

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T(SS).A. Nos.147&148/Ahd/2019  
(A.Ys.: 2005-06 & 2006-07)

Smt. Neelu Sanjay Gupta, L/h. of Late Shri Sanjay Gupta B-202, Dhananjay Tower, Anand Nagar Road, Satellite, Ahmedabad-380015	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(2), Ahmedabad
[PAN No.ADYPG0351K]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

I.T(SS).A. Nos.21 to 23/Ahd/2020 & 15/Ahd/2022 & ITA No.  
93/Ahd/2020)  
(A.Ys.: 2007-08, 2008-09 & 2006-07 & 2010-11 to 2011-12)

M/s. Technodot Engineers Ltd., C/o. Cambay Hotel & Resorts, Plot No. 22, 23, 24 GIDC, Sector-25, Gandhinagar-382010	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(2), Ahmedabad
[PAN No.AABCT5392A]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Adv. & Shri Parimal Sinh B. Parmar, Shri Umed Singh Bhati & Shri Abhimanyu Singh, A.Rs.
<b>Respondent by:</b>	Shri R. N. Dsouza, CIT-DR & Shri Rignesh K. Das, Sr. DR

<b>Date of Hearing</b>	19.09.2024
<b>Date of Pronouncement</b>	26.11.2024

O R D E R

**PER BENCH:**

These appeals have been filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-7 & 12, (in short “CIT(A)”, Ahmedabad vide separate orders dated 09.01.2019, 23.09.2019, 14.01.2020 & 30.09.2019 passed for A.Ys. 2005-06 to 2008-09 & 2010-11 to 2011-12. Since

common facts and issues for consideration are involved for all the years under consideration before us, all the appeals filed by the assessee for the aforesaid Assessment Years are being taken up together.

2. We shall take up IT(SS)A No. 147/Ahd/2019 as the lead year and our observations would apply to balance years as well, wherever applicable.

2.1 The brief facts of the present group of cases are that there was a search under Section 132 of the Income Tax Act, 1961, carried out at the premises of Neesa Group on September 8, 2010. Neesa Group was being managed by the assessee, late Shri Sanjay Gupta. A search warrant was authorized for the assessee's premises and a proceedings under Section 153A of the Act were initiated. However, the assessee remained non-compliant to several notices issued by the Department. The assessee later requested that the original return filed under Section 139(1) for the Assessment Year 2005-06 be considered as the return under Section 153A of the Act. Despite several reminders and extensions by the Assessing Officer, the assessee failed to submit necessary documents such as the income computation, profit and loss account, and balance sheet. The Assessing Officer observed that **even after nearly one year**, compliance to the notice under Section 153A was only made on June 26, 2012. The first notice under Section 143(2) was issued on June 1, 2012, and served by June 4, 2012, followed by subsequent notices under Section 142(1) on the same day and later on September 25, 2012, and October 18, 2012. **However, the assessee's responses were found to be inadequate, and many of the details were not provided.** The assessee also filed a writ petition in the Gujarat High Court challenging the validity of the search proceedings, on the ground that the Department lacked sufficient reasons to initiate the search. **The**

**Gujarat High Court dismissed the petition on March 4, 2011, affirming that the necessary conditions for the search under Section 132 had been met.** The Assessing Officer observed that again the assessee continued to obstruct the investigation by not providing the requested documents, despite repeated attempts by the Department to obtain them. On October 30, 2012, a show-cause notice under Section 271(1)(b) was issued, for consistent non-appearance citing the assessee's non-compliance with the notices under Sections 143(2) and 142(1). The assessee's responses, submitted on November 20, 2012, were deemed insufficient, and a penalty under Section 271(1)(b) was levied on November 27, 2012. The assessee's appeal against the penalty was dismissed by the CIT (A) on May 9, 2013, for failure to comply fully with the notices. **The assessee's non-cooperative attitude led to the case being referred for a special audit under Section 142(2A) of the Income Tax Act.** A detailed show-cause notice was issued on December 26, 2012, which highlighted discrepancies in the accounts and financial data provided by the assessee. These discrepancies were **especially evident when comparing the digital data seized during the search to the audited accounts. The discrepancies raised concerns over the authenticity of the books of accounts, leading to the referral for special audit.** The special auditor revealed several inconsistencies, including **discrepancies between the digital data seized during the search and the reported figures in the audited accounts,** particularly related to loans, unsecured loans, and sundry creditors. One notable issue was the substantial loan amounts shown as being provided by the assessee's family members, **which, upon investigation, were found to have been routed through third parties and accommodation entries.** Despite numerous requests and deadlines set by the Department, the assessee

failed to provide satisfactory explanations for these discrepancies, reinforcing the non-cooperative nature of the assessee. The Assessing Officer observed that throughout the assessment proceedings, there was lack of cooperation from the assessee in providing necessary documents and explanations required for the completion of assessment. The issues were first raised through issuance of various notices, starting from 25th September 2012, requesting information on cash deposits, loans, land transactions, and shareholding patterns within the group. Despite multiple notices, **the assessee failed to provide any details or evidences within the timelines stipulated.** Firstly, the assessee was required to explain the source of cash deposits amounting to Rs. 2,46,77,980/-; however, no details were provided even after the expiration of the three-month period granted for compliance. Similar issues arose regarding a loan of Rs. 10,75,000/- from Shri Bhuneshwar Yadav, for which no details were submitted despite repeated reminders. Furthermore, the assessee was asked to provide the sale deed and payment details for a land purchased in Udaipur, yet no response was received. Similarly, AO observed that a cash receipt of Rs. 10,00,000/- from the sale of flat A-7/72 in Ahmedabad remained unexplained. Additionally, the assessee failed to furnish details on shareholding patterns, accumulated profits, and the inter-company loans within the group. Although the assessee claimed that these loans were for trade advances, no supporting evidence was provided, despite several reminders. In light of these failures, a proposal for a special audit under Section 142(2A) was raised. However, despite these measures, the assessee's continued to remain non-cooperative. Reports from the Special Auditors indicated that many necessary details, documents, and explanations were not provided. The special auditors repeatedly mentioned the non-cooperation and incomplete records from the

assessee. As a result, the special audit process was delayed, leading to extensions of time to allow the assessee a fair chance to comply. **Furthermore, the assessee challenged the validity of the direction for special audit before the Gujarat High Court. However, the High Court dismissed the petition, confirming that the Assessing Officer had sufficient grounds to order the special audit, given the complexity of the accounts and the interest of the Revenue.** The special auditors' report highlighted several issues, including the unavailability of information and access to the company's books and records. The auditors noted that they could not express an opinion on the accuracy of the books of accounts as they were not provided with complete records or the necessary access. The assessee's non-cooperation continued to obstruct the audit process. The special auditors could not form an opinion on the correctness of the accounts, which were found to be incomplete. **As a result, the Assessing Officer rejected the books of accounts under Section 145(3) of the Income Tax Act.** The income was assessed as per Section 144, which allows the income to be determined based on the best judgment of the Assessing Officer when the books of accounts are found to be inadequate or unreliable. Consequently, the assessee was issued a specific questionnaire to clarify the issues raised in the special audit report, but further delays and non-compliance continued, demonstrating the assessee's persistent failure to provide required details.

3. Thereafter, the Assessing Officer proceeded to make certain additions. The detailed assessment of the assessee's income revealed several adjustments that have led to an increase in the total income. The Assessing Officer identified various unaccounted investments, amounting to Rs. 2,50,000/-. These investments were not disclosed in the financial records of the assessee,

and therefore, they were added to the total income as undisclosed income. Additionally, an amount of Rs. 1,92,000/- was treated as undisclosed income, further increasing the income to be assessed. One of the significant additions was related to unexplained credits, which totalled Rs. 98,50,000/-. These credits could not be substantiated during the assessment, and as a result, they were added to the total income. Furthermore, unrecorded investment was found to be Rs. 2,31,055/-. This amount represented investments that were not reflected in the books of accounts and was therefore added to the income of the assessee. An interest disallowance of Rs. 5,92,835/- was made under Section 36(1), as the interest expenses claimed by the assessee could not be fully justified with proper documentation and the underlying purpose. Moreover, an amount of Rs. 33,525/- was treated as unaccounted cash, which also contributed to the increase in the total income, reflecting cash that was not disclosed. Additional unrecorded investments were found, amounting to Rs. 45,768/-, which further added to the total income of the assessee. Deemed dividends under Section 2(22)(e) were also included, with Rs. 19,00,105/- being added from GSPPL and Rs. 10,00,000/- from NIIP. These amounts were treated as deemed dividends, which had to be included in the taxable income under the relevant provisions of the Income Tax Act. The Assessing Officer also made a disallowance of a deduction under Section 80G, amounting to Rs. 15,000/-. This disallowance was made because the necessary supporting documents for claiming the deduction were either insufficient or not provided. Moreover, unrecorded interest income of Rs. 4,402/- was added to the income, as it had not been accounted for in the original return filed by the assessee. Finally, a disallowance of depreciation on a vehicle was made, amounting to Rs. 5,06,392/-. This disallowance occurred because the depreciation claimed

on the vehicle could not be substantiated with adequate evidence or documentation. After considering all the above additions, the total assessed income was determined by the Assessing Officer at a figure of Rs. 1,84,36,610/-.

4. In appeal, Ld. CIT(Appeals) confirmed the additions since the assessee continued to remain non-cooperative, failed to furnish necessary documentation / evidences in support of its contentions and did not furnish proper explanation with respect to any of the additions made by the AO.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the additions made by the Assessing Officer. The Counsel for the assessee before us took various legal arguments, which we shall be discussing in the succeeding paragraphs.

6. The present appeal filed by the assessee in IT(SS)A 147/Ahd/2019 is being taken as a lead year and our observations for this year, would also apply to balance years before us for our consideration. This is for the reason that the present group of appeals are emanating out of search conducted on the Neesa group of companies, of which the assessee is the main promoter. Certain additions have been made in hands of the assessee for Assessment Years 2005-06 and 2006-07 and additions have been made in the hands of Techno Dot Engineers Private Limited for various assessment years before us.

7. The assessee has taken the following Grounds of Appeal:

**IT(SS)A No. 147/Ahd/2019 A.Y. 2005-06**

*“1.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.2,50,000/- on account of undisclosed income.*

2.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.1,51,200/- on account of unexplained credits.*

3.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.98,50,000/- on account of unrecorded investment.*

4.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.2,31,055/- on account of unrecorded investment.*

5.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming disallowance of interest amounting to Rs.5,92,835/- u/s 36(1)(iii) of the Income Tax Act,1961.*

6.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.33,525/- on account of unaccounted cash.*

7.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.45,768/- on account of unrecorded investment.*

8.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.29,00,105/- on account of deemed dividends u/s 2(22)(e) of the Income Tax Act,1961.*

9.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming disallowance of deduction amounting to Rs.15,000/- u/s 80G of the Act.*

10.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming addition of Rs.4,402/- on account of unrecorded interest.*

11.0 *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming disallowance of depreciation amounting to Rs.5,06,392/-."*

8. The assessee has raised the following Additional Grounds of Appeal:

*"5.0 The impugned assessment order passed u/s 153A r.w.s. 143(3) r.w.s. 145(3) of the Income Tax Act, 1961 dated 27.09.2013 is void-ab-initio and should be quashed since the statutory and mandatory approval was granted u/s 153D of the Act in a mechanical and ritualistic manner without application of mind and moreover a common approval was given for all abated and unabated assessment year."*

9. The Counsel for the assessee has primarily taken four legal arguments before us (has and has not specifically discussed the merits of each of the additions made by the assessing officer and upheld by Ld. CIT(Appeals)).

10. We shall be discussing each of the four legal arguments taken before us by the counsel for the assessee and its applicability to assessee's set of facts.

11. **The first legal argument** taken before us by the Counsel for the assessee is regarding the approval granted under Section 153D of the Income Tax Act. It has been argued that the approval obtained for both the late Sanjay Gupta's cases and Technodot Engineers Pvt. Ltd.'s group of cases was done in a "mechanical manner," i.e. approval was granted without due application of mind and without reviewing the essential documents by the approving authority. This approval was obtained on the same date as the request made by the Assessing Officer (AO), and the Joint Commissioner of Income Tax (JCIT) granted a "common approval" for all the assessment years in question. It was submitted that a perusal of the approval process divulges several critical aspects which suggest the approval was not given in a thorough manner. It was argued that the JCIT, while granting the approval, merely analyzed the draft assessment orders and did not review the entire case records / documents, thereby supporting the argument that the approval was granted in a mechanical manner. The approval was thus granted without considering the vital case records, indicating a mechanical approach while granting the approval. Reliance was placed by the Counsel for the assessee on legal precedents in which it has been held that the approval under Section 153D is not merely a formality, but requires the prescribed authority to apply their mind to the facts and circumstances of the case. If the approval is granted in a mechanical manner without reviewing relevant materials, the subsequent assessment orders must be quashed. Several court decisions were relied upon, including the cases of *PCIT vs. Anuj Bansal* (ITA 368/2023), *Anuj Bansal vs. ACIT* (ITA No.1016/Del/2021), *ACIT vs. Serajuddin & Co.* (2023), *PCIT vs. Siddarth*

***Gupta (2023), Sanjay Duggal vs. ACIT (ITA Nos. 1800-1828/Del/2019), and  
Vrushali Sanjay Shinde vs. DCIT (2023), amongst others.***

12. In response, Ld. DR produced before us Guidelines relating to search and seizure operations, and submitted that on perusal of the same, it is evident that it is not only at the stage of approval that the complete facts come to the notice of the Approving Authority for the first time but the Approving Authority has complete knowledge right from the start of search operations. The Ld. DR submitted before us that the approving authority is in complete know-how of things from the start of search and seizure operations in Group cases. It is not a case where the relevant materials, including draft assessment orders and case records are produced before the approval authority for the first time, at the time of grant of approval. The Ld. DR submitted that the Guidelines dated 22<sup>nd</sup> December, 2006 throw useful light on the procedure related to search and seizure assessments. A perusal of the same would show that from the moment search operations are initiated, the assessing officer and the Approving Authority are in complete know-how of the facts relating to the parties in respect of whom, the search operations are being carried on. The DR submitted before us that there has been no opportunity for the Courts to analyse the complete procedure relating to search assessments, since this procedure was never brought to the knowledge of the Hon'ble Courts for their consideration, so as to reach an informed decision. The Ld. DR submitted that the decision on this issue may be taken by taking into consideration the Guidelines relating to search and seizure assessments.

13. We have heard the rival contentions and perused the material on record. It would be useful to reproduce, as part of our decision, a brief analysis /

summary of the document titled "Search and Seizure Assessments" issued on 22<sup>nd</sup> December 2006 (F. No. 286/161/2006-IT (Inv. II)) which provides a comprehensive set of Guidelines for Assessing Officers to handle cases involving search and seizure under the Income Tax Act. The Guidelines are structured in three stages: from the receipt of the Appraisal Report to the filing of the return, after the return is filed, and the final show cause notice and assessment order. It is observed that these Guidelines have been issued with an aim to standardize and enhance the quality of assessments in such cases and provide a time-bound action framework for AOs. Let us summarize the same for sake of ready reference:

#### **First Stage: From Receipt of Appraisal Report to Filing of Return**

14. The Guidelines provide that upon receiving the appraisal report within 60 days of a search operation, the Assessing Officer must become familiar with both the report and the seized material. Once the material is received, **the AO, along with the Range Head, should scrutinize the material to determine if notices under sections 153A, 153C, or 148 are required.** An **"Action Note"**, detailing these findings and the need for further action such as audits or investigations, must be **prepared within 90 days of receiving the seized material.** This note should also consider proposals for special audits and centralization of cases, as well as investigate third-party connections and opening of seized hard disks. **A copy of this action note is to be sent to the CIT (Central) for supervision. After issuing the necessary statutory notices, the AO must ensure that proper satisfaction is recorded for the application of Sections 153A and 153C, especially as these sections deal with the six financial years preceding the year of the search.** In addition,

the AO should consider invoking section 281B of the Act to safeguard Revenue interests during the assessment process. If any further investigation into third parties or external agencies is needed, the CIT (Central) should be informed to request assistance from the Investigation Wing or other relevant agencies.

### **Second Stage: After Filing of Return**

15. Once the return is filed, the AO should prepare a detailed questionnaire to seek explanations from the assessee on the seized materials and the documents filed with the return. This questionnaire should address any discrepancies or queries that arise from the assessee's submissions. The AO will then analyze the replies based on the material available, determining whether they are prima facie acceptable, require further enquiry, or are outright unacceptable. The assessment should focus on establishing the facts and understanding the modus operandi used by the assessee to generate undisclosed income. This involves conducting independent enquiries from external entities such as banks, financial institutions, and government departments. The assessment should be built on preponderance of probabilities rather than assumptions, in line with judicial principles from cases like *CIT v. Durga Prasad More* and *Sumati Dayal v. CIT*. Affidavits provided by the assessee should be scrutinized and accepted only after verification, in line with the principles laid down by the Supreme Court in cases like *Mehta Parikh and Company vs. Commissioner of Income Tax*. Proper cross-examination rights must be afforded to the assessee, following judicial precedents. **If the AO disagrees with findings in the appraisal report, these should be discussed with the Range Head, and if necessary, the CIT (Central). The AO may**

**also request guidance from higher authorities under section 144A to ensure the proper handling of complex issues or disputes that arise during the assessment process.**

### **Third Stage: Final Show Cause Notice and Assessment Order**

16. Once the investigation and enquiries are complete, the AO should issue a final show cause notice to the assessee. This notice must give the assessee an adequate opportunity to respond and should outline the structure of the proposed order, the evidence on record, and the case laws relied upon. Any case law referenced should be examined in the context of the issue it addresses, not merely on the ratio of the decision, as emphasized in *CIT v. Sun Engineering Works Pvt. Ltd.* The assessment order should be detailed and clear, making it understandable even to a layperson. It must consider and address the assessee's replies and evidence, rebutting any arguments or presenting the applicable case law. The order must also explicitly mention the seized materials, detailing where and when they were found, and must include any relevant annexures or scanned copies of critical documents.

17. On going through the contents of the Guidelines, we observe that the Guidelines provide that the assessing officer on receipt of appraisal report, which is expected to be received within 60 days of the search, is required to be acquainted with the appraisal report in the seized material before he takes up the assessments for the Group cases. The guidelines further provide that on receipt of the appraisal report and seized material, **both the Assessing Officer and the Range Head should jointly scrutinize the appraisal report and seized material and prepare an “Examination Note”** to decide appropriate

cases where notices under Section 153A of the Act are required to be issued.

**Further, the Guidelines provide that the assessments should be taken up group -wise to ensure holistic approach as well as to ensure that no income remains unassessed due to any confusion about regarding the hands in which it is to be assessed. A copy of this action note should be sent to CIT through the addition/joint CIT as part of a compliance report to enable proper supervision by him.**

18. Therefore, on perusal of the Guidelines issued by the Department in relation to search and seizure guidelines, it is evident that once a search been carried out, and appraisal report is prepared within 60 days of the search, the assessing officer is required to be acquainted with the appraisal report and seized material before he takes the assessment of the case. On receipt of the appraisal report and seized material, the **assessing officer and range head jointly** scrutinize the appraisal report and seized material and **prepare an “Examination Note”** to decide cases where notices under section 153A of the Act are required to be issued. Thereafter, an **“Action Note”** based on a comprehensive and methodical examination of seized material, in addition to the comments available in the appraisal report is prepared within 90 days of receipt of seized material. This action note covers various aspects including proposals for special audit under Section 142(2A), identification of third parties, in respect of form enquiries have to be carried out, report on opening of all hard disks seized and printouts obtained, identification of evidence including ascertainment of handwriting on loose papers were seized and statements recorded under Section 132 etc. Therefore, on analysis of the detailed Guidelines in relation to search and seizure operations, it is evident that a detailed investigation is carried out including **both the assessing officer**

and the senior officials, who are involved in the entire procedure from the date when the search is carried out at the premises of the assessee and **involves various stages including preparation of an Appraisal Report within 60 days of search, analysis of appraisal report, preparation of Examination Note to decide cases where notices under Section 153A of the Act have to be issued and preparation of an Action Note to be prepared within 90 days of receipt of seized material.**

19. Therefore, we observe that in case of search and survey operations, **it is not a case where the entire case records are presented before the approving authority on the last date of approval for his /her approval, as the case is typically made out to be before Courts, but both the assessing officer as well as his senior officials, including the Approving Authority are in the knowhow of affairs, right from the date of search.**

20. Further, looking into the specific facts of the instant case, on perusal of the letter sent to joint Commissioner for approval of assessment orders in the group cases before us, we observe that the draft assessment orders along with case records were submitted for approval as required under the provisions of Section 153D of the Act. Further, the approving authority, approved the assessment orders and after due approval, it was specifically mentioned that the case records were also returned to the Assessing Officer. Therefore, as observed above, it is not a case where the joint Commissioner came to be aware of the facts of the search and survey operations only when the draft assessment orders were sent for his approval. The fact that approval was granted on the same date itself would not render the approval having been granted in a mechanical manner. The Guidelines further provided a copy of the

action note should be should be sent to the CIT (Central) through the additional/joint Commissioner as part of compliance report to enable proper supervision by him. Upon going through the Guidelines relating to search and survey operations, it is observed that the assessing officer and the range head are in complete know-how of complete set of facts relating to search and seizure operations. In view of the facts of the instant case wherein we have noted that complete case records were sent to Joint CIT for his approval, we are of the considered view that the procedure recorded in this case was not in a mechanical manner. Further, the argument of the counsel for the assessee that individual approval has to be granted for each of the cases for each of the assessment years, we observe that as per Guidelines relating to search operations, **it has been specifically mentioned that as far as possible, assessment should be taken up Group Wise to ensure holistic approach as well as to ensure that no income remains unassessed due to any confusion about regarding the hands in which it is to be assessed. It is not an allegation of the assessee that any prejudice has been caused to the assessee, by joint approval in group cases. We observe that the approval is granted jointly in Group matters so that a comprehensive assessment in relation to group matters is carried out so that there is no escapement of income and there is clarity in whose hands the income is to be assessed.** In the present case, it is observed that the assessee has been engaged in fraudulent activities in a consistent manner and has taken every steps to stonewall the assessments sought to be completed in his name and other group concerns of which he was the promoter. The Hon'ble Gujarat High Court accordingly, passed appropriate orders to ensure that assessments were duly completed in the name of the assessee and his group concerns. **The challenges by the**

**assessee to initiation of search proceedings and appointment of special auditor were also rejected by the Hon’ble Gujarat High Court, keeping in view the assessee’s set of facts.** The assessee and his group concerns have been given multiple opportunities of hearing to present the facts on merits, but there has been consistent non-compliance/non-appearance and non-furnishing of relevant materials/evidence/documents so as to enable the assessing officer/Department to complete the assessment. It is not a case of the assessee that there was any denial of justice or opportunity of being heard not having been granted to the assessee or his group concerns. However, despite a large number of opportunities, the assessee consistently kept on evading all notices of hearing and has avoided furnishing of necessary documents/details both before the assessing officer as well as before Ld. CIT(Appeals) and has taken recourse to legal/technical arguments to hinder the assessment/appellate proceedings. While respectfully following the decisions, wherein it has been held that grant of approval cannot be carried out in a mechanical manner, however, in our considered view those decisions would not come to the aid of the assessee in the instant facts for the reason that in some of the cases in which this principle has been upheld, notices have been approved by the Approving Authority for multiple sets of assessees having no relation with each other whatsoever by way of a common order (however, the case of those assessees and the present Group are on a different footing since search was conducted on Neesa Group in which the assessee is the main promotor). Secondly, as observed by us in the preceding paragraphs, the complete set of Guidelines relating to search and seizure operations have not been brought to the notice of the Hon’ble Tribunals / Courts so as to take an informed decision regarding the due procedure followed by the Approving Authority in search

cases. Thirdly, in this case draft orders along with records were sent to Jt. CIT for his approval. After approval, it has been specifically noted that draft orders along with case records were returned back. This is one of the cases where the assessee has been consistently engaged in fraudulent/dubious activities to avoid payment of taxes, has consistently been non-compliant/non-cooperative during the course of assessment/appellate proceedings and assessee is seeking recourse to legal arguments in order to set aside the assessment/appellate proceedings conducted on the assessee and his group concerns, without providing necessary evidences/documents in support of its case on merits.

21. Accordingly, looking into the facts of the assessee's case, and detailed discussion relating to procedure involving search operations, we are of the considered view that the approval has not been granted in a mechanical manner by the Approving Authority, and therefore, this legal ground of the assessee is hereby rejected.

**The second legal argument be taken by the assessee is that the assessment under Section 143(3) read with section 153A/153C of the Income Tax Act (the Act) must strictly be based on "incriminating material" that is found during the course of a "search in case of unabated assessment year**

22. The Counsel for the assessee submitted that the case of "Neelu Gupta, L/H of Sanjay Gupta - IT(SS)A 147/Ahd/2019 - AY 2005-06," may be considered the lead case /appeal. A search under Section 132 of the Act was conducted on 08.09.2010 in the "Neesa group of cases," during which the premises of the late Sanjay Gupta were covered. Following the search, assessments for the Assessment Years (AYs) 2005-06 to 2006-07 were framed

in the case of the late Sanjay Gupta under Section 143(3) read with section 153A of the Act. Additionally, during the search, material belonging to "Technodot Engineers Pvt. Ltd." was discovered. As a result, the case of "Technodot Engineers Pvt. Ltd." was centralized on 22.11.2012, and notices under Section 153C were issued on 12.12.2012 for 2011-12 several assessment years. Assessments for these years were framed under Section 143(3) read with section 153C of the Act. the Counsel for the assessee submitted that in the instant case, the AO directed a special audit under Section 142(2A) of the Act. **The report from the special auditor was received, and based on the findings from this report, various additions were made to the income. However, it was pointed out before us that these additions were not based on any "incriminating material" that was found during the search.** It was submitted that it is a well-established principle that the assessment under Section 143(3) read with section 153A of the Act must be based solely on "incriminating material" found during the search of the concerned assessee. Reliance was placed on several judgments, including *PCIT v. Abhisar Buildwell P. Ltd. (2023) 454 ITR 212 (SC)*, *PCIT v. Saumya Construction (2017) 387 ITR 529 (Guj.)*, *CIT v. Kabul Chawla (2015) 380 ITR 573 (Del.)*, *PCIT v. Kutch Salt and Allied Industries (Tax Appeal 283 of 2023)*, and *PCIT v. Backbone Projects Ltd. (Tax Appeal 88 of 2023)*. In these decisions it has been held that assessments framed under Section 153A or 153C must not be arbitrary but must be firmly based on material directly linked to the search, such as incriminating documents or evidence discovered during the search operation.

23. The above legal argument, it was argued, is applicable to all assessment years under consideration before us. Therefore, our

**observations in the succeeding paragraphs would be applicable to all assessment years under consideration before us.**

24. The legal proposition, that in case of search cases relating to unabated assessment years, addition can be made only on the basis of “incriminating material” found during the course of search, is a well-settled / well-accepted legal proposition. There is no dispute so far as this legal proposition is concerned. Therefore, this brings us to the question whether in the instant case, the additions have been made on the basis of “incriminating material” found during the course of search or not. The counsel for the assessee has stated that **all the additions for all the assessment years before us** (seven in total) have not been made on the basis of any incriminating material found during the course of search. It has stated that all the additions have been made only on the basis of recommendation of special auditor and therefore, no addition is liable to be sustained. **At the outset we may point out that so far as assessment years 2010-11 and 2011-12 are concerned, admittedly those are abated assessment years and therefore the above legal argument would not apply to those years under consideration before us.**

**Assessment Year 2005-06 to 2008-09**

25. Specifically, in the case of the assessee Late Shri Sanjay Gupta, for Assessment Year 2005-06, firstly let us take into consideration the basis for initiating the present proceedings. On perusal of the reasons for initiating present assessment proceedings, it is observed that the “Reasons” take note of the fact that a search proceeding under the Income Tax Act, 1961, were carried out on 08.09.2010 in case of Neesa Group and its associates. In the case of

M/s. Neesa Leisure Ltd., a warrant of authorization under Section 132 of the Act was issued for the premises at Cambay Square, Gandhinagar. During the search, several documents belonging to M/s. Technodot Engineers Pvt. Ltd. were found and seized from the Gandhinagar office of M/s. Neesa Leisure Ltd. These included: pages 80 to 113 of Annexure A-19, which contained a Facility Management Agreement between Technodot Engineers Pvt. Ltd. and Neesa Agritech Pvt. Ltd., signed by Mr. Prakash Dave, the authorized signatory for Technodot Engineers Pvt. Ltd.; page 121 of Annexure A-19, which listed various credit and debit balances in the accounts of Neesa Leisure Ltd. (NLL), DHPL, NIL, NEPL, NTPL, **and Shri Sanjay Gupta** in the books of Technodot Engineers Pvt. Ltd.; pages 152 to 156 of Annexure A-19, which contained a Development Agreement between Technodot Engineers Pvt. Ltd. **and Neelu S. Gupta**, signed by Shri Rohit Gupta on behalf of Technodot Engineers Pvt. Ltd.; and pages 89-90 of Annexure A-9, which contained the minutes of a meeting held on 14.08.2010 at the corporate office of Technodot Engineers Pvt. Ltd. **Furthermore, a separate search was conducted on 09.09.2010 in the case of Shri Sanjay Gupta.** A warrant of authorization under Section 132 of the Act was issued for his premises at B-202, Dhananjay Tower, Ahmedabad. Documents found and seized from this location, **relating to M/s. Technodot Engineers Pvt. Ltd.**, included pages 16-17 of Annexure B-1, which contained the profit and loss account of Technodot Engineers Pvt. Ltd. for the period from 01.04.2010 to 06.07.2010. Therefore, after having satisfied that there were substantial material to initiate the present search proceedings, search action was taken and subsequent assessments were framed for various assessment years, which are the subject matter of appeal before us.

26. The assessee filed a writ petition in the Hon'ble High Court of Gujarat challenging the validity of the search proceedings conducted under the provisions of the Income Tax Act, 1961. In the Writ Petition, the assessee argued that the Department did not have sufficient "reasons to believe" before initiating the search under Section 132 of the Act. The assessee's contention was that the conditions required for the search authorization were not met, which led to the filing of the writ petition. However, the Hon'ble High Court of Gujarat dismissed the petition in its order dated March 4, 2011, in Special Civil Application No. 13498 of 2010. In its ruling, **the Gujarat High Court observed that the conditions precedent for the exercise of powers under Section 132(1) had been duly fulfilled prior to the issuance of the search authorization. The Court further found that there was sufficient reason for the concerned officer to issue notices under Section 133(6) of the Act, which are related to calling for information from the assessee. As a result, the petitioners were not entitled to the reliefs they had sought, and the petition was dismissed.**

27. However, the assessee remained non-cooperative throughout the assessment proceedings and despite issuance of several notices of hearing, the assessee provided little assistance/details with a view to stonewall the assessment proceedings. Keeping in view the non-cooperative the assessee, the case of the assessee was referred to special audit. **The appointment of special auditor was challenged by the assessee before the Hon'ble High Court of Gujarat, which was dismissed by the Hon'ble High Court, keeping into consideration the facts of the assessee's case.**

28. Upon reviewing these documents, including those supplied by the assessee during assessment proceedings, several discrepancies and complexities were pointed out by the Special Auditor. A number of issues, including discrepancies between the data seized during the search and the audited accounts submitted by the assessee for various assessment years were observed. **The seized data revealed significant differences in balance sheet figures, loans, and creditors compared to the audited accounts. In addition, there were several differences noted between the digital data impounded from various premises, and the accounts presented by the assessee for the relevant assessment years.** The Special Auditor pointed out that the assessee had failed to provide certain requested books of account for the assessment years 2005-06 to 2011-12, despite being asked to do so via a notice under Section 142(1) dated 07.11.2012. Furthermore, during the search, the Special Auditor pointed out that the assessee was confronted with an amount of Rs. 7,10,46,010/- appearing in their personal books, allegedly from unsecured loans in the names of the assessee's parents. **However, the father of the assessee, Shri Raghunath Prasad Gupta, denied giving any loan. It was later discovered that the funds were linked to cheques issued by Bhui Mercantile Co-op. Bank, with the sources traced back to businesses owned by Shri Bharat Shah, who admitted to providing accommodation entries for commission income.** Additionally, other discrepancies related to personal loans and credit transactions were highlighted, but the required explanations or documentation were not provided by the assessee in the stipulated timeframes. **The audit also uncovered cash deposits of Rs. 2,46,77,980/- as per documents seized from the assessee's office.** Despite several reminders and notices, the assessee failed to provide any details regarding the source of these

deposits. Similar non-compliance was observed regarding loans from various individuals and entities, including one from Shri Bhuneshwar Yadav, which the assessee was required to substantiate with evidence. Further discrepancies were noted in the purchase of land in Udaipur by the group, with missing sale deed documents and details of payments. Additionally, a cash receipt of Rs. 10,00,000/- related to the sale of a flat in Goyal Intercity, Ahmedabad was not accounted for properly, and no supporting documents were provided by the assessee. Despite the time extensions granted by the tax authorities, the assessee continued to remain non-cooperative. The special auditor, communicated this lack of cooperation through multiple letters, highlighting that many required documents and details were still missing as of June 12, 2013. As a result, the tax authorities had to extend the deadline for the audit report submission on two occasions-first by 30 days on June 13, 2013, and later by an additional 15 days on July 15, 2013, in the interest of fairness and natural justice.

29. Therefore, on perusal of the observations made by the special auditor, it is observed that a detailed comparison was made between the data as appearing in the tax audit report and the data seized from the office premises of Shri Sanjay Gupta at Ahmedabad, in which several discrepancies were pointed out with respect to details of unsecured loans, sundry creditors, loans and advances etc. Therefore, it is not a case where the additions were made without reference to any incriminating material found during the course of search. The special auditors despite lack of cooperation part of the assessee, observed that there are various differences in the books of accounts when compared with the books of accounts impounded in the digital form from the office premises of Shri Sanjay Gupta at Ahmedabad. During the course of search, from the premises of the

assessee the auditors observed that an amount of ₹ 7.10 crores were appearing in the personal books of accounts towards unsecured loans, while in the statement dated 8 September 2010, the father of the assessee admitted that he had not given any loan to the assessee whatsoever. Further, the special auditors observed that Shri Bharat Shah and others had already the accepted during their statements taken on 29 September 2010 and 10 December 2010 under Section 131 of the Act that they **had provided accommodation entries to the assessee for which they had earned commission income and this amount was linked to this commission income. During the course of survey at the premises of the assessee, total cash deposits to the tune of Rs. 2.46 crores were found, for which the special auditors asked the assessee to provide the requisite explanation.** Further, from the documents impounded from the office of the assessee, certain details for purchase of land by the group was found at Udaipur. However, the assessee did not provide any documents relating to purchase of the land. Further with regards to sale of flat at Goyal intercity, Ahmedabad from the documents impounded from the office of the assessee, it was observed there were cash receipts of ₹ 10 lakhs which was found, for which the assessee gave no plausible explanation. **Here we are dealing with facts only related to assessment year 2005-06, which has been taken as a lead assessment year. A perusal of the basic facts itself revealed that substantial documents were impounded from the office premises of the assessee, on the basis of which the special auditors requisitioned for substantial details, which the assessee failed to provide.** Therefore, substantial additions were made in the hands of the assessee for various sources of income, the details of which are provided in the assessment order. Even during appellate proceedings before Ld. CIT(Appeals), the assessee

remained largely non-cooperative and did not furnish any supporting documents/evidences and tried to hinder the appellate process to the extent possible. Accordingly, the additions made by the assessing officer were confirmed by Ld. CIT(Appeals).

30. On going through the assessment orders for all the years under consideration before us, we observe that similar facts emerged that on the basis of documents found in the course of search, several discrepancies were noted by the Special Auditors when comparing the same with the audited books of accounts submitted by the assessee, thereby leading to rejection of the books of accounts. Various incriminating documents were found during the course of search and statements of various persons were taken, leading to the conclusion that the books of accounts were manipulated, the assessee was engaged in taking accommodation entries and further, the assessee was not providing any assistance whatsoever during the course of assessment proceedings. **Therefore, a blanket statement that all the additions which have been made in the hands of the assessee, were not made on the basis of any incriminating material found during the course of search, is highly general and unacceptable, looking into the assessee's set of facts.**

31. Also, we may point out that the argument that any addition made on the basis of recommendation of / on the basis of observations made by a Special Auditor, are not liable to be sustained is also erroneous. In our view, one cannot generalise the conclusion that no additions can be made in case of search assessments on the basis of recommendations of a Special Auditor. If this general proposition were to be accepted, then in all search cases, all additions proposed to be added on the basis of recommendations of the Special

Auditor are liable to be set aside/ vacated, even if the proposed additions are on the basis of incriminating material found during the course of search. This would defeat the very purpose of appointment of Special Auditors in complex search related cases. In the instant case, the appointment of Special Auditor was also appealed by the assessee before the honourable Gujarat High Court, who, looking into the assessee's particular set of facts, dismissed the Writ Petition filed by the assessee.

32. We also observe that no evidence/discussion was carried out before us on merits of the case for any of the several years before us and only a general statement was made that all the additions have been made, without any reference to any incriminating material found during the course of search. However, as pointed out in the preceding paragraphs, even taking into consideration the facts of the lead case before us, certain additions evidently were made on the basis of incriminating material found in the course of search. We are therefore, unable to accept the general proposition/argument that “none” of the additions relating to all the impugned years under consideration before us were made on the basis of incriminating material found during the course of search (leaving aside the abated assessment years relating to Assessment Year 2010-11 and 2011-12, in which the assessing officer was not under an obligation to restrict the additions on the basis of incriminating material found in the course of search). As stated above, the assessee has not given any supporting documents/any discussions relating to the merits of the case before us and is only taking recourse to multiple legal arguments with a view to set aside the assessment/appellate orders.

33. However, keeping in view the fact that substantial additions have been made during the course of assessment in the case of the assessee, and evidently some of which is on the basis of incriminating material found in the course of search as pointed out by us in the preceding paragraphs, in interest of justice, the matter is restored to the file of Ld. CIT(Appeals) so as to allow one more opportunity to the assessee to file documentary evidence in support of its case and thereafter, in light of the evidence produced by the assessee, decide each of the disallowances/additions on merits of the case. If however, with respect to any particular addition/disallowance, the assessee is able to substantiate/demonstrate that the particular addition does not have any reference to any incriminating material found during the course of search, then keeping in view the legal principle that in case of search cases for unabated assessment years, no additions can be made in absence of any incriminating material found during the course of search, such addition may be deleted in the hands of the assessee.

**Assessment year 2010-11 and 2011-12 (Technodot Engineers Pvt. Ltd.)**

34. We observe that these are admittedly abated assessment years and therefore, the legal arguments sought to be taken by the counsel for the assessee that the additions in case of unabated assessment years have to be restricted to incriminating material found during the course of search only do not come to the assistance of the assessee for these two assessment years.

35. However, as pointed out in the preceding paragraphs that since no supporting evidence/arguments were taken before us on the merits of the case, and also as noted by us that since substantial additions have been made in the

hands of the assessee, in interest of justice, even for these two assessment years i.e. Assessment Year 2010-11 and 2011-12, the matter is restored to the file of Ld. CIT(Appeals) for de-novo consideration, so as to enable the assessee one more opportunity to present the necessary supporting documents/evidences in support of its case. The Ld. CIT(Appeals) thereafter, after taking into consideration any evidence sought to be placed by the assessee in support of its case, may take appropriate action accordance with law.

**The third legal argument of the counsel for the assessee is that once books of accounts were rejected under section 145 (3) of the Act, no addition can be made in respect of items reflected in the books of accounts:**

36. The Counsel for the assessee also relied upon several decisions in support of the above proposition. Specifically dealing with the above legal argument of the assessee, we observe that the cases on which reliance has been placed by the counsel for the assessee are distinguishable on facts and hence do not apply to the assessee's particular set of facts. Firstly, at the outset it is observed that none of the cases on which reliance is not be placed relate to search assessment matters. It may be pointed out that search cases are special cases involving detailed investigation involving several assessment years, taking statements of several parties etc. The facts of the cases are completely different and would not come to the aid of the assessee. Secondly, as pointed out by assessee preceding paragraphs, the additions have not been made solely on the basis of books of accounts which were rejected by the assessing officer, but also on the basis of substantial incriminating material found during the course of search. On the basis of incriminating material found during the course of search proceedings at the premises of the assessee and other group

companies, the Special Auditor observed substantial discrepancies between the material found during the course of search, the statement of certain parties taken during the course of search and the books of accounts maintained by the assessee, which were found to be fallacious. Accordingly, in light of these facts, certain information was sought from the assessee during the course of assessment proceedings by the Special Auditor, but the assessee was found to be absolutely non-cooperative. The assessee took every step to thwart/stonewall the assessment proceedings, including filing of writ petition challenging the validity of search proceedings as well as challenging the validity of appointment of special auditor in this case. However, the Hon'ble Gujarat High Court, taking into consideration the assessee's particular set of facts, dismissed both the writ petitions filed by the assessee, thereby validating the initiation of search proceedings as well as appointment of special auditor, looking into assessee's particular set of facts. As mentioned above, the additions have not been made only taking into consideration the books of accounts of the assessee but also taken into consideration the incriminating material found during the course of search. Therefore, in our considered view, the above legal argument does not come to the support of the assessee and the case laws/judicial precedents on which reliance has been placed by the assessee are found to be distinguishable on facts.

37. In the result, this legal argument of the assessee is hereby rejected.

**The last legal argument taken before us is that so far as assessment year 2006-07 is concerned, the same falls beyond the period of 6 years immediately preceding previous year in which the search was carried out.**

38. This specific legal argument is only applicable/has been taken with specific reference in the case of Techodot Engineers Pvt. Ltd for assessment year 2006-07 only.

39. The argument taken by the Counsel for the assessee is that in the case of Technodot Engineers Pvt. Ltd., the case records were centralized on November 22, 2012, and notices under Section 153C of the Income Tax Act were issued on December 12, 2012. Consequently, the case records were transferred to the AO in the Financial Year 2012-13 relevant for the Assessment Year 2013-14. In cases where proceedings under Section 153C are initiated, the "date of initiation of search under Section 132 or making requisition under Section 132A" is understood as the "date of receiving books of accounts, documents, or assets seized or requisitioned by the AO having jurisdiction over the person concerned." This interpretation is supported by various judicial precedents, including the decision of the Supreme Court in *CIT v. Jasjit Singh (2023) 458 ITR 437*, *PCIT v. Shalimar Town Planners P Ltd. (2024) 161 taxmann.com 306*, and the Ahmedabad Tribunal's ruling in *Madhudas Nehchaldas Ramchandani vs. ITO (IT(SS)A 152/Ahd/2023)*. In the case of Technodot Engineers Pvt. Ltd., the case records were received by the AO for the Assessment Year 2013-14, specifically in the period between FY 12-13/AY 13-14. As a result, the six-year period for initiating proceedings under Section 153C is applicable from the Assessment Years 2007-08 to 2012-13. Given this timeline, it was argued that proceedings under Section 153C cannot be initiated for the Assessment Year 2006-07, as it falls outside the six-year limit stipulated for such proceedings.

40. We observe that this is a legal argument has been taken for the first time before us. Since, the entire assessments have been restored to the file of Ld. CIT(Appeals) for de novo consideration, after giving due opportunity of hearing to the assessee to present its case on merits along with supporting documents/evidences in respect of each addition made, this legal arguments/issue is also restored to the file of Ld. CIT(Appeals) for his consideration, for carrying out due enquiries on the precise date when the case records were received by the assessing officer of Technodot and thereafter, to decide the applicability of the judicial precedents relied upon by the assessee, to the assessee's particular set of facts.

41. Accordingly, the legal argument relating to Assessment Year 2006-07 in the case of Technodot Industries Private Limited is hereby restored to the file of Ld. CIT(Appeals) for his consideration, keeping in light the assessee's particular set of facts.

42. Accordingly, this legal ground of the assessee is allowed for statistical purposes.

43. In the combined result, appeals of the assessee are partly allowed for statistical purposes.

<b>This Order pronounced in Open Court on</b>	<b>26/11/2024</b>
---	-------------------

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 26/11/2024  
*TANMAY, Sr. PS*

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**TRUE COPY**

*IT(SS)A Nos.147 & 148/Ahd/2019 & 21 to  
23/Ahd/2020 & 15/Ahd/2022 & 93/Ahd/2020  
Sanjay Gupta vs. DCIT & others  
Asst.Years –2005-06 to 2008-09 & 2010-11 & 2011-12  
- 33-*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad