld. DR submitted that a careful perusal of the bank accounts of the investor companies revealed that immediately before the subject investments with the assessee company an equivalent amount was transferred in their bank accounts. It was submitted by him that in case where an excess amount had come in the bank accounts of the investor companies, then the amount in excess of the investment with the assessee company was routed/diverted to other beneficiaries, i.e. the group entities of the assessee company. The Ld. DR submitted that the investor companies were worthless companies which were not involved in any

business activities. Also, the Ld. DR to fortify his claim that the investor companies were paper/shell companies had drawn support from the fact that though they were holding substantial stakes in the assessee company but were neither involved in its management nor were in receipt of any revenue by way of dividend. It was submitted by him that merely for the reason that the investments made by the investor companies were channelized through banking channel was not sufficient to substantiate the authenticity of the assessee's claim of having received genuine share application money/share capital/share premium from the said companies. The Ld. DR had relied on the observations of the A.O that the investor companies were paper/shell companies which had facilitated the routing of the unaccounted income of the assessee company in the garb of share application money/share capital/share premium back to the latter's coffers.

37. The Ld. AR rebutted the contentions advanced by the department's counsel. It was submitted by the Ld. AR that the CIT(Appeals) had based on a well-reasoned order dislodged the adverse inferences that were drawn by the A.O as regards the authenticity of the assessee's claim of having received genuine amount of share application money/share capital/share premium from the subject investor companies during the year in question.

38. We have heard the Ld. authorized representative of both the parties at length, perused the orders of the lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

39. As the Ld. AR has assailed the validity of the jurisdiction assumed by the A.O for framing the assessment/making the impugned additions vide his order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 based on two grounds, viz. (i) that the A.O in absence of any incriminating material found during the course of search proceedings for the subject year, i.e. A.Y.2010-11, could not have made any addition as regards the unabated assessment proceedings of the assessee company for the said year; and (ii) that the A.O in absence of a valid approval u/s.153D of the Act granted by the Jt. CIT, Range-Central, Raipur had wrongly assumed jurisdiction and framed the assessment vide his order passed u/s.143(3) r.w.s 153A of the Act, dated 30.12.2019; therefore, we shall first deal with the same.

40. We shall first advert to the contentions of the Ld. AR that the A.O in absence of any incriminating material found during the course of search & seizure proceedings conducted u/s.132 of the Act on the assessee company on 24.10.2017, could not have made any addition while framing

the assessment for the said year, i.e. A.Y.2010-11 which was unabated as on the date of search.

41. Admittedly, after the judgment of the **Hon'ble Supreme Court** in the case of **Pr. CIT, Central-3 Vs. Abhisar Buildwell (P) Ltd, (2023) 454 ITR 212 (SC)**, the issue that in respect of an unabated assessment, no addition can be made by the A.O in absence of incriminating material found for the subject year during the course of search & seizure proceedings u/s.132 of the Act or requisition u/s.132A of the Act is no more *res-integra*. For the sake of clarity, the observations of the Hon'ble Apex Court on the aforesaid issue are culled out as under:

"5. We have heard learned counsel for the respective parties at length.

The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under Section 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132A, the assessment has to be done under Section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence

of any incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr. Commissioner Of Income Tax v. Mehndipur Balaji, 2022 SCC OnLine All 444 : (2022) 447 ITR 517 has taken a contrary view.

7.1 In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

38. 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 153A(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."

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) and after considering the entire scheme of block assessment under Section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or

reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub- section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT (supra)*, the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla (supra)* and the Gujarat High Court in the case of *Saumya*

Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961. The erstwhile scheme of block assessment under Section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Section 153A of the Act reads as under:

"153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any

assets are requisitioned under Section 132-A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;

(b) 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:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, Section 153-

B and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.”

11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the ‘total income’ in respect of each assessment

year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/148 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which

is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

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

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

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

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021

15. Insofar as the aforesaid Civil Appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under Section 143(1)(a) or 143(3) of the Act, 1961 and to re- assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

Civil Appeal Nos. 15617/2017, 10267/2017, 10266/2017 & 10268/2017

16. Insofar as the aforesaid appeals filed by the assessee – Dayawanti through legal heir against the impugned common judgment and order dated 27.10.2016 passed by the High Court of Delhi at New Delhi in ITA Nos. 357/2015, 358/2015, 565/2015 and 566/2015. The question before the High Court was, whether the Income Tax Appellate Tribunal was justified in upholding the addition made on the basis of the incriminating material during the course of search.

16.1 In view of the aforesaid discussion and the reasoning, all these appeals filed by the assessee – Dayawanti through legal heir fail and the same deserve to be dismissed and are accordingly dismissed. No costs."

42. Controversy involved in the present appeal in the backdrop of the settled position of law laid down by the Hon'ble Apex Court in the case of Pr. CIT, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra) boils down to two fundamental aspects, viz. **(A)** that as to whether or not assessment proceedings in the case of the assessee company for A.Y.2010-11 were unabated as on the date on which search & seizure proceedings u/s. 132 of the Act were conducted on it, i.e. on 24.10.2017; and **(B)** that as to whether or not any incriminating material pertaining to the subject year, i.e. A.Y.2010-11 was found in the course of the search & seizure proceedings conducted on the assessee company.

(A). Re: As to whether assessment proceedings in the case of the assessee company were unabated as on the date on which search & seizure proceedings u/s.132 of the Act were conducted on the assessee company i.e. on 24.10.2017

43. Admittedly, it is an undisputed fact that assessment proceedings in the case of the assessee company for the subject year, i.e. A.Y.2010-11 on the date of search i.e. on 24.10.2017 were unabated. On this aspect, neither anything to the contrary is discernible from the record nor any contention disputing the said factual position had been raised before us by the Ld. CIT-DR or stated in the report filed by the A.O.

(B). Re: As to whether any incriminating material pertaining to the subject year, i.e. A.Y.2010-11 was found in the course of search & seizure proceedings.

44. We shall, thus, narrow down to the solitary issue that survives for adjudication i.e. as to whether or not any incriminating material for the year under consideration was found in the course of the search & seizure proceedings conducted on the assessee company u/s.132 of the Act on 24.10.2017?

45. We have thoughtfully considered the observations of the first appellate authority in the backdrop of those recorded by the A.O. Before proceeding any further, we may herein observe that the assessee company in the course of the assessment proceedings vide its reply dated 24.12.2019, had assailed before the A.O the validity of the jurisdiction that was assumed by him for making additions while framing the assessment u/s.153A of the Act. Although, it was the claim of the assessee company that as no incriminating material was found in the course of the search proceedings, therefore, the A.O was divested of his jurisdiction to make any addition regarding its unabated assessment for the year under consideration but the same was summarily rejected by the A.O. The A.O, was of the view that an assessment u/s.153A of the Act was not dependent upon finding of any incriminating material in the course of search proceedings. Ostensibly, the A.O while framing the assessment had concluded that any addition/disallowance could validly be made in proceedings u/s.153A of the Act and was not to be limited to the incriminating seized material even where the assessment in the case was

previously framed u/s. 143(3) of the Act. We are unable to persuade ourselves to concur with the aforesaid view of the A.O. The aforesaid observation of the A.O is not found to be in conformity with the judgment of the **Hon'ble Supreme Court** in the case of **Pr. CIT, Central-3 Vs. Abhisar Buildwell (P) Ltd. (2023) 454 ITR 212 (SC)** as had been deliberated upon by us at length hereinabove.

46. At this stage, we may herein observe that the departmental representative in the course of proceedings before the Tribunal cannot be permitted to improve upon the assessment order, and can only support the same. Although it is the claim of the Ld. DR that incriminating material was unearthed in the course of search & seizure proceedings conducted on the assessee company but the said fact does not emanate from the assessment order. On the contrary, the A.O while framing the assessment had observed that additions/disallowances can validly be made while framing the assessment u/s. 153A of the Act irrespective of the fact that no incriminating material for the subject year was found in the course of the search proceedings. Although the contention of the Ld. DR as had been canvassed before us, i.e. incriminating material was found in the course of the search & seizure proceedings conducted u/s. 132 of the Act on the assessee company does not emanate from the assessment order, but in all fairness, and for the sake of completeness, we shall hereinafter deal with the same.

47. Apropos the issue in hand, i.e. as to whether or not any incriminating material was found in the course of search & seizure proceedings conducted on the assessee company on 24.10.2017, we find that the CIT(Appeals) had observed that the A.O had mentioned at Para 3 of the assessment order that various books of accounts, documents, loose papers were seized during the course of search and seizure proceedings conducted on the assessee company. The CIT(Appeals), further observed that the assessee company in compliance to notice u/s. 153A of the Act, had filed its return of income for the year under consideration, i.e. A.Y.2010-11. Also, it was observed by him that the assessee company had thereafter from time to time participated in the assessment proceedings and filed written submissions along with supporting documents with the A.O. The CIT(Appeals) observed that as the assessee company had filed its return of income in response to the notice u/s. 153A of the Act, and also participated in the assessment proceedings, therefore, it could not thereafter claim that the issue of notice u/s. 153A of the Act for the year under consideration was not in order. Accordingly, the CIT(Appeals) was of a firm conviction that the issuance of notice u/s.153A of the Act by the A.O for the year under consideration, i.e. A.Y.2010-11 was in order. Also, the CIT(Appeals) had observed that a perusal of the assessment order revealed that during the course of search and seizure operations, books of account, documents and loose papers were seized. The CIT(Appeals) was of

the view that as books of accounts, documents and loose papers seized during the course of search & seizure proceedings were incriminating material, therefore, no infirmity did emerge from the additions that were made by the A.O based on the same. As such, the CIT(Appeals) found no merit in the claim of the assessee company that in absence of any incriminating material found in the course of search proceedings, no addition could have been validly made as regards the unabated assessment for the subject year wherein the assessment was unabated on the date of search, i.e. 24.10.2017. For the sake of clarity, the observations of the CIT(Appeals) on the issue in hand are culled out as under:

" Through these grounds of appeal, the appellant has challenged legality of assessment order passed by the AO. I have perused the submissions of the learned AR, the various decision cited, and the assessment order. Once the search has taken place and notices u/s.153A has been issued the jurisdiction is conferred on the assessing officer to pass assessment order to 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. The assessing officer has specifically mentioned in para 3 of the assessment order that various books of accounts, documents, loose papers were seized. The appellant assessee has filed the returns of income in response to notice u/s. 153A issued for A.Y 2009-10 to 2017-18 and the assessee filed returns of income for A.Y 2012-13 to 2017-18 on 26.10.2019 and AYs 2009-10 to 2011-12 on 25.12.2019. Shri. Amit Maloo C.A and authorized representative attended the assessment proceedings before the A.O from time to time and filled written submissions with supporting documents which were placed on record by the A.O. Regular books of accounts were also produced and checked with seized material by the A.O. Inspection and copies of all seized documents was provided by the A.O.

4.1.1 Once the assessee has participated in assessment proceedings before the A.O the appellant assessee cannot claim that issue of notice u/s.153A for A.Ys 2010-11 to 2015-16 is not in

order. Once the assessee has been put to notice and has filed returns in response to the notices and has attended the assessment proceedings, it cannot be said that issue of notice u/s 153A is not in order. It is seen that the issue of notice u/s 153A by the A.O for A.Ys. 2010-11 to 2015-16 is in order. A perusal of the assessment order shows that during search and seizure operations books of account, document, loose papers etc. were seized. Photocopies of the seized material was also provided to the assessee by the A.O. The seized documents and papers are the incriminating material on the basis of which the additions have been made. In view of the above, the ground taken by the appellant that no incriminating material is found and the issue of notices u/s 153A for A.Y 2010-11 to 2015-16 is not justified, has no merit and is, therefore, rejected. Therefore, appeal on these grounds is **Dismissed.**"

48. Although, we find that the CIT(Appeals) had hereinabove observed that books of account, documents and loose papers etc. seized in the course of search & seizure proceedings conducted on the assessee company on 24.10.2017 were incriminating material which, thus, justified the additions made by the A.O while framing the assessment vide his order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019, but the said observation is found to be contradictory in the backdrop of the subsequent observations recorded in his order. The CIT(Appeals) at Page 383 of his order, had, inter alia, observed that no incriminating material relevant to the additions pertaining to the alleged bogus share application money that was received by the assessee company from its five group companies had been referred to by the A.O in the assessment order. Also, it was observed by him that though both the assessee company and the investor companies were covered under the search and survey operations but

nothing incriminating relating to the additions made by the A.O was found in the course of the said proceedings. In fact, the CIT(Appeals), had observed that the A.O ought to have connected the alleged bogus share application money with independent cogent evidence that the companies from whom share application money was received were involved in providing accommodation entries or the moneys emanated from the coffers of the assessee company which, thus, could prove that the latter's claim was incorrect. For the sake of clarity, the observations of the CIT(Appeals) recorded at Page 383 of his order are culled out as under:

"It is utmost important to mention that search and survey proceedings u/s 132 of the Act were carried out on the premises of the appellant alongwith investor companies and during the course of search not a single iota of doubt and evidence was found regarding the appellant's engagement in procuring bogus accommodation entry. **Nonetheless, no incriminating material relevant to the additions made has been referred by the AO which pertains to the alleged bogus share application money availed by the appellant from its five group companies which have been simultaneously assessed with same AO. It is seen that during the course of impugned assessment proceedings, the AO called for information from the assessee and the assessee in reply has filed all the desired information as sought by the AO.** However, the AO took an adverse view solely on the basis of statements recorded of the third party and on the basis of findings and observations of Investigation Wing. **It is important to note that assessee and the investor companies were covered under the search & survey operation carried out at residential and business premises of various concerns of the group from where nothing incriminating was found during the course of said search relating to the additions made by the AO.** The AO ought to have connected the alleged bogus share application money with independent cogent evidence that the companies from whom share application money was availed are involved in providing accommodation entries or the moneys emanated from the coffers of the appellant and which could prove that the claim of appellant is incorrect, which is missing in the present case of appellant. Thus, the

A.O had no locus standi to assume that the share application money received by the appellant is not genuine."

(emphasis supplied by us)

49. Be that as it may, we shall independent of the aforesaid observations of the CIT(Appeals) deliberate upon the issue as to whether or not any incriminating material pertaining to the subject year was found or unearthed in the course of the search proceedings conducted on the assessee company. We find that the **Hon'ble Apex Court** in the case of **Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra)**, while approving the view taken by the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Kabul Chowla (supra)**, had observed that the completed/unabated assessment can be interfered with by the AO while making the assessment under Section 153A of the Act only on the basis of some incriminating material found during the course of search; or requisition of documents; or undisclosed income or property discovered in the course of search which was not produced or not already disclosed or made known in the course of original assessment. The Hon'ble Apex Court had further observed that in case of an unabated assessment if no incriminating material is found, then the only remedy available with the revenue would be to initiate reassessment proceedings u/ss.147/148 of the Act subject to fulfillment of the conditions contemplated in the said

statutory provisions. For the sake of clarity, the observations of the Hon'ble Apex Court are culled out as under:

"..... Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy."

Based on the aforesaid observations of the Hon'ble Apex Court, we find that in a case of an unabated/completed assessment for the subject year, it is only where any incriminating material pertaining to the said year is found or unearthed during the course of the search proceedings that the A.O can validly assume jurisdiction for making additions while framing assessment for the said year u/s. 153A of the Act.

50. We shall now deal with the contention of the Ld. DR that "incriminating material" was found in the course of the search & seizure proceedings conducted on the assessee company. The Ld. DR had tried to

bring within the meaning of "incriminating material", viz. (a) documents seized during the course of search proceedings, i.e. (i) Page No.44 of LPS-1; and (ii) Page No.20 of LPS-1; (b) statements of directors of the investor companies recorded much prior to the search proceedings; (c) statements of Shri Sanjay Agrawal, director of the assessee company recorded u/s. 132(4) of the Act and u/s.131(1A) of the Act; and (d) insignificant creditworthiness of the investor companies to make substantial investments towards share application money/share capital/share premium with the assessee company. The multi-facet contentions of the Ld. DR on the aforesaid aspects are being dealt with as under:

(A) Re: Seized documents referred by the A.O in the assessment order:

51. Admittedly, it is a matter of fact discernible from the assessment order that the A.O had referred to two documents which were seized from the office premises of the assessee company during the course of search & seizure proceedings conducted on 24.10.2017, viz. (i) Page 44 of LPS 1; and (ii) Page 20 of LPS-1. For the sake of clarity, the scanned copies of the aforesaid seized documents are culled out as under:

Page 44-LPS-1

**M/s. N.R ISPAT & POWER PVT. LTD
DETAILS OF INFUSION OF CAPITAL**

Year	Paid-up capital	Share premium	Total
2007-08	300000	0	300000

2008-09	9610000	22690000	32300000
2009-10	9160000	105340000	114500000
2010-11	0	0	0
2011-12	12648000	145152000	157800000
2012-13	6578940	62770958	69349898
2013-14	3192470	32882441	36074911
2014-15	2384800	26232800	28617600
2015-16	154150	1695650	1849800
Total	44028360	396763849	440792209

Page 20-LPS-1

		Prithvi Deal Com Pvt. Ltd.	Shri Shyam Ply Traders Pvt. Ltd.	Unnati Commodeal Pvt. Ltd.	Chitrakoot Infonet Pvt. Ltd.	Eternity Commercial Pvt. Ltd.	Total
Sl. No.	F.Y	Amount	Amount	Amount	Amount	Amount	
1	2009-10	40500000	23000000	-	-	-	63500000
2	2010-11	38500000	13700000	12000000	-	-	64200000
3	2011-12	22300000	54200000	9000000	-	-	85500000
4	2012-13	1275000	-	69350000	15300000	13000000	98925000
5	2013-14	-	-	-	-	6500000	6500000
Grand Total		102575000	909000000	90350000	15300000	19500000	318625000

52. Apropos the seized document, viz. Page 44 of LPS-1, we concur with the Ld. AR that the amounts therein mentioned are the details of infusion of fresh share capital and share premium with the assessee company during the subject year, which were recorded in its audited financial statements filed alongwith its original return of income for the year under consideration. Our aforesaid view can safely be gathered from a conjoint perusal of "Schedule A" forming part of the "balance sheet" of the assessee

company as of 31.03.2010, Page 16 of APB and the contents of the aforesaid seized document, viz. Page 44-LPS-1. The "balance sheet" of the assessee company for the year under consideration reveals the share capital at Rs.1,90,70,000/- (as on 31.03.2010) and at Rs.99,10,000 (as on 31.03.2009) as under:

<i>" (i) Shareholders fund</i>		Year Ended 31-03-2010	Year Ended 31-03-2009
(a) Share Capital	A	<u>1,90,70,000</u>	<u>99,10,000"</u>

It transpires on a careful scrutinizing of the aforesaid "balance sheet", that infusion of fresh share capital during the subject year was Rs.91,60,000, i.e. Rs.1,90,70,000/- (as on 31.03.2010) (minus) Rs.99,10,000/- (as on 31.03.2009). We, thus, find substance in the Ld. AR's contention that the amount of Rs.91,60,000/- (supra) mentioned in the seized document, viz. Page No.44 of LPS-1 is the amount of fresh capital that was received by the assessee company during the year under consideration and was duly disclosed in its audited "balance sheet" for the subject year.

53. Apropos the amount of Rs.10,53,40,000/- mentioned in the aforesaid seized document, viz. Page No.44 of LPS-1, we find that the same is the amount that was received by the assessee company as "Share premium" during the subject year and was disclosed in "Schedule B" of its

"balance sheet" for the said year as "Security premium account" under the parent head "Reserves and surplus", Page 19 of APB, as under:

SCHEDULE B	RESERVES & SURPLUS	AS AT	AS AT
		31-03-2010	31-03-2009
<i>Securities Premium Account</i>			
	Opening Balance	22,690,000	
	Received during the year	105,340,000	22,690,000
	Profit & Loss Account	<u>4,664,660</u>	<u>326,680</u>
		<u>132,694,660</u>	<u>23016680</u>

It transpires in the backdrop of the aforesaid facts that the figure of Rs.10,53,40,000/- (supra) as mentioned in the aforesaid seized document, i.e. Page No. 44 of LPS-1 for the subject year was the amount that was received by the assessee company during the subject year as "Share premium", which was disclosed in its audited "balance sheet" that was filed along with its original return of income for the said year.

54. Based on our aforesaid observations, we are of the view that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a mention of the "share capital" and "share premium" that was received by the assessee company during the subject year, which as observed by us hereinabove were disclosed in its audited "balance sheet" for the said year, therefore, the same cannot be brought within the meaning of "incriminating material" found during the course of search proceedings. Our aforesaid view that a transaction recorded in the books of account of an assessee which had been subjected to audit and was disclosed in its

financial statements enclosed along with the original return of income, cannot be brought within the meaning of "incriminating material" found in the course of search proceedings is supported by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Param Dairy Ltd. (2021) 439 ITR 89 (Del.)**. In the case before the Hon'ble High Court, search and seizure operations u/s. 132 of the Act were carried out on the assessee group on 28.02.2024. Although, the assessee company in its return of income had claimed cash payments of about Rs.17 crores to dairy owners from whom it had purchased milk, but in the course of search proceedings, it was found that the said payments were not made to the dairy owners but to middlemen. As the cash payments made by the assessee company to middlemen were not permitted, thus, the A.O made addition of the said amount to the income of the assessee company.

55. On appeal, the Tribunal observed that since the entries of cash payments were made in the books of account of the assessee company, which had been subjected to audit and formed part of the return of income filed by the assessee company, therefore, it could not be brought within the meaning of incriminating evidence found during the course of search proceedings. On further appeal, the Hon'ble High Court approved the view taken by the Tribunal. The Hon'ble High Court, inter alia, observed that the regular books of account of the assessee company by no stretch of

imagination could be treated as "incriminating material" to form a basis for framing of the assessment u/s. 153A r.w.s. 143(3) of the Act.

56. We, thus, are of a strong conviction that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a reference of the fresh share capital of Rs.91,60,000/- (supra) and share premium of Rs.10,53,40,000/- (supra) received by the assessee company during the subject year, which were duly recorded in its audited financial statements filed along with its original return of income, therefore, by no means the same could be brought within the meaning of "incriminating material" found during the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017.

57. Apropos the seized document, viz. Page No.20 of LPS 1, it is the Ld. AR's contention that the contents of the same reveals the share application money that was received by the assessee company during the subject year from the investor companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.45 crore; and (ii) M/s. Shri Shayam Ply Traders Pvt. Ltd. : Rs.2.30 crore, and the same was duly recorded in its books of accounts.

58. Before proceeding any further, it would be pertinent to point out that the A.O while framing the assessment had, inter alia, observed that the share application money received by the assessee company for the subject year, i.e. A.Y.2010-11 was recorded in its books of account. In fact, the A.O

had observed that the assessee company in the garb of share application money stated to have been received from various Kolkata based paper/shell companies had introduced its unaccounted income in its books of account. For the sake of clarity, the observations of the A.O are culled out as under:

"4.1 During the course of search assessment, it is found that during the block period from A.Y 2009-10 to 2018-19, M/s NR Ispat & Power Pvt. Ltd has introduced its unaccounted money into the books in the form of share application money from various Kolkata Based shell companies. The rotation of money through various bank accounts and companies was carried by entry operator. An entry operator is the person who is in the business of giving accommodation entries in lieu of cash/cheque of equal amount after charging certain percentage of commission in cash. The details of shell/paper companies and year wise investment are as under:

M/s N.R Ispat & Power Pvt. Ltd.

PAN-AACCN6591Q

A.Y -2012-13 to 2018-19

Sl. No.	Sl. No.	Name of the Investor Company	F.Y	A.Y	Amount of share capital/ Premium received
1	1	Basukinath Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	2	Jealous Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	3	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	1500000
	4	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	7500000
	5	Navdurga Barter Pvt. Ltd.	2008-09	2009-10	9000000
	6	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	1500000
	7	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	5000000
	8	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	1000000
	9	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	2500000
	10	Bhagirathi Dealcom Pvt Ltd.	2008-09	2009-10	3000000
	11	Parrot Agencies and Credit Pvt Ltd.	2008-09	2009-10	12000000
	12	Brown Vinimay Pvt Ltd, Kolkata	2008-09	2009-10	5000000
	13	Fastgrow Suppliers Pvt Ltd.	2008-09	2009-10	8000000
	14	Nayan Tie Up Pvt Ltd, Kolkata	2008-09	2009-10	9500000
	15	Om Vanijya Pvt Ltd.	2008-09	2009-10	1500000
	16	Success Tour & Travels Pvt	2008-09	2009-10	4000000
Total					86000000
2	1	Prithvi Dealcom Pvt. Ltd.	2009-10	2010-11	34500000
	2	Shri Shyam Ply Traders Pvt. Ltd.	2009-10	2010-11	23000000
Total					57500000
3	1	Prithvi Dealcom Pvt. Ltd.	2010-11	2011-12	38500000
	2	Shri Shyam Ply Traders Pvt. Ltd	2010-11	2011-12	13700000
	3	Unnati Commodeal Pvt. Ltd.	2010-11	2011-12	12000000
Total					64200000
4	1	Prithvi Dealcom Pvt. Ltd	2011-12	2012-13	25900000
	2	Shri Shyam Ply Traders	2011-12	2012-13	54200000
	3	Unnati Commodeal Pvt. Ltd.	2011-12	2012-13	9000000
Total					89100000
5	1	Unnati Commodeal Pvt. Ltd.	2012-13	2013-14	69350000
	2	Prithvi Dealcom Pvt. Ltd	2012-13	2013-14	1275000
	3	Eternity Commercial Pvt. Ltd.	2012-13	2013-14	13000000
	4	Chirakoot Infonet Pvt. Ltd.	2012-13	2013-14	15300000
Total					98925000
6	1	Eternity Commercial Pvt. Ltd.	2013-14	2014-15	6500000
Total					6500000
7	1	Eternity Commercial Pvt. Ltd.	2015-16	2016-17	1250000
		Chirakoot Infonet Pvt. Ltd.	2015-16	2016-17	600000
Total					1850000

(emphasis supplied by us)

As observed by us hereinabove, it is the Ld. ARs' claim that now when the share application money received by the assessee company from the aforementioned investor companies were recorded in its books of account, it was, thus, incomprehensible as to how the same could be brought within the meaning of "incriminating material" as had been canvassed by the department's counsel. In fact, we find on a perusal of the record that the assessee company vide its submissions, dated 31.08.2020 filed with the CIT(Appeals), Page 200 of CIT(A)'s order, had stated that shares were issued to the aforesaid share applicants against the share application money of Rs.5.75 crore (supra) that was received from them, as under:

'Table-A'
for identity of the share applicant-Co. & genuineness of the transaction

Sl. No.	Name of the <u>share applicant</u>	<u>Amount of SAM received</u> in AY10-11 (Rs.)	<u>No. of shares</u> allotted (Nos.)	<u>Date of allotment</u> of shares	<u>Certificate No./ Distinctive number</u>
1.	Prithwi Dealcom P.Ltd (now known as NRTMT (India) P.Ltd) PAN-AAECP8302R	3,45,00,000	2,44,000 shares allotted for Rs. 3,05,00,000 32,000 shares allotted for Rs.40,00,000	3-12-09 3-3-12	34 to 36/ 1479001-1723000 43/ 1911001-1943000
2.	Shree Shyam Ply Traders P.Ltd (now known as NR Ferro & Power PL) PAN-AALCS6435R	2,30,00,000	1,84,000 shares allotted for Rs. 2,30,00,000	30-12-09	37-38/ 1723001-1907000
	Total	5,75,00,000	4,60,000 shares allotted for Rs. 5,75,00,000		

59. We are of a firm conviction that now when the share application money of Rs.5.75 crore (supra) received by the assessee company from the aforementioned share applicants, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.45 crore; and (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : Rs.2.30 crore is found recorded in its audited books of accounts, and had formed part of its financial statements that were enclosed along with its original return of income for the said year, it is difficult to fathom that as to how the same could be brought within the meaning of "Incriminating material" found in the course of search proceedings conducted on 24.10.2017. Rather, the fact that shares were issued by the assessee company to the aforementioned respective share applicants in lieu of the share application money that was received from them, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : (a) 2,44,000 shares (allotted for Rs.3.05 crore on 03.03.2012); and (b) 32,000 shares (allotted for Rs.40 lacs on 03.03.2012); and (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : 1,84,000 shares (allotted for Rs.2.30 crore on 30.12.2009), i.e. much prior to the search and seizure proceedings, therein fortifies the assessee's claim that the share application money that was received from the aforementioned parties could not be held as "incriminating material found in the course of search and seizure proceedings conducted on the assessee company on 24.10.2017.

60. Although it is the claim of the department that the assessee company during the year under consideration was in receipt of share

application money of Rs.5.75 crore from 2 paper/shell companies but there can be no gainsaying that no incriminating material was found or unearthed during the course of search proceedings which would support the same. In fact, it is not even the case of the department that any incriminating material evidencing receipt of accommodation entries by the assessee company in the garb of share application money/share capital/share premium from the aforementioned investor/subscriber companies was found in the course of the search & seizure proceedings conducted on 24.10.2017.

(B) Re : Statements of the directors of the investor companies:

61. The Ld. DR had emphasized that the statements of the directors of the investor companies from whom share application money/share capital/share premium of Rs.5.75 crore (supra) was received by the assessee company during the subject year were in itself incriminating in nature. The Ld. DR by pressing into service the observations of the A.O, had tried to impress upon us that the statements of the directors of the investor companies/entry operator that were recorded prior to the search proceedings conducted on the assessee company being incriminating in nature vested jurisdiction with the A.O to make additions towards bogus share application money/share capital/share premium while framing the assessment of the assessee company for the subject year, i.e. A.Y.2010-11.

62. We are unable to persuade ourselves to subscribe to the aforesaid claim of the department. As the statements of the directors of the investor companies were recorded by the DDIT(Inv.), Unit-IV, Kolkata much prior to the search & seizure proceedings conducted on the assessee company on 24.10.2017, therefore, the same cannot be brought within the meaning of incriminating material found or unearthed during the course of search & seizure proceedings conducted on the assessee company.

63. At this stage, we may observe that various courts have held that though a statement certainly has an evidentiary value and relevance as contemplated under the "Explanation" to Section 132(4) of the Act, but the same on such standalone basis without reference to any other material found during the search and seizure operations would not bring it within the meaning of "incriminating material" found or unearthed in the course of search proceedings. The **Hon'ble High Court of Delhi** in the case of **CIT Vs. Harjeev Aggrawal (2016) 190 CTR (Del) 263**, had observed that statements recorded u/s. 132(4) of the Act cannot by themselves be construed as an incriminating material. For the sake of clarity, the observation of the Hon'ble High Court is culled out as under:

"23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.

24. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation."

64. Also, a similar view had been taken by the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Best Infrastructure (India) Pvt. Ltd. (2017) 397 ITR 82 (Del.)**. The Hon'ble High Court relying upon its earlier order in the case of **CIT Vs. Harjeev Aggrawal (supra)**, had once again held that the statement recorded u/s.132(4) of the Act cannot by itself be construed as an incriminating material. Also, the aforesaid view had been reiterated by the **Hon'ble High Court of Delhi** in the case of **PCIT v. JPM Tools Ltd (2023) 154 Taxmann.com 44 (Delhi)**. The Hon'ble High Court, while approving the view taken by the Tribunal had relied on its earlier order passed in the case of **Pr. CIT Vs. Best Infrastructure (India) Pvt. Ltd. (supra)** and held that a statement recorded u/s.132(4) of the Act cannot by itself be construed as an incriminating material. Further, our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **PCIT Vs. Anand Kumar Jain HUF (2021) 432 ITR 384 (Del)**. The Hon'ble High Court had observed that the existence of

incriminating material found during the course of search is a *sine-qua-non* for making an addition pursuant to search and seizure operation. It was observed by the Hon'ble High Court that though the statement has evidentiary value and relevance as contemplated under the "Explanation" to Section 132(4) of the Act but the same on a standalone basis without reference of any material recovered during the course of search and seizure operation cannot empower the A.O to frame the assessment. In the case before the Hon'ble High Court statement of an accommodation entry provider that was recorded u/s.132(4) of the Act had formed the foundation of the assessment made by the A.O u/s. 153A of the Act. The Hon'ble High Court while rejecting the claim of the revenue, observed that the statement of the accommodation entry provider recorded u/s.132(4) of the Act, wherein he had admitted of having provided accommodation entry to the assessee and his family members through their chartered accountant, though carried an evidentiary value and relevance u/s. 132(4) of the Act, but the same on a standalone basis without reference to any material discovered during the search and seizure operation could not be brought within the meaning of "incriminating material" found during the course of search proceedings.

65. We find that a similar view had been taken by the **ITAT, Delhi, "B" Bench** in the case of **Divya Exim Pvt. Ltd. Vs. DCIT [2024] 159 taxmann.com 1370 (Delhi)**. It was observed by the Tribunal that no

adverse statement of a third party could be read as an "incriminating material" found in the course of the search in the case of the assessee. It was further observed that a statement recorded in the course of search proceedings could not be imported in the case of the assessee for the purpose of satisfying the salutary condition of existence of "incriminating material" found/unearthed in the course of the search proceedings conducted on the assessee. Also, we find that **ITAT, Mumbai, "B" Bench** in the case of **Micro Ankur Developers Vs. DCIT-CC 3(4), ITA Nos. 1046 to 1050/Mum/2019 dated 02.09.2022** had adopted a similar view. The Tribunal had concluded that the statement of the entry operator recorded u/s.132(4) of the Act cannot be construed as an incriminating evidence justifying the addition made in case of an unabated assessment of the assessee company particularly when the statement was not recorded on the basis of any incriminating material found or unearthed in the course of search & seizure proceedings conducted on the assessee.

66. We, thus, based on our aforesaid deliberations are unable to concur with the A.O (as stated in his report dated 08.09.2023)/CIT-DR that the adverse statements of the directors of the investor companies, which were recorded much prior to the search conducted on the assessee company can be brought within the meaning of "incriminating evidence" found in the course of the search & seizure proceedings conducted on the assessee

company on 24.10.2017 which, thus, vested jurisdiction with the A.O to make additions while framing the assessment u/s.153A of the Act.

(C) Re: Evasive reply of Shri Sanjay Agrawal, director of the assessee company in his statement recorded u/s. 132(4) of the Act, dated 24.10.2017 and u/s. 131(1A) of the Act, dated 29.01.2018:

67. The Ld. DR submitted that Shri Sanjay Agrawal, director of the assessee company, was confronted with the impounded material that was seized from the premises of the chartered accountant of the assessee company, viz. Shri Amin Khatri, wherein the names of few investor/subscriber companies were mentioned. The Ld. AR submitted that Shri Sanjay Agrawal (supra) in his statement recorded u/s. 132(4) of the Act, dated 24.10.2017 had come up with an evasive reply. Elaborating on his contention, the Ld. DR submitted that Shri Sanjay Agrawal (supra) on being queried about the investments made by the aforementioned investor companies had stated that he had no knowledge about the same. Also, the Ld. DR submitted that Shri Sanjay Agrawal (supra) in his reply to Question No.7 of his statement recorded u/s. 131(1A) of the Act, dated 29.01.2018, had admitted that the share capital/premium was received by the assessee company from the Kolkata based investors through banking channels. Carrying his contention further, the Ld. DR had tried to impress upon us that as the evasive approach adopted by Shri Sanjay Agrawal (supra) regarding the investments made by the aforementioned share

applicant companies was in itself incriminating in nature, thus, the same vested jurisdiction with the A.O for making the additions while framing assessment u/s. 153A of the Act.

68. We have thoughtfully considered the aforesaid contention of the Ld. DR and are unable to persuade ourselves to subscribe to the same. Although the statement of Shri Sanjay Agrawal (supra) recorded u/s. 132(4) of the Act would carry evidentiary value and be relevant under "Explanation" to Section 132(4) of the Act but the same on such standalone basis without any reference to any other material found during the course of search and seizure operations conducted on the assessee company cannot bring it within the meaning of "incriminating material" found or unearthed in the course of search proceedings. As the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra), had held that in absence of any incriminating material found in the course of search proceedings, no addition in case of an unabated assessment of the assessee can be validly made, therefore, we are of the a firm conviction that the A.O in absence of any incriminating material pertaining to the subject year found in the course of search proceedings conducted on the assessee company on 24.10.2017 was divested of his jurisdiction from making any addition while framing the assessment in its case for the subject year u/s. 153A of the Act.

69. Apart from that, we are of a firm conviction that the mere fact that Shri Sanjay Agrawal, director of the assessee company, had in his statement recorded u/s. 132(4) of the Act, dated 24.10.2017 failed to furnish details as regards the investments made by the investor/subscriber companies can by no stretch of imagination render the said statement as incriminating in nature. Also, we find no substance in the claim of the department that as Shri Sanjay Agrawal (supra) in his reply to Question No.7 of his statement recorded u/s.131(1A) of the Act dated 29.01.2018, had stated that the share capital/premium was received by the assessee company from Kolkata based investor companies through banking channels, therefore, the same rendered the said statement as incriminating in nature. At the threshold, we may observe that as the aforesaid statement dated 29.01.2018 (supra) was in itself recorded much after conclusion of the search proceedings, therefore, the same cannot be brought within the meaning of "incriminating material" found in the course of search & seizure proceedings conducted on the assessee company on 24.10.2017. Also, we are unable to comprehend that as to how any adverse inferences could be drawn from the statements of Shri Sanjay Agrawal (supra) to the extent he had stated that investment towards share application money/share capital/share premium was received from the Kolkata based investors companies through banking channel. We, thus, in terms of our aforesaid deliberations are unable to concur with the claim of

the department that the evasive replies of Shri Sanjay Agrawal (supra) brought the same within the meaning of "incriminating material" found in the course of search & seizure proceedings conducted on 24.10.2017.

(D) Re: Insignificant financials of the investor companies:

70. The Ld. DR by drawing support from the report of the A.O dated 08.09.2023, stated that the assessee company had failed to discharge the onus that was cast upon it as regards proving the identity and creditworthiness of the investor companies, as well as the genuineness of the transactions of receipt of share application money/share capital/share premium from them. Elaborating further, the Ld. DR submitted that as a perusal of the financial statements of the investor companies revealed that they lacked the creditworthiness for making huge investments with the assessee company, therefore, the said factual position in itself was incriminating. Also, the Ld. DR submitted that as the documents justifying the financials/investments made by the investor companies were neither available with the assessee company during the course of search proceedings nor in the course of assessment proceedings, therefore, the same remained unexplained in terms of Section 68 of the Act.

71. We have thoughtfully considered the aforesaid contentions of the Ld. DR and are unable to concur with the same. Once again, we may herein reiterate that the Hon'ble Apex Court in the case of Principal

Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra), had held that in absence of any incriminating material found in the course of search proceedings, no addition regarding unabated assessment of the assessee can be made. Accordingly, it is only where any incriminating material is found or unearthed in the course of search proceedings that the requisite jurisdiction to make addition regarding unabated assessment of the assessee company for the subject year would be vested with the A.O. We are of a strong conviction that drawing of adverse inferences regarding the financial credibility of the investor companies by the A.O *de-hors* finding of any incriminating material in the course of search & seizure proceedings would not vest jurisdiction with the A.O to make addition in its unabated assessment for the subject year, i.e. A.Y.2010-11.

72. Alternatively, we are of the view that as the investors/subscriber companies in compliance to the notices issued by the A.O u/s. 133(6) of the Act had filed copies of share certificates, bank statements evidencing subscription, copies of return of income, audited financial statements, therefore, the primary onus that was cast upon the assessee company u/s. 68 of the Act stood discharged. As the A.O while framing the assessment had though referred to the statements of the directors of the investor companies but had failed to place on record any material which would conclusively establish that the unaccounted money of the assessee

company was routed back to its coffers in the garb of bogus share application money/share capital/share premium, there could be no justification for summarily drawing of any adverse inferences based on the aforesaid statements which were never confronted to the assessee company. Also, we cannot remain oblivion of the fact that as the pre-amended provisions of Section 68 of the Act were applicable for the subject year, i.e. A.Y.2009-10, therefore, in the backdrop of the observations of the **Hon'ble Apex Court** in the case of **CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC)**, now when the identity of the share subscriber/investor companies which had admitted their respective investments towards share application money/share capital/share premium with the assessee company was established, then, the proper recourse available to the A.O was to proceed against the said investor companies and not make any addition in the hands of the assessee company. For the sake of clarity, the observations of the Hon'ble Apex Court which had dismissed the "Special Leave Petition" (SLP) filed by the revenue are culled out as under:

"Can the amount of share money be regarded as undisclosed income under section 68 of the Income-tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual, assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

(emphasis supplied by us)

73. Be that as it may, we are of a firm conviction that as the observation of the A.O that investors/subscriber companies did not have necessary creditworthiness to make investment towards share application money/share capital/share premium cannot be brought within the meaning of "incriminating material" found in the course of search & seizure proceedings conducted on the assessee company on 24.10.2017, therefore, the A.O on the said count itself was divested of his jurisdiction to make any addition while framing assessment in the unabated assessment of the assessee company for A.Y. 2010-11.

74. We, thus, in terms of our aforesaid observations are of the considered view that as held by the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra), in absence of any incriminating material found in the course of search proceedings, no addition regarding the unabated assessment of the assessee company for the subject year, i.e. A.Y.2010-11 could have been made.

75. Accordingly, in the backdrop of our aforesaid deliberations, we concur with the Ld. AR that the A.O had wrongly assumed jurisdiction and made an addition of Rs.5.75 crore (supra) u/s. 68 of the Act while framing the assessment u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 for

A.Y.2010-11. Thus, the **Ground of cross objection No.2** raised by the assessee company is allowed in terms of our aforesaid observations.

76. Before parting, we may herein observe that though the additions made by the A.O vide his order passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019, had been vacated by us on the ground that in absence of any incriminating material found during the course of search proceedings conducted on the assessee company, no addition could have been made by the A.O while framing assessment u/s. 153A of the Act as regards the unabated/completed assessment for the subject year, i.e. A.Y.2010-11, but as observed by the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd. (supra), the remedy is still available to the revenue to initiate reassessment proceedings u/ss.147/148 of the Act, subject to fulfillment of the conditions mentioned in the said statutory provisions. Accordingly, the A.O in the present case is directed to consider initiation of reassessment proceedings u/ss. 147/148 of the Act in the backdrop of Section 150 of the Act as per the extant law.

77. We shall now deal with the assessee's claim that in absence of a valid approval of the Jt. CIT, Range-Central, Raipur u/s.153D r.w.s. 153B(1)(a) of the Act the assessment order passed by the A.O u/s. 147 r.w.s. 153A of the Act, dated 30.12.2019 was invalid and bad in law.

78. Before proceeding any further, we deem it fit to cull out the provisions of Section 153D of the Act as had been made available on the statute vide the Finance Act, 2007 w.e.f. 01.06.2007, as under:

"153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

It transpires on a careful perusal of Section 153D of the Act that the same establishes a critical procedural safeguard in the assessment and reassessment process contemplated under sections 153A(b) and 153B(b) of the Act. As per the aforesaid safeguard as had been made available on the statute by the legislature in all its wisdom, no order of assessment or reassessment, inter alia, pursuant to search & seizure proceedings conducted on the assessee shall be passed by an A.O. below the rank of Joint Commissioner without obtaining the prior approval of the Joint Commissioner. We find that the primary objective of Section 153D is to introduce a higher degree of scrutiny of an assessment order framed pursuant to search proceedings. It is not merely a procedural step but a substantive legal requirement as underscored by the Central Board of


Direct Taxes (CBDT) in Circular No.3 of 2008, dated 12.3.2008. The purpose of incorporating the aforesaid statutory provision is to prevent arbitrary or biased decisions by introducing a layer of accountability in the assessment process.

79. We find that the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Anuj Bansal (2024) 165 taxmann.com 2 (Del.)** and the **Hon'ble High Court of Allahabad** in the cases of **Pr. CIT Vs. Sapna Gupta (2023) 147 taxmann.com 288** and **Pr. CIT Vs. Siddharth Gupta (2023) 450 ITR 534 (All. HC)**, while approving the view taken by the Tribunal had held that the approving authority is required to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. Also, it was observed that in case approval was granted in a mechanical manner without application of mind by the Jt. CIT, then the same vitiated the assessment order. Further, we may herein observe that the **Hon'ble Supreme Court** in the case of **ACIT Vs. Serajuddin & CO, SLP (Civil) Diary No.44989/2023 dated 28.11.2023**, had approved the order of the **Hon'ble High Court of Orissa** in the case of **ACIT Vs. Serajuddin & Co. (2023) 454 ITR 312 (Orissa)**, wherein it was held that non-compliance with the requirements of Section 153D or granting approval without proper examination can lead to the invalidation of the assessment order. It was, thus, observed that a mere mechanical approval without proper examination and understanding of the draft assessment

order or case records of the case vitiated the assessment order. Based on the aforesaid settled position of law, we are of a firm conviction that an approval u/s. 153D of the Act granted after due application of mind and verifying the draft assessment order in the backdrop of the seized material is mandatory for framing of a valid assessment u/s. 153A of the Act.

80. We shall now in the backdrop of the aforesaid settled position of law, deliberate upon the contentions advanced by the Ld. AR, based on which, he has assailed the validity of the assessment order that is stated to have been passed by the A.O u/s.143(3) r.w.s. 153A of the Act dated 30.12.2019 in absence of a valid approval u/s. 153D of the Act of the Jt. CIT, Range-Central, Raipur.

81. Admittedly, it is a matter of fact borne from record that the A.O had vide his letter dated 26.12.2019 forwarded the "draft assessment order" to the Jt. CIT, Range-Central, Raipur for approval u/s. 153D of the Act, Page 1 of APB. Also, it transpires that the Jt. CIT vide his common letter dated 30.12.2019 had granted approval u/s. 153D of the Act in the case of the assessee company for A.Y.2009-10 to A.Y.2018-19 as well as 27 cases of three other assessee's. For the sake of clarity, the letter of the Jt. CIT, Range-Central, Raipur dated 30.12.2019 granting approval u/s. 153D of the Act, is culled out as under:



Office of the
Joint Commissioner of Income tax, Range Central
Aayakar Bhawan, Civil Lines, Raipur (CG)
Email: raipur.addlciit.cen@incometax.gov.in Ph. & Fax 0771-2331044

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आयकर उपायुक्त (केंद्रीय-2)
दि. 30-12-2019
502
Dated: 30-12-2019 (P.F.)

F.No. JCIT(C)/RPR/153D/2019-20/348

The Dy. Commissioner of Income tax (Central)-2,
Raipur

Mini Prasad

Subject - Approval u/s 153D of the I.T. Act -N. R. and Indermani Groups -
Regarding.

Please refer to your letters in F.No. DCIT(C)-2/RPR/Search assessment/2019-20
dated 26.12.2019 and dated 28.12.2019.

2. The draft assessment orders u/s 153D and 143(3) in the following cases
submitted vide above mentioned letter are hereby approved u/s 153D of the I.T. Act

S.No.	Name of the assessee	PAN	AY
1	N.R. Ispat & Power Pvt. Ltd.	AACCN6591Q	2009-10 to 2018-19
2	N.R. TMT (India) Pvt. Ltd.	AAECP8302P	2012-13 to 2018-19
3	NRVS Steels Pvt. Ltd.	AAHCS4369L	2008-09 to 2018-19
4	Sambhavi Energy and Coal Beneficiation Pvt. Ltd.	AALCS5140B	2012-13 to 2018-19

3. Further in view of this office letter no. F.No. JCIT(C)/RPR/Draft Asst.
Order/2016-17/ dated 09.09.2016 it is presumed that the AO has -

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.


4. You may act accordingly. The copy of the final order may be submitted for record
purpose in this office.

Encl: case records

(R.M. Mujumdar)
Joint Commissioner of Income tax,
Range- Central, Raipur

As stated by the Ld. AR and, rightly so, we find that the A.O after forwarding the "draft assessment order", dated 26.12.2019 (received by the office of Jt. CIT on 26.12.2019) had thereafter continued with the assessment proceedings. The A.O had vide his letter dated 27.12.2019 (Page 159 of APB for A.Y.2018-19) forwarded to the assessee company a

copy of the comments of the department/registered valuer, viz. M/s.Frontline Constants Pvt. Ltd., dated 27.12.2019, Page 160 of APB for A.Y.2018-19, wherein the latter had dealt with the objections that were raised by the assessee company regarding the valuation of its stock. Accordingly, the A.O had called upon the assessee company to submit its comments on the aforesaid report of the valuer before 27.12.2019 (up to 5.00 pm). For the sake of clarity, the letter dated 27.12.2019 of the Dy.CIT (Central Circle)-2, Raipur is culled out as under:


Government of India
Ministry of Finance: Department of Revenue
Office of the Deputy Commissioner of Income-tax, (Central)-2,
Aayakar Bhawan, Central Revenue Building, Civil Lines, Raipur (C.G.)
Ph. & Fax:- 0771-2331091, E mail: raipur.dcit.cen2@incometax.gov.in

F.No. DCIT (C)-2 RPR Search assessment/NR/2019-20 Date: 27.12.2019

To,
M/s N.R Ispat & Power Pvt. Ltd.
M/s NR TMT(India) Pvt. Ltd.
Raigarh

Sir,

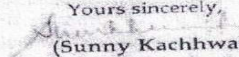
Sub:- Valuation of Plant & machinery and determination of quantity, Value of inventories, at different location in the case of NR TMT(India) Pvt. Ltd. and NR Ispat & Power Pvt Ltd. -Regarding.

Kindly refer to your letter dated 13.12.2019 on the above subject.

In this connection it is stated that your objection regarding valuation of stock taken by Frontline Consultant Pvt. Ltd. was referred to it for offer its comments.

In this regard, vide letter dated 27.12.2019(Copy enclosed), the Govt. approved has stated that the At the time of the stock valuation in the factory and other premises of the assessee companies all the objections taken by the party was taken care of and with the discussion of the in charge tax officials at that time. The valuation report had also been handed over to the investigating officer at Bilaspur latter on. Moreover, time to time discussion as on 03.11.2017, 08.11.2017 and 22.12.2017 had been made with the investigating officer and other higher officials with regards to the opinion and valuation report of sockt and others. In compliance to the letter dtd. 30.01.2018 issued by ADIT, Bilaspur, detail discussion and submission of all the desires documents had been made on 12.02.2018.

Therefore, you are requested to submit your comments on or before 27.12.2019, 05.00 -PM. If you are not submit your comments with in prescribed time, it is assumed that you have nothing to explain about above and order will be passed as per valuation report submitted by the Govt. approved Valuer.

Yours sincerely,

(Sunny Kachhwaha)
Dy. Commissioner of Income Tax
(Central circle)-2, Raipur

82. Also, the A.O vide his "Show Cause Notice" ("SCN") dated 27.12.2019, Page 159A of the APB for A.Y.2018-19, had called upon the assessee company to put forth an explanation as to why the difference of stock pertaining to raw material, finished goods and scrap amounting to Rs.1,61,42,749/- may not be added in its case u/s. 69 of the Act. The A.O as per the "SCN" dated 27.12.2019 had directed the assessee company to

furnish its reply by 28.12.2019 (upto 02.00 pm). For the sake of clarity, the aforesaid SCN, dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur is culled out as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2, RAIPUR

To, N R ISPAT AND POWER PRIVATE LIMITED 286,C/O OMPRAKASH AGRAWAL 286,C/O OMPRAKASH AGRAWAL PADAMPUR ROAD 493554 ,Chhattisgarh India	
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PAN: AACCN6591Q	AY: 2018-19	DIN & Notice No: ITBA/AST/F/143(3)(SCN)/20 19-20/1023286938(1)	Dated: 27/12/2019	Hearing Date and Time: 28/12/2019 02:00 PM
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SHOW CAUSE NOTICE

Kindly refer to the above mentioned subject.

In connection with above subject, it is stated that a search and seizure action u/s 132 of the Income tax Act, 1961 was carried on 24.10.2017 in the Residential, Business and Factory Premises of NR Group of cases. During the course of search action, valuation of stock of raw materials, finished products and scrap have been made and huge difference of stock was found. Vide you letter dated 26.01.2018, you have sought certain information and documents in connection with the valuation done by registered values. The valuation done by M/s Frontline Consultants Pvt. Ltd. It is to inform that registered valuer vide its letter dt. 04.04.2018, provided same clarification (Copy enclosed) related to valuation of stock. You are requested offer your comments and show-caused as to why difference of stock amounting to Rs. 16142749/- should not be added u/s 69 of the Act.

SUNNY KACHHWAHA
CENTRAL CIRCLE 2, RAIPUR

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, RAI02, RAI03, RAI04, RAIPUR, Chhattisgarh, 492001
Email: RAIPUR.DCIT.CEN2@INCOMETAX.GOV.IN,

We find that the assessee company had thereafter in compliance to the aforesaid letter/SCN, both dated 27.12.2019, issued by the Dy.CIT, Central Circle-2, Raipur on the same date, i.e. on 27.12.2019 filed its reply, Page 157-158 of APB for A.Y.2018-19.

83. Ostensibly, the aforementioned facts reveal that the A.O after forwarding the "draft assessment order" vide his letter dated 26.12.2019, had thereafter continued with the assessment proceedings. Although, the Jt. CIT, Range-Central, Raipur had vide his common letter dated 30.12.2019, inter alia, granted approval u/s. 153D of the Act in the case of the assessee company for the subject year, i.e. A.Y.2010-11, but there is nothing on record which would reveal that the proceedings that were carried out by the A.O subsequent to forwarding of the "draft assessment order" vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur were brought to the latter's notice. As is discernible from the record, we find that the assessment proceedings continued by the A.O after forwarding the "draft assessment order" to the Jt. CIT, Range-Central, Raipur for approval u/s.153D of the Act vide his letter dated 26.12.2019 (received by the office of Jt. CIT on same date) were never brought to the latter's notice. For the sake of clarity, the proceedings continued by the A.O after forwarding of the "draft assessment order" to the Jt. CIT, Range-Central, Raipur on 26.12.2019 are chronologically culled out as under:

- Receipt by the A.O of the letter/comments dated 27.12.2019 of the registered/department's valuer, viz. Frontline Consultants Pvt. Ltd., Page 160 of APB for A.Y.2018-19;

- Letter dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur to the assessee company, wherein a copy of the letter/comments, dated 27.12.2019 of the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd. commenting on the objections that were raised by the assessee company to the valuation of stock that it had earlier carried out, was made available to the assessee company. The A.O had directed the assessee company to file its reply to the letter/comments of the registered/department's valuer by 27.12.2019 (upto 5.00 pm), Page 159 of APB for A.Y.2018-19;
- "Show Cause Notice" (SCN), dated 27.12.2019 issued by the Dy.CIT, Range-Central, Raipur to the assessee company, wherein he had called upon the assessee company to put forth an explanation as to why the difference of stock amounting to Rs.1,61,42,749/- may not be added in its case u/s. 69 of the Act and had directed it to furnish its reply by 28.12.2019. (upto 02.00 pm), Page 159A of APB for A.Y.2018-19.
- Reply of the assessee company dated 27.12.2019 to the letter dated 27.12.2019 received from the Dy. CIT, Central Circle-2, Raipur, wherein it had rebutted the comments of the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd.

84. We find substance in the Ld. AR's contention that it is not a case that the A.O after forwarding the "draft assessment order" to the Jt. CIT,

Range-Central, Raipur vide his letter dated 26.12.2019 (received by the Jt. CIT on the same date) for approval u/s.153D of the Act, had thereafter, communicated to the said approving authority about the assessment proceedings that were continued by him after forwarding the "draft assessment order" on 26.12.2019. Also it is not a case that the A.O had forwarded any fresh "draft assessment order" incorporating the aforesaid material facts to the Jt. CIT, Range-Central, Raipur for his approval u/s. 153D of the Act, viz. (i) receipt by the A.O of a letter/comments of the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd. dated 27.12.2019; (ii) letter dated 27.12.2019 issued by the Dy. CIT, Central Circle-2, Raipur to the assessee company calling upon it to offer its comments to the letter/comments dated 27.12.2019 of the registered /department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd. by 27.12.2019 (upto 05.00 pm); (iii) the "Show Cause Notice" (SCN) dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur calling upon the assessee company to furnish its reply that as to why the difference of stock amounting to Rs.1,61,42,749/- may not be added to its income u/s. 69 of the Act by 28.12.2019 (upto 2.00 pm); and (iv) the reply dated 27.12.2019 of the assessee company filed with the A.O wherein it had pointed out the discrepancies in the letter/comments dated 27.12.2019 of the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd.

85. We further find that as brought to our notice by Shri Vijay Mehta, the Ld. AR and, rightly so, the final assessment order passed by the A.O u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 is substantially different from the "draft assessment order" that was forwarded by the A.O vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur for approval u/s.153D of the Act and was approved by the latter on 30.12.2019. As observed by us hereinabove, a conjoint reading of the "draft assessment order" (approved by the Jt. CIT, Range-Central, Raipur on 30.12.2019) vis-à-vis the final assessment order, dated 30.12.2019 reveals material variance/difference in the same, which have been brought to our notice by the Ld. AR, as under:

"2. As directed by the Hon'ble Bench during the course of hearing, we are submitting herein below, the details of instances of differences between the draft assessment order forwarded by the Assessing Officer to the Joint Commissioner under the covering letter dated 26-12-2019 (copy made available to us during the course of hearing) and the final assessment order dated 30-12-2019.

(i) At page no. 53 of the draft assessment order, in table in para 4.12 at sr. no.6 for F.Y. 13-14(A.Y. 14-15) undisclosed income is 'Nil'; while in the final assessment order, at page 53 in table in para 4.12 at sr. no. for F.Y. 13-14 (A.Y. 14-15) undisclosed income is '64,99,958.

(ii) At page no. 54 of the draft assessment order in para 5.1 – table of 'Excess Items' following differences are noticed as compared to the final assessment order dt. 30-12-2019;-

(a) at Sl.No.1 of Billets there is difference in the value as compared to final assessment order:

In the 'draft assessment order', there is mentioned figures of value of physical verification at Rs.99,94,740; thereafter difference mentioned at Rs.3,91,061;

While, in the 'final assessment order', there is mentioned figures of value of physical verification at Rs.99,94,660; thereafter, difference mentioned at Rs.3,90,980;

(b) at Sl.No.4 of Coal there is difference in rate per MT (PMT) and corresponding value as compared to final assessment order:

In the 'draft assessment order', rate per MT of physical verification taken at Rs.2,180 and as per books of account taken at Rs.2,180; value of difference taken at Rs.31,45,773;

While, in the 'final assessment order', rate per MT of physical verification taken at Rs.3,000 and as per books of account taken at Rs.2,500; value of difference taken at Rs.1,08,70,619;

(c) at Sl.No.7 of Charcoal in the 'draft assessment order' mentioned in table of "Excess Items"; while, in the 'final assessment order, it is included in in the table of "Shortage";

(d) at Sl.No.8 of Dolomite in 'draft assessment order and 'final assessment order, there are following differences in 'rate' & 'value' of 'Dolomite':

8	Dolomite	939.66	750	704745	939.66	750	704745	0
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While, in the "final assessment order for the same Dolomite row no.8' is as under:

8	Dolomite	939.66	12000	11275860	0	0	0	11275860
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(e) in the 'draft assessment order', total of table of 'Excess Items', 'total difference value' mentioned at Rs.3,42,90,294; while, as per "final assessment order', 'total difference value' mentioned at Rs.5,32,56,634;

(iii) at Page 54 of the 'draft Assessment order' i.e., undated Para 5.1 - table of 'Short Items' following differences are there from the 'final assessment order'.

(a) in 'Short item' table in 'draft assessment order' there is no row for 'Charcoal'; while in the 'final assessment order', 'Charcoal' row has been added.

(b) In 'Iron Ore Fines' row, there is complete differences in figures of the item, as 'rate' taken in draft assessment order is Rs.775, while in the 'final assessment order', 'rate' taken at Rs.2,000; similar is for 'difference of value' taken at Rs.11,05,394 in the draft assessment order, while in the final assessment order, 'difference of value taken at Rs.8,38,842;

(c) in total of table of 'Short Items', 'total difference value' is Rs.-1,30,10,170 as per 'draft assessment order' and 'total difference value' is Rs.-1,27,09,217 as per 'final assessment order'.

(iv) at Page 55 of the draft assessment order, there is no table in Para 5.2: whereas, in the 'final assessment order', in Para 5.2, there are 2 tables showing detailed working of 'excess' of stock found of Rs.3,54,60,103 and detailed working of 'shortage of stock items at Rs.1,31,14,109;

(v) further, at Page 55 of the draft assessment order the addition of 'excess stock found' as per draft assessment order is Rs.3,42,90,294 in Para 5.2. while, addition of 'excess stock' is Rs.3,54,60,103 as per 'final assessment order at 1" table in Para 5.2 & 5.3 (Page 55);

(vi) at Page 55 of the draft assessment order, Para 5.3 is completely different from the final assessment order like for 'shortage of stock', GP rate of 12.70% taken for AY18-19 in draft assessment order at Para 5.3; while, for 'shortage of stock', GP rate of 11.36% is taken based on last 3 years average in final assessment order at Para 5.3; similarly, 'unaccounted sale' is taken at Rs.1,30,10,170 and profit on such sales taken at Rs.16,52,292 in the draft assessment order at Para 5.3 while, profit on 'shortage of stock taken at Rs.14,89,762 in the final assessment order at Para 5.3.

(vii) at Page 56 of the draft assessment order at Para 8, in the table, addition of Rs.3,59,42,686 and assessed income for AY18-19 is mentioned at Rs.6,05,53,626; while, in the final assessment order dt.30-12-2019, at Page 57, addition of Rs.3,69,49,865 and assessed income at Rs 6,15,60,805 has been mentioned.

The above differences are mentioned in tabular format:

Sl No.	Pg. No. of draft assessment order	Pg.No. of final assessment order dt.30-12-19
1.	at page 53 in table in para 4.12 at sr. no 6 for E.Y. 13-14 (A.Y. 14-15) undisclosed income is NIT	at page 53 in table in para 4.12 at sr. no for FY. 13-14 (A.Y. 14-15) undisclosed income is '64,99,958.
2.	<p>at page no. 54 in para 5.1-table of Excess Items</p> <p>(a) at St.No.1 of Billets there is difference In the value, mentioned figures of value of physical verification at Rs.99,94,740, thereafter difference mentioned at Rs. 3,91,061</p> <p>(b) at Sl. No.4 of Coal there is difference in rate per MT (PMT) and corresponding value, rate per MT of physical verification taken at Rs.2,180 and as per books of account taken at Rs 2,180, value of difference taken at Rs.31,45,773</p> <p>(c) at Sl.No.7 of Charcoal mentioned in table of "Excess Items"</p> <p>(d) at SL.No.8 of Dolomite there is difference in rate PMT and corresponding value, rate per MT of physical verification taken at Rs.750 and as per books of account is also at Rs.750, value of difference taken at Nil</p> <p>(e) total of table of 'Excess Items', 'total difference value' mentioned at Rs.3,42,90,294</p>	<p>at page no. 54 in para 5.1-table of "Excess Items</p> <p>(a) at St.No.1 of Billets there is difference in the value, mentioned figures of value of physical verification at Rs.99,94,660, thereafter, difference mentioned at Rs.3,90,980</p> <p>(b) at Sl. No.4 of Coal there is difference in rate per MT (PMT) and corresponding value, rate per MT of physical verification taken at Rs.3,000 and as per books of account taken at Rs.2,500; value of difference taken at Rs.1,08,70,619</p> <p>(c) Charcoal is included in the table of "Shortage":</p> <p>(d) at SL.No.8 of Dolomite there is difference in rate PMT and corresponding value, rate per MT of</p>

		<p>physical verification taken at Rs.12,000 and as per books of account it is taken at 'Nil'; value of difference taken at Rs. 1,12,75,860</p> <p>(e) total of table of 'Excess Items', 'total difference value' mentioned at Rs. 5,32,56,634</p>
3.	<p>at Page 54 in Para 5.1 table of 'Short Items (a) in 'Short item table, there is no row for 'Charcoal</p> <p>(b) In 'Iron Ore Fines' row, there is complete differences in figures of the item, as 'rate' taken at Rs.775; similarly, is for 'difference of value taken at Rs.11,05,394</p> <p>(c) in total of table of 'Short Items', 'total difference value' is Rs-1,30, 10,170</p>	<p>at Page 54 in Para 5.1 table of 'Short Items" (a) in 'Short item' table, 'Charcoal row has been added</p> <p>(b) In 'Iron Ore Fines' row 'rate' taken at Rs.2,000; similarly, is for 'difference of value taken at 0,38,042</p> <p>in total of table of 'Short Items", "total difference value' is Rs. 1,27,09,217</p>
4.	at Page 55 there is no table in Para 5.2	at Page 55 in Para 5.2: there are 2 tables showing detailed working of 'excess' of stock found of Rs.3.54.60.103 and detailed working of 'shortage of stock items at Rs. 1,31,14,109
5.	further, at Page 55, the addition of 'excess stock found is Rs.3,42,90,294 in Para 5.2	further, at Page 55, the addition of 'excess stock found is Rs. 3,54,60,103 as per 'final assessment order at 1" table in Para

		5.2.& 53
6.	at Page 55 in Para 5.3 is completely different from the final assessment order like for shortage of stock, GP rate of 12.70% taken for AY18-19 at Para 5.3 similarly, unaccounted sale' is taken at Rs. 1,30,10,170 and profit on such sales taken at Rs 16,52,292 at Para 5.3	at Page 55 in Para 5.3 for 'shortage of stock, GP rate of 11.36% is taken based on last 3 years average in final assessment order at Para 5.3, profit on 'shortage of stock taken at Rs. 14,89,762 in Para 5.3
7.	at Page 56 in Para addition of Rs.3,59,42,686 and assessed Income for AY18-19 is mentioned at Rs. 6,05,53,626	at Page 57, addition of Rs.3,69,49,865 and assessed income at Rs. 6,15,60,805 has been mentioned

4. It is submitted that when the final assessment order is different (and in the present case, it is materially different), the Assessing Officer ought to have obtained a fresh approval in order to effectively comply with provisions of S.153D of the Act.

5. In this respect, we strongly rely on the decision of the Hon'ble Bombay High Court in the case of Akil Gulamali Somji in IT Appeal(L) No.1416 to 1419 of 2012 dated 15.01.2013.(copy enclosed).

6. We further rely upon the order of the Pune Bench of Hon'ble Tribunal in the case of BVG India Ltd v. DCIT (2023) (Pune-Trib) dated 19-10-2023, IT(SS)A No.10 to 16/Pun/2023 & ITA No.516/Pun/2023, AY14-15 to 19-20 (Para 21 & Para 42 to 46)wherein, the above referred decision of the Hon'ble Bombay High Court has been followed (although some other decision of the Bom HC has been reproduced by oversight).(copy enclosed).

7. We request Your Honors to hold that the assessment order passed by the A.O. is bad in law."

The Ld. CIT-DR on being confronted with the aforesaid difference/variance in the "draft assessment order" and the final assessment order, dated 30.12.2019 failed to come forth with any reply.

86. Based on the aforesaid facts, we find that the A.O in the present case before us, had after forwarding the "draft assessment order" for approval u/s. 153D of the Act to the Jt. CIT on 26.12.2019 not only continued with the assessment proceedings, but had also after receiving the approval of the Jt. CIT, Range-Central, Raipur vide his letter, dated 30.12.2019, tinkered with the said "draft assessment order" which, thus, had resulted to material variance/difference between the final assessment order and the "draft assessment order" that was approved by the Jt. CIT. As observed by us hereinabove, it is neither the case of the department that the facts pertaining to continuation of the assessment proceedings after forwarding the "draft assessment order" for approval of the Jt. CIT, Range-Central, Raipur, i.e. from 27.12.2019 to 28.12.2019 were brought by the A.O to the notice of the Jt. CIT; or any fresh "draft assessment order" incorporating the aforementioned material facts was forwarded to the Jt. CIT, Range-Central, Raipur for his fresh approval u/s. 153D of the Act.

87. We find that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013**, had

observed, that in a case where the Jt.CIT had no occasion to consider changes that were incorporated by the A.O in the final assessment order, then it was to be held that the impugned assessment order was passed without approval of the concerned authority as required per the mandate of law. Also, we find that the **ITAT, Pune** in the case of **BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023**, taking cognizance of the fact that the A.O after obtaining approval of the Jt. CIT u/s. 153D of the Act had thereafter carried out certain rectification/improvements and passed the final assessment order, observed that the said order was to be held as having been passed without obtaining the approval as per the mandate of law.

88. We are of a firm conviction that once the "draft assessment order" is approved by the Jt. CIT u/s. 153D of the Act, then the A.O thereafter is rendered as *functus officio* and can only pass the final assessment order as approved by the Jt. CIT. An analogy in support of our aforesaid view can safely be drawn from the judgment of the **Hon'ble Apex Court** in the case of **Panchmahal Steel Ltd. Vs. U.A.Joshi, ITO and another (1997) 225 ITR 458 (SC)**. In the present case before us not only the A.O had tinkered with the "draft assessment order" that was approved by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019 but had also come up with a final assessment order, which as observed by us

hereinabove is found to be materially different from the "draft assessment order" that was approved by the Jt. CIT on 30.12.2019.

89. Considering the aforesaid facts, we are of a firm conviction that as the Jt. CIT, Range-Central, Raipur had no occasion to consider the changes/modifications/alteration carried out by the Dy.CIT(Central Circle)-2, Raipur to the "draft assessment order" that was approved by him on 30.12.2019; nor was informed of the assessment proceedings that were continued by the A.O after forwarding of the "draft assessment order" on 26.12.2019, therefore, we concur with the Ld. AR that the final assessment order was passed by the A.O without obtaining the approval of the Jt. CIT, Range-Central, Raipur as required per the mandate of Section 153D of the Act. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013** and the order of **ITAT, Pune** in the case of **BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023**. Accordingly, in absence of a valid approval having been granted by the Jt. CIT, Range-Central, Raipur, based on which, the common final assessment order had been passed by the A.O u/s.143(3) r.w.s. 153A/143(3) of the Act, dated 30.12.2019, we are of the view that the same cannot be sustained and is liable to be struck down on the said count itself. Our aforesaid view that in absence of a valid approval u/s. 153D of the Act the assessment framed by the A.O cannot be sustained is

supported by the judgment of the **Hon'ble Apex Court** in the case of **ACIT Vs. Sirajuddin & C. (Supra.)**.

90. Apropos the reliance placed by the Ld. DR on the judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur, TAXC No.88 of 2024, dated 16.04.2024**, we find that the same being distinguishable on facts would not carry the case of the revenue any further. The Hon'ble High Court in its aforesaid order had observed, that it cannot be presumed on the mere say of the assessee that there is no application of mind while granting of approval u/s. 153D of the Act by the Jt. CIT. The Hon'ble High Court observed that the approval need not be a detailed assessment order. Also, it was observed that as per Section 114 of the Evidence Act, where an official Act had been done in accordance with the official procedure, it will lead to a presumption that due diligence was followed. Apart from that, the Hon'ble High Court had observed that as the matter was remanded back to the file of the A.O for fresh adjudication with a liberty to the assessee to raise the issue before the revenue authority, and furnish necessary information/evidence in support of his contention, therefore, no prejudice was caused to him.

91. At this stage, we may herein observe that in the case of Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur (supra), the assessee except for

referring to the contents of the approval letter had failed to lead any evidence/material which could irrefutably prove to the hilt that the approval was mechanically granted in absence of any application of mind by the Jt. CIT. However, the facts involved in the present case before us are materially distinguishable. The A.O in the present case after forwarding the "draft assessment order" vide his letter dated 26.12.2019, had thereafter continued with the assessment proceedings over the period, i.e. 27.12.2019 to 28.12.2019, and had passed the final assessment order which is found to be substantially different from the "draft assessment order" that was approved by the Jt. CIT, Range-Central, Raipur u/s.153D of the Act on 30.12.2019. As in the present case of the assessee company before us, there is no approval u/s.153D of the Act by the Jt. CIT, Range-Central, Raipur qua the final assessment order that had been passed by the A.O u/s. 143(3) r.w.s. 153A/143(3) of the Act, dated 30.12.2019, therefore, the same renders the facts involved in the case before us as distinguishable as against those involved in the case of Hitesh Golchha Vs. ACIT (supra). Thus, **the Ground of cross objection No.3 (revised)** raised by the assessee company is allowed in terms of our aforesaid observations.

92. As we have quashed the assessment framed/vacated the additions made by the A.O u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 for want of valid assumption of jurisdiction on two grounds, viz. (i) the making of additions in the case of unabated assessment for the subject year

despite the fact that no incriminating material was found during the course of search & seizure proceedings conducted on the assessee company on 24.10.2017; and (ii) the framing of the assessment of the assessee company in absence of any valid approval of the Jt. CIT u/s. 153D of the Act therefore, we refrain from dealing with the contentions advanced by the Ld. authorized representatives of both the parties as regards the observations of the CIT(Appeals) qua the merits of the case which, thus, are left open.

93. In the result, while for the cross objection filed by the assessee company in CO No.12/RPR/2022 for A.Y.2010-11 is allowed, the appeal of the revenue in IT(SS)A No.6/RPR/2021 for A.Y.2010-11 is dismissed as having been rendered as infructuous in terms of our aforesaid observations.

IT(SS)A 07/RPR/2021
CO No.13/RPR/2022
A.Y.2011-12

94. Although the facts and the issue involved in the case of the assessee company for A.Y.2010-11, i.e. CO No.12/RPR/2022, based on which we have, inter alia, vacated the additions made by the A.O vide his consolidated order passed u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 for A.Y.2010-11, for the reason that in absence of any incriminating material found in the course of search and seizure

proceedings conducted on the assessee company on 24.10.2017, no addition could have been made as regards its unabated assessment for the said year, therein, remains the same as are there before us in its case for the captioned year, i.e.A.Y.2011-12, in CO No.13/RPR/2022, but we deem it fit to briefly cull out the facts in so far the same emanates from the contents of the seized documents referred to by the A.O in the assessment order for the year under consideration, i.e. A.Y.2011-12, viz. (i) Page 44 of LPS-1; and (ii) Page 20 of LPS-1.

95. Admittedly, it is a matter of fact discernible from the assessment order that the A.O had referred to two documents which were seized from the office premises of the assessee company during the course of search & seizure proceedings conducted on 24.10.2017, viz. (i) Page 44 of LPS 1; and (ii) Page 20 of LPS-1. For the sake of clarity, the scanned copies of the aforesaid seized documents are culled out as under:

Page 44-LPS-1

**M/s. N.R ISPAT & POWER PVT. LTD
DETAILS OF INFUSION OF CAPITAL**

Year	Paid-up capital	Share premium	Total
2007-08	300000	0	300000
2008-09	9610000	22690000	32300000
2009-10	9160000	105340000	114500000
2010-11	0	0	0
2011-12	12648000	145152000	157800000
2012-13	6578940	62770958	69349898
2013-14	3192470	32882441	36074911

2014-15	2384800	26232800	28617600
2015-16	154150	1695650	1849800
Total	44028360	396763849	440792209

Page 20-LPS-1

		Prithvi Deal Com Pvt. Ltd.	Shri Shyam Ply Traders Pvt. Ltd.	Unnati Commodeal Pvt. Ltd.	Chitrakoot Infonet Pvt. Ltd.	Eternity Commercial Pvt. Ltd.	Total
Sl. No.	F.Y	Amount	Amount	Amount	Amount	Amount	
1	2009-10	40500000	23000000	-	-	-	63500000
2	2010-11	38500000	13700000	12000000	-	-	64200000
3	2011-12	22300000	54200000	9000000	-	-	85500000
4	2012-13	1275000	-	69350000	15300000	13000000	98925000
5	2013-14	-	-	-	-	6500000	6500000
Grand Total		102575000	909000000	90350000	15300000	19500000	318625000

96. Apropos the seized document, viz. Page 44 of LPS-1, we concur with the Ld. AR that the amounts therein mentioned are the details of infusion of fresh share capital and share premium with the assessee company during the subject year which were recorded in its audited financial statements filed alongwith its original return of income for the subject year. Our aforesaid view can safely be gathered from a conjoint perusal of "Schedule A" forming part of the "balance sheet" of the assessee company as on 31.03.2011, Page 16 & 19 of APB and the contents of the aforesaid seized document, viz. Page 44-LPS-1. The "balance sheet" of the assessee company for the year under consideration reveals the share capital at

Rs.1,90,70,000/- (as on 31.03.2011) and at Rs.1,90,70,000 (as on 31.03.2010) as under:

<i>" (i) Shareholders fund</i>	Year Ended 31-03-2011	Year Ended 31-03-2010
(a) share capital	<u>19,070,000</u>	<u>19,070,000"</u>

It transpires on a careful scrutinizing of the aforesaid "balance sheet" that there was no infusion of fresh share capital during the subject year i.e. Rs.1,90,70,000/- (as on 31.03.2011) (minus) Rs.1,90,70,000/- (as on 31.03.2010). We, thus, find substance in the Ld. AR's contention that as mentioned in the seized document, viz. Page No.44 of LPS-1 no fresh share capital was received by the assessee company during the year under consideration as was disclosed in its audited "balance sheet" for the subject year.

97. Apropos the amount of Rs.0/- mentioned in the aforesaid seized document, viz. Page No.44 of LPS-1, under the head "share premium" for the subject year, i.e. A.Y.2011-12, we find that the fact that no amount was received by the assessee company as "Share premium" during the subject year was disclosed in "Schedule B" of its "balance sheet" for the said year as "Securities premium account" under the parent head "Reserves and surplus", Page 19 of APB, as under:

"SCHEDULE- B	RESERVES & SURPLUS	AS AT	AS AT
		31-03-2011	31-03-2010
<i>"Securities Premium Account</i>			
Opening Balance	128,030,000		22,690,000
Received during the year	-	128,030,000	105,340,000
Profit & Loss Account		<u>20,572,838</u>	<u>46,64,660</u>
		<u>148,602,838</u>	<u>132,694,660</u>

In the backdrop of the aforesaid facts, we find that as mentioned in the aforesaid seized document, i.e. Page No. 44 of LPS-1, the assessee company during the subject year had not received any amount of "Share premium", a fact that was disclosed in its audited "balance sheet" that was filed along with its original return of income for the said year.

98. Based on our aforesaid observations, we are of the view that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a mention of the fact that no amount of "Share capital" and "Share premium" was received by the assessee company during the subject year, a fact which as observed by us hereinabove was disclosed in its audited "balance sheet" for the said year, therefore, the same cannot be brought within the meaning of "incriminating material" found during the course of search proceedings. Our aforesaid view that a transaction recorded in the books of account of an assessee, which had been subjected to audit and was disclosed in its financial statements enclosed along with the original return of income, cannot be brought within the meaning of "incriminating material" found in the course of search proceedings is supported by the

judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Param Dairy Ltd. (2021) 439 ITR 89 (Del.)**. In the case before the Hon'ble High Court, search and seizure operations u/s. 132 of the Act were carried out on the assessee group on 28.02.2024. Although, the assessee company in its return of income had claimed cash payments of about Rs.17 crores to dairy owners from whom it had purchased milk, but in the course of search proceedings, it was found that the said payments were not made to the dairy owners but to middlemen. As the cash payments made by the assessee company to middlemen were not permitted, thus, the A.O made addition of the said amount to the income of the assessee company.

99. On appeal, the Tribunal observed that since the entries of cash payments were made in the books of account of the assessee company, which had been subjected to audit and formed part of the return of income filed by the assessee company, therefore, it could not be brought within the meaning of incriminating evidence found during the course of search proceedings. On further appeal, the Hon'ble High Court approved the view taken by the Tribunal. The Hon'ble High Court, inter alia, observed that the regular books of account of the assessee company by no stretch of imagination could be treated as "incriminating material" to form a basis for framing of the assessment u/s. 153A r.w.s. 143(3) of the Act.

100. We, thus, are of a strong conviction that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a reference of the fact that the assessee company during the subject year had not received any amount of "Share capital" and "Share premium", i.e. a fact that is recorded in its audited financial statements filed along with its original return of income, therefore, by no means the same can be brought within the meaning of "incriminating material" found during the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017.

101. Apropos the seized document, viz. Page No.20 of LPS 1, it is the Ld. AR's contention that the contents of the same reveals the "Share application money" that was received by the assessee company during the subject year from the investor companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.85 crore; (ii) M/s. Shri Shayam Ply Traders Pvt. Ltd. : Rs.1.37 crore; and (iii) M/s. Unnati Commodeal Pvt. Ltd. : Rs.1.20 crore, and the same were recorded in its books of accounts.

102. Before proceeding any further, it would be pertinent to point out that the A.O while framing the assessment had, inter alia, observed that the share application money received by the assessee company for the subject year, i.e. A.Y.2011-12 was recorded in its books of account. In fact, the A.O had observed that the assessee company had in the garb of share application money stated to have been received from various Kolkata based

paper/shell companies introduced its unaccounted income in its books of account. For the sake of clarity, the observations of the A.O are culled out as under:

"4.1 During the course of search assessment, it is found that during the block period from A.Y 2009-10 to 2018-19, M/s NR Ispat & Power Pvt. Ltd has introduced its unaccounted money into the books in the form of share application money from various Kolkata Based shell companies. The rotation of money through various bank accounts and companies was carried by entry operator. An entry operator is the person who is in the business of giving accommodation entries in lieu of cash/cheque of equal amount after charging certain percentage of commission in cash. The details of shell/paper companies and year wise investment are as under:

M/s N.R Ispat & Power Pvt. Ltd.

PAN-AACCN6591Q

A.Y -2012-13 to 2018-19

Sl. No.	Sl. No.	Name of the Investor Company	F.Y	A.Y	Amount of share capital/ Premium received
1	1	Basukinath Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	2	Jealous Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	3	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	1500000
	4	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	7500000
	5	Navdurga Barter Pvt. Ltd.	2008-09	2009-10	9000000
	6	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	1500000
	7	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	5000000
	8	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	1000000
	9	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	2500000
	10	Bhagirathi Dealcom Pvt Ltd.	2008-09	2009-10	3000000
	11	Parrot Agencies and Credit Pvt Ltd.	2008-09	2009-10	12000000
	12	Brown Vinimay Pvt Ltd, Kolkata	2008-09	2009-10	5000000
	13	Fastgrow Suppliers Pvt Ltd.	2008-09	2009-10	8000000
	14	Nayan Tie Up Pvt Ltd, Kolkata	2008-09	2009-10	9500000
	15	Om Vanijya Pvt Ltd.	2008-09	2009-10	1500000
	16	Success Tour & Travels Pvt	2008-09	2009-10	4000000
Total					86000000
2	1	Prithvi Dealcom Pvt. Ltd.	2009-10	2010-11	34500000
	2	Shri Shyam Ply Traders Pvt. Ltd.	2009-10	2010-11	23000000
Total					57500000
3	1	Prithvi Dealcom Pvt. Ltd.	2010-11	2011-12	38500000
	2	Shri Shyam Ply Traders Pvt. Ltd	2010-11	2011-12	13700000
	3	Unnati Commodeal Pvt. Ltd.	2010-11	2011-12	12000000
Total					64200000
4	1	Prithvi Dealcom Pvt. Ltd	2011-12	2012-13	25900000
	2	Shri Shyam Ply Traders	2011-12	2012-13	54200000
	3	Unnati Commodeal Pvt. Ltd.	2011-12	2012-13	9000000
Total					89100000
5	1	Unnati Commodeal Pvt. Ltd.	2012-13	2013-14	69350000
	2	Prithvi Dealcom Pvt. Ltd	2012-13	2013-14	1275000
	3	Eternity Commercial Pvt. Ltd.	2012-13	2013-14	13000000
	4	Chirakoot Infonet Pvt. Ltd.	2012-13	2013-14	15300000
Total					98925000
6	1	Eternity Commercial Pvt. Ltd.	2013-14	2014-15	6500000
Total					6500000
7	1	Eternity Commercial Pvt. Ltd.	2015-16	2016-17	1250000
	2	Chirakoot Infonet Pvt. Ltd.	2015-16	2016-17	600000
Total					1850000

(emphasis supplied by us)

As observed by us hereinabove, it is the Ld. ARs' claim that now when the share application money received by the assessee company from the aforementioned investor companies was recorded in its books of account, it was, thus, incomprehensible as to how the same could be brought within the meaning of "incriminating material" as had been canvassed by the department's counsel. The Ld. AR submitted that the amount of Rs.6.42 crore, i.e. aggregate amount mentioned in the seized document, viz. Page 20 of LPS-1, was the amount of share application money received by the assessee company during the subject year, i.e. A.Y.2011-12, which was disclosed in its "balance sheet" for the said year. The Ld. AR had drawn our attention to Page 16 & 18 of APB, i.e. the "balance sheet" of the assessee company for the subject year, i.e. as of 31.03.2011, which revealed that the amount of Rs.6.42 crore (supra) was the amount received by the assessee company as "share application money (pending allotment)". In fact, we find on a perusal of the record that the assessee company vide its submissions, dated 31.08.2020 filed with the CIT(Appeals), Page 216-217 of CIT(A)'s order, had stated that shares were allotted to the aforesaid share applicants against the share application money of Rs.6.42 crore (supra) that was received from them, as under:

'Table-A'
for identity of the share applicant-Co. & genuineness of the transaction

Sl. No.	Name of the <u>share applicant</u>	<u>Amount of SAM received in AY11-12</u>	<u>No. of shares allotted (Nos.)</u>	<u>Date of allotment of shares</u>	<u>Certificate No./ Distinctive number</u>
1.	Prithwi Dealcom P.Ltd (now known as NRTMT (India) P.Ltd) PAN-AAECP8302R	3,85,00,000	3,08,000 shares allotted for Rs. 3,85,00,000	3-3-12	44 to 47/ 1943001-2251000
2.	Shree Shyam Ply Traders P.Ltd (now known as NR Ferro & Power P.Ltd) PAN-AALCS6435R	1,37,00,000	1,09,600 shares allotted for Rs. 1,37,00,000	3-3-12	50/ 2458201-2567800
3.	Unnati Commodeal P.Ltd PAN-ABCU1091R	1,20,00,000	96,000 shares allotted for Rs. 1,20,00,000	3-3-12	53/ 2835001-2931000
	Total	6,42,00,000	5,13,600 shares allotted for Rs. 6,42,00,000		

103. We are of a firm conviction that now when the share application money of Rs.6.42 crore (supra) received by the assessee company from the aforementioned share applicants, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.3.85 crore; (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : Rs.1.37; and (iii) M/s. Unnati Commodeal Pvt. Ltd. : Rs.1.20 crore is found recorded in its audited books of accounts which formed part of its financial statements that were enclosed along with its original return of income, therefore, it is difficult for us to fathom that as to how the same can be brought within the meaning of "Incriminating material" found in the course of search

proceedings conducted on it on 24.10.2017. Rather, the fact that shares have been allotted by the assessee company to the said respective share applicants in lieu of the share application money received from them, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : 3,08,000 shares allotted (for Rs.3.85 crore on 03.03.2012); (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd.: 1,09,600 shares allotted (for Rs.1.37 crore on 03.03.2012); and (iii) M/s. Unnati Commoddeal Pvt. Ltd. : 96,000 shares allotted (for Rs.1.20 crore on 03.03.2012) i.e. much prior to the search and seizure proceedings conducted on 24.10.2017, therein further supports the assessee's claim that the contents of the seized documents, viz. Page 20-LPS-1 cannot be brought with the meaning of "incriminating material" found during the course of search and seizure proceedings conducted on the assessee company on 24.10.2017.

104. Although it is the claim of the department that the assessee company during the year under consideration had received its unaccounted money of Rs.6.42 crores in the garb of share application money from 3 paper/shell companies but there can be no gainsaying that no incriminating material was found or unearthed during the course of search proceedings which would support the same. In fact, it is not even the case of the department that any incriminating material evidencing receipt of accommodation entries by the assessee company in the garb of share application money/share capital/share premium from the

aforementioned investor/subscriber companies was found in the course of the search & seizure proceedings conducted on 24.10.2017.

105. As the aforesaid issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11 in CO No.12/RPR/2022, wherein after dealing with the multi-facet observations of the lower authorities on the issue as to whether or not any "incriminating material" was found in the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017, we had answered the same in negative and decided the issue in favour of the assessee company, therefore, our adjudication, on the said issue shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.13/RPR/2022 for A.Y.2011-12 filed by the assessee company. The **Ground of cross-objection No.2** is allowed on the same terms.

106. Apropos the issue that in absence of any valid approval of the Jt. CIT u/s.153D of the Act, the assessment order passed by the A.O u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 was invalid and bad in law, we are of the view that as the said issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11, while disposing off the cross objection filed by the assessee company, i.e. CO No.12/RPR/2022, therefore, our adjudication on the said issue shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.13/RPR/2022 for

A.Y.2011-12. The **Ground of cross objection No.3 (revised)** is allowed on same terms.

107. In the result, while for the cross objection filed by the assessee company in CO No.13/RPR/2022 for A.Y.2011-12 is allowed, the appeal of the revenue in IT(SS)A No.7/RPR/2021 for A.Y.2011-12 is dismissed as having been rendered as infructuous in terms of our aforesaid observations.

IT(SS)A 08/RPR/2021
CO No.14/RPR/2022
A.Y.2012-13

108. Although the facts and the issue involved in the case of the assessee company for A.Y.2010-11, i.e. CO No.12/RPR/2022, based on which we have, inter alia, vacated the additions made by the A.O vide his consolidated order passed u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 for A.Y.2010-11, for the reason that in absence of any incriminating material found in the course of search and seizure proceedings conducted on the assessee company on 24.10.2017 no addition could have been made as regards its unabated assessment for the said year, therein, remains the same as are there before us in its case for the captioned year, i.e.A.Y.2012-13, CO No.14/RPR/2022, but we deem it fit to briefly cull out the facts in so far the same emanates from the contents of the seized documents referred to by the A.O in the assessment

1	2009-10	40500000	23000000	-	-	-	63500000
2	2010-11	38500000	13700000	12000000	-	-	64200000
3	2011-12	22300000	54200000	9000000	-	-	85500000
4	2012-13	1275000	-	69350000	15300000	13000000	98925000
5	2013-14	-	-	-	-	6500000	6500000
Grand Total		102575000	909000000	90350000	15300000	19500000	318625000

110. We may herein observe that the case of the assessee company was originally assessed by the A.O vide his order u/s. 143(3) of the Act dated 26.03.2015, Page 12-16 of APB. We concur with the Ld. AR that the amounts mentioned in the seized document, viz. Page 44 of LPS-1, are the details of infusion of fresh share capital and share premium with the assessee company during the subject year which were recorded in its audited financial statements filed alongwith its original returns of income for the subject year, and had been scrutinized by the A.O while framing the original assessment in its case vide order passed u/s. 143(3) of the Act, dated 26.03.2015. Our aforesaid view can safely be gathered from a conjoint perusal of the "balance sheet" of the assessee company as on 31.03.2012, and the contents of the aforesaid seized document, viz. Page 44-LPS-1. The "balance sheet" of the assessee company for the year under consideration reveals the share capital at Rs.3,17,18,000/- (as on 31.03.2012) and at Rs.1,90,70,000 (as on 31.03.2011) as under:

<i>" (i) Shareholders fund</i>	As at 31-03-2012	As at 31-03-2011
(a) share capital	<u>3,17,18,000</u>	<u>19,070,000"</u>

It transpires on a careful scrutinizing of the aforesaid "balance sheet" that there was an infusion of fresh "share capital" during the subject year amounting to Rs.1,26,48,000/-, i.e. Rs.3,17,10,000/- (as on 31.03.2012) (minus) Rs.1,90,70,000/- (as on 31.03.2011). We, thus, find substance in the Ld. AR's contention that as mentioned in the seized document, viz. Page No.44 of LPS-1 fresh "share capital" of Rs.1,26,48,000/- was received by the assessee company during the year under consideration as was disclosed in its audited "balance sheet" for the said year.

111. Apropos the amount of Rs.14,51,52,000/- mentioned in the aforesaid seized document, viz. Page No.44 of LPS-1, under the head "share premium" for the subject year, i.e. A.Y.2012-13 we find that the same was the amount received by the assessee company as "Share premium" during the subject year, which was disclosed in its "balance sheet" for the said year as "Securities premium account" under the parent head "Reserves and surplus", as under:

RESERVES & SURPLUS	AS AT 31-03-2012	AS AT 31-03-2011
"Securities Premium Account		
Amount at the beginning of the year	128,030,000	128,030,000
Add: Amount received during the year	145152000	-

Amount at the end of the year

273182000128030000

In the backdrop of the aforesaid facts, we find that as mentioned in the aforesaid seized document, i.e. Page No. 44 of LPS-1, the assessee company during the subject year had received an amount of Rs.14,51,52,000/- as "Share premium", a fact which was disclosed in its audited "balance sheet" that was filed along with its original return of income for the said year, which as observed by us hereinabove was scrutinized by the A.O while framing the assessment vide his order passed u/s. 143(3) of the Act, dated 26.03.2015.

112. Based on our aforesaid observations, we are of the view that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a mention that an amount of share capital (Rs.1,26,48,000/-) and share premium (Rs.14,51,52,000/-) was received by the assessee company during the subject year, i.e. A.Y.2012-13, a fact which was disclosed in its audited "balance sheet" for the said year, therefore, the same cannot be brought within the meaning of "incriminating material" found during the course of search proceedings. Our aforesaid view that a transaction recorded in the books of account of an assessee, which had been subjected to audit and was disclosed in its financial statements enclosed along with the original return of income cannot be brought within the meaning of "incriminating material" found in the course of search proceedings is

supported by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Param Dairy Ltd. (2021) 439 ITR 89 (Del.)**. In the case before the Hon'ble High Court, search and seizure operations u/s. 132 of the Act were carried out on the assessee group on 28.02.2024. Although, the assessee company in its return of income had claimed cash payments of about Rs.17 crores to dairy owners from whom it had purchased milk, but in the course of search proceedings, it was found that the said payments were not made to the dairy owners but to middlemen. As the cash payments made by the assessee company to middlemen were not permitted, thus, the A.O made addition of the said amount to the income of the assessee company.

113. On appeal, the Tribunal observed that since the entries of cash payments were made in the books of account of the assessee company, which had been subjected to audit and formed part of the return of income filed by the assessee company, therefore, it could not be brought within the meaning of incriminating evidence found during the course of search proceedings. On further appeal, the Hon'ble High Court approved the view taken by the Tribunal. The Hon'ble High Court, inter alia, observed that the regular books of account of the assessee company by no stretch of imagination could be treated as "incriminating material" to form a basis for framing of the assessment u/s. 153A r.w.s. 143(3) of the Act.

114. We, thus, are of a strong conviction that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a reference of the fact that the assessee company during the subject year had received amounts towards "share capital" and "share premium", which were recorded in its audited financial statements filed along with its original return of income, therefore, by no means the same can be brought within the meaning of "incriminating material" found during the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017.

115. Apropos the seized document, viz. Page No.20 of LPS 1, the Ld. AR submitted that the same refers to the share application money that was received by the assessee company during the subject year from the investor companies, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.2.23 crore; (ii) M/s. Shri Shayam Ply Traders Pvt. Ltd. : Rs.5.42 crore; and (iii) M/s. Unnati Commodeal Pvt. Ltd. : Rs.90 lacs, which were recorded in its books of accounts. As the amount of "share application money" received during the subject year by the assessee company from one of the investor company, viz. M/s. Prithvi Dealcom Pvt. Ltd. as per the seized document, viz. Page-20-LPS-1 was Rs.2.23 crore, while for that as per the "books of accounts" was Rs.2.59 core, i.e. as adopted by the A.O, wherein the latter had held the same as the unaccounted money of the assessee company, the Ld. AR was queried about the same. In reply, the Ld. AR submitted that the assessee company had during the year under consideration

received Rs.2.59 crore (supra) from the aforementioned investor company. The Ld. AR had drawn our attention to the bifurcated details of amounts received by the assessee company from the aforementioned investor company a/w. the latter's source, Page 463-464 of APB and the details of share allotted to the said investor in lieu of share application money of Rs.2.59 crore (supra) received from the latter during the year under consideration, Page 236 of CIT(A)'s order. Apart from that, the Ld. AR submitted that the A.O had held the amount of Rs.2.59 crore (supra) as the unaccounted income of the assessee company received in the garb of share application money from the said investor and had made addition of the same while framing the assessment for the year under consideration, i.e. A.Y.2012-13. The Ld. AR submitted that the receipt of "share application money" of Rs.2.59 crore during the year under consideration, had been looked into by the A.O while framing assessment in its case vide his order passed u/s. 143(3) of the Act, dated 26.03.2015, Page 12-16 of APB.

116. Before proceeding any further, it would be pertinent to point out that the A.O while framing the assessment had, inter alia, observed that the share application money received by the assessee company for the subject year, i.e. A.Y.2012-13 was recorded in its books of account. In fact, the A.O had observed that the assessee company in the garb of share application money stated to have been received from various Kolkata based

paper/shell companies introduced its unaccounted income in its books of account. For the sake of clarity, the observations of the A.O are culled out as under:

"4.1 During the course of search assessment, it is found that during the block period from A.Y 2009-10 to 2018-19, M/s NR Ispat & Power Pvt. Ltd has introduced its unaccounted money into the books in the form of share application money from various Kolkata Based shell companies. The rotation of money through various bank accounts and companies was carried by entry operator. An entry operator is the person who is in the business of giving accommodation entries in lieu of cash/cheque of equal amount after charging certain percentage of commission in cash. The details of shell/paper companies and year wise investment are as under:

M/s N.R Ispat & Power Pvt. Ltd.

PAN-AACCN6591Q

A.Y -2012-13 to 2018-19

Sl. No.	Sl. No.	Name of the Investor Company	F.Y	A.Y	Amount of share capital/ Premium received
1	1	Basukinath Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	2	Jealous Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	3	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	1500000
	4	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	7500000
	5	Navdurga Barter Pvt. Ltd.	2008-09	2009-10	9000000
	6	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	1500000
	7	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	5000000
	8	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	1000000
	9	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	2500000
	10	Bhagirathi Dealcom Pvt Ltd.	2008-09	2009-10	3000000
	11	Parrot Agencies and Credit Pvt Ltd.	2008-09	2009-10	12000000
	12	Brown Vinimay Pvt Ltd, Kolkata	2008-09	2009-10	5000000
	13	Fastgrow Suppliers Pvt Ltd.	2008-09	2009-10	8000000
	14	Nayan Tie Up Pvt Ltd, Kolkata	2008-09	2009-10	9500000
	15	Om Vanijya Pvt Ltd.	2008-09	2009-10	1500000
	16	Success Tour & Travels Pvt	2008-09	2009-10	4000000
Total					86000000
2	1	Prithvi Dealcom Pvt. Ltd.	2009-10	2010-11	34500000
	2	Shri Shyam Ply Traders Pvt. Ltd.	2009-10	2010-11	23000000
Total					57500000
3	1	Prithvi Dealcom Pvt. Ltd.	2010-11	2011-12	38500000
	2	Shri Shyam Ply Traders Pvt. Ltd	2010-11	2011-12	13700000
	3	Unnati Commodeal Pvt. Ltd.	2010-11	2011-12	12000000
Total					64200000
4	1	Prithvi Dealcom Pvt. Ltd	2011-12	2012-13	25900000
	2	Shri Shyam Ply Traders	2011-12	2012-13	54200000
	3	Unnati Commodeal Pvt. Ltd.	2011-12	2012-13	9000000
Total					89100000
5	1	Unnati Commodeal Pvt. Ltd.	2012-13	2013-14	69350000
	2	Prithvi Dealcom Pvt. Ltd	2012-13	2013-14	1275000
	3	Eternity Commercial Pvt. Ltd.	2012-13	2013-14	13000000
	4	Chirakoot Infonet Pvt. Ltd.	2012-13	2013-14	15300000
Total					98925000
6	1	Eternity Commercial Pvt. Ltd.	2013-14	2014-15	6500000
Total					6500000
7	1	Eternity Commercial Pvt. Ltd.	2015-16	2016-17	1250000
	2	Chirakoot Infonet Pvt. Ltd.	2015-16	2016-17	600000
Total					1850000

(emphasis supplied by us)

As observed by us hereinabove, it is the Ld. ARs' claim that now when the share application money received by the assessee company from the aforementioned investor companies was recorded in its books of account, it was, thus, incomprehensible as to how the same could be brought within the meaning of "incriminating material" as had been canvassed by the department's counsel. The Ld. AR submitted that as observed by the A.O, the assessee company as per its books of account had received an aggregate amount of share application money of Rs.8.91 crore (supra) during the year under consideration, i.e. A.Y.2012-13, against which shares were allotted to the aforesaid share applicants during the subject year itself, and complete details as regards the same were filed by the assessee company vide its reply filed with the A.O on 10.12.2019, i.e. during the course of the impugned assessment proceedings, Page 433-443 of APB. The Ld. AR in order to fortify his contention had drawn our attention to Page 440 of APB. In fact, we find on a perusal of the record that the assessee company vide its submissions filed with the CIT(Appeals), Page 236-237 of CIT(A)'s order, had stated that shares were allotted to the aforesaid share applicants against the share application money of Rs.8.91 crore (supra) that was received from them, as under:

'Table-A'
for identity of the share applicant-Co. & genuineness of the transaction

Sl. No.	Name of the <u>share applicant</u>	<u>Amount of SAM received in AY11-12</u>	<u>No. of shares allotted</u> (Nos.)	<u>Date of allotment of shares</u>	<u>Certificate No./ Distinctive number</u>
1.	Prithwi Dealcom P.Ltd (now known as NR TMT (India) P.Ltd) PAN-AAECP8302R	2,59,00,000	2,07,200 shares allotted for Rs. 2,59,00,000	3-3-12	48-49/ 2251001-2458200
2.	Shree Shyam Ply Traders P.Ltd (now known as NR Ferro & Power P.Ltd) PAN-AALCS6435R	5,42,00,000	2,67,200 shares allotted for Rs. 3,34,00,000 1,66,400 shares allotted for Rs. 2,08,00,000	3-3-12 28-3-12	51-52/ 2567801-2835000 55-56/ 3003001-3169400
	Unnati Commodeal P.Ltd	90,00,000	72,000 shares allotted for Rs.	3-3-12	54/

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M/s. N R Ispat and Power Pvt. Ltd.,
Appeal No. CIT(A)-3/BPL/IT- 12387/2016-17, 11261, 11262, 11285 11252, 11277 & 11286/2019-20

A.Y. 2010-11 to 2015-16,
A.Y. 2016-17, 2017-18, 2018-19, 2019-20

	PAN-ABCU1091R		90,00,000		2931001-3003000
	Total	8,91,00,000	7,12,800 shares allotted for Rs. 8,91,00,000		

117. We are of a firm conviction that now when the share application money of Rs.8.91 crore (supra) received by the assessee company from the aforementioned share applicants, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.2.59 crore; (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd. : Rs.5.42; and (iii) M/s. Unnati Commodeal Pvt. Ltd. : Rs.90 lacs is found recorded in its audited books of accounts which formed part of its financial statements that were enclosed along with its original return of income, which thereafter, have been scrutinized in the original assessment framed u/s. 143(3) of the Act, dated 26.03.2015, therefore, it is difficult to fathom that as to how the same could be brought within the meaning of "Incriminating material" found in the course of search proceedings conducted on 24.10.2017. Rather, the fact that shares have been allotted by the assessee company to the said respective share applicants in lieu of the share application money received from them, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : 2,07,200 shares allotted (for Rs.2.59 crore on 03.03.2012); (ii) M/s. Shri Shyam Ply Traders Pvt. Ltd.: 2,67,200 shares allotted (for Rs.5.42 crore on 03.03.2012/28.03.2012); and (iii) M/s. Unnati Commodeal Pvt. Ltd. : 72,000 shares allotted (for Rs.90 lacs on 03.03.2012) i.e. much prior to the search and seizure proceedings conducted on 24.10.2017, therein further supports the assessee's claim that the contents of the seized documents, viz. Page 20-LPS-1 cannot be brought with the meaning of

"incriminating material" found during the course of search and seizure proceedings conducted on the assessee company on 24.10.2017.

118. Although it is the claim of the department that the assessee company during the year under consideration had received its unaccounted money of Rs.8.91 crores in the garb of share application money/share capital/share premium from 3 paper/shell companies but there can be no gainsaying that no incriminating material was found or unearthed during the course of search proceedings which would support the same. In fact, it is not even the case of the department that any incriminating material evidencing receipt of accommodation entries by the assessee company in the garb of share application money/share capital/share premium from the aforementioned investor/subscriber companies was found in the course of the search & seizure proceedings conducted on 24.10.2017.

119. As the aforesaid issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11, in CO No.12/RPR/2022, wherein we had after dealing with the multi-facet observations of the lower authorities on the issue as to whether or not any "incriminating material" was found in the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017, had answered the same in negative and decided the issue in favour of the assessee company, therefore, our adjudication,

on the said issue shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.14/RPR/2022 for A.Y.2012-13 of the assessee company. The **Ground of cross objection No.2** is allowed in terms of our aforesaid observations.

120. Apropos the issue that in absence of any valid approval of the Jt. CIT u/s.153D of the Act, the assessment order passed by the A.O u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 was invalid and bad in law, we are of the view that as the said issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11, while disposing off the cross objection, i.e. CO No.12/RPR/2022, therefore, our adjudication rendered on the said issue in the aforementioned cross-objection shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.14/RPR/2022 for A.Y.2012-13. The **Ground of cross objection No.3 (revised)** is allowed in terms of our aforesaid observations.

121. In the result, while for the cross objection filed by the assessee company in CO No.14/RPR/2022 for A.Y.2012-13 is allowed, the appeal of the revenue in IT(SS)A No.8/RPR/2021 for A.Y.2012-13 is dismissed as having been rendered as infructuous in terms of our aforesaid observations.

IT(SS)A 09/RPR/2021
CO No.15/RPR/2022
A.Y.2013-14

122. Although the facts and the issue involved in the case of the assessee company for A.Y.2010-11, i.e. CO No.12/RPR/2022, based on which we have, inter alia, vacated the additions made by the A.O vide his consolidated order passed u/s.143(3) r.w.s. 153A of the Act, dated 30.12.2019 for A.Y.2010-11, i.e. for the reason that in absence of any incriminating material found in the course of search and seizure proceedings conducted on the assessee company on 24.10.2017 no addition could have been made as regards its unabated assessment for the said year, therein, remains the same as are there before us in its case for the captioned year, i.e.A.Y.2013-14, CO No.15/RPR/2022, but we deem it fit to briefly cull out the facts in so far the same emanates from the contents of the seized documents referred to by the A.O in the assessment order for the year under consideration, i.e. A.Y.2013-14, viz. (i) Page 44 of LPS-1; and (ii) Page 20 of LPS-1.

123. Admittedly, it is a matter of fact discernible from the assessment order that the A.O had referred to two documents which were seized from the office premises of the assessee company during the course of search & seizure proceedings conducted on 24.10.2017, viz. (i) Page 44 of LPS 1; and (ii) Page 20 of LPS-1. For the sake of clarity, the scanned copies of the aforesaid seized documents are culled out as under:

Page 44-LPS-1**M/s. N.R ISPAT & POWER PVT. LTD
DETAILS OF INFUSION OF CAPITAL**

Year	Paid-up capital	Share premium	Total
2007-08	300000	0	300000
2008-09	9610000	22690000	32300000
2009-10	9160000	105340000	114500000
2010-11	0	0	0
2011-12	12648000	145152000	157800000
2012-13	6578940	62770958	69349898
2013-14	3192470	32882441	36074911
2014-15	2384800	26232800	28617600
2015-16	154150	1695650	1849800
Total	44028360	396763849	440792209

Page 20-LPS-1

		Prithvi Deal Com Pvt. Ltd.	Shri Shyam Ply Traders Pvt. Ltd.	Unnati Commodeal Pvt. Ltd.	Chitrakoot Infonet Pvt. Ltd.	Eternity Commercial Pvt. Ltd.	Total
Sl. No.	F.Y	Amount	Amount	Amount	Amount	Amount	
1	2009-10	40500000	23000000	-	-	-	63500000
2	2010-11	38500000	13700000	12000000	-	-	64200000
3	2011-12	22300000	54200000	9000000	-	-	85500000
4	2012-13	1275000	-	69350000	15300000	13000000	98925000
5	2013-14	-	-	-	-	6500000	6500000
Grand Total		102575000	909000000	90350000	15300000	19500000	318625000

124. We may herein observe that the case of the assessee company was originally assessed by the A.O vide his order u/s. 143(3) of the Act dated 16.02.2016, Page 19-22 of APB. We concur with the Ld. AR that the

amounts mentioned in the seized document, viz. Page 44 of LPS-1, are the details of infusion of fresh "share capital" and "share premium" with the assessee company during the subject year which were recorded in its audited financial statements filed alongwith its original return of income for the said year, and had been scrutinized by the A.O while framing the original assessment in its case vide order passed u/s. 143(3) of the Act, dated 16.02.2016. Our aforesaid view can safely be gathered from a conjoint perusal of the "balance sheet" of the assessee company as of 31.03.2013, Page 12 & 13 of APB and the contents of the aforesaid seized document, viz. Page 44-LPS-1. The "balance sheet" of the assessee company for the year under consideration reveals the share capital at Rs.3,82,96,940/- (as on 31.03.2013) and at Rs.3,17,18,000/- (as on 31.03.2012) as under:

" (i) Shareholders fund	Note No.	As at 31-03-2013 (R)	As at 31-03-2012 (R)
(a) share capital	2	<u>38296940</u>	<u>31718000"</u>

It transpires on a careful scrutinizing of the aforesaid "balance sheet" that there was an infusion of fresh share capital during the subject year of Rs.65,78,940/-, i.e. Rs.3,82,96,940/-/- (as on 31.03.2013) (minus) Rs.3,17,18,000/- (as on 31.03.2012). We, thus, find substance in the Ld. AR's contention that as mentioned in the seized document, viz. Page No.44

of LPS-1 the fresh share capital of Rs.65,78,940/- that was received by the assessee company during the year under consideration was disclosed in its audited "balance sheet" for the said year.

125. Apropos the amount of Rs.6,27,70,958/- mentioned in the aforesaid seized document, viz. Page No.44 of LPS-1, we find that the same was the amount that was received by the assessee company as "share premium" for the subject year, i.e. A.Y.2013-14 and was disclosed in its "balance sheet" for the said year as "Securities premium account" under the parent head "Reserves and surplus", Page 13 of APB as under:

"RESERVES & SURPLUS	AS AT 31-03-2013 (R)	AS AT 31-03-2012 (R)
"Securities Premium Account		
Amount at the beginning of the year	273182000	128030000
Add: Amount received during the year	62770958	145152000
Amount at the end of the year	<u>33952958</u>	<u>273182000</u>

In the backdrop of the aforesaid facts, we find that as mentioned in the aforesaid seized document, i.e. Page No. 44 of LPS-1, the assessee company during the subject year had received an amount of Rs.6,27,70,958/- as "Share premium", a fact which was disclosed in its audited "balance sheet" that was filed along with its original return of income for the said year, and was scrutinized by the A.O while framing the assessment vide his order passed u/s. 143(3) of the Act, dated 16.02.2016.

126. Based on our aforesaid observations, we are of the view that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a mention that an amount of share capital (Rs.65,78,940/-) and share premium (Rs.6,27,70,958/-) was received by the assessee company during the subject year, a fact which was duly disclosed in its audited "balance sheet" for the said year, therefore, the same cannot be brought within the meaning of "incriminating material" found during the course of search proceedings. Our aforesaid view that a transaction recorded in the books of account of an assessee, which had been subjected to audit and was disclosed in its financial statements enclosed along with the original return of income cannot be brought within the meaning of "incriminating material" found in the course of search proceedings is supported by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Param Dairy Ltd. (2021) 439 ITR 89 (Del.)**. In the case before the Hon'ble High Court, search and seizure operations u/s.132 of the Act were carried out on the assessee group on 28.02.2024. Although, the assessee company in its return of income had claimed cash payments of about Rs.17 crores to dairy owners from whom it had purchased milk, but in the course of search proceedings, it was found that the said payments were not made to the dairy owners but to middlemen. As the cash payments made by the assessee company to middlemen were not permitted, thus, the A.O made addition of the said amount to the income of the assessee company.

127. On appeal, the Tribunal observed that since the entries of cash payments were made in the books of account of the assessee company, which had been subjected to audit and formed part of the return of income filed by the assessee company, therefore, it could not be brought within the meaning of incriminating evidence found during the course of search proceedings. On further appeal, the Hon'ble High Court approved the view taken by the Tribunal. The Hon'ble High Court, inter alia, observed that the regular books of account of the assessee company by no stretch of imagination could be treated as "incriminating material" to form a basis for framing of the assessment u/s. 153A r.w.s. 143(3) of the Act.

128. We, thus, are of a strong conviction that as the contents of the seized document, viz. Page No.44 of LPS-1 makes a reference of the fact that the assessee company during the subject year had received amounts towards "share capital" and "share premium", which were recorded in its audited financial statements filed along with its original return of income, therefore, by no means the same can be brought within the meaning of "incriminating material" found during the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017.

129. Apropos the seized document, viz. Page No.20 of LPS 1, it is the Ld. AR's contention that the contents of the same reveals the share application money that was received by the assessee company during the subject year

from the investor companies aggregating to Rs.9,89,25,000/-, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : Rs.12,75,000/-; (ii) M/s. Eternity Commercial Pvt. Ltd. : Rs.1,30,00,000/-; (iii) M/s. Chirakoot Infonet Pvt. Ltd. : Rs.1,53,00,000/- and (iv) M/s. Unnati Commodeal Pvt. Ltd. : Rs.6,93,50,000/-, which were recorded in its books of accounts. The Ld. AR submitted that the receipt of "share application money" during the year under consideration, had been looked into by the A.O while framing assessment in its case vide his order passed u/s. 143(3) of the Act, dated 16.02.2016, Page 19-22 of APB.

130. Before proceeding any further, it would be pertinent to point out that the A.O while framing the assessment had, inter alia, observed that the share application money received by the assessee company for the subject year, i.e. A.Y.2013-14 was recorded in its books of account. In fact, the A.O had observed that the assessee company in the garb of share application money stated to have been received from various Kolkata based paper/shell companies introduced its unaccounted income in its books of account. For the sake of clarity, the observations of the A.O are culled out as under:

"4.1 During the course of search assessment, it is found that during the block period from A.Y 2009-10 to 2018-19, M/s NR Ispat & Power Pvt. Ltd has introduced its unaccounted money into the books in the form of share application money from various Kolkata Based shell companies. The rotation of money through various bank accounts and companies was carried by

entry operator. An entry operation is the person who is in the business of giving accommodation entries in lieu of cash/cheque of equal amount after charging certain percentage of commission in cash. The details of shell/paper companies and year wise investment are as under:

M/s N.R Ispat & Power Pvt. Ltd.
PAN-AACCN6591Q
A.Y-2012-13 to 2018-19

Sl. No.	Sl. No.	Name of the Investor Company	F.Y	A.Y	Amount of share capital/ Premium received
1	1	Basukinath Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	2	Jealous Vincom Pvt. Ltd.	2008-09	2009-10	7500000
	3	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	1500000
	4	Minimart Vyapaar Pvt. Ltd	2008-09	2009-10	7500000
	5	Navdurga Barter Pvt. Ltd.	2008-09	2009-10	9000000
	6	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	1500000
	7	Shyam Dealcom Pvt. Ltd	2008-09	2009-10	5000000
	8	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	1000000
	9	Srijan Nirman Pvt. Ltd.	2008-09	2009-10	2500000
	10	Bhagirathi Dealcom Pvt Ltd.	2008-09	2009-10	3000000
	11	Parrot Agencies and Credit Pvt Ltd.	2008-09	2009-10	12000000
	12	Brown Vinimay Pvt Ltd, Kolkata	2008-09	2009-10	5000000
	13	Fastgrow Suppliers Pvt Ltd.	2008-09	2009-10	8000000
	14	Nayan Tie Up Pvt Ltd, Kolkata	2008-09	2009-10	9500000
	15	Om Vanijya Pvt Ltd.	2008-09	2009-10	1500000
	16	Success Tour & Travels Pvt	2008-09	2009-10	4000000
Total					86000000
2	1	Prithvi Dealcom Pvt. Ltd.	2009-10	2010-11	34500000
	2	Shri Shyam Ply Traders Pvt. Ltd.	2009-10	2010-11	23000000
Total					57500000
3	1	Prithvi Dealcom Pvt. Ltd.	2010-11	2011-12	38500000
	2	Shri Shyam Ply Traders Pvt. Ltd	2010-11	2011-12	13700000
	3	Unnati Commodeal Pvt. Ltd.	2010-11	2011-12	12000000
Total					64200000
4	1	Prithvi Dealcom Pvt. Ltd	2011-12	2012-13	25900000
	2	Shri Shyam Ply Traders	2011-12	2012-13	54200000
	3	Unnati Commodeal Pvt. Ltd.	2011-12	2012-13	9000000
Total					89100000
5	1	Unnati Commodeal Pvt. Ltd.	2012-13	2013-14	69350000
	2	Prithvi Dealcom Pvt. Ltd	2012-13	2013-14	1275000
	3	Eternity Commercial Pvt. Ltd.	2012-13	2013-14	13000000
	4	Chirakoot Infonet Pvt. Ltd.	2012-13	2013-14	15300000
Total					98925000
6	1	Eternity Commercial Pvt. Ltd.	2013-14	2014-15	6500000
Total					6500000
7	1	Eternity Commercial Pvt. Ltd.	2015-16	2016-17	1250000
	2	Chirakoot Infonet Pvt. Ltd.	2015-16	2016-17	600000
Total					1850000

(emphasis supplied by us)

As observed by us hereinabove, it is the Ld. ARs' claim that now when the share application money received by the assessee company from the aforementioned investor companies was recorded in its books of account, it was, thus, incomprehensible as to how the same could be brought within the meaning of "incriminating material" as had been canvassed by the department's counsel. The Ld. AR submitted that the amount of Rs.9,89,25,000/- i.e. aggregate amount mentioned in the seized document, viz. Page 20 of LPS-1, was the amount of share application money received by the assessee company during the subject year, i.e. A.Y.2013-14, against which shares were allotted to the aforesaid share applicants and complete details as regards the same were filed by the assessee company vide its reply filed with the A.O on 10.12.2019, i.e. during the course of the impugned assessment proceedings, Page 564-574 of APB. The Ld. AR in order to fortify his contention had drawn our attention to Page 571 of APB. In fact, we find on a perusal of the record that the assessee company vide its submissions filed with the CIT(Appeals), Page 236-237 of CIT(A)'s order, had stated that shares were allotted to the aforesaid share applicants against the share application money of Rs.9,89,25,000/- (supra) that was received from them, as under: (relevant extract for the subject year, i.e. A.Y.2013-14)

F.Y.2012-13 A.Y.2013-14							
9	Unnati Commoddeal Pvt. Ltd. PAN-AABCU1091R	-	69350000	69349900	657894		
10	Prithvi Dealcom Pvt. Ltd. now NRTMT (PAN-AAECP8302R) Allotted on AY.14-15	-	1275000	1274979	11283	21	
11	Eternity Commercial Pvt. Ltd. PAN-AACCE1315P Allotted on AY.14-15	-	13000000	12999972	115044	28	

12	Chirakoot Infonet Pvt. Ltd. PAN-ADCC5880A Allotted on AY.14-15	-	15300000	15299974	135398	26	
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131. We are of a firm conviction that now when the share application money of Rs.9,89,25,000/-(supra) received by the assessee company from the aforementioned share applicants, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. :Rs.12,75,000/-; (ii) M/s. Eternity Commercial Pvt. Ltd. : Rs.1,30,00,000/-; (iii) M/s. Chirakoot Infonet Pvt. Ltd. : Rs.1,53,00,000/-; and (iv) M/s. Unnati Commoddeal Pvt. Ltd. : Rs.6,93,50,000/- is found recorded in its audited books of accounts, which formed part of its financial statements that were enclosed along with its original return of income, and had been scrutinized in the original assessment framed u/s. 143(3) of the Act, dated 16.02.2016, therefore, it is difficult to fathom that as to how the same can be brought within the meaning of "Incriminating material" found in the course of search proceedings conducted on 24.10.2017. Rather, the fact

that shares have been allotted by the assessee company to the aforesaid respective share applicants in lieu of the share application money received from them, viz. (i) M/s. Prithvi Dealcom Pvt. Ltd. : 11,283 shares allotted (for Rs.12,74,979/-); (ii) M/s. Eternity Commercial Pvt. Ltd.: 115044 shares allotted (for Rs.1,29,99,972/-); (iii) M/s. Chirakoot Infonet Pvt. Ltd. : 135398 shares allotted (Rs.1,52,99,974/-); and (iv) M/s. Unnati Commodial Pvt. Ltd. : 657894 shares allotted for Rs.6,93,49,900/- i.e. much prior to the search and seizure proceedings conducted on 24.10.2017, therein further supports the assessee's claim that the contents of the seized document, viz. Page 20-LPS-1 cannot be brought with the meaning of "incriminating material" found during the course of search and seizure proceedings conducted on the assessee company on 24.10.2017.

132. Although it is the claim of the department that the assessee company during the year under consideration had received its unaccounted money of Rs.9,89,25,000/- in the garb of share application money from 4 paper/shell companies but there can be no gainsaying that no incriminating material was found or unearthed during the course of search proceedings which would support the same. In fact, it is not even the case of the department that any incriminating material evidencing receipt of accommodation entries by the assessee company in the garb of share application money/share capital/share premium from the

aforementioned investor/subscriber companies was found in the course of the search & seizure proceedings conducted on 24.10.2017.

133. As the aforesaid issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11 in CO No.12/RPR/2022, wherein we had after dealing with the multi-facet observations of the lower authorities on the issue as to whether or not any "incriminating material" was found in the course of the search & seizure proceedings conducted on the assessee company on 24.10.2017, had answered the same in negative and decided the same in favour of the assessee company, therefore, our adjudication, on the said issue shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.15/RPR/2022 for A.Y.2013-14 filed by the assessee company. The **Ground of cross objection No.2** is allowed in terms of our aforesaid observations.

134. Apropos the issue that in absence of any valid approval of the Jt. CIT u/s.153D of the Act, the assessment order passed by the A.O u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 was invalid and bad in law, we are of the view that as the said issue had been deliberated at length by us in the preceding year, i.e. A.Y.2010-11, while disposing off the cross objection, i.e. CO No.12/RPR/2022, therefore, our adjudication rendered on the said issue shall *mutatis-mutandis* apply for disposing the captioned cross-objection, viz. CO No.15/RPR/2022 for A.Y.2013-14. The **Ground of**

cross objection No.3 (revised) is allowed in terms of our aforesaid observations.

135. In the result, while for the cross objection filed by the assessee company in CO No.15/RPR/2022 for A.Y.2013-14 is allowed, the appeal of the revenue in IT(SS)A No.9/RPR/2021 for A.Y.2013-14 is dismissed as having been rendered as infructuous in terms of our aforesaid observations.

ITA No.04/RPR/2021
ITA No.10/RPR/2021
A.Y.2018-19

136. As the facts and issue qua the validity of the jurisdiction assumed by the A.O for framing the assessment vide his order passed u/s. 143(3) of the Act, dated 30.12.2019 for the subject year, i.e. A.Y.2018-19, in absence of valid approval of the Jt. CIT, Range-Central, Raipur u/s. 153D of the Act remains the same as was there before us in the preceding year, i.e. A.Y.2010-11, in CO No.12/RPR/2022, therefore, the order therein passed shall mutatis mutandis apply for disposing the captioned appeal filed by the assessee company viz. ITA No. 04/RPR/2021 for A.Y.2018-19.

137. As we have in terms of our aforesaid observations quashed the assessment framed by A.O u/s.143(3) of the Act, dated 30.12.2019 for want of valid assumption of jurisdiction, thus, while for the appeal filed by the assessee company in ITA No.04/RPR/2021 for A.Y.2018-19 is allowed,

the appeal filed by the revenue in ITA No.10/RPR/2021 for A.Y.2018-19 having been rendered as academic in nature is dismissed as infructuous in terms of our aforesaid observations.

138. As we have in terms of our aforesaid observations quashed the assessment framed by the A.O for A.Y.2018-19 vide his order passed u/s. 143(3) of the Act for want of valid assumption of jurisdiction, therefore, we refrain from adverting to the appeal filed by the revenue and the contentions raised by the Ld. AR on other issues which, thus, are left open.

139. In the result, while for the appeal filed by the assessee in ITA No.04/RPR/2021 for A.Y.2018-19 is allowed, the appeal of the revenue in ITA No.10/RPR/2021 for A.Y.2018-19 is dismissed as having been rendered as infructuous in terms of our aforesaid observations.

140. In the combined result, as the cross-objections filed by the assessee company, i.e. CO Nos. 12 to 15/RPR/2022 for A.Y.2010-2011 to 2013-14, and ITA No.04/RPR/2021 for A.Y.2018-19, wherein the assumption of jurisdiction/additions made by the A.O have been struck down/vacated for want of valid assumption of jurisdiction, and thus, have been allowed; therefore, the appeals filed by the revenue in IT(SS)A No.06 to 09/RPR/2021 for A.Y.2010-11 to A.Y.2013-14 and in ITA

No.10/RPR/2021 for A.Y.2018-19 being rendered as academic are dismissed as infructuous.

Order pronounced in open court on 30th day of August, 2024.

Sd/-

ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 30th August, 2024.

*****##SB, Sr. PS

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (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 //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.