

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.(SS)A. Nos.41 & 42/Lkw/2022
Assessment Years:2012-13 & 13-14

&

I.T.(SS)A. Nos.43 to 45/Lkw/2022
Assessment Years:2016-17 to 18-19

M/s Standard Frozen Foods Exports Pvt. Ltd., 2-1/1347, New Shivpuri, Hapur. PAN:AAQCS8231E	Vs.	Dy. C.I.T., Central Circle-II, Kanpur.
(Appellant)		(Respondent)

I.T.(SS)A. Nos.46 to 49/Lkw/2022
Assessment Years:2012-13 to 15-16

M/s Standard Agro Vet Pvt. Ltd., 2-1/1347, New Shivpuri, Hapur. PAN:AAHCS5216N	Vs.	Dy. C.I.T., Central Circle-II, Kanpur.
(Appellant)		(Respondent)

I.T.(SS)A. Nos.50 to 53/Lkw/2022
Assessment Years:2015-16 to 18-19

Shri Kamal Kant Verma, 30, Nai Abadi, Hapur. PAN:ACCPV8729R	Vs.	Dy. C.I.T., Central Circle-II, Kanpur.
(Appellant)		(Respondent)

I.T.(SS)A. No.54/Lkw/2022
Assessment Years:2012-13

Shri Sachin Verma, 2-1/1347, New Shivpuri, Hapur. PAN:AAIPV2688K	Vs.	Dy. C.I.T., Central Circle-II, Kanpur.
(Appellant)		(Respondent)

I.T.(SS)A. Nos.55 to 59/Lkw/2022
Assessment Years:2014-15 to 18-19

Shri Sachin Verma, 2-1/1347, New Shivpuri, Hapur. PAN:AAIPV2688K	Vs.	Dy. C.I.T., Central Circle-II, Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Ashish Jaiswal, Advocate
Respondent by	Smt. Namita S. Pandey CIT (D.R.)

ORDER

PER BENCH:

(A) These appeals, filed by the respective assesseees, pertain to Rustam Foods Pvt. Ltd. group of cases. In Rustam Foods Pvt. Ltd. group of cases, search & seizure operation u/s 132 of the IT Act was carried out on 10/01/2018. For the sake of convenience and brevity, these appeals are hereby disposed of through this consolidated order. The details regarding assessment order and impugned appellate orders in respect of each of the appeals being disposed of through this consolidated order are summarized below in a tabular form as under:

Name of assessee	Asstt. year	Dt. of assessment order	Assessed income	Dt. of impugned appellate order of learned CIT(A)	Outcome of impugned appellate order of learned CIT(A)
Standard Frozen Foods Exports Pvt. Ltd.	12-13	29/12/2019	5,62,470	31/01/2022	Dismissed
-Do-	13-14	29/12/2019	32,94,360	31/01/2022	Partly allowed
-Do-	16-17	30/12/2019	87,42,900	31/01/2022	Partly allowed
-Do-	17-18	30/12/2019	34,94,030	31/01/2022	Partly allowed
-Do-	18-19	31/12/2019	2,97,93,070	31/01/2022	Partly allowed
Standard Agro Vet Pvt. Ltd.	12-13	28/12/2019	47,43,180	31/01/2022	Partly allowed
-Do-	13-14	29/12/2019	1,22,06,030	31/01/2022	Partly allowed
-Do-	14-15	29/12/2019	72,29,750	31/01/2022	Partly allowed
-Do-	15-16	29/12/2019	96,13,740	31/12/2022	Partly allowed
Kamal Kant Verma	15-16	30/12/2019	68,45,160	31/01/2022	Partly allowed
-Do-	16-17	30/12/2019	1,00,02,230	31/01/2022	Partly allowed
-Do-	17-18	30/12/2019	92,76,090	31/01/2022	Partly allowed
-Do-	18-19	31/12/2019	3,72,59,560	31/01/2022	Partly allowed
Shri Sachin Verma	12-13	30/12/2019	9,98,580	31/01/2022	Dismissed
-Do-	14-15	29/12/2019	39,75,100	31/01/2022	Partly allowed
-Do-	15-16	30/12/2019	80,49,830	31/01/2022	Partly allowed
-Do-	16-17	30/12/2019	37,52,840	31/01/2022	Partly allowed
-Do-	17-18	30/12/2019	47,33,840	31/01/2022	Partly allowed
-Do-	18-19	31/12/2019	5,11,17,229	31/01/2022	Partly allowed

(A.1) The grounds raised by the assesseees in these appeals are as under:

I.T.A. No.41/Lkw/2022

1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*

4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.5,60,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.42/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.26,70,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.43/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.40,80,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the learned CIT(A) has erred in confirming addition of Rs.43,00,000/- on account of unsecured loan as unexplained cash credit u/s 68 of the IT Act.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.44/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*

4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.3,55,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.45/Lkw/2022

1. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
2. *That the Ld. CIT (A) as well as Assessing Officer has erred in confirming addition of Rs.80,70,000/- on a account of alleged unexplained money.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful as no addition can be made merely on doubt or presumption without bringing any positive evidences.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.46/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*

3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.21,64,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.47/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.81,45,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*

7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.48/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.11,63,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.49/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*

4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.38,30,000/- on a account of unexplained share application money received us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.50/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.45,00,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.51/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.56,00,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the Ld. CIT (A) has erred in confirming addition of Rs.56,00,000/- on a account of gift received as unexplained cash credit u/s 68 of the IT Act.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.52/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*

4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.50,96,100/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.53/Lkw/2022

1. *That the assessment order passed by the Assessing Officer is without jurisdiction and bad in law and without valid and lawful approval u/s 153D of the IT Act.*
2. *That the learned CIT(A) as well as Assessing Officer has erred in making addition of Rs.3,52,40,000/- on account of profit on sale of poultry feed (MBM).*
3. *That the assessment completed by learned Assessing Officer is arbitrary, prejudicial and unlawful as no addition can be made merely on doubt or presumption without any bringing any positive evidences.*
4. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.54/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*

3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.2,00,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the Ld. CIT (A) has erred in confirming disallowance on account of interest on unsecured loan of Rs.789/-.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.55/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.4,00,000/- u/s 56(2)(vii)(b) of the Income Tax Act, 1961.*
6. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*

7. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.56/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.30,00,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the Ld. CIT (A) has erred in confirming disallowance on account of interest on unsecured loan of Rs.82,094/-.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.57/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*

3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.8,90,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*
6. *That the Ld. CIT (A) has erred in confirming disallowance on account of interest on unsecured loan of Rs.1,71,382/-.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.58/Lkw/2022

- "1. *That the notice issued and assessment completed under section 153A of the act is invalid and unlawful being without jurisdiction.*
2. *That the learned assessing officer has erred in invoking section 153A of the Income Tax Act, 1961.*
3. *That the learned assessing officer has erred in making addition arbitrarily without any relevance or nexus to the seized material.*
4. *That the assessment order passed by Ld. AO is without jurisdiction and bad in law as without valid and lawful approval u/s. 153D of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A) has erred in confirming addition of Rs.25,00,000/- on a account of unsecured loan us. 68 of the Income Tax Act, 1961.*

6. *That the Ld. CIT (A) has erred in confirming disallowance on account of interest on unsecured loan of Rs.3,13,739/-.*
7. *That the assessment completed by learned assessing officer is arbitrary, prejudicial and unlawful.*
8. *That the learned assessing officer has erred in not providing proper and adequate opportunity to the appellant."*

I.T.A. No.59/Lkw/2022

1. *That the assessment order passed by learned Assessing Officer is without jurisdiction and bad in law as without valid and lawful approval u/s 153D of the IT Act.*
2. *That the learned CIT(A) as well as Assessing Officer has erred in making addition of Rs.2,63,00,000/- on account of profit on sale of poultry feed (MBM)*
3. *That the learned CIT(A) as well as Assessing Officer has erred in making addition of Rs.1,77,17,070/- on account of alleged cash loan as unexplained money.*
4. *That the learned CIT(A) has erred in confirming addition of Rs.13,02,580/- on account of unsecured loan u/s 68 of the IT Act.*
5. *That the learned CIT(A) has erred in confirming disallowance of Rs.2,22,289/- on account of interest on unsecured loan.*
6. *That the assessment completed by learned Assessing Officer is arbitrary, prejudicial and unlawful as no addition can be made merely on doubt or presumption without bringing any positive evidences.*
7. *That the learned Assessing Officer has erred in not providing proper and adequate opportunity to the appellant."*

(B) In the course of appellate proceedings in Income Tax Appellate Tribunal, paper books containing the following documents were filed from the assessee's side:

Sl.No.	Particulars
1.	Copy of tabular chart containing status and details of appellant assessment completed under section 153A of the IT Act in absence of incriminating material
2.	Copy of decisions of Hon'ble Supreme Court on the issue of assessment completed under section 153A of the Act, in absence of incriminating material: -Saroj Sudhir Kothari dated 7 th August, 2023 -M/s King Buildcon (P) Ltd. dated 10 th July 2023 -M/s Jay Ambey Aromatics dated 24 th November, 2023 -M/s Abhisar Buildwell (P) Ltd. dated 24 th April, 2023
3.	Copy of decisions of Hon'ble High Court where the courts have held that statement under section 132(4) of the Act does not constitute incriminating material found during the course of search: -Shiv Kumar Agarwal (Del. HC) dated 28 th July, 2022 -Anand Kumar Jain (Del. HC) dated 12 th February, 2021 -Best Infrastructure (India) (P) Ltd. dated 1 st August, 2017 -Divya Exim (P) Ltd. dated 15 th January, 2023
4.	Copy of statement of Sachin Verma recorded under section 132(4) of the Act, dated 12/01/2018
5.	Copy of tabular chart containing details of approval of case by Additional CIT (Central), Kanpur along with approval letters
6.	Copy of decisions on the issue of statutory approval by Addl. CIT under section 153D of the Act: -Subodh Agarwal (All. HC) dated 12 th December 2022 -M/s Khoday Ehshwarsa and Sons (Bang. Trib.) dated 30 th September, 2024 -M/s Quality Structures Pvt. Ltd. (Lko.Trib.) dt. 30 th September 2024 -Navin Jain & Others (Lko.Trib.) dt. 3 rd August 2021
7.	Copy of CBDT order under section 119 of the Act dated 27 th September 2019
8.	Copy of rectification orders passed by Assessing Officer u/s 154 of the Act in the case of appellant group of cases
9.	Copy of letters filed before the Assessing Officer during the course of assessment proceedings provide allow adequate opportunity and summon/inquire third parties at the cost of assessee
10.	Copy of notice u/s 142(1) dated 23/12/2019 in the case of Standard Frozen Foods Export Pvt. Ltd. for assessment year 2018-19
11.	Copy of reply to Assessing Officer on notice u/s 142(1) dated 23/12/2019 in the case of Standard Frozen Foods Export Pvt. Ltd. for assessment year 18-19 on LOOSE PAPERS 5 pag 44
12.	Copy of reply to Assessing Officer on notice u/s 142(1) dated 27/11/2019 in the case of Standard Frozen Foods Export Pvt. Ltd. for assessment year 18-19 on AT International
13.	Copy of notice u/s 142(1) dated 19/09/2019 and 09/09/2019 in the case of Sachin Verma for assessment year 2018-19
14.	Copy of reply to Assessing Officer in the case of Sachin Verma for assessment year 18-19
15.	Copy of Panchnama drawn at the Premise – Unnao of Standard Frozen

	Foods Export Pvt. Ltd.
16.	Copy of tabular chart containing details of unsecured loan in the case of Sachin Verma along with supporting documents
17.	Copy of tabular chart containing details of unsecured loan in the case of Kamal Kant Verma along with supporting documents
18.	Copy of tabular chart containing details of share application in the case of Standard Frozen Foods Export Pvt. Ltd. along with supporting documents
19.	Copy of Form No. PAS-3 return of share allotment in the case of Standard Frozen Foods Export Pvt. Ltd.
20.	Copy tabular chart containing details of share application in the case of Standard Agro Vet Pvt. Ltd. along with supporting documents
21.	Copy of Form No. PAS-3 return of share allotment in the case of Standard Agro Vet Pvt. Ltd.
22.	Copy of shareholder list as on 31/03/2018 in the case of Standard Agro Vet Pvt. Ltd.
23.	Copy tabular chart containing details of share application in the case of Standard Agro Vet Pvt. Ltd. along with supporting documents
24.	Copy of Form No. PAS-3 return of share allotment in the case of Standard Agro Vet Pvt. Ltd.

(B.1) Moreover, written submissions in two parts were filed from the assessee's side which are reproduced below for the ease of reference:

(B.1.1) *Sub: Written Submission in the case of:*

Standard Frozen Foods Export Pvt Lt - ITSSA 41-44/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 and ITA 45/Lkw/2022 for AY 2018-19

Standard Agro Vet Pvt Ltd- ITSSA 46-49/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16

Kamal Kant Verma- ITSSA 50-52/Lkw/2022 for AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 53/Lkw/2022 for AY 2018-19

Sachin Verma- ITSSA 54-58/Lkw/2022 for AY 2012-13, AY 2014-15, AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 59/Lkw/2022 for AY 2018-19

In connection to the above, the appellant humbly submits before your honour as under:

1. *That the search and seizure operation u/s 132 was carried out on 10.01.2018 in the Rustom Foods Group of cases alongwith the appellant group of cases u/s 132 of the IT Act, 1961. The case was centralized u/s 127 dated 28.06.2018 to DCIT, Central Circle-2, Kanpur. Consequent to search and centralization of cases, search assessment proceeding was initiated by DCIT, CC-2, Kanpur by*

issuing notice u/s 153A/143(2) of the Act dated 12.07.2019 and 28.08.2019 respectively whereas the questionnaire was issued u/s 142(1) dated 09.09.2019 for compliance on 24.09.2019 and subsequently the search assessment proceeding was completed u/s 153A vide order dated 29.12.2019 with mechanical approval of Addl.CIT, Central Circle, Kanpur.

2. The case of the appellant involves legal issue of approval u/s 153D and the issue of assessment completed without incriminating material u/s 153A as well as on merit as following:

- ASSESSMENT ORDER IS ILLEGAL AND WITHOUT JURISDICTION AS THE APPROVAL REQUIRED U/S 153D OF THE ADDL.CIT, CENTRAL IS MECHANICAL AND WITHOUT APPLICATION OF MIND IN VIOLATION OF REQUIREMENT U/S 153D [page no. 5-18]
- NO ADDITION CAN BE MADE BY AO IN ABSENCE OF ANY INCRIMINATING MATERIAL FOUND DURING SEARCH [page no. 19-27]
- ON MERIT [page no. 28-51]

3. The appellant humbly makes submission before your honour issue wise legal as well as on merits following along with brief submission on legal issues as under:

Brief Submission on Legal Issues: Issue of Statutory Approval by JCIT u/s 153D of the IT Act, 1961 & Issue of Assessment framed u/s 153A in absence of incriminating material.

ISSUE OF STATUTORY APPROVAL BY JCIT U/S 153D OF THE IT ACT, 1961:

The appellant humbly submits that in all 19 appeals from ITSSA 41-59/LKW/2022 common legal issue of statutory approval u/s 153D of the Income Tax Act, 1961 is involved. The appellant humbly submits before your honour in brief legally as well as factually as to how there has been violation of mandatory and legal requirement u/s 153D as well as factually how the Addl.CIT failed to do discharge the statutory obligation casted upon by the legislature which lead to mechanical approval at the fag end of assessment proceeding on 27.12.2019 ad 28.12.2018 only for the sake of completion of assessment proceeding getting time barred on 31.12.2019 as following:

- Common Approval as against the statutory legal requirement of approval for each assessment year in conjoint reading on section 153A(1) and section 153D
- Mechanical Approval- 110 Cases approved by Addl.CIT in two days, 48 cases on 27.12.2019 and 62 cases on 28.12.2019. It is even humanly not

possible to go through exhaustive assessment records and search & seizure material of 110 cases. (Pg 76-84 of PB Vol-1)

- *Approval No. 1490 requested by AO on 28.12.2019 and approved by Addl.CIT on the same day i.e. 28.12.2019 consisting of 16 cases (appellant cases from sl. no. 1 to 14) whereas approval no.1488 requested by ld.AO on 26.12.2019 approved by Addl.CIT on the next day i.e. 27.12.2019 consisting of 15 cases (appellant cases from sl. no. 6 to 15). (Pg 83 and 80 of PB Vol-1)*
- *Draft Assessment Order sent by AO for approval to Addl.CIT at the fag end of assessment proceeding on 26.12.2019 and 28.12.20219 getting barred on 31.12.2019*
- *Addl.CIT failed to discharge mandatory and statutory obligation to protect appellant/assessee from arbitrary or unjust exercise of discretion by AO and failure to provide fair search assessment being the very intention and purpose of section 153D statutory approval introduced by legislature in its wisdom to cast obligation upon JCIT in search assessment for the following reasons in the case of appellant:*
 - *Mistake committed and accepted by AO :- Subsequent to search assessment, petitions were filed for rectification of orders, which were also rectified u/s 154. Meaning thereby that the ld.AO accepted the mistake committed in making addition in the search assessment order (No. of Cases rectified u/s 154 – 7 Search Assessment Orders.)- Page 164-179 of PB Vol-1*
 - *Undue and unjust discretion by AO: Notice was issued on 23/12/2019 for compliance on 24/12/2019 as show-cause notice for the first time on the issue of certain cash payment of Rs. 80 Lacs appearing on LP 05 page 44 seized from Saleem Qureshi, Lucknow to which the appellant filed reply and denied to have any connection with these transaction as neither it was found from the possession of appellant nor contains name of the appellant and further requested for confrontation of the person with whom such paper was found to which the ld.AO has simply made addition without any basis. (Notice and reply on Page 204-219 of PB Vol-1)*
 - *No Cross Examination: At page 223 of the PB Vol-1, the appellant had requested the ld.AO regarding transaction with AT Internationalof Rs.1.77 Crore and requested for confrontation but the ld.AO simply brushed aside the request.*
 - *Inquiry before Assessment u/s 142(1): The appellant has requested the ld.AO to make summon and make inquiry at appellant cost on the issue of share application and unsecured loan which the ld.AO simply brushed aside. (Relevant Para O Page 183- Letters on Page 180-203)*

- Mechanical Approval for the sake of completion of search assessment proceeding time barring on 31.12.2019: Absence of application on mind on the cases in which Approval have been granted also prima-facie apparent from the Approval Letter itself. The approval has been granted by way of common approval being an empty formality at the fag end of assessment proceeding on 27.12.2019 and 28.12.2018 to multiple assessee and assessment years upto 110 cases for the sake of completion of group search assessment proceeding getting time barred on 31.12.2019.

The appellant humbly submits in brief and pray before your honour that the assessment has been framed in violation to mandatory and statutory requirement of approval to be given by the Addl.CIT, Central being Approving Authority u/s 153D of the IT Act, 1961 without application of mind to the facts of the case, replies and supporting documents filed, seized material and the conduct of assessment proceeding by the Id.AO as submitted above and failed to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO for which provision u/s 153D has been introduced and also by common approval instead of each assessee assessment year wise on the same day and next day respectively to 110 cases which is also in violation of requirement u/s 153D of the IT Act, 1961 only for the sake of providing administrative approval at the fag end of assessment proceeding on 27.12.2019 and 28.12.2019 for completion of assessment proceeding getting time barred on 31.12.2019.

Reliance is placed upon Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal, ITA 86 of 2022 dated 12.12.2022, recent decision in the case of KhodayEhshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024, I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others and Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024.

ISSUE OF ASSESSMENT FRAMED U/S 153A IN ABSENCE OF INCRIMINATING MATERIAL:

- That the search conducted u/s 132 of the Income Tax Act, 1961 on 10.01.2018 and the search assessment was completed u/s 153A for the AY 2012-13 to AY 2017-18. No notice or assessment proceeding was pending on the date of search i.e. 10.01.2018 which is also apparent from the assessment order itself.
- No incriminating material found and seized during search, also apparent from the assessment order. Reliance is placed upon Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 454 ITR 212 (SC) and also in the following decisions subsequent to AbhisarBuildwell, the Apex Court affirmed its decision in the following cases:

- PCIT vs. Saroj Sudhir Kothari, SLP (C) No. 4077 of 2023 dated 07.08.2023

- *PCIT vs. King Buildcom (P) Ltd, Civil Appeal No. 4326 of 2023 dated 10.07.2023*
 - *PCIT vs. Jay Ambey Aromatics, SLP (Civil) 24524 of 20223 dated 24.11.2023*
 - *PCIT vs. S.S. Con Build (P) Ltd., SLP (C) No. 7799 of 2023 dated 04.05.2023*
- *On the basis of tabular chart (at page 1-2 of PB Vol-1) Income Tax Appeal and the appellatant wise categorisation of appellatant with legal issue and its judicial precedence has been made as following:*

Sl. No 1 to 10 : In these cases no incriminating material was found during search and the addition has been made on account of share application received during the year. Reliance is placed upon the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 454 ITR 212 (SC) where the Hon'ble Court has held that no addition can be made in absence of incriminating material found and seized during search.

Sl.No. 11 to 13:In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the appellatant during search. Reliance is placed upon the decision of Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024 in which the Hon'ble Court held that no addition can be made in absence of incriminating material found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

Sl.No. 14 to 16:In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the brother of the appellatant during search and that no confirmation or statement to confront the same was done during search or assessment proceeding. Reliance is placed upon the decision of Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024 in which the Hon'ble Court held that no addition can be made in absence of incriminating material found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

- *In view of above, the appellant prays and request before your honour to quash the assessment order framed unlawfully and in violation to provision of law and settled judicial precedents or appropriate relief as deem fit in the interest of justice to the appellant.*

I. ASSESSMENT ORDER IS ILLEGAL AND WITHOUT JURISDICTION AS THE APPROVAL REQUIRED U/S 153D OF THE ADDL.CIT, CENTRAL IS MECHANICAL AND WITHOUT APPLICATION OF MIND IN VIOLATION OF REQUIREMENT U/S 153D:

4. *That the appellant humbly submits before your honour that there has been no application of mind by the approving authority and the approval given is purely mechanical for the sake of administrative approval for completion of assessment at the fag end of assessment proceeding for the following reasons:*

- *Firstly, that the approval has been given to the draft assessment order for multiple assessee's and assessment years by common approval in violation of mandatory requirement of law being for 'each assessment year'*
- *Secondly, the approval has been granted by the Addl.CIT to 110 cases in two days i.e. 48 approvals on 27.12.2019 and 62 approvals on 28.12.2019 by way of common approvals among which the approval of appellant case has also given by the Addl.CIT at the fag end of assessment proceeding i.e. 31.12.2019 for the sake of administrative approval for completion of assessment proceeding (approvals at page 76-84, relevant approval at page 80 & 83 of the PB Vol-1)*

and

- *Thirdly on facts of the case that there has been no application of mind while giving statutory approval to the cases approved in the approval letter as the approving authority also failed on various aspect in the assessment order where the draft assessment order stood erroneous and there was statutory obligation casted upon the statutory authority which is JCIT while approving the cases required to discharge it in the spirit of requirement in law and not mechanically but after due application of mind which acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO, which in the present the Id.JCIT has failed to do so as:*

- *the search assessment has been passed by the AO without any application of mind to the reply and supporting documents filed by the appellant and also failure to conduct any inquiry and provide cross examination before making the additions (copy of*

replies at page 180-203, 209-219, 220-224 and 235-245 of PB Vol-1) and

- *also that the Id.AO consequent to search assessment completed has made several rectification of assessment orders, accepting the mistakes committed in completing the assessment hurriedly of which details were already available on record, meaning that the Id.AO has overlooked the documents already available on record.(copy of seven rectification orders u/s 154 on page 164-179 of PB Vol-1)*

The Addl.CIT while giving approval to the cases on the same day or next day where the approval were given to 110 cases, failed to apply mind to the facts of the case, the assessment proceeding conducted by the AO, the issue in appraisal, seized documents and replies alongwith supporting documentary evidences filed the by appellant which is the very intent of section 153D entrusted upon the JCIT to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO.

5. *Now, the appellant humbly submits before your honour that before going to legal issue involved, it is important to understand the background of the assessment and its relevant timelines in which assessment proceeding has been conducted and completed by the Id.AO and approved by the Id.Addl.CIT. That the search and seizure operation u/s 132 was carried out on 10.01.2018 in Rustom Foods Group of cases alongwith the appellant group of cases. That the search assessment proceeding was initiated by DCIT, CC-2, Kanpur by issuing notice u/s 153A and 143(2) of the Act dated 12.07.2019 and 28.08.2019 respectively whereas the questionnaire was issued u/s 142(1) dated 09.09.2019 for compliance on 24.09.2019 and the assessment proceeding was completed u/s 153A vide order dated 29.12.2019 with mechanical approval of Addl.CIT, Central Circle, Kanpur vide approval no. 1488 and 1490.*

Therefore, from the above, it is clear that the time frame available to the appellant and Id.AO for compliance by the appellant and inquiry before assessment u/s 142(1) and completion of assessment u/s 153A with approval of JCIT u/s 153D available to Id.AO was only of 3 months 20 days as the notice u/s 142(1) was issued on 19.09.20219 and assessment was completed on 29.12.2019 to complete the whole search group of cases including Rustom Group of Cases and Appellant group of cases alongwith other search group of cases (Shatabdi Group of Cases and Vivek Agarwal Group of Cases) and regular assessments.

Meaning thereby, that the Id.AO has competed Rustom Food Group and Standard Frozen Group of cases assessment in 3 months without inquiry on the issue of which addition has been made by the Id.AO and also where the request for inquiry of share application and unsecured loan and cross examination of

alleged transaction with AT International and Rustom Foods was requested by the appellant as apparent from the reply filed during the assessment proceeding appearing on page 180-203 and 220-224 of the paperbook vol-1.

6. *The appellant very humbly submits before your honour that from the above timeline and conduct of assessment proceedings by the Id.AO, it is prima-facie apparent that the assessment has been drafted and completed by the Id.AO hurriedly without due application of mind to facts and law in each and every case which has been forwarded to the Addl.CIT, Central, Kanpur for administrative approval on 26.12.2019 and 28.12.2019 at the fag end of assessment proceeding i.e. 31.12.2019 and the same has been approved on 27.12.2019 and 28.12.2019 respectively by the Addl.CIT.*

Whereas, the Addl.CIT, Kanpur (Approving Authority) held charge of Central Kanpur as well as Central Agra under which Central Kanpur- DCIT, Central Circle-1, Kanpur (Search Group- SatvikPolychem Group of Cases, Rajendra Chabra Group of Cases, Shyam Leela Fashion Group of cases and Som Arora Group of Cases) were time barring on 31.12.2019 and with DCIT, Central Circle-2, Kanpur (Search Group- Rustom Food Group of Cases, Standard Frozen Group of Cases, Shatabdi Group of Cases and Vivek Agarwal Group of Cases) were time barring on 31.12.2019 and that under Central Agra – DCIT, Central Circle, Agra (Search Group- BNR Overseas Group of Cases) was time barring on 31.12.2019.

Therefore, from the above, it is very humbly submitted that as many as nine search group of cases required statutory approval of Addl.CIT of whose search assessment were time barring on 31.12.2019 among which the appellant cases alongwith others upto 110 cases were approved on the same day or the next day at the fag end of assessment proceeding without application of mind for the sake of administrative approval for completion of assessment.

7. *The appellant from the above humbly submits before your honour that the provision of section 153D has been specifically incorporated in the Statute and made mandatory in the process of completion of search assessment for the approval to be given by the JCIT as statutory obligation casted upon any statutory authority which is JCIT in the present case required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO, which in the present the Id.JCIT has failed to do so as apparent from the above that the Id.AO has completed the search assessment of whole group in short period of three months without conducting any inquiry and providing cross examination to the appellant before making any addition even though requested by the appellant and on this count as well as legal requirement the Addl.CIT failed to discharge the statutory obligation entrusted by the provision of section 153D of the Act.*

The very purpose and intent of legislature to put obligation on the statutory authority before giving approval u/s 153D to protect the interest of taxpayer and unjust exercise of discretion by the AO in search assessment has been mechanically followed by the Addl.CIT as the Id.Addl.CIT failed to supervise or check before giving approval as to whether addition proposed in the draft assessment order has been made after proper examination of reply with documentary evidence and inquiry and cross examination as requested by the appellant.

8. **Furthermore**, the appellant humbly submits before your honour that the appellant case has been approved by the Addl.CIT, Central Circle, Kanpur mechanically without application of mind in violation to provision u/s 153D as the approval has given approval mechanically for the sake of administrative requirement at the fag end of assessment proceeding getting barred on 31.12.2019 and has not applied mind to each and every case file and assessment, approval letter of which is annexed with the tabular chart in the paperbook at page 76 of PB Vol-1, where the approval office letter reference number is appearing with the date of approval to be same in all the cases.
9. The law requires the Addl.CIT to give approval on each assessment year, therefore each assessment year is required to be verified and approved by the JCIT being Approving Authority with application of mind without which the approval is mechanical and the order passes in consequence to mechanical approval u/s 153D invalid and without jurisdiction.
10. The provision of section 153D is being reproduced for your honour perusal as under:

"Prior approval necessary for assessment in cases of search or requisition.

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."

11. That the approval granted by the JCIT as required u/s 153D has been granted mechanically by the approving authority only for the sake of formality as being one of the mandatory requirement before completion of search assessment u/s 153A at the fag end of assessment proceeding getting barred on 31.12.2019 as the same has been given by common approval letter for multiple assessee and

assessment years which is contrary and violative of mandatory requirement of law u/s 153D for giving approval for 'each assessment year' with application of mind and not by way of formality in the form of common approval letter for multiple assessee's mechanically without application of mind.

12. **Moreover**, the approval has been granted by the Addl.CIT to 110 cases in two days i.e. 48 approvals on 27.12.2019 and 62 approvals on 28.12.2019 by way of common approvals among which the approval of appellant case has also given vide approval no. 1488 and 1490 appearing at page 80 & 83 of the PB Vol-1 along with other approvals at page 76-84 of the PB Vol-1.
13. This mandatory provision u/s 153D for each assessment year is *parimateria* to the provision of section 151 where sanction required for issue of notice u/s 148 is mandatory by JCIT/ CIT with application of mind and *parimateria* to section 153D. Similar is the position u/s 153D, approval is mandatory requirement and required to be approved for each assessment year with application of mind and not merely a piece of formality to approve the search assessment collectively by of common approval letter without application of mind.
14. That the legislature in its highest wisdom made it compulsory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority have to approve the Assessment order. Object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should scrutinize the seized documents and any other material forming the foundation of Assessment. It is an elementary law that whenever any statutory obligation is casted upon any statutory authority such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessary reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending.
15. It is apparent that the purpose behind the enactment of the above provision in the statute by the Parliament is two-folds. Firstly, the approval of the senior authority will ensure that the assessee is not prejudiced by the undue or irrelevant addition or assessment. Secondly, the approval by the senior authority will also ensure that proper enquiry or investigations are carried out by the assessing authority. Thus, the above provision provides for the mental application of a senior officer of the Department, which in turn, provides safeguard to both i.e., Revenue as well as the assessee. Therefore, this important provision laid down by the legislature cannot be treated as a mere

empty formality. If the approval is granted by the superior authorities in a mechanical manner without application of mind then the very purpose of obtaining approval is defeated. The power to grant approval is not to be exercised casually and in a routine manner and further, the concerned authority, while granting approval, is expected to examine the entire material before approving the assessment order. It has also been laid down that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. At this juncture, it is pertinent to mention that the **Hon'ble Apex Court in the case of Sahara India (Firm) v. CIT &Anr. (2008) 216 CTR (SC) 303 : (2008) 7 DTR (SC) 27 : (2008) 300 ITR 403 (SC)**, while discussing the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act, opined that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of said provision being inbuilt protection against the arbitrary or unjust exercise of power by the assessing officer, casts a very heavy duty on the said high-ranking authority to see it that the approval envisaged in the section is not turned into an empty ritual. The Hon'ble Apex Court held that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.

16. Reliance is placed upon the **Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal**, ITA 86 of 2022 dated 12.12.2022 in which the Hon'ble High Court held that approval of draft assessment order is an inbuilt protection against any arbitrary or unjust exercise of power by Assessing Officer cannot said to be a mechanical exercise without application of mind. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years). The careful and conjoint reading of section 153A(1) and section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under section 153A.

The relevant finding of the Hon'ble High Court is reproduced as under:

8. *The submission is that the substantial question of law which arises for consideration before this Court is about the justification of the act of the Tribunal in ignoring the findings recorded by the Assessing Officer and setting-aside the assessment order on the sole ground of defect in the approval to the draft assessment order granted by the competent Approving Authority. Learned counsel for the Assessee, however, defended the order of the tribunal for the reasoning given therein.*

9. *Considering the submissions of the learned counsel for the parties and having perused the order of the Tribunal, in view of the undisputed facts before us about the manner in which the approval to the draft assessment order was granted under section 153D for the assessment proceedings, by a letter dated 31-12-2017 in 38 cases placed before the approving authority in a single day, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeal.*

To answer the same, we are required to go through the relevant provisions of the Income-tax Act. Section 132 provides the procedure for search and seizure operations in consequence of the information in possession of the Income-tax Authorities. Section 153A prescribes assessment in case of search or requisition. Section 153A provides that in the case of a person where a search is initiated under section 132, the Assessing Officer shall 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 (and for the relevant assessment year or 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 apply accordingly as if such return were a return required to be furnished under section 139.

10. *Section 153D of the Act relevant for our purposes is to be noted hereunder:*

"Prior approval necessary for assessment in cases of search or requisition.

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."

11. *The Tribunal while quashing the assessment order had relied upon its earlier decision in Navin Jain and Others (supra) wherein a detailed discussion has been made with regard to the requirement of prior approval of superior authority on the draft assessment order under section 153D, before passing the assessment order by the Assessing Officer. It was noted that the word 'approval' though has not been defined in the Income-tax Act but the general meaning of the word 'approval' in Black's Law Dictionary, 6th Edition was to be seen. The decision of the Apex Court in Vijayadevi Naval Kishore Bharatiav. Land Acquisition Officer (2003) 5 SCC 83 wherein the distinction between Approving Authority and Appellate Authority was drawn, had been noted. The decision of the High Court of Gauhati in Dharampal Satyapal Ltd.v. Union of India [2019] 366 ELT 253 has been noted to record that grant of approval means due application of mind on the subject matter approved which satisfies all the legal and procedural requirements. There is an exhaustive discussion on the requirement of prior approval under section 153D of the Act and it was noted that the requirement of approval cannot be treated as mere formality and the mandate of the Act that the Approving Authority has to act in a judicious manner by due application of mind in a manner of a quasi judicial authority, has been considered.*

12. *It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in sections 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of sections 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.*

13. *It was noted that the obligations of the approval of the Approving Authority serves two purposes:*

- (i) On the one hand, he has to apply his mind to ensure the interest of the revenue against any omission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year.*

(ii) On the other hand, superior authority is also responsible and duty-bound to do justice with the tax-payer by granting protection against arbitrary or creating baseless tax liability on the assessee.

14. The Tribunal has further noted that the provisions contained in section 153A to section 153D provide for separate notice to be given to assessee for assessment for each year as specified in section 153A of the Act; the assessee has to file separate ITR for each year as specified in section 153A of the Act; separate assessment orders are to be passed for each year as specified in section 153A of the Act.

15. It was observed that this is an important concept mentioned in section 153A of the Act, which is peculiar to the scheme of the said section. Keeping in view of this basic fundamental features of section 153A, if section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of section 153D, which is "each assessment year". The reading of the provisions in section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under section 153D of the Income-tax Act. In its erudite judgement with the discussion on the legislative intent of sections 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India(Firm)v. CIT [\[2008\] 169 Taxman 328/300 ITR 403](#) where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.

The above discussion made in the judgement of Tribunal dated 3-8-2021 in the case of Navin Jain (supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under section 153D of the Act would vitiate the entire proceedings in the instant case.

17. For the reasoning given in the case of Navin Jain (supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of section 153D of the Income-tax Act.

18. *The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).*

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

20. *In the instant case, the draft assessment order in 38 cases, i.e. for 38 assessment years placed before the Approving Authority on 31-12-2017 was approved on same day i.e. 31-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.*

21. *As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are*

not open to agitate within the scope of the present appeal being in the nature of second appeal. No substantial question of law arises for consideration before us.

22. *The Appeal is dismissed being devoid of merit.*

17. *Reliance is placed upon the decision of **KhodayEhshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024** where the Hon'ble Tribunal observed and held that all the draft orders involving 6 assessment years i.e. assessment years 2015-16 to 2020-21, were sent to the Id. Additional CIT for approval vide letter dated 30 March 2022 which were approved on the next date i.e. 31.3.2022. The assessment order for the AY 2020-2021 contained only 62 pages involving complex issues with respect to the business income and capital gains transaction but the same was approved by the Id. Additional Commissioner of Income Tax on the next date which evidence that the approval was granted in mechanical manner. Thus, in the absence of proper approval under section 153D of the Act, the assessment order is bad in law.*

18. *Further reliance is placed upon recent decision of **Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024** in which the Hon'ble Tribunal following the decision in the case of Shri Navin Jain vs. Dy. CIT in IT(SS)A No.s 639 to 641/LKW/2018 held that the approval given by the Addl. CIT is non-est and the consequential assessment made on the basis of such approval is illegal and deserves to be annulled. In the present case the approval had been granted through common approval without separate approval letter in respect of "each" assessment year for "each" assessee and on the same day.*

19. *The entire gamete of law, as contemplated u/s 153D of the Act, has been considered by Delhi Bench of the Tribunal in a bunch of 52 appeals in **I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others** wherein the Hon'ble Bench vide order dated 19/01/2021 has quashed the assessment orders by holding that the approval granted u/s 153D of the Act was in a mechanical manner and thus cannot be held to be an approval as required u/s 153D of the Act. The relevant findings of the Tribunal are contained in para 11 onwards, which for the sake of completeness are reproduced below:*

"11. We have considered the rival submissions and perused the written submissions filed by the parties and considered the material on record. It is an admitted fact that search and seizure action were carried-out in the cases of the assesseees on 29.12.2015. Section 153A have been inserted into the Income Tax Act w.e.f. 01.06.2003. Prior to that there were provisions contained under section 158BC being the special procedure for assessment of search cases. Thus, the provisions of Section 153A to 153D are applicable in the case of assesseees. According to Section 153A of the I.T. Act, there should be a search initiated under section 132 of the I.T. Act and

panchanama drawn, the A.O. shall have to issue notice to the assessee requiring him to furnish the return of income within the specified time in respect of each assessment year falling within six assessment years. The A.O. shall assess or re-assess 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 A.O. shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. It is further provided that assessment or re-assessment, if any, relevant to any assessment year falling within the period of six assessment years referred to in this Section 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 abated. Thus, when provisions of Section 153A are applicable in a case of assessee, A.O. shall have to give separate notice of each assessment year and assessee shall have to be directed to file return of income for each year and separate orders shall have to be passed for each assessment year. In Section 153A of the I.T. Act, the A.O. shall have to see whether there are abated or non-abated assessments which was not provided in earlier provisions for block assessments. The Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla [2016] 380 ITR 573 (Del.) considered the issue of abated and non-abated assessments and with regard to completed assessments held that the same can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search which was not produced or not already disclosed or made known in the course of original assessment. It is also held in the same Judgment that in so far 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 have to be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on record by the A.O. Therefore, these were the mandatory provisions contained in Section 153A which shall have to be satisfied by the A.O. before proceeding to frame assessment in the cases of persons searched under section 132 of the I.T. Act, 1961. Further safeguard have been provided for framing the assessments under section 153A that prior approval shall be necessary for assessments in the cases of the search or requisitioned, under section 153D of the IT. Act. Section 153D of the I.T. Act is reproduced as under :

"153D - No Order of assessment or re-assessment 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 (ii) 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 Commissioner under subsection (12) of section 144BA."

11.1. *It is an admitted fact that in all the above appeals assessments under section 153A have been framed by ACIT, Central Circle, New Delhi, therefore, prior approval of the JCIT in respect of each assessment year referred to under section 153A or 153B shall have to be obtained. Thus, no order of assessment or re-assessment shall be passed by the A.O. in the present cases in respect of each assessment years under section 153A/153B of the I.T. Act, 1961, except with the prior approval of the Joint Commissioner. Learned Counsel for the Assessee has argued that the approval under section 153D have been granted by the JCIT without going through the seized material, appraisal report and other material on record. Thus, the approval is granted in a most mechanical manner and without application of mind. Therefore, same is invalid, bad in Law and void ab initio and as such all assessments under section 153A got vitiated and as such A.O. was not having jurisdiction to pass the assessment orders under section 153A of the I.T. Act, 1961.*

11.2. *The meaning of the word "Approval" as defined in Black Law Dictionary is –*

"The Act of confirming, rectifying, sanctioning or consenting to some act or thing done by another. To approve means to be satisfied with, to confirm, rectify, sanction or 'consent to some act or thing done by another, to consent officially, to rectify, to confirm, to pronounce good, thing or Judgment of, admitting propriety or excels or to pleas with."

11.3. *The Hon'ble Supreme Court of South Carolina in State vs., Duckett 133 SC 85 [SC 1925], 130 SE 340 decided on 05.11.1925 held that "Approval implies knowledge and, the exercise or discretion after knowledge."*

11.4. *The Hon'ble Supreme Court in the case of Vijayadevi Naval Kishore Bharatia vs., Land Acquisition Officer [2003] 5 SCC 83 wherein it has been held that :*

"Whenever there is an administrative approval given by higher authority, higher authority applies its mind to see whether the proposed Award is acceptable to the Government or not ? Such Authority may satisfy itself as to the material relied upon by the Adjudicator, but, the Approving Authority cannot reverse the finding, as he is an Appellate Authority for the purpose of remanding the matter to the Adjudicating Authority as can be done by the Appellate Authority. Further, the Approving Authority also cannot exercise its power of prior approval to give directions to the Adjudicating Authority in what beneficial to accept/ appreciate tine material on record in regard to the compensation payable. Otherwise, it would tantamount to blurring the distinction between Approving Authority and Appellate Authority".

11.5. *The Hon'ble Gauhati High Court in the case of Dharampal Satyapal Ltd., vs., Union of India [2019] 366 ELT 253 (Gau.) Manu/GH/07070/2018 in para-28 has held as under:*

"When an Authority is required to give his approval, it is also to be understood that such Authority makes an application of mind as to whether the matter that is required to be approved satisfies all the requirements of Law or procedure to which it may be subjected. In other words, grant of approval and application of mind as to whether such approval is to be granted must co- exist and, therefore, where an Authority grants an approval it is also to be construed that there was due application of mind that the subject matter approved and satisfies all the legal and procedural requirements."

11.6. *Therefore, in the cases of search, assessment orders whether framed under section 153A or 153C, the Joint Commissioner [Approving Authority] is required to see that whether the additions have been made in the hands of assessee are based properly on incriminating material found during the course of search, observations/comments in the appraisal report, the seized documents and further enquiries made by the A.O. during the course of assessment proceedings. Therefore, necessarily at the time of grant of approval of the assessment made by the A.O, the Joint Commissioner is required to verify the above issues, apply his mind that whether they have been properly appreciated by the A.O. while framing the assessment orders or not. The JCIT is also required to verify whether the required procedure have been followed by the A.O. or not at the time of framing of the assessments. Thus, the approval cannot be a mere discretion or formality, but, is mandatory being Quasi Judicial function and it should be based on reasoning. In our view, when the legislature has enacted some provision to be exercised by the higher Revenue Authority enabling the A.O. to pass assessment order or reassessment order in search cases, then, it is the duty of the JCIT to exercise such powers by applying his judicious mind. We are of the view that the obligation of the approval of the Approving Authority is of two folds ; on one hand, he has to apply his mind to secure in build for the Department against any omission or negligence by the A.O. in taxing right income in the hands of right person and in right assessment year and on the other hand, JCIT is also responsible and duty bound to do justice with the tax payer [Assessee] by granting protection against arbitrary or unjust or unsustainable exercise and decision by the A.O. creating baseless tax liability on the assessee and thus, the JCIT has to discharge his duty as per Law. Thus, granting approval under section 153D of the I.T. Act is not a mere formality, but, it is a supervisory act which requires proper application of administrative and judicial skill by the JCIT on the application of mind and this exercise should be discernable from the Orders of the approval under section 153D of the I.T. Act."*

20. *The above facts of the case and the conduct of assessment proceeding alongwith with its approval and position of law and case authorities relied upon clearly establishes that there has been no application of mind by the approving authority and the same has been approved mechanically for the sake of giving approval for completion of assessment by way of common approval for multiple assessee and assessment years instead of each assessment as mandatorily required by the law.*
21. *In view of above, the appellatant humbly submits and request before your honour to quash the assessment order as the assessment has been framed in violation to mandatory and statutory requirement of approval to be given by the Addl.CIT, Central being Approving Authority u/s 153D of the IT Act, 1961 without application of mind to the facts of the case, replies and supporting documents filed, seized material and the conduct of assessment proceeding by the Id.AO as submitted above and failed to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO for which provision u/s 153D has been introduced and also by common approval instead of each assessee assessment year wise on the same day and next day respectively to 110 cases which is also in violation of requirement u/s 153D of the IT Act, 1961 only for the sake of providing administrative approval at the fag end of assessment proceeding on 27.12.2019 and 28.12.2019 for completion of assessment proceeding getting time barred on 31.12.2019. Reliance is placed upon Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal, ITA 86 of 2022 dated 12.12.2022, recent decision in the case of KhodayEhshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024, I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others and Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024.*

NO ADDITION CAN BE MADE BY AO IN ABSENCE OF ANY INCRIMINATING MATERIAL FOUND DURING SEARCH:

22. The appellant humbly submits before your honour that the Id.AO has made addition in absence of any incriminating material found during the search and whereas no addition can be made in absence of incriminating material is settled by the Hon'ble Supreme Court in the case of **Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 454 ITR 212 (SC)**.

In appellants case the search was conducted u/s 132 on 10.01.2018 and notice u/s 153A was issued on 12.07.2019 for the AY 2012-13 to AY 2017-18 (six assessment year) whereas the limitation for issuance of notice u/s 143(2) for the last assessment year i.e. AY 2017-18 was 30.09.2018 whereas no assessment proceeding was pending or abated for assessment as apparent from the assessment order framed u/s 153A of the Income Tax Act, 1961.

The details of the appellant alongwith status of the appellant in which no incriminating material has been found during search is as following:

SL.No.	Appeal Number	A.Y	Appellant	Whether assessment completed/ Unabated?	Whether any incriminating material found during search for the assessment year
1	ITSSA 41/LKW/2022	2012-13	Standard Frozen Foods Exports Pvt. Ltd	Yes	No
2	ITSSA 42/LKW/2022	2013-14	Standard Frozen Foods Exports Pvt. Ltd	Yes	No
3	ITSSA 43/LKW/2022	2016-17	Standard Frozen Foods Exports Pvt. Ltd	Yes	No
4	ITSSA 44/LKW/2022	2017-18	Standard Frozen Foods Exports Pvt. Ltd	Yes	No
5	ITSSA 46/LKW/2022	2012-13	Standard Agro-Vet Pvt. Ltd	Yes	No
6	ITSSA 47/LKW/2022	2013-14	Standard Agro-Vet Pvt. Ltd	Yes	No
7	ITSSA 48/LKW/2022	2014-15	Standard Agro-Vet Pvt. Ltd	Yes	No
8	ITSSA 49/LKW/2022	2015-16	Standard Agro-Vet Pvt. Ltd	Yes	No
9	ITSSA 55/LKW/2022	2014-15	Sachin Verma	Yes	No
10	ITSSA 57/LKW/2022	2016-17	Sachin Verma	Yes	No
11	ITSSA 54/LKW/2022	2012-13	Sachin Verma	Yes	No

12	ITSSA 56/LKW/2022	2015-16	Sachin Verma	Yes	No
13	ITSSA 58/LKW/2022	2017-18	Sachin Verma	Yes	No
14	ITSSA 50/LKW/2022	2015-16	Kamal Kant Verma	Yes	No
15	ITSSA 51/LKW/2022	2016-17	Kamal Kant Verma	Yes	No
16	ITSSA 52/LKW/2022	2017-18	Kamal Kant Verma	Yes	No

23. On the basis of above tabular chart Income Tax Appeal and the appellant wise categorisation of appellant with legal issue and its judicial precedence has been made as following:

Sl. No 1 to 10 : In these cases no incriminating material was found during search and the addition has been made on account of share application received during the year. Reliance is placed upon the decision of Hon'ble Supreme Court in the case of **Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 454 ITR 212 (SC)** where the Hon'ble Court has held that no addition can be made in absence of incriminating material found and seized during search.

Sl.No. 11 to 13: In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the appellant during search. Reliance is placed upon the decision of **Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024** in which the Hon'ble Court held that no addition can be made in absence of incriminating material found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

Sl.No. 14 to 16: In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the brother of the appellant during search and that no confirmation or statement to confront the same was done during search or assessment proceeding. Reliance is placed upon the decision of **Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024** in which the Hon'ble Court held that no addition can be made in absence of incriminating material

found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

24. In the case of **Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd [2023] 454 ITR 212 (SC)[24-04-2023]**, the Hon'ble Supreme Court has held that in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A.

The relevant finding of the Hon'ble Supreme Court is reproduced as under:

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 147/48 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.

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 rewriting 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.

25. Further, the Hon'ble Supreme Court has upheld its decision of **Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 454 ITR 212 (SC)** in the following decisions subsequent to AbhisarBuildwell as following:

- *PCIT vs. Saroj Sudhir Kothari, SLP (C) No. 4077 of 2023 dated 07.08.2023*
- *PCIT vs. King Buildcom (P) Ltd, Civil Appeal No. 4326 of 2023 dated 10.07.2023*
- *PCIT vs. Jay Ambey Aromatics, SLP (Civil) 24524 of 20223 dated 24.11.2023*
- *PCIT vs. S.S. Con Build (P) Ltd., SLP (C) No. 7799 of 2023 dated 04.05.2023*

26. As regard to addition made on the basis of statement recorded during search the appellants place reliance on the following judicial precedence where the Hon'ble Courts has held that no addition can be made on the basis of statement recorded in absence of incriminating material found during search as the same does not constitute incriminating material:

- ***Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022***
- ***PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021***
- ***Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi)***
- ***Recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024***

In the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, the Hon'ble Delhi High Court has held that where pursuant to search conducted upon a company, AO invoked proceedings under section 153A against assessee and made addition treating exempt capital gain under section 10(38) shown by assessee on sale of shares of said company as unexplained credit under section 68, since assessment with respect to relevant assessment year already stood completed as on date when notice under section 153A was issued to assessee and above said addition was not based on any incriminating material found during course of search and AO had made additions solely relying on disclosures made by MD of a company on which search was conducted, impugned addition was unjustified.

The decision of the Hon'ble Court is reproduced as under:

1. The present Income-tax Appeal arises out of the impugned order passed by the Income-tax Appellate Tribunal (hereinafter referred to as 'ITAT'), Delhi in Raj Gopal Agarwal v. Asstt. CIT [IT Appeal 5280 (Delhi) of 2018, dated 30-6-2021]. The facts, in brief are that the Investigation Wing of the Income-tax Department conducted a search & seizure and survey operations under section 132/133A of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') on 8th July, 2015 against M/s K.R. Pulp & Papers Ltd. and its group at various residential and business premises. During post-search investigations, Sh. Madho Gopal Agarwal, Managing Director of M/s K.R. Pulp & Papers Ltd. made a statement. It is the case of the Revenue that Sh. Madho Gopal Agarwal, Managing Director of M/s K.R. Pulp & Papers Ltd. admitted that undisclosed income has been routed in the books through bogus entries of Long Term Capital Gains (LTCG) by way of sale of shares. It is also the case of the Revenue that during the course of the search operations and post-search investigation, various incriminating documents were found and seized which disclosed that income from sale of shares of penny stock companies was disclosed as LTCG by its beneficiaries, and the LTCG earned by the promoters and family members has been used for personal use.

2. In this regard reliance has been placed on the statement of Sh. Madho Gopal Agarwal recorded on oath under section 132(4) of the Act on 3rd August, 2015 and letter dated 31st July, 2015 issued by Sh. Madho Gopal Agarwal. The case was centralised as per the orders passed under section 127 of the Act and a notice under section 153A of the Act was issued on 6th September, 2016, which was duly served. Upon receipt of notice the assessee filed his return for the relevant assessment year 2011-12 declaring an income of Rs. 5,41,130/- on 2nd March, 2017. During the year under consideration, the assessee declared income under the head 'income from salary', 'income from capital gains' and 'income from other sources'. With respect to the income from capital gains, the assessee submitted in his reply to state that he had purchased 400 shares of one M/s KGN Industries Ltd. for a total consideration of Rs. 4,000/- at Rs. 10/- per share subsequently dematerialised the shares and sold the shares on 13th October, 2010 i.e., in Financial Year (FY) 2010-11 for a sum of Rs. 3,62,996/-. It is submitted that the assessee had earned capital gain of Rs. 3,61,496/- on the sale of the said shares. However, LTCG of Rs. 3,61,496/- was claimed by the assessee as an exempt income under section 10(38) of the Act. The Assessing Officer (AO) relying upon the letter dated 31st July, 2015 and statement by Sh. Madho Gopal Agarwal dated 3rd August, 2015 held that the amount of gain of Rs. 3,61,496/- is an accommodation entry, therefore, rejected the return filed by the assessee and treated

the amount of Rs. 3,61,496/- as an unexplained credit received by the assessee under section 68 of the Act and added the same to the total income of the assessee.

3. The assessee filed an appeal against the aforesaid order of the AO dated 28th December, 2017 before CIT(A). The assessee raised a specific ground that the assessment with respect to the AY 2011-12 stood completed as on the date when notice under section 153A of the Act was issued to the assessee. The assessee submitted that no incriminating evidence or document was found during the search proceedings for the relevant assessment year. The assessee further contended that the statement of Sh. Madho Gopal Agarwal recorded under section 132(4) of the Act during the search proceedings does not constitute as incriminating material. The assessee further relied upon the judgment of this Court in the case of CIT v. Kabul Chawla [\[2015\] 61 taxmann.com 412/234 Taxman 300/\[2016\] 380 ITR 573](#) to contend that the order of the AO was contrary to law and liable to be set aside.

However, CIT(A) relying upon the statement of Sh. Madho Gopal Agarwal confirmed the addition made by the AO and dismissed the appeal vide order dated 8th June, 2018. The assessee being aggrieved by the dismissal filed an appeal before ITAT. The order of the ITAT is a common order which has been passed in respect of six assesses pertaining to same search. The lead appeal determined by the ITAT is in the case of Shri Gopal Agarwal, however, no challenge to the said appeal is pending before this Court. It is stated by the learned counsel that the appeal may be in the process of filing or listing before the Registry.

4. The ITAT after determining the appeal of Shri Gopal Agarwal has on same reasoning allowed the appeal of the respondent/assessee since it contained identical grounds for challenge. The ITAT concluded that the additions made by the AO for the assessment under consideration is not based on any incriminating material found during the course of search from the premises of the assessee. The ITAT concluded that the AO had made the additions solely relying on the disclosures made by the Managing Director, Sh. Madho Gopal Agarwal. The ITAT after finding that there was no incriminating material found as a result of the search conducted against the assessee on record, allowed the appeal and set aside the addition made by the AO. The ITAT has relied upon the judgment of this Court in Pr. CIT v. Anand Kumar Jain [2021] 432 ITR 384 and CIT v. Best Infrastructure India (P.) Ltd. [\[2017\] 84 taxmann.com 287/397 ITR 82 \(Delhi\)](#) wherein this Court has held that statements recorded under section 132(4) of the Act do not themselves constitute as incriminating material in the absence of any corroborative evidence. The ITAT placed reliance on para 35 of Best Infrastructure India (P.) Ltd. (supra) as reproduced hereinbelow:—

"35. Turning to the facts of the present case, it requires to be noted that the statements of Mr. Anu Aggarwal, portions of which have been extracted hereinbefore, make it plain that the surrender of the sum of Rs. 8 crores was only for the AY in question and not for each of the six AYs preceding the year of search. Secondly, when Mr. Anu Aggarwal was confronted with A-1, A-4 and A-11 he explained that these documents did not pertain to any undisclosed income and had, in fact been accounted for. Even these, therefore, could not be said to be incriminating material qua each of the preceding AYs."

5. The appellant has filed the present appeal aggrieved by the aforesaid order of the tribunal.

6. It is contended before us that the ITAT fell in error in holding that there was no corroborative material in support of the statement made by Sh. Madho Gopal Agarwal, in this regard, it was contended that in pursuance to the statement made by Sh. Madho Gopal Agarwal, various other members of the family disclosed LTCG and did not claim

exemption under section 10(38) of the Act and paid taxes on the said amount. It was, thus, submitted that in view of the statement of Sh. Madho Gopal Agarwal and the corroborative conduct of the other family members, the ITAT fell in error and the reliance placed on the judgment of this Court in *Best Infrastructure India (P.) Ltd. (supra)* is erroneous.

7. The addition has been made by the AO with respect to the LTCG earned on sale of shares of M/s KGN Industries Limited.

8. We have perused the statement dated 3rd August, 2015 and the contents of the letter dated 31st July, 2015, both authored by Sh. Madho Gopal Agarwal. There is no reference to M/s KGN Industries Ltd. in either of the said documents. No other material found during search pertaining to M/s KGN Industries Ltd. has been placed on record. The Revenue has not placed on record any incriminating material which was found as a result of the search conducted on the assessee herein. It is also the contention of the assessee that there was no surrender by him unlike Sh. Madho Gopal Agarwal and he, therefore, specifically disputed that any notice under section 153A of the Act could have been initiated against him. The said facts are not disputed by the counsel for the Revenue.

9. On the date of search, admittedly, the assessment with respect to the AY under consideration 2011-12 admittedly stood completed. Since no assessment was pending for the relevant AY 2011-12 on the date of search and no incriminating material was found during the course of search, the issue is covered in favour of the assessee by the judgment of this Court in the case of *Kabul Chawla (supra)* and *Pr. CIT v. MeetaGutgutia* [2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526. The relevant paragraphs are reproduced hereinbelow:—

'10. The ITAT, therefore, concluded that since no assessment was pending for the relevant assessment year 2010-11 on the date of search and no incriminating material was found during the course of search, the issue is covered in favour of the assessee by the judgment of this Court in the case of *Commissioner of Income-tax v. Kabul Chawla (2016) 380 ITR 573* and *Principal CIT v. MeetaGutgutia(2017) 395 ITR 526* as well as by the orders of the ITAT in the group cases of *Madho Gopal Agarwal and M/s Kapis Impex LLP (supra)*.

11. A predecessor Division Bench of this Court in *Kabul Chawla (supra)* has held that if no incriminating material is found during the course of the search in respect of an issue, then no addition in respect of such an issue can be made in the assessment under sections 153A and 153C of the Act. The legal position summarized in the subsequent decision of *MeetaGutgutia (supra)* is reproduced hereinbelow:—

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

- i. Once a search takes place under section 132 of the Act, notice under section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

- iii. *The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. *Although section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material."*
- v. *In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. *Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
- vii. *Completed assessments can be interfered with by the AO while making the assessment under section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

10. *In this view of the matter there is no infirmity in the order passed by the ITAT. In the aforesaid facts, no substantial questions of law arise for consideration. Accordingly, the present appeal is dismissed.*

27. *In view of above facts and case authorities relied upon the appellant humbly request your honour to quash the assessment order framed u/s 153A for the AY 2012-13 to AY 2017-18 in appeal in absence of incriminating material found during search.*

ON MERIT:

- I. **Standard Frozen Foods Export Pvt Lt - ITSSA 41-44/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 and ITA 45/Lkw/2022 for AY 2018-19- [Page No. 28-32]**
- II. **Standard Agro Vet Pvt Ltd- ITSSA 46-49/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16 [Page No. 32-33]**
- III. **Kamal Kant Verma- ITSSA 50-52/Lkw/2022 for AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 53/Lkw/2022 for AY 2018-19 [Page No. 33-39]**
- IV. **Sachin Verma- ITSSA 54-58/Lkw/2022 for AY 2012-13, AY 2014-15, AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 59/Lkw/2022 for AY 2018-19 [Page No. 39-51]**

Standard Frozen Foods Export Pvt Lt - ITSSA 41-44/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 and ITA 45/Lkw/2022 for AY 2018-19:

The appellant humbly submits before your honour that in the above appeal, the issues on account of which addition has been made by the Id.AO is on account of share application in the AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 totaling to Rs.76,65,000/- and unsecured loan of Rs.43,00,000/- in AY 2016-17 and on the basis of LP-5 page 44 found with the third party of Rs. 80,76,000/- in the AY 2018-19 which has been confirmed by the Ld. CIT(A).

Share Application- A.Y AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18:

In respect of addition in A.Y AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 on the issue of share application, the appellant humbly submit the appellant company was in its initial stage where the share capital was raised from number of persons/subscribers in small amount in cash and cheque who have been subsequently allotted shares. The appellant during the assessment proceeding as well as appellate proceeding had submitted the return of share allotment filed with MCA in which address of the shareholder was available. The appellant also filed available details of shareholders with Id.AO and requested to verify the same at appellant cost.

The return of share allotment filed with the MCA is appearing at page 272-311 whereas the available details of shareholders are at page 106-271 of the paperbook vol-2 part 1.

The appellant begs to submit that these share application money subscribed by the appellant company is in the range of Rs.35,000/- to Rs.2,00,000/- which the Id.AO has doubted without making any inquiry from the shareholders. The share application are genuine because of which the shares have allotted to the share applicant who became shareholder of the company of which details had been filed with the Id.AO and address were also provided in the share allotment but the Id.AO has made arbitrary addition without any corroborative evidence to support the suspicion or inquiry.

The Id.AO as well Id.CIT(A) has made addition only on the basis that section 68 requirement is not fulfilled whereas the shareholder details were available with the Id.AO who failed to confirm or conduct any inquiry. The identity in the form of name, address in the share allotment alongwith share applicants details available were provided. Moreover, the share applicants were allotted shares and made shareholder of the company and as regard to the creditworthiness of the shareholders looking at the amount of share application money ranging from 35,000/- to 2,00,000/- the same may is reasonable amount which a person could hold in his saving to invest in share application of the company to become shareholder of that company.

As regard to Unsecured Loan of Rs. 43,00,000/- in AY 2016-17, the appellant humbly submits that the this is not an unsecured loan from U.S. Traders but an advance from customer to whom sale has been made. The ledger account, confirmation, letter from U.S Trader and Bill of Supply is enclosed in the paperbook at page 259-263 of PB Vol2- Part1. Furthermore, the audited books of account has not been rejected by the AO and also the sales are accepted. Moreover, the arbitrary addition without application of mind has resulted in double taxation.

As regard to addition on the basis of LP-5 page 44 found with the third party of Rs. 80,76,000/- in the AY 2018-19:

01. *it is undisputed fact that alleged document/ paper was not found from the possession of appellant. In other words alleged paper was found from the possession of the third parties.*
02. *That this alleged paper is not part of the books of accounts.*
03. *That this alleged paper is not written by assessee and who has written/ maintained this paper does not known to appellant.*
04. *That appellant has no business transaction with Mr. Saleem Qureshi. It is fact that assessee has business relation with M/s Rushtam Foods Pvt. Ltd only. Merely in the*

last page of alleged documents, name of appellant company is mentioned does not alone make accountable for the documents written in the back of assessee.

- 05. Your honour may please very kindly be appreciate that during the course of search operation in the appellant group of cases, no evidence/ documents indicating alleged payment / receipts were found.*
- 06. That every person is free to think, write anything at his own choice and only he is accountable for that thing. No other person can be made accountable for the act of another person. What was the theory behind writing such payment is best known to only Mr. Saleem Qureshi. There is no indication that goods was supplied over and above to accounted records than what was the logic for making payment in cash. Further no where such cash was recovered from the possession of appellant during the course of search. Further no undisclosed investment has been found during the course of search and in absence of investment, no addition could be made.*
- 07. The seized materials on the basis of which addition has been made recovered from the possession of third parties. Further apart from the documents seized from the possession of Mr. Saleem Qureshi, no other proof to corroborate facts mentioned in the seized documents was found.*
- 08. The during assessment proceeding before AO, appellant denied for having such receipts then burden was on the AO to establish the transactions through enquiry which has not been made. Your honour may please very kindly be appreciate that no addition could be made on the basis of untested / unverified / dumb materials.*
- 09. There may be possibility that this LP-05 documents incorporates details of transaction made by Mr. Saleem Qureshi sheet several transactions relating to appellant and others were noted but it does not mean that all the transactions relates to assessee. From the copy of alleged seized documents, enclosed herewith, it transpires that several types of payments are written which includes bank payment, Cash Payment and MLA Donation. In this paper, name of assessee is not appearing. It is fact that several business transactions made with Rushtam Foods Pvt Ltd are appearing but it does not mean that entire transactions relates to appellant only, may be relates to others. Only few business transaction appearing in this sheet alone does not establish that cash transactions relates to assessee as this sheet was not found from the possession of assessee.*
- 10. That appellant during assessment proceeding strongly denied having cash receipts from Mr. Saleem Qureshi. The assessee also does not know who is MLA and why payment has been made to MLA and how payment made to MLA relates to assessee. What Mr. Saleem Qureshi has stated about transaction appearing in this alleged sized loose document is not known to assessee. The appellant was requested AO for cross examination with the Saleem Qureshi for confrontation of facts but the said requests was not entertained*

11. *The legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross-examination, no addition could be made as it will be amount to violation of principles of natural justice. No addition can be made only the basis of presumptions.*
12. *Your honour may please very kindly be appreciate that no addition could be made merely on the basis of documents collected behind the back of assessee and statements of third parties recorded during search on another person unless the assessee is confronted with those statements/ documents, and without affording opportunity for cross examination.*
13. *It was held in the case of Paul Mathews & Sons v. CIT reported in 263 ITR 101 (Ker) apex court judgment reported in 91 ITR 18 (SC) and CIT v. S. Khader Khan Son reported in 300 ITR 157 (Mad) no addition is called for also involved of CBDT Instruction. Section 133A of the Act empower any authority to examine any person on oath, and such statement has on evidentiary value and any admission made during the search statement cannot be itself be made the basis for addition. Unless, the A.O have corroborative material in the hand to made such addition if there is un accounted investment the same should be taxed as undisclosed and not on the basis of un substantiated statement recorded either from the assessee or from the third party.*
14. *The document found from the possession of Mr. Saleem Qureshi is not legally binding on assessee as name of assessee is nowhere mentioned and further no evidence are available with the department that this alleged cash payment has actually been passed to assessee. This document is only binding on Mr. Saleem Qureshi and not to assessee and it cannot be used as evidence against the assessee.*
15. *Reliance is placed on the decision of Hon'ble A.P. High Court in the case of K Lakshmi Savitri Devi in ITA No. 563 of 2011 has upheld the order of the Tribunal observing as under:*

"We are of the view that the Tribunal has rightly held that the registered document dt. 21.8.2006 under which the respondent purchased the above property showed that only Rs.65. 00 lakhs was paid to the vendor by the respondent: that there was no evidence to show that the respondent had paid Rs.1. 00 crore in cash also to the vendor; that no presumption of such payment of Rs.1.00 crore in cash can be drawn on the basis of an entry found in a diary loose sheet in the premises of C. Radha Krishna Kumar which is not in the respondents handwriting and which did not contain the name of the respondent or any date of payment or the name of the person who made the payment. It rightly held that the Revenue failed to establish the nexus of the seized material to the respondent and had drawn inferences based on suspicion, conjectures and surmises which cannot take the place of proof. We

also agree with the Tribunal that the assessing officer did not conduct any independent enquiry relating to the value of the property purchased and the burden of proving the actual consideration in the purchase of the property is on the Revenue and it had failed to discharge the said burden.

16. Reliance is also placed on the decision in the case of *CBI vs. VC Shukla* (1998) 3 SCC 410) it has been held that the loose sheets of paper cannot be considered to be books.

17. In the case of [CIT vs. Girish Chaudhary](#) (2008) 296 ITR 619 (Delhi) - Delhi High Court has held as under:-

"That the revenue has to prove the undisclosed income beyond doubt. Further it was held that the document should be a speaking one and it should contain narration in respect of various figures noted therein. Otherwise the same should be considered as dumb document on which reliance could not be placed upon."

18. Your honour may please very kindly be appreciate that without collecting any evidence and bringing the same on record, no addition cannot be made on loose sheet / dumb documents found from the possession of third party, that too on the basis of estimation/ extrapolation. Reliance is placed on the followings decisions:

- i) *Common Cause v/s Union Of India*, 77 taxmann.com 245 (SC);
- ii) *CIT v/s JayabenRatilalSarothiya*, 222 taxman 64 (Guj.);
- iii) *Uday C. Thmhankan v/s DCIT*, 174 TTJ 151 (Mum.); and
- iv) *Dr. M.K.E. Menon*, 248 ITR 310 (Bom.).

Standard Agro Vet Pvt Ltd- ITSSA 46-49/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16

The appellant humbly submits before your honour that in the above appeal, the issue on account of which addition has been made by the Id.AO is on account of share application in the AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16 totaling to Rs.1,53,02,000/-.

Share Application- AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16:

In respect of addition in A.Y AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 on the issue of share application, the appellant humbly submit the appellant company was in its initial stage where the share capital was raised from number of persons/subscribers in small amount in cash and cheque who have been subsequently allotted shares. The appellant during the assessment proceeding as well as appellate proceeding had submitted the return of share allotment filed with MCA in which address of the shareholder was available. The appellant also filed

available details of shareholders with Id.AO and requested to verify the same at appellant cost.

The return of share allotment filed with the MCA is appearing at page 567-574 whereas the available details of shareholders are at page 312-566 of the paperbook vol-2 part 2.

The appellant begs to submit that these share application money subscribed by the appellant company is in the range of Rs.35,000/- to Rs.2,00,000/- which the Id.AO has doubted without making any inquiry from the shareholders. As regard to the share application money above 2,00,000/- the PAN and Bank Statement has also been provided. The share application are genuine because of which the shares have allotted to the share applicant who became shareholder of the company of which details had been filed with the Id.AO and address were also provided in the share allotment but the Id.AO has made arbitrary addition without any corroborative evidence to support the suspicion or inquiry.

The Id.AO as well Id.CIT(A) has made addition only on the basis that section 68 requirement is not fulfilled whereas the shareholder details were available with the Id.AO who failed to confirm or conduct any inquiry. The identity in the form of name, address in the share allotment alongwith share applicants details available were provided. Moreover, the share applicants were allotted shares and made shareholder of the company and as regard to the creditworthiness of the shareholders looking at the amount of share application money ranging from 35,000/- to 2,00,000/- the same may is reasonable amount which a person could hold in his saving to invest in share application of the company to become shareholder of that company whereas as regard to the share application money above 2,00,000/- the PAN and Bank Statement has also been provided which are enclosed in the paperbook vol2 part 2 page 312-566.

As regard to Unsecured Loan of Rs. 6,00,000/- in AY 2012-13, the appellant humbly submits that the this is not share application from S.K.Nigam but unsecured loan which has been repaid. The copy confirmed copy of account, ITR, acknowledgement from S.K. Nigam and bank reflecting repayment is enclosed in the paperbook at page 343-347 of PB Vol2- Part2.

Kamal Kant Verma- ITSSA 50-52/Lkw/2022 for AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 53/IKw/2022 for AY 2018-19

The appellant humbly submits before your honour that in the above appeal, the issue on account of which addition has been made by the Id.AO is on account of unsecured loan in the AY 2015-16, AY 2016-17 & AY 2017-18 totaling to Rs.1,55,11,100/- and Rs.3,45,00,000/- in AY 2018-19 on the basis of LP 5 Page 32 which has been confirmed by the Ld. CIT(A).

Unsecured loan in the AY 2015-16, AY 2016-17 & AY 2017-18 totaling to Rs.1,55,11,100/-:

In respect of unsecured loan the appellant humbly submits that the addition has been made on the basis of statement recorded of the brother of the appellant without confrontation with the appellant during search or post search during assessment and neither any incriminating material was found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO. The Id.AO also failed to conduct any inquiry on the lender during the assessment proceeding. The Id.CIT(A) confirmed the addition on the basis of statement of brother of appellant.

The appellant has filed details of the unsecured loan comprising of ledger account, PAN, ITR & Bank Statement whereas in the case of gift the ledger account, PAN, ITR & Bank Statement alongwith gift declaration have been filed and appearing in the paperbook vol 2 part 1 from page 45 to 105 fulfilling the requirement of section 68 three ingredients i.e. identity, genuineness and creditworthiness.

In view of above, the appellant humbly request your honour to kindly delete the addition made on the basis of statement recorded of the brother of the appellant without confrontation with the appellant during search or post search during assessment and neither any incriminating material was found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO.

ADDITION OF RS.3,45,00,000/- IN AY 2018-19 ON THE BASIS OF LP 5 PAGE 32:

In respect of addition of Rs.3,45,00,000/- in AY 2018-19 on the basis of LP 5 Page 32, the appellant humbly submits that the addition has been made on the basis of statement recorded of the brother of the appellant without confrontation with the appellant during search or post search during assessment and neither any incriminating material other than alleged loose paper found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO. The Id.AO also failed to conduct any inquiry during the assessment proceeding and the Id.CIT(A) confirmed the addition on the basis of statement.

01. *That Ld. AO has made addition on the basis of seized loose paper Page No- 32 of LP-5 and relying on the statement of Shri Sachin Verma recorded u/s 132(4) of the Income Tax Act, 1961. In this regards appellant respectfully submitted that paper seems printout taken from of tally accounting software and is account ledger named Net Profit MBM Sales (GST Exempted) for the period 30.04.2017 to 31.12.2017 containing 10 entries on monthly basis. It is also important to address*

being doubtful as to whether the printout being taken as LP 5 Page 31 & 32 are from the tally computer of Standard Frozen Foods Export Pvt Ltd, Unnao which the department is claiming or mischievously kept or provided by someone to the department.

02. *This paper contains details of cash sales on the very last day of the every month with narration Being Net Profit Received.*
03. *Except to only this tally printout, no other documents/ slip/evidence with regards income/ outgoing justifying actual sales was found.*

That in this alleged Loose paper neither detail of purchase nor detail of sale is mentioned. To earn actual profit, purchases and sales must existed and established because no one has to earn income without these transactions, closely associates to any business entities. In this paper neither name of item supplied nor in what weight, the item of supplied is also not mentioned.

04. *If the allegation of the AO is accepted, it will not be less than a magic where he was earning profit in Cash only on the very last day of the every month and also profits in only rounding figures and thus clearly suggest a big conspiracy of any frustrated person who has knowingly written this type of paper and left the same in the business premises of appellant as such type of entries in tally software is impossible.*
05. *Further during the course of search, except to this alleged paper, no other single document evidencing the activities actually to have been carried out was found. Your honour may appreciate that to earn income of Rs.37 lacs to 60 lacs in a single day, there must be sale at least 2,46,00,000/- to 4,00,00,000/-in that day if the profit rate is assumed being 15%. The rate of MBM is approx.35000/- PMT meaning thereby at least goods to the extents of 700 Ton to 1140 Ton must have been supplied. The truck capacity is approx. 15 MT thus at least 50 to 76 trucks must be required. Further no stock was found undisclosed in the hand of assessee and all these things clearly supports that this paper was prepared by someone only with intent to mischief the appellant. Your honour may please very kindly be appreciate that department has carried out action u/s 132 covering business as well as residential premises and except to this alleged seized document, no other evidence with regards to fallowing transactions which is integral part of business ,were found:*

- i) *No single evidence regarding sales of MBM to earn such huge profit in a day was found.*
- ii) *No Single evidence regarding purchases of MBM was found.*
- iii) *No evidence regarding the buyers or suppliers was found.*
- iv) *No single Kg. of stock was found.*
- v) *No single evidence regarding transportation was found.*
- vi) *No evidence regarding weight of alleged goods supplied was found.*

- vii) *No investments regarding unexplained investment in any movable or immovable assets have been found.*
- viii) *No such cash as was found at the time of search.*
06. *Your honour may appreciate that in GST regime which requires E way bill for supplying of goods over to value of 50000/- such supply is not possible in a single day. The address mentioned in the loose paper is E-20, UPSIDC Industrial Area, Unnao which does not belongs to appellant. This address is factory premises of Standard Frozen Foods Exports Pvt Ltd and thus this paper was not found from the possession of appellant.*
07. *That during the course of assessment proceeding, assessee has filed detailed submissions on the query raised along with supporting evidences and explanations but the Id. AO disregarded the same and has come to conclusion with predetermined and preconceived mind of making addition on the basis of investigation report, solely considering amount of surrender made in the statements recorded u/s 132(4) of Sachin Verma without bringing any evidence to disregards the explanations/ submissions and without establishing with corroborative evidences whether the alleged transactions having been actually carried out or not.*
08. *It Is fact that in statement recorded u/s 132(4) Sachin Verma has surrendered certain sum but the same was retracted giving detailed reasons by him. Your honour may appreciate that after getting the photocopy of the seized documents and their verification with reference to the books of account, since no discrepancy was noticed, no undisclosed income was offered in the return of income by the appellant and if there was any discrepancy or defect in the assessee's books of account or the seized documents indicating any undisclosed income, the AO ought to have mentioned the same in the assessment order and all these facts were brought in the notice of AO. The Hon'ble High Court of Gujarat in the case of Dy. CIT v. Ratan Corpn. [2005] 145 Taxman 503 (Gujarat) held that when the statement made during the course of search has been retracted, and then it is duty of the AO to make further inquiries.*
09. *That the assessment has been framed without affording reasonable opportunity to the appellant, solely relying on investigation report and on statements recorded u/s 132(4) of the IT Act, 1961 without collecting any concrete evidence to justify the addition.*
10. *Your honour may appreciate that no addition can be made or sustained simply on the basis of statement recorded at the time of search, for which no corroborative material is found. In order to make a genuine and legally sustainable addition on the basis of surrender during search, there must be some incriminating material must have been found to correlate the undisclosed income with such statement which is absent in the case of appellant.*

11. *That if the contents are alleged documents is treated as genuine then cash to the extent of Rs.3,45,00,000/- must have been found available at the time of search or undisclosed investment to that extents must have been found which is absent in the appellant case. The cash in the case of appellant was found tallied with the books of accounts and therefore no addition has been made on account of cash. The Hon'ble Supreme Court in Ramji Dayawala& Sons (P.) Ltd. v. Invest import AIR 1981 SC 2085 observed that the truth of the facts stated in the documents had to be proved by admissible evidence and not by mere handwriting. In the case of CBI v. V.C. Shukla 1998 taxmann.com 2155 (SC), Hon'ble Apex court has loose sheets have been ruled out as of any evidentiary value. loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting it is not the record of the assessee. Even assuming such entries as correct and authentic they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an inference about correctness of the entries still such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person. Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.*
12. *That all these things clearly suggests that this paper is nothing but a dumb paper having no reality and cannot be considered as evidence against appellant and no addition could be made on the basis of such dumb paper. It seems that this ledger was prepared by some frustrated person only with intent to deceive the appellant and thus no addition could be made on the basis of such dumb paper without collecting any corroborative evidence and bringing the same on record. Reliance is placed on the followings decisions:*
- i) Common Cause v/s Union Of India, 77 taxmann.com 245 (SC);*
 - ii) CIT v/s JayabenRatilalSarothiya, 222 taxman 64 (Guj.);*
 - iii) Uday C. Thmhankan v/s DCIT, 174 TTJ 151 (Mum.); and*
 - iv) Dr. M.K.E. Menon, 248 ITR 310 (Bom.).*
13. **Evidentiary value of statement recorded u/s 132(4) of the Income Tax Act, 1961:**
The CBDT has issued Instruction to curb such erroneous practices of seeking involuntary forced confession of undisclosed income, the CBDT issued Circular F. No. 286/2/2003-IT(Inv.), dated 10-3-2003 after taking due recommendation of Kelker Committee, which clearly states that 'no attempt should be made to obtain confession/surrender as to the undisclosed income during search. Any action on the contrary shall be viewed adversely'.

CBDT Instruction F. No. 286/2/2003-IT (Inv.), dated 10-3-2003 regarding confession of additional income during the course of search & seizure and survey operation is as reproduced herein under –

“In pursuance of the Finance Minister’s budget speech dated 28-2-2003 this instruction was issued by the CBDT and is as under:

“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are taken/retracted by the concerned assesseees while filing return of income. In these circumstances, confession during the search and seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely”. This instruction is in line with the recommendation of the Task Force on Direct Taxes Chaired by Dr. Vijay Kelker.”

Recommendation in final Report Para 3.27 of Task Force on Direct Taxes Chaired by Dr. Vijay Kelkar in this context:

- *The CBDT must issue immediate instruction to the effect that no raiding party should obtain any surrender whatsoever.*
- *Where, a taxpayer desire to voluntarily make a disclosure, he should be advised to make so after the search.*
- *All cases where surrender is obtained during the course of the search in violation of the instruction of the CBDT, the leader of the raiding party be subjected to vigilance enquiry.*
- *All statements recorded during the search should be Video recorded.*

*Subsequently, CBDT also issued another letter [**F.NO.286/98/2013-IT (INV.II)**], **DATED 18-12-2014**, emphasizing upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. The letter is being reproduced herein under:-*

***“SECTION 132, READ WITH SECTION 133A OF THE INCOME-TAX ACT, 1961 –
SEARCH & SEIZURE – ADMISSIONS OF UNDISCLOSED INCOME UNDER COERCION/PRESSURE DURING SEARCH/SURVEY***

LETTER [F.NO.286/98/2013-IT (INV.II)], DATED 18-12-2014

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of

Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.
3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.
4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.
5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.
6. This issues with approval of the Chairperson, CBDT.”

Evidence Act, 1871: It is pertinent to mention that Section 31 of the Indian Evidence Act, 1872 states that admissions are not conclusive proof of the matters admitted. Furthermore, in view of Section 94 of the Indian Evidence Act, presumption can be rebutted by proving that the admission or confession was caused by inducement, threat or promise, thereby making the admission irrelevant. Thus, an admission or acquiescence cannot be a foundation for an assessment where the admission was made under involuntarily, threat, force, pressure, coercion or erroneous impression or misconception of law. In such circumstances, it is always open to an assessee to demonstrate and satisfy the authority concerned with documentary evidence.

Supreme Court decisions on admission being not conclusive:-

The settled principle of law suggests that a confession of an accused would need corroboration with evidences to convict the accused. It is a matter of acceptance that though an admission is an important piece of evidence but it is not conclusive and it is open to the assessee to show that it is incorrect.

At this stage, it shall not be out of place to quote the verdict of **Hon’ble Supreme Court of India in case of Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18** wherein their Lordships while observing that admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect. The landmark verdict was followed by the Hon’ble Delhi High Court of Delhi in case of **S. Arjun Singh v. CWT [1989] 175 ITR 91.**

Further reliance can also be placed on the judgement of the apex court in case of **Nagubai Armul V. B Sharma Rao AIR 1956 SC 100** wherein it was held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is

incorrect. In yet another case of Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637 , the Hon'ble Supreme Court of India held that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances in which it is made. It can be shown to be erroneous or untrue."

14. In view of above facts submitted, it is humbly prayed that the addition made on the basis of statement made by the brother of the appellant and LP 5 Pg 32 alleged to be found being doubtful as to whether the printout being taken as LP 5 Page 31 & 32 are from the tally computer of Standard Frozen Foods Export Pvt Ltd, Unnao which the department is claiming or mischievously kept or provided by someone to the department and moreover, the Id.AO failed to corroborate or substantiate factually or through evidences as to how the profit from such business is practically perceivable or possible as explained and submitted by the appellant no addition can be made on the basis of dumb document and suspicion without corroboration with material evidence.

Sachin Verma- ITSSA 54-58/Lkw/2022 for AY 2012-13, AY 2014-15, AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 59/Lkw/2022 for AY 2018-19

The appellant humbly submits before your honour that in the above appeal, the issue on account of which addition has been made by the Id.AO is on account of unsecured loan in the AY 2012-13, 2015-16, AY 2016-17 & AY 2017-18 totaling to Rs.81,58,004/-, AY 2014-5-15 of Rs. 4,00,000/- on of difference in value of property u/s 56(2)(vi) and Rs.2,60,00,000/- in AY 2018-19 on the basis of LP 5 Page 31, Rs. 1,77,17,070 on the basis of LP 5 Pg 13&14 which has been confirmed by the Ld. CIT(A).

Unsecured loan in the AY 2012-13, AY 2014-15, AY 2015-16, AY 2016-17 & AY 2017-18 totaling to Rs.81,58,004/-:

In respect of unsecured loan the appellant humbly submits that the addition has been made on the basis of statement recorded without corroborative evidence to substantiate with any incriminating material found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO. The Id.AO also failed to conduct any inquiry on the lender during the assessment proceeding. The Id.CIT(A) confirmed the addition on the basis of statement of the appellant under undue coercion contrary to the fact.

The appellant has filed details of the unsecured loan comprising of ledger account, PAN, ITR & Bank Statement have been filed and appearing in the paperbook vol 2 part 1 from page 2 to 43 fulfilling the requirement of section 68 three ingredients i.e. identity, genuineness and creditworthiness.

In view of above, the appellant humbly request your honour to kindly delete the addition made on the basis of statement recorded without any incriminating material was found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO.

ADDITION OF RS. 4,00,000/- IN AY 2014-15 ON OF DIFFERENCE IN VALUE OF PROPERTY U/S 56(2)(vii) OF THE IT ACT, 1961:

1. *That appellant re-producing the provisions of section 56(2)(vii)(b) for ready reference as under : —*

(b) any immovable property,—

i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided *that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:*

Provided further *that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;'*

2. *That Ld. AO has made addition simply relying on the provisions of section 56(2)(vii)(b) of the Income Tax Act,1961. During the course of assessment proceeding, no show cause/ query was raised with regards to addition.*

3. *Your honour may appreciate that during the course of search and seizure operation, no contrary evidence with regards to payment made on alleged property over and above disclosed price was found. No enquiry has been made before making addition and unless it is established on record by the department that the consideration as alleged by the AO did pass to the seller from the appellant, addition cannot be held justified. Without conducting any enquiry to find out the actual purchase price on which property is available for purchases and unless the AO obtained no evidence that more than what was stated was paid, no higher price could be taken to make addition.*

4. *The expression "fair market value", in relation to any immovable property transferred, meant the price the immovable property ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property. The fair market value is the best price which vendor can reasonably obtain in the circumstances of a particular case and what is required to be done for the ascertainment of such market value is to ascertain the price which a willing, reasonable and prudent purchaser would pay for the property. In ascertaining that, all factors having any depressing or appreciative effect on the value of the property have to be taken into account or if irrelevant considerations have entered the enquiry, the finding becomes vitiated in law. There is no difference between the import of the terms "cost", "price" and "value". As a matter of fact, a price indicates a fact that has already occurred in practice, a completed affair after a property has been, or agreed to be sold. On the other hand, "value" indicates the estimation of a probable price of the property concerned. The value of a property cannot be stated in an abstract form and it varies from time to time and can only be stated with reference to so many factors, i.e. the locality, situation, general appearance in the area, availability of shopping and marketing facilities, condition of public ways and transportation, availability of utilities, and many other things. As far as "cost" is concerned, it indicates cost to the purchaser for the purchase of the property after the purchase has been completed or agreed to. The provisions of sec. 56 of the Act state the fair market value and value is estimation of a probable price of the property, i.e. the deeming fiction.*

5. *The value of a property cannot be stated in an abstract form and it varies from time to time and can only be stated with reference to so many factors, i.e., the locality, situation, general appearance in the area, availability of shopping and marketing facilities, condition of public ways and transportation, availability of utilities, uses and many other things.*

6. *The Ld. AO also passed assessment order without obtaining valuation report from any authority for valuation of such property, which is against the law. If the AO was of the opinion that value of property is more than disclosed price, the AO should have referred Valuation to Valuation officer (DVO) for valuation of property but Ld. AO did not do so. Your good self kind attention is invited to the amended section 56(2)(x)(B), which said that:*



"Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

7. *Your honour may appreciate that the valuation by the stamp valuation authority is based on the circle rates. These circle rates adopt uniform rate of land*

for an entire locality, which inherently disregards peculiar features of a particular property. Even in a particular area, on account of location factors and possibilities of commercial use, there can be wide variations in the prices of land. However, circle rates disregard all these factors and adopt a uniform rate for all properties in that particular area.

8. *Reliance is placed to the decision in the case of CIT v. Chandni Bhuchar [2010] 323 ITR 510/191 Taxman 142 (Punj. & Har.) in which it has been held that the valuation done by the state agency for the purpose of stamp duty would not ipso facto substitute the actual sale consideration as being passed on to the seller by the purchaser in the absence of any admissible evidence.*

9. *Reliance is also placed to the decision in the case of Pr. CIT v. Dharmaja Infrastructure [2019] 107 taxmann.com 281/265 Taxman 125 (Guj.) - The valuation adopted by the Stamp authority could not have been made the basis for coming to the conclusion that there is unexplained investment. Moreover, as observed by the Commissioner (Appeals), no material was brought on record by the Assessing Officer to prove that the assessee had, in fact, made investments over and above that recorded in the books in the year under consideration.*

10. *Your honour may please very kindly be appreciate that no addition could be made solely on presumption without affording reasonable opportunity to the appellant and without following the provisions of section section56(2)(x)(B)as amended. There is no presumption under Law that the difference between the actual purchase price and the stamp duty value would be unaccounted investment by the purchaser.*

In view of the above, it is prayed that addition made by AO may please very kindly be deleted as:-

i) *No evidence either at the time of search or at the time of assessment was found that appellant has paid any extra amount other than actual price.*

ii) *No opportunity has been allowed to appellant before making addition.*

iii) *The AO has failed to follow the provisions of section 56(2)(x)(B), as amended, as the provisions is curative in nature and must be adhered.*

ADDITION OF RS. 2,60,00,000/- IN AY 2018-19 ON THE BASIS OF LP 5 PAGE 31:

In respect of addition of Rs. 2,60,00,000/- in AY 2018-19 on the basis of LP 5 Page 31, the appellant humbly submits that the addition has been made on the basis of statement recorded of the appellant without any incriminating material other than alleged loose paper found during search nor any corroborative evidence to support the allegation brought on record during the assessment proceeding by the Id.AO.

The Id.AO also failed to conduct any inquiry during the assessment proceeding and the Id.CIT(A) confirmed the addition on the basis of statement.

01. *That Ld. AO has made addition on the basis of seized loose paper Page No- 31 of LP-5 and relying on the statement of Shri Sachin Verma recorded u/s 132(4) of the Income Tax Act, 1961. In this regards appellant respectfully submitted that paper seems printout taken from of tally accounting software and is account ledger named Net Profit MBM Sales (GST Exempted) for the period 30.04.2017 to 31.12.2017 containing 10 entries on monthly basis. It is also important to address being doubtful as to whether the printout being taken as LP 5 Page 31 & 32 are from the tally computer of Standard Frozen Foods Export Pvt Ltd, Unnao which the department is claiming or mischievously kept or provided by someone to the department.*
02. *This paper contains details of cash sales on the very last day of the every month with narration Being Net Profit Received.*
03. *Except to only this tally printout, no other documents/ slip/evidence with regards income/ outgoing justifying actual sales was found. That in this alleged Loose paper neither detail of purchase nor detail of sale is mentioned. To earn actual profit, purchases and sales must existed and established because no one has to earn income without these transactions, closely associates to any business entities. In this paper neither name of item supplied nor in what weight, the item of supplied is also not mentioned.*
04. *If the allegation of the AO is accepted, it will not be less than a magic where he was earning profit in Cash only on the very last day of the every month and also profits in only rounding figures and thus clearly suggest a big conspiracy of any frustrated person who has knowingly written this type of paper and left the same in the business premises of appellant as such type of entries in tally software is impossible.*
05. *Further during the course of search, except to this alleged paper, no other single document evidencing the activities actually to have been carried out was found. Your honour may appreciate that to earn income of Rs.37 lacs to 60 lacs in a single day, there must be sale at least 2,46,00,000/- to 4,00,00,000/-in that day if the profit rate is assumed being 15%. The rate of MBM is approx.35000/- PMT meaning thereby at least goods to the extents of 700 Ton to 1140 Ton must have been supplied. The truck capacity is approx. 15 MT thus at least 50 to 76 trucks must be required. Further no stock was found undisclosed in the hand of assessee and all these things clearly supports that this paper was prepared by someone only with intent to mischief the appellant. Your honour may please very kindly be appreciate that department has carried out action u/s 132 covering business as well as residential premises and except to this alleged seized document, no other evidence with regards to following transactions which is integral part of business ,were found:*

- ix) *No single evidence regarding sales of MBM to earn such huge profit in a day was found.*
 - x) *No Single evidence regarding purchases of MBM was found.*
 - xi) *No evidence regarding the buyers or suppliers was found.*
 - xii) *No single Kg. of stock was found.*
 - xiii) *No single evidence regarding transportation was found.*
 - xiv) *No evidence regarding weight of alleged goods supplied was found.*
 - xv) *No investments regarding unexplained investment in any movable or immovable assets have been found.*
 - xvi) *No such cash as was found at the time of search.*
06. *Your honour may appreciate that in GST regime which requires E way bill for supplying of goods over to value of 50000/- such supply is not possible in a single day. The address mentioned in the loose paper is E-20, UPSIDC Industrial Area, Unnao which does not belongs to appellants. This address is factory premises of Standard Frozen Foods Exports Pvt Ltd and thus this paper was not found from the possession of appellants.*
07. *That during the course of assessment proceeding, assessee has filed detailed submissions on the query raised along with supporting evidences and explanations but the Id. AO disregarded the same and has come to conclusion with predetermined and preconceived mind of making addition on the basis of investigation report, solely considering amount of surrender made in the statements recorded u/s 132(4) of Sachin Verma without bringing any evidence to disregards the explanations/ submissions and without establishing with corroborative evidences whether the alleged transactions having been actually carried out or not.*
08. *It is fact that in statement recorded u/s 132(4) Sachin Verma has surrendered certain sum but the same was retracted giving detailed reasons by him. Your honour may appreciate that after getting the photocopy of the seized documents and their verification with reference to the books of account, since no discrepancy was noticed, no undisclosed income was offered in the return of income by the appellants and if there was any discrepancy or defect in the assessee's books of account or the seized documents indicating any undisclosed income, the AO ought to have mentioned the same in the assessment order and all these facts were brought in the notice of AO. The Hon'ble High Court of Gujarat in the case of Dy. CIT v. Ratan Corpn. [2005] 145 Taxman 503 (Gujarat) held that when the statement made during the course of search has been retracted, and then it is duty of the AO to make further inquiries.*
09. *That the assessment has been framed without affording reasonable opportunity to the appellants, solely relying on investigation report and on statements recorded u/s 132(4) of the IT Act, 1961 without collecting any concrete evidence to justify the addition.*

10. *Your honour may appreciate that no addition can be made or sustained simply on the basis of statement recorded at the time of search, for which no corroborative material is found. In order to make a genuine and legally sustainable addition on the basis of surrender during search, there must be some incriminating material must have been found to correlate the undisclosed income with such statement which is absent in the case of appellant.*

11. *That if the contents are alleged documents is treated as genuine then cash to the extent of Rs.3,45,00,000/- must have been found available at the time of search or undisclosed investment to that extents must have been found which is absent in the appellant case. The cash in the case of appellant was found tallied with the books of accounts and therefore no addition has been made on account of cash. The Hon'ble Supreme Court in Ramji Dayawala & Sons (P.) Ltd. v. Invest import AIR 1981 SC 2085 observed that the truth of the facts stated in the documents had to be proved by admissible evidence and not by mere handwriting. In the case of CBI v. V.C. Shukla 1998 taxmann.com 2155 (SC), Hon'ble Apex court has loose sheets have been ruled out as of any evidentiary value. loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting it is not the record of the assessee. Even assuming such entries as correct and authentic they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an inference about correctness of the entries still such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person. Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.*

12. *That all these things clearly suggests that this paper is nothing but a dumb paper having no reality and cannot be considered as evidence against appellant and no addition could be made on the basis of such dumb paper. It seems that this ledger was prepared by some frustrated person only with intent to deceive the appellant and thus no addition could be made on the basis of such dumb paper without collecting any corroborative evidence and bringing the same on record. Reliance is placed on the followings decisions:*
 - i) Common Cause v/s Union Of India, 77 taxmann.com 245 (SC);*
 - ii) CIT v/s Jayaben Ratilal Sarothiya, 222 taxman 64 (Guj.);*
 - iii) Uday C. Thmhankan v/s DCIT, 174 TTJ 151 (Mum.); and*
 - iv) Dr. M.K.E. Menon, 248 ITR 310 (Bom.).*

ADDITION ON THE BASIS OF SEIZED LOOSE PAPER PAGE NO- 12 &13 OF LP-5 OF RS. 1,77,17,070/-:

01. That Ld. AO has made addition on the basis of seized loose paper Page No- 12 &13 of LP-5 and relying on the statement of Shri Sachin Verma recorded u/s 132(4) of the Income Tax Act, 1961. In this regards appellant respectfully submits as under:
- a) That paper is printout taken from of tally accounting software and is account ledger of A T International.
 - b) This paper does not contain the name of person/ company to whom it belongs. In other words name of the receiver is no where mentioned in this loose paper.
 - c) This paper contains details of cash taken /given to/from A.T International during the periods 09.06.2017 to 02.01.2018.
 - d) That Ld. AO allegation on the hand is that this printout was taken from tally systems and another hand it has been alleged that no one has to records such types of transactions in regular books.
 - e) That in no where it has been found that appellant was maintaining two sets of books.
 - f) Only a account ledger could be construed as books.
 - g) That as per alleged printout, assessee has taken loan of Rs.1,77,17,070/- and repaid Rs.1,01,50,000/- leaving balance payable amounts to Rs.7567070/-. If the transactions are recognized as loan, then interest element must be there because no one has to give such huge money without any benefits.
 - h) Further during the course of search, no other supporting evidence in token to acceptance was found showing name of receiver/ payers.
 - i) Your honour may appreciate that during the course of assessment proceeding, appellant has filed affidavit of Mohd. Anwar partner of M/s A T International and his affidavit he affirmed that No Cash loan / Cash Transaction were made with the appellant group. The Loan transactions were made through banking channels. The appellants request for confrontations of facts with Mohd. Anwar has also been rejected by the AO holding that case is going time barring on 31.12.2019 which is also incorrect. The limitation in this case was expiring on 30.09.2020.
 - j) This paper is nothing but a dumb paper having no reality and cannot be considered as evidence against appellant and no addition could be made on the basis of such dumb paper. It seems that this ledger was prepared by someone only with intent to mischief the appellant.

- k) *That if the contents are alleged documents is treated as genuine then cash to the extent of Rs.7567070/- must have been found available at the time of search or undisclosed investment to that extents must have been found which is absent in the appellant case. The cash in the case of appellant was found tallied with the books of accounts and therefore no addition has been made on account of cash. The Hon'ble Supreme Court in Ramji Dayawala& Sons (P.) Ltd. v. Invest import AIR 1981 SC 2085 observed that the truth of the facts stated in the documents had to be proved by admissible evidence and not by mere handwriting. In the case of CBI v. V.C. Shukla [1998 taxmann.com 2155 \(SC\)](#), Hon'ble Apex court has loose sheets have been ruled out as of any evidentiary value. loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting it is not the record of the assessee. Even assuming such entries as correct and authentic they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an inference about correctness of the entries still such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person. Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.*
- l) *Similar view was taken in ITO v. Smt. Pratibha Goyal [\[2011\] 14 taxmann.com 50/132 ITD 517 \(Jp.\)](#): wherein reference was made to Mumbai Bench of the Tribunal in the case of Universal Impex v. ITO [IT Appeal No. 444 (Mum.) of 2007, dated 7-5-2009] held that addition made on the basis of statement of one of the partners and entries recorded in the diary cannot be upheld solely on the strength of the statement without any supporting material. The onus was on the AO to collect supporting material and since the AO has not discharged his onus, therefore, the addition was deleted.*
- m) *In the case of CIT v. Ravi Kumar [\[2008\] 168 Taxman 150/\[2007\] 294 ITR 78 \(Punj. & Har.\)](#), The Hon'ble High Court has observed as under:*

The assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips was proved. Held that, the assessee had discharged the onus by explaining that slips contained the rough calculations and it was for the revenue to prove that the same represented the transaction of sale of stock-in-hand. Further, even if the assessee had failed to explain the contents of the slips, it was for the Revenue to prove on the basis of material on record that the same represented transactions of sales or stock-in-hand before making any addition on

this score. The assessee had duly explained that these were rough calculations and the assessee's explanation has not been rebutted by any material evidence.

- n) *Reliance is placed on the decision in the case of Atul Kumar Jain v. Dy. CIT [1999] 64 TTJ (Delhi) 786 wherein it has been held that presumption u/s. 132(4A) requires independent corroborative evidence. The Tribunal held that the seized paper being not corroborated by any independent evidence cannot be considered as a document in proof of investment in house property, and, accordingly, this paper is liable to be ignored. Held that:*

"6.6 If we consider the said piece of paper seized during search, in light of the definition of the word "document" as given in the Indian Evidence Act and General Clauses Act and truthfulness of the contents thereof in light of the cited decisions of the Hon'ble Supreme Court, we find that the said paper contains jottings of certain figures by the same does not describe or express the substance of any transaction and even if the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the transactions the way the Assessing Officer has deciphered them without support of corroborative evidence of the parties attributed to the alleged transaction. The said paper, therefore, does not come within the compass of the definition of the word "document" to be used as evidence. The paper seized, therefore, has no evidentiary value and accordingly the same cannot form the basis for assessing the undisclosed income."

- o) *That Ld. AO has only relied on the statement recorded u/s 132(4) which was later on retracted by the appellant and thus the statement has no evidentiary value. The copy of retraction made by appellant was given before AO.*
- p) *Your honour may appreciate that no addition could be made solely on the basis of statement recorded u/s 132(4) unless the same is not supported by in corroborative evidences in the form of undisclosed investments. The addition has been made solely on presumption basis without affording proper opportunity to the appellant and thus suffers from legal infirmity. Reliance is placed to the decision of Hon'ble Gauhati High Court in the case Greenview Restaurant vs. Assistant Commissioner of Income-tax reported in (2003] 133 Taxman 432 (Gauhati) in which Hon'ble High Court has held as under:*

A plain reading of section 143(2) and (3) makes it manifestly clear that if the Assessing Officer while making the assessment of the tax liability considers it necessary to ensure that the assessee had not understated the income or had not computed excessive loss and had not underpaid the tax in any manner, he shall serve on the assessee a notice requiring him either to attend his (Assessing Officer) office or to produce or cause to be produced any evidence on which the assessee may rely in support of the return. It is thereafter on the date specified in the notice or subsequent thereto as may be, that the Assessing Officer, after hearing such evidence as the assessee may produce as well as any other evidence as he may require on specified points and after taking into account all relevant materials,

make the assessment of the total income or loss of the assessee and determine the sum payable by him or refundable to him on the basis of such assessment. [Para 12]

The underlying purpose of the exercise outlined in sub-sections (2) and (3) of section 143 is evidently to ascertain correctly the tax liability of the assessee and if for the said purpose, the Assessing Officer, for good reasons, considers it necessary to issue a notice under section 143(2) in respect thereof, and the assessee produces evidence in support of his return, the Assessing Officer is obligated to consider the same and make further inquiries, if called for, before making the final assessment of the total income to determine his tax liability. The clear mandate, therefore, is that in case the Assessing Officer is not inclined to accept the returned income, he has to afford an opportunity to the assessee to produce evidence in support of the return already filed; it is axiomatic thus, that the Assessing Officer cannot take note of any materials beyond those contained in the return to assess the income in excess of that reflected in the return or to enhance the assessee's tax liability without affording him an opportunity to produce evidence in support of the return. The purpose being to ensure a correct assessment of the tax liability in accordance with law, the above provision of the Act contains in-built safeguards to prevent possible abuse of the power of the Assessing Officer to the prejudice of the assessee in a given fact situation. The live concern of the Legislature in that regard, therefore, manifests itself in the mandatory requirement of granting an opportunity to the assessee in the assessment proceeding so as to guarantee a correct determination of the taxable income for the consequential liability on the basis thereof. Having regard to the scheme contemplated under section 143, no departure from the precepts thereof can be either comprehended or countenanced. As a corollary, any assessment under section 143(3) in violation of the peremptory guidelines in the parent provision would render it untenable in law. When the law prescribes a mode of doing a thing, it has to be done in that way alone and all other modes of execution are impliedly prohibited. [Para 13]

On an overall consideration of the facts and circumstances of the case discussed above, it was clear that the mandatory requirement of affording opportunity to the appellant-firm to adduce evidence in support of the return and explain the disclosures made in the statement of its partner had not been complied with. The Tribunal in passing the impugned orders also did not address itself to that vital aspect of the matter. Thus, one could not sustain the impugned orders of the Tribunal restoring the amount of Rs. 4 lakhs as undisclosed income of the appellant- firm for the assessment years in question. Matter was to be remitted back to the Assessing Officer. [Para 17]

13. **Evidentiary value of statement recorded u/s 132(4) of the Income Tax Act, 1961:**
The CBDT has issued Instruction to curb such erroneous practices of seeking involuntary forced confession of undisclosed income, the CBDT issued Circular F. No. 286/2/2003-IT(Inv.), dated 10-3-2003 after taking due recommendation of Kelker Committee, which clearly states that 'no attempt should be made to obtain

confession/surrender as to the undisclosed income during search. Any action on the contrary shall be viewed adversely’.

CBDT Instruction F. No. 286/2/2003-IT (Inv.), dated 10-3-2003 regarding confession of additional income during the course of search & seizure and survey operation is as reproduced herein under –

“In pursuance of the Finance Minister’s budget speech dated 28-2-2003 this instruction was issued by the CBDT and is as under:

“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are taken/retracted by the concerned assesseees while filing return of income. In these circumstances, confession during the search and seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely”. This instruction is in line with the recommendation of the Task Force on Direct Taxes Chaired by Dr. Vijay Kelker.”

Recommendation in final Report Para 3.27 of Task Force on Direct Taxes Chaired by Dr. Vijay Kelkar in this context:

- *The CBDT must issue immediate instruction to the effect that no raiding party should obtain any surrender whatsoever.*
- *Where, a taxpayer desire to voluntarily make a disclosure, he should be advised to make so after the search.*
- *All cases where surrender is obtained during the course of the search in violation of the instruction of the CBDT, the leader of the raiding party be subjected to vigilance enquiry.*
- *All statements recorded during the search should be Video recorded.*

Subsequently, CBDT also issued another letter [F.NO.286/98/2013-IT (INV.II)], DATED 18-12-2014, emphasizing upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. The letter is being reproduced herein under:-

***“SECTION 132, READ WITH SECTION 133A OF THE INCOME-TAX ACT, 1961 –
SEARCH & SEIZURE – ADMISSIONS OF UNDISCLOSED INCOME UNDERCOERCION/PRESSURE DURING SEARCH/SURVEY***

LETTER [F.NO.286/98/2013-IT (INV.II)], DATED 18-12-2014

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

- 2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.*
- 3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.*
- 4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.*
- 5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.*
- 6. This issues with approval of the Chairperson, CBDT.”*

Evidence Act, 1871: *It is pertinent to mention that Section 31 of the Indian Evidence Act, 1872 states that admissions are not conclusive proof of the matters admitted. Furthermore, in view of Section 94 of the Indian Evidence Act, presumption can be rebutted by proving that the admission or confession was caused by inducement, threat or promise, thereby making the admission irrelevant. Thus, an admission or acquiescence cannot be a foundation for an assessment where the admission was made under involuntarily, threat, force, pressure, coercion or erroneous impression or misconception of law. In such circumstances, it is always open to an assessee to demonstrate and satisfy the authority concerned with documentary evidence.*

Supreme Court decisions on admission being not conclusive:-

The settled principle of law suggests that a confession of an accused would need corroboration with evidences to convict the accused. It is a matter of acceptance that though an admission is an important piece of evidence but it is not conclusive and it is open to the assessee to show that it is incorrect.

*At this stage, it shall not be out of place to quote the verdict of **Hon’ble Supreme Court of India in case of Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18** wherein their Lordships while observing that admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect. The landmark verdict was followed by the Hon’ble Delhi High Court of Delhi in case of **S. Arjun Singh v. CWT [1989] 175 ITR 91.***

*Further reliance can also be placed on the judgement of the apex court in case of **Nagubai Armul V. B Sharma Rao AIR 1956 SC 100** wherein it was held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect. In yet another case of **Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637**, the Hon'ble Supreme Court of India held that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances in which it is made. It can be shown to be erroneous or untrue."*

14. In view of above facts submitted, it is humbly prayed that the addition made on the basis of statement made by the appellant and LP 5 Pg 32 alleged to be found being doubtful as to whether the printout being taken as LP 5 Page 31 & 32 are from the tally computer of Standard Frozen Foods Export Pvt Ltd, Unnao which the department is claiming or mischievously kept or provided by someone to the department and moreover, the Id.AO failed to corroborate or substantiate factually or through evidences as to how the profit from such business is practically perceivable or possible as explained and submitted by the appellant no addition can be made on the basis of dumb document and suspicion without corroboration with material evidence.

PRAYER

The appellant humbly submits in brief and pray before your honour that the assessment has been framed in violation to mandatory and statutory requirement of approval to be given by the Addl.CIT, Central being Approving Authority u/s 153D of the IT Act, 1961 without application of mind to the facts of the case, replies and supporting documents filed, seized material and the conduct of assessment proceeding by the Id.AO as submitted above and failed to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO for which provision u/s 153D has been introduced and also by common approval instead of each assessee assessment year wise on the same day and next day respectively to 110 cases which is also in violation of requirement u/s 153D of the IT Act, 1961 only for the sake of providing administrative approval at the fag end of assessment proceeding on 27.12.2019 and 28.12.2019 for completion of assessment proceeding getting time barred on 31.12.2019. Reliance is placed upon Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal, ITA 86 of 2022 dated 12.12.2022, recent decision in the case of KhodayEhshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024, I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others and Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024

Also, that the assessment has been framed u/s 153A for AY 2012-13 to AY 2017-18 in appeal before your honour as illegal and without jurisdiction in absence of incriminating material. Reliance is placed upon Principal Commissioner of Income-

tax, *Central-3 v. AbhisarBuildwell (P.) Ltd.* [2023] 454 ITR 212 (SC) and others by Supreme Court in the case of *PCIT vs. Saroj Sudhir Kothari*, SLP (C) No. 4077 of 2023 dated 07.08.2023, *PCIT vs. King Buildcom (P) Ltd*, Civil Appeal No. 4326 of 2023 dated 10.07.2023, *PCIT vs. Jay Ambey Aromatics*, SLP (Civil) 24524 of 20223 dated 24.11.2023 and *PCIT vs. S.S. Con Build (P) Ltd.*, SLP (C) No. 7799 of 2023 dated 04.05.2023.

In view of above, the appellant prays and request before your honour to quash the assessment order framed unlawfully and in violation to provision of law and settled judicial precedents or appropriate relief as deem fit in the interest of justice to the appellant."

(B.1.2) Second Part of Written submissions

Sub: **Brief Submission on Legal Issues in the case of :**

Standard Frozen Foods Export Pvt Lt - ITSSA 41-44/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2016-17 & AY 2017-18 and ITA 45/Lkw/2022 for AY 2018-19

Standard Agro Vet Pvt Ltd- ITSSA 46-49/Lkw/2022 for AY 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16

Kamal Kant Verma- ITSSA 50-52/Lkw/2022 for AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 53/Lkw/2022 for AY 2018-19

Sachin Verma- ITSSA 54-58/Lkw/2022 for AY 2012-13, AY 2014-15, AY 2015-16, AY 2016-17 & AY 2017-18 and ITA 59/Lkw/2022 for AY 2018-19

In connection to the above, the appellant humbly submits before your honour as under:

Legal Issues:*Issue of Statutory Approval by JCIT u/s 153D of the IT Act, 1961 & Issue of Assessment framed u/s 153A in absence of incriminating material.*

ISSUE OF STATUTORY APPROVAL BY JCIT U/S 153D OF THE IT ACT, 1961:

The appellant humbly submits that in all 19 appeals from ITSSA 41-59/LKW/2022 common legal issue of statutory approval u/s 153D of the Income Tax Act, 1961 is involved. The appellant humbly submits before your honour in brief legally as well as factually as to how there has been violation of mandatory and legal requirement u/s 153D as well as factually how the Addl.CIT failed to do discharge the statutory obligation casted upon by the legislature which lead to mechanical approval at the fog end of assessment proceeding on 27.12.2019 ad 28.12.2018 only for the sake of completion of assessment proceeding getting time barred on 31.12.2019 as following:

- *Common Approval as against the statutory legal requirement of approval for each assessment year in conjoint reading on section 153A(1) and section 153D*
- *Mechanical Approval- 110 Cases approved by Addl.CIT in two days, 48 cases on 27.12.2019 and 62 cases on 28.12.2019. It is even humanly not possible to go through exhaustive assessment records and search & seizure material of 110 cases. (Pg 76-84 of PB Vol-1)*
- *Approval No. 1490 requested by AO on 28.12.2019 and approved by Addl.CIT on the same day i.e. 28.12.2019 consisting of 16 cases (appellant cases from sl. no. 1 to 14) whereas approval no.1488 requested by ld.AO on 26.12.2019 approved by Addl.CIT on the next day i.e. 27.12.2019 consisting of 15 cases (appellant cases from sl. no. 6 to 15). (Pg 83 and 80 of PB Vol-1)*
- *Draft Assessment Order sent by AO for approval to Addl.CIT at the fag end of assessment proceeding on 26.12.2019 and 28.12.20219 getting barred on 31.12.2019*
- *Addl.CIT failed to discharge mandatory and statutory obligation to protect appellant/assessee from arbitrary or unjust exercise of discretion by AO and failure to provide fair search assessment being the very intention and purpose of section 153D statutory approval introduced by legislature in its wisdom to cast obligation upon JCIT in search assessment for the following reasons in the case of appellant:*
 - *Mistake committed and accepted by AO :- Subsequent to search assessment, petitions were filed for rectification of orders, which were also rectified u/s 154. Meaning thereby that the ld.AO accepted the mistake committed in making addition in the search assessment order(No. of Cases rectified u/s 154 – 7 Search Assessment Orders.)- Page 164-179 of PB Vol-1*
 - *Undue and unjust discretion by AO: Notice was issued on 23/12/2019 for compliance on 24/12/2019 as show-cause notice for the first time on the issue of certain cash payment of Rs. 80 Lacs appearing on LP 05 page 44 seized from Saleem Qureshi, Lucknow to which the appellant filed reply and denied to have any connection with these transaction as neither it was found from the possession of appellant nor contains name of the appellant and further requested for confrontation of the person with whom such paper was found to which the ld.AO has simply made addition without any basis. (Notice and reply on Page 204-219 of PB Vol-1)*
 - *No Cross Examination: At page 223 of the PB Vol-1, the appellant had requested the ld.AO regarding transaction with AT Internationalof*

Rs.1.77 Crore and requested for confrontation but the ld.AO simply brushed aside the request.

- *Inquiry before Assessment u/s 142(1): The appellant has requested the ld.AO to make summon and make inquiry at appellant cost on the issue of share application and unsecured loan which the ld.AO simply brushed aside. (Relevant Para O Page 183- Letters on Page 180-203)*
- *Mechanical Approval for the sake of completion of search assessment proceeding time barring on 31.12.2019: Absence of application on mind on the cases in which Approval have been granted also prima-facie apparent from the Approval Letter itself. The approval has been granted by way of common approval being an empty formality at the fag end of assessment proceeding on 27.12.2019 and 28.12.2018 to multiple assessee and assessment years upto 110 cases for the sake of completion of group search assessment proceeding getting time barred on 31.12.2019.*

The appellant humbly submits in brief and pray before your honour that the assessment has been framed in violation to mandatory and statutory requirement of approval to be given by the Addl.CIT, Central being Approving Authority u/s 153D of the IT Act, 1961 without application of mind to the facts of the case, replies and supporting documents filed, seized material and the conduct of assessment proceeding by the ld.AO as submitted above and failed to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO for which provision u/s 153D has been introduced and also by common approval instead of each assessee assessment year wise on the same day and next day respectively to 110 cases which is also in violation of requirement u/s 153D of the IT Act, 1961 only for the sake of providing administrative approval at the fag end of assessment proceeding on 27.12.2019 and 28.12.2019 for completion of assessment proceeding getting time barred on 31.12.2019.

Reliance is placed upon Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal, ITA 86 of 2022 dated 12.12.2022, recent decision in the case of Khoday Ehshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024, I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others and Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024.

ISSUE OF ASSESSMENT FRAMED U/S 153A IN ABSENCE OF INCRIMINATING MATERIAL:

- *That the search conducted u/s 132 of the Income Tax Act, 1961 on 10.01.2018 and the search assessment was completed u/s 153A for the AY 2012-13 to AY 2017-18. No notice or assessment proceeding was pending on the date of search i.e. 10.01.2018 which is also apparent from the assessment order itself.*

- *No incriminating material found and seized during search, also apparent from the assessment order. Reliance is placed upon Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC) and also in the following decisions subsequent to Abhisar Buildwell, the Apex Court affirmed its decision in the following cases:*
 - *PCIT vs. Saroj Sudhir Kothari, SLP (C) No. 4077 of 2023 dated 07.08.2023*
 - *PCIT vs. King Buildcom (P) Ltd, Civil Appeal No. 4326 of 2023 dated 10.07.2023*
 - *PCIT vs. Jay Ambey Aromatics, SLP (Civil) 24524 of 20223 dated 24.11.2023*
 - *PCIT vs. S.S. Con Build (P) Ltd., SLP (C) No. 7799 of 2023 dated 04.05.2023*
- *On the basis of tabular chart (at page 1-2 of PB Vol-1) Income Tax Appeal and the appellant wise categorisation of appellant with legal issue and its judicial precedence has been made as following:*

Sl. No 1 to 10 : In these cases no incriminating material was found during search and the addition has been made on account of share application received during the year. Reliance is placed upon the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC) where the Hon'ble Court has held that no addition can be made in absence of incriminating material found and seized during search.

Sl.No. 11 to 13:In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the appellant during search. Reliance is placed upon the decision of Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017] 397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024 in which the Hon'ble Court held that no addition can be made in absence of incriminating material found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

Sl.No. 14 to 16:In these cases no incriminating material was found during search and the addition has been made on account of unsecured loan received during the year on the basis of statement recorded u/s 132(4) of the brother of the appellant during search and that no confirmation or statement to confront the same was done during search or assessment proceeding. Reliance is placed upon the decision of Delhi High Court in the case of PCIT vs. Shiv Kumar Agarwal, ITA No 231 of 2022 dated 28.07.2022, PCIT vs. Anand Kumar Jain (2021) 432 ITR 384 dated 12.02.2021, Best Infrastructure India (P.) Ltd [2017]

397 ITR 82 (Delhi) and recent decision in the case of Dviya Exim (P) Ltd v. DCIT, ITA 7442, 5952 & 5957 (Delhi) of 2018 dated 15.01.2024 in which the Hon'ble Court held that no addition can be made in absence of incriminating material found during search on the basis of statement recorded u/s 132(4) of the IT Act, 1961.

- *In view of above, the appellant prays and request before your honour to quash the assessment order framed unlawfully and in violation to provision of law and settled judicial precedents or appropriate relief as deem fit in the interest of justice to the appellant.*

PRAYER

The appellant humbly submits in brief and pray before your honour that the assessment has been framed in violation to mandatory and statutory requirement of approval to be given by the Addl.CIT, Central being Approving Authority u/s 153D of the IT Act, 1961 without application of mind to the facts of the case, replies and supporting documents filed, seized material and the conduct of assessment proceeding by the Id.AO as submitted above and failed to protect the taxpayer against arbitrary or unjust exercise of discretion by the AO for which provision u/s 153D has been introduced and also by common approval instead of each assessee assessment year wise on the same day and next day respectively to 110 cases which is also in violation of requirement u/s 153D of the IT Act, 1961 only for the sake of providing administrative approval at the fag end of assessment proceeding on 27.12.2019 and 28.12.2019 for completion of assessment proceeding getting time barred on 31.12.2019. Reliance is placed upon Jurisdictional Allahabad High Court in the case of PCIT vs. Subodh Agarwal, ITA 86 of 2022 dated 12.12.2022, recent decision in the case of Khoday Eshwarsa and Sons vs. DCIT, ITA 1079 & 1080/Bang/2024 dated 20.09.2024, I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others and Hon'ble Lucknow Tribunal in the case of Quality Structure Pvt Ltd. vs. DCIT, CC-2, Kanpur, ITSSA 679 & 680/Lkw/2019 dated 30.09.2024

Also, that the assessment has been framed u/s 153A for AY 2012-13 to AY 2017-18 in appeal before your honour as illegal and without jurisdiction in absence of incriminating material. Reliance is placed upon Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC) and others by Supreme Court in the case of PCIT vs. Saroj Sudhir Kothari, SLP (C) No. 4077 of 2023 dated 07.08.2023, PCIT vs. King Buildcom (P) Ltd, Civil Appeal No. 4326 of 2023 dated 10.07.2023, PCIT vs. Jay Ambey Aromatics, SLP (Civil) 24524 of 20223 dated 24.11.2023 and PCIT vs. S.S. Con Build (P) Ltd., SLP (C) No. 7799 of 2023 dated 04.05.2023.

In view of above, the appellant prays and request before your honour to quash the assessment order framed unlawfully and in violation to provision of law and settled

judicial precedents or appropriate relief as deem fit in the interest of justice to the appellant.”

(B.2) In addition, copies of the following orders were also filed from the assessee's side:

- (1) Order of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs. Shiv Kumar Nayyar, ITA 285/2024
- (2) Order of Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. [2023] 150 taxmann.com 146 (Orissa)
- (3) Order of Hon'ble Supreme Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. [2024] 158 taxmann.com 247 (SC)

(C) At the time of hearing before us, the assessee was represented by Shri Ashish Jaiswal, learned Counsel for the assessee and Revenue was represented by Smt. Namita S. Pandey, learned CIT (D.R.). The learned Counsel for the assessee placed heavy reliance on the written submissions, already reproduced in foregoing paragraphs (B.1.1) and (B.1.2) of this order. He read out the relevant portions from the written submissions and also drew our attention to relevant pages from the paper books referred to in foregoing paragraph no. (B) of this order. He also supported his submissions with the help of case laws referred to in foregoing paragraph number (B.2) of this order. The learned D.R. for Revenue placed reliance on the impugned appellate orders passed by the learned CIT(A) and on the assessment orders passed by the Assessing Officer.

(D) We have heard representatives of both sides. We have also perused the materials on record carefully.

(D.1) The first limb of the contention raised by the learned Counsel for the assessee is on the legal ground that statutory approval given to the Assessing Officer for the assessment orders was not based on application of mind. It was the case of the learned Counsel for the assessee that approval

was given by Addl. CIT in a mechanical manner within a short period of time during which it was humanly impossible for the Addl. CIT to go through exhaustive assessment records, search & seizure materials and to thereafter give approval after due application of mind. The learned Counsel for the assessee submitted that the Addl. CIT gave approval to 110 cases in two days which included; 48 cases on 27/12/2019 and 62 cases on 28/12/2019. These cases included approvals given for assessment orders which are subject matters of the present batch of appeals before us. The learned Counsel for the assessee further drew our attention to the fact that approval No. 1490 was requested by the Assessing Officer for 16 cases on 28/12/2019 and approval was given by the Addl. CIT on the same day i.e. on 28/12/2019. He further drew our attention to the fact that approval No. 1488 was requested by the Assessing Officer for 15 cases on 26/12/2019 and approval was given by the Addl. CIT on the very next day i.e. on 27/12/2019. He also drew our attention to the fact that draft assessment orders were sent by the Assessing Officer for approval to the Addl. CIT at the fag end of the assessment proceedings on 26/12/2019 and 28/12/2019 though the assessments were going to be barred by limitation barely a few days later, on 31/12/2019. Placing reliance on the order of Hon'ble Allahabad High Court in the case of Pr. CIT vs. Subodh Agarwal, I.T.A. No.86 of 2022, dated 12/12/2022 and order of Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra) and further on the order of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs. Shiv Kumar Nayyar (supra), learned Counsel for the assessee submitted that the assessment orders passed by the Assessing Officer, based on mechanical approval given by the Addl. CIT, without due application of mind, lacked legal validity and deserved to be quashed. He also placed reliance on the orders of Income Tax Appellate Tribunal in the case of Khoday Eshwarsa and Sons vs. DCIT, I.T.A. No.1079 & 1080/Bang/2024

dated 20/09/2024 and in the case of Sanjay Duggal and Others, I.T.A. No.1813/Del/2019 and in the case of Quality Structure Pvt. Ltd. vs. DCIT, IT(SS)A No. 679 & 680/Lkw/2019. The learned CIT, D.R. for Revenue submitted that it was the normal practice that the Assessing Officer and the Addl. CIT/Jt. CIT engage in periodical discussion over a long period of time. Therefore, it was possible for the Addl. CIT to grant approval to draft assessment order after application of mind even though time available was short. In his rejoinder, learned Counsel for the assessee submitted that there is nothing on record to show that there was discussion between the Assessing Officer and Addl. CIT. In response to specific query from Bench whether the assesseees were responsible for the delay on the part of the Assessing Officer in submission of draft assessment orders to the Addl. CIT at the fag end of the limitation period; and if so, whether the submissions made by the assessee would still be good on merits, learned Counsel for the assessee submitted that the delay on the part of the Assessing Officer in submission of the draft assessment orders to the Addl. CIT was due to the fact that assessment proceedings were taken up in haste by the Assessing Officer after lapse of substantial duration of time available during the limitation period. He further submitted that the assesseees made compliance with the notices of the Assessing Officer even though sufficient time was not given by the Assessing Officer. Therefore, he contended that the delay on the part of the Assessing Officer in submission of the draft assessment order to the Addl. CIT was entirely attributable to Revenue and to the Assessing Officer in particular; and further, that the assesseees were in no way responsible for the delay. After hearing both sides, we are of the view that the issue in dispute is squarely covered by the order of the Hon'ble Allahabad High Court in the case of Pr. CIT vs. Subodh Agarwal, I.T.A. No.86 of 2022, dated 12/12/2022, order of Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra) and order of Hon'ble Delhi High

Court in the case of Pr. Commissioner of Income Tax vs. Shiv Kumar Nayyar (supra), in favour of the assessee. Further the issue in dispute is also squarely covered in favour of the assessee by the orders of the Income Tax Appellate Tribunal in the case of Khoday Eshwarsa and Sons vs. DCIT, I.T.A. No.1079 & 1080/Bang/2024 dated 20/09/2024 and in the case of Sanjay Duggal and Others, I.T.A. No.1813/Del/2019 and in the case of Quality Structure Pvt. Ltd. vs. DCIT, IT(SS)A No. 679 & 680/Lkw/2019 (supra). In view of the foregoing, we set aside the impugned appellate orders of learned CIT(A) deserve to be set aside; and the assessment orders passed by the Assessing Officer deserve to be annulled.

(D.2) The second limb of the contentions made by the learned Counsel for the assessee on behalf of the appellant assesseees was that in the following cases, no incriminating material was found in the course of search conducted u/s 132 of the IT Act:

Appeal Number	Assessment year	Appellant
IT(SS)A No.41/Lkw/2022	2012-13	Standard Frozen Foods Exports Pvt. Ltd.
IT(SS)A No.42/Lkw/2022	2013-14	Standard Frozen Foods Exports Pvt. Ltd.
IT(SS)A No.43/Lkw/2022	2016-17	Standard Frozen Foods Exports Pvt. Ltd.
IT(SS)A No.44/Lkw/2022	2017-18	Standard Frozen Foods Exports Pvt. Ltd.
IT(SS)A No.46/Lkw/2022	2012-13	Standard Agro Vet Pvt. Ltd.
IT(SS)A No.47/Lkw/2022	2013-14	Standard Agro Vet Pvt. Ltd.
IT(SS)A No.48/Lkw/2022	2014-15	Standard Agro Vet Pvt. Ltd.
IT(SS)A No.49/Lkw/2022	2015-16	Standard Agro Vet Pvt. Ltd.
IT(SS)A No.55/Lkw/2022	2014-15	Sachin Verma
IT(SS)A No.57/Lkw/2022	2016-17	Sachin Verma
IT(SS)A No.54/Lkw/2022	2012-13	Sachin Verma
IT(SS)A No.56/Lkw/2022	2015-16	Sachin Verma
IT(SS)A No.58/Lkw/2022	2017-18	Sachin Verma
IT(SS)A No.50/Lkw/2022	2015-16	Kamal Kant Verma
IT(SS)A No.51/Lkw/2022	2016-17	Kamal Kant Verma
IT(SS)A No.52/Lkw/2022	2017-18	Kamal Kant Verma

Further, he submitted that in the aforesaid cases, the assessments were unabated. Therefore, he contended, following the order of Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell (P) Ltd. (supra), no additions could be made in the assessment orders passed by the Assessing Officer in the aforesaid assessment orders. The learned CIT D.R. for Revenue placed reliance on the orders of the Assessing Officer and the impugned appellate orders of the learned CIT(A) on this issue. After hearing both sides, we are of the view that the issue is squarely covered in favour of the assesseees as far as aforesaid assessments are concerned, by order of Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell (P) Ltd. (supra). Accordingly, the additions made in the aforesaid assessment orders deserve to be deleted.

(D.2.1) In view of the foregoing, we are of the view that the additions made in the assessment orders pertaining to the present bunch of 19 appeals cannot be upheld. In the light of the discussion in foregoing paragraph (D.1) and (D.2) of this order, we are also of the view that the assessment orders passed by the Assessing Officer in the present batch of 19 appeals lack validity in law; and that the additions made cannot be upheld. In view of the foregoing, we set aside the impugned appellate orders passed by the learned CIT(A) and we annul corresponding assessment orders for various assessment years pertaining to various assesseees in present batch of 19 appeals being disposed of through this consolidated order.

(E) As we have already set aside the impugned appellate orders passed by the learned CIT(A) and as we have already annulled corresponding assessment orders pertaining to various assesseees in the present batch of

19 appeals, the other submissions and contentions made on behalf of the assesseees in the written submissions, paper book, case laws and oral submissions are merely academic in nature and do not require adjudication. Therefore, we decline to adjudicate on the other matters.

(F) In the result, all the appeals are allowed.

(Order pronounced in the open court on 22/11/2024)

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Dated:22/11/2024

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar