**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER, AND**

**SHRI K.M. ROY, ACCOUNTANT MMBER**

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|---|---|
| **ITA no.108/Nag./2024** (Assessment Year – 2009-10) | **ITA no.109/Nag./2024** (Assessment Year – 2010-11) |
| **ITA no./110/Nag./2024** (Assessment Year – 2011-12) | **ITA no.111/Nag./2024** (Assessment Year – 2012-13) |

**ITA no.112/Nag./2024**

**(**Assessment Year : 2013-14)

M/s. Maheshwari Coal Benefication &
Infrastructure Private Limited
697, 1st Floor, Ward no.33 ……. Appellant
Behind 16–Kholi, Tikrapara
Bilaspur 495 001 PAN – AAECM9298D

v/s

Dy. Commissioner of Income Tax
[Central] Circle–1(1), Nagpur ……. Respondent

Assessee by : Shri Sunil Kumar Agrawal
Revenue by : Shri Sandipkumar Salunke

| | |
|---|---|
| Date of Hearing – 12/11/2024 | Date of Order – 26/12/2024 |

**O R D E R**

**PER BENCH**

These captioned appeals are filed by the assessee challenging the impugned orders of even date 18/01/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)–. Nagpur, ["*learned CIT(A)*"], for the assessment year 2009–10, 2010–11, 2011–12, 2012–13 and 2013–14 respectively.

2. Since all these appeals pertain to the same assessee, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

3. We first take up the issue for adjudication which relates to impugned assessment made under section 153C of the Act being barred by limitation. This issue is involved in the following appeals:-

**ITA no.108/Nag./2024**
**for A.Y. 2009-10**

**ITA no.109/Nag./2024**
**A.Y. 2010-11**

**ITA no.110/Nag./2024**
**A.Y. 2011-12 and**

**ITA no.111/Nag./2024**
**for A.Y. 2012-13**

4. The facts of the issue are that whether or not it is beyond the 10 years block as per first proviso to section 153C and Explanation-1 to section 153A of the amended provisions of law by the Finance Act, 2017 w.e.f. 01/04/2017; whether, notice under section 153C of the Act and the assessment made under section 153C for the assessment year 2009-10 to 2012-13 is invalid as time barred by limitation, as per first proviso to section 153C and Explanation-1 to section 153A of the Act.

5. The assessee has raised additional ground of appeal in ITA No.108/Nag./2024, for the assessment year 2009–10 by relying on National Thermal Power Co. Ltd. v/s CIT, [1998] 229 ITR 383 (SC) which is as under:–

*Additional Gr.No.1:*

*"On the facts & circumstances of the case and in law, assessment under section 153C dt.31-3-22 for AY09-10 is invalid; as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the AO of the assessee; notice under section 153C dt.11/03/2022 shall be considered the date of search; AY09-10 would be beyond the block of 10 AYs as per Expln.-1 to section 153A; assessment made under section 153C for AY09-10 is barred by limitation, is liable to be quashed; relied on Ojjus Medicare PL (2024) (Del HC); Jasjit Singh (2023) (SC); Shalimar Town Planners PL (2024) (SC); RB Jewellers PL(2023) (Cal HC); AR Safiullah (2021) (Mad); Rakesh Bansal (2024) (Del-Trib); Bhagwati Suresh Modi (2023) (Mum-Trib)."*

6. In the appeal being ITA no.109/Nag./2024, for the assessment year 2010–11, following additional ground of appeal has been raised:

*Additional Gr.No.1:*

*"On the facts & circumstances of the case and in law, assessment under section 153C dt.31-3-22 for AY10-11 is invalid; as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the AO of the assessee; notice under section 153C dt.11/03/2022 shall be considered the date of search; AY10-11 would be beyond the block of 10 AYs as per Expln.-1 to section 153A; assessment made under section 153C for AY10-11 is barred by limitation, is liable to be quashed; relied on Ojjus Medicare PL (2024) (Del HC); Jasjit Singh (2023) (SC); Shalimar Town Planners PL (2024) (SC); RB Jewellers PL (2023) (Cal HC); AR Safiullah (2021) (Mad); Rakesh Bansal (2024) (Del-Trib); Bhagwati Suresh Modi (2023) (Mum-Trib)."*

7. In the appeal being ITA No.110/Nag./2024, for the assessment year 2011-12, following additional ground of appeal has been raised:

*Additional Gr.No.1:*

*"On the facts & circumstances of the case and in law, assessment under section 153C dt.31-3-22 for AY11-12 is invalid; as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the AO of the assessee; notice under section 153C dt.6-12-21 shall be considered the date of search; AY11-12 would be beyond the block of 10 AYs as per Expln.-1 to section 153A; assessment made under section 153C for AY11-12 is barred by limitation, is liable to be quashed; relied on Ojjus Medicare PL (2024) (Del HC); Jasjit Singh (2023) (SC); Shalimar Town Planners PL (2024) (SC); RB Jewellers PL(2023) (Cal HC); AR Safiullah (2021) (Mad); Rakesh Bansal (2024) (Del-Trib); Bhagwati Suresh Modi (2023) (Mum-Trib)."*

8. In the appeal being ITA no.111/Nag./2024, for the assessment year 2012–13, the following additional ground of appeal has been raised:

*Additional Gr.No.1:*

*"On the facts & circumstances of the case and in law, assessment under section 153C dt.31-3-22 for AY12-13 is invalid; as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the AO of the assessee; notice under section 153C dt.6-12-21 shall be considered the date of search; AY12-13 would be beyond the block of 10 AYs as per Expln.-1 to section 153A; assessment made under section 153C for AY12-13 is barred by limitation, is liable to be quashed; relied on Ojjus Medicare PL (2024) (Del HC); Jasjit Singh (2023) (SC); Shalimar Town Planners PL (2024) (SC); RB Jewellers PL(2023) (Cal HC); AR Safiullah (2021) (Mad); Rakesh Bansal (2024) (Del-Trib); Bhagwati Suresh Modi (2023) (Mum-Trib)."*

9. We, keeping in view of the judgment of the Hon'ble Apex Court in the case of NTPC Ltd (supra), admit the additional grounds of appeal being a legal ground which goes to the root of the matter and does not require any further verification beyond the facts available on records.

10. Brief facts of the case are that the assessee is engaged in the business of wholesale trading of Coal; transportation of Coal; washing, handling, loading & unloading of Coal; that search & seizure u/s132 has been conducted upon a third party i.e., M/s.RKTC Group, Korba; M/s.Rashi Steels P. Ltd., Kolkata and Shri Suresh Kumar Agrawal, Kolkata, on 22/01/2019, some documents was found/seized from the searched premises of M/s.Rashi Steels, / Suresh Agrawal, Kolkata and statement under section 132(4) of the Act was recorded in respect of Shri Suresh Agrawal, Kolkata, Director of M/s.Rashi Steels. The documents seized was alleged to be pertain to the assessee-Company (i.e., "Maheshwari Coal"). Notice under section 153C of the Act was issued on 11/03/2022 and 06/12/2021 for the assessment year 2009–10, 2010–11, 2011–12, 2012–13 and 2013-14 and the search assessment made under section 153C for the same assessment years on 31/03/2022.

11. On appeal, the learned CIT(A), without going on to the merits of the issues involved, simply dismissed the appeal filed by the assessee with following observations:–

> *"4. Discussion and decision:*
>
> *The appellant has raised seven grounds of appeals, out of which Ground No. 5, 6 & 7 is general in nature and not adjudicated, hence dismissed.*
>
> *Ground No.1 to 4: AllThese grounds of appeal are co-related, challenging the order of the AO andmaking addition of Rs.12,00,000/- u/s 68 of the Act and Rs. 3,99,600/- on account of interest expenditure against the loans.*
>
> *I have perused ground-wise submission made by the AR of the appellant and the assessment order passed by the AO before deciding this appeal. I find no merit in the submission of the appellant. Hence, I confirm the assessment order passed by the AO. In view of the above the Ground No. 1 to 6 of the appeal are hereby dismissed."*

The assessee being aggrieved, is in further appeal before the Tribunal.

12. The learned A.R. for the assessee submitted by way of taking additional ground of appeal before us that the assessment made under section 153C of the Act dated 31/03/2022, for the assessment year 2009–10, 2010–11, 2011–12 and 2012–13 is barred by limitation. As per first proviso to section 153C of the Act, the date of search shall be the date of receiving the

documents/information by the Assessing Officer of the assessee-Company. The notice under section 153C of the Act dated 11/03/2022 and 06/12/2021 for the assessment year 2009–10, 2010–11, 2011–12 and 2012–13 shall be considered the date of search; and thus, it is submitted by the learned A.R. that the assessment year 2009-10 to 2012-13 would be beyond the block of 10 assessment years as per Explanation-1 to section 153A of the Act. Notice issued under section 153C and assessment made under section 153C for the assessment year 2009-10 to 2012-13 would be barred by limitation and it is requested to quash the impugned assessments for the assessment year 2009-10 to 2012-13. For this, the learned A.R. submitted that there has been amendment made by the Finance Act, 2017 (wef.01/04/2017) in section 153A and section 153C of the Act which read as under:–

> *"Section 153A. Assessment in case of search or requisition-*
> *(1) Notwithstanding anything contained in sec139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated u/s132 or books of account, other documents or any assets are requisitioned u/s132A after the 31-5-03 but on or before the 31-3-21, the AO shall-*
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the ROI in respect of each AY falling within 6 AYs and for the relevant AY or years referred to in cl(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 u/s139;*
> *(b) assess or reassess the total income of 6 AYs immediately preceding the AY relevant to the PY in which such search is conducted or requisition is made and of the relevant AY or years:*
> *Provided that the AO shall assess or reassess the total income in respect of each AY falling within such 6 AYs and for the relevant AY or years:*
> *Provided further that assessment or reassessment, if any, relating to any AY falling within the period of 6 AYs and for the relevant AY or years referred to in this sub-sec pending on the date of initiation of the search u/s132 or making of requisition u/s132A, as the case may be, shall abate:*
> *Provided also that the Central Govt may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the AO shall not be required to issue notice for assessing or reassessing the total income for 6 AYs immediately preceding the AY relevant to the PY in which search is conducted or requisition is made and for the relevant AY or years.*
> *Provided also that no notice for assessment or reassessment shall be issued by the AO for the relevant AY or years unless-*
> *(a) the AO has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more in the relevant AY or in aggregate in the relevant AYs;*
> *(b) the income referred to in cl(a) or part thereof has escaped assessment for such year or years; and*
> *(c) the search u/s132 is initiated or requisition u/s132A is made on or after the 1-4-17.*

*Explanation-1.- For the purposes of this sub-sec, the expression "relevant AY" shall mean an AY preceding the AY relevant to the PY in which search is conducted or requisition is made which falls beyond 6 AYs but not later than 10 AYs from the end of the AY relevant to the PY in which search is conducted or requisition is made.*
*Explanation-2.- For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account."*

*"Section 153C. Assessment of income of any other person-*

*(1) Notwithstanding anything contained in sec139, 147, 148, 149, 151 and 153, where the AO is satisfied that,-*
*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*
*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the AO having jurisdiction over such other person for 6 AYs immediately preceding the AY relevant to the PY in which search is conducted or requisition is made and that AO shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant AY or years referred to in section 153A(1):*
*Provided that in case of such other person, the reference to the date of initiation of the search u/s132 or making of requisition u/s132A in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person:*
*Provided further that the Central Govt may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the AO shall not be required to issue notice for assessing or reassessing the total income for 6 AYs immediately preceding the AY relevant to the PY in which search is conducted or requisition is made and for the relevant AY or years as referred to in section 153A(1) except in cases where any assessment or reassessment has abated.*

*(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-sec (1) has or have been received by the AO having jurisdiction over such other person after the due date for furnishing the ROI for the AY relevant to the PY in which search is conducted u/s132 or requisition is made u/s132A and in respect of such AY-*
*(a) no ROI has been furnished by such other person and no notice under sub-sec (1) of sec142 has been issued to him, or*
*(b) a ROI has been furnished by such other person but no notice u/s143(2) has been served and limitation of serving the notice u/s143(2) has expired, or*
*(c) assessment or reassessment, if any, has been made,*
*before the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person, such AO shall issue the notice and assess or reassess total income of such other person of such AY in the manner provided in section 153A.*
*(3) Nothing contained in this sec shall apply in relation to a search initiated u/s132 or books of account, other documents or any assets requisitioned u/s132A on or after the 1-4-21."*

13. The learned A.R. for the assessee submitted that the notice under section 153C for the assessment year 2009-10 to 2012-13 has been issued on 11/03/2022 and 06/12/2021 for filing the return of income under section 153C of the Act to the assessee-Company (i.e., non-searched person); search under section 132 was conducted on 22/01/2019 on M/s.RKTC Group, Korba; M/s.Rashi Steels PLtd, Kolkata and Shri Suresh Agrawal, Kolkata (i.e., the searched person). It is submitted that the assessment made under section 153C on 31/03/2022 for the assessment year 2009-10 to 2012-13 is barred by limitation.

14. As per the amended provisions of law by the Finance Act, 2017 w.e.f 01/04/2017, the first proviso to section 153C of the Act reads as under:–

> *"Provided that in case of such other person, the reference to the date of initiation of the search u/s132 or making of requisition u/s132A in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person:*
> *a. As per the amended provisions of law by the Finance Act, 2017 wef.1-4-17, Explanation-1 to section 153A, reads as under:*
> *Explanation-1.- For the purposes of this sub-sec, the expression "relevant AY" shall mean an AY preceding the AY relevant to the PY in which search is conducted or requisition is made which falls beyond 6 AYs but not later than 10 AYs from the end of the AY relevant to the PY in which search is conducted or requisition is made.:*

15. The learned A.R. of the assessee submitted that as per first proviso to section 153C, date of search shall be the date of receiving the documents by the Assessing Officer of the assessee-Company (i.e., non searched person); in absence of any information of handing over the documents to the Assessing Officer of the non-searched person (i.e., the assessee-Company), notice under section 153C dated 11/03/2022 for the assessment year 2009-10 shall be considered the date of search for the non-searched person (i.e., the assessee-Company).

16. It is submitted that, Explanation.-1 to section 153A is clear as to the manner of computation of the 10 assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which the search is conducted or requisition is made. The date of search is considered in this case on 11/03/2022, and, therefore, the

search year would be assessment year 2022-23. The end of the assessment year 2022-23 is 31/03/2023. The computation of 10 years has to run backwards from the said date i.e., 31/03/2023. The first year will of–course be the search assessment year itself (i.e., A.Y. 2022-23), the details of which are as under:–

| | | |
|---|---|---|
| | | *Notice under section 153C issued on 11/03/2022 for AY 2009-10 & 2010-11 and notice under section 153C issued on 06/12/2021 for AY 2011-12 to 2013-14; 'first year' of 10 years block would start from A.Y. 2022-23; as date of search for non-searched person (i.e., the assessee-Co) would be the date of issuing notice under section 153C for filing the ROI under section 153C for the relevant AYs* |
| *1st year* | *AY22-23* | *Notice under section 153C issued on 11/03/2022; to be considered as the date of search for the non-searched person; it means, search year would be AY22-23* |
| *2nd year* | *AY 2021-22* | |
| *3rd year* | *AY 2020-21* | |
| *4th year* | *AY 2019-20* | |
| *5th year* | *AY 2018-19* | |
| *6th year* | *AY 2017-18* | |
| *7th year* | *AY 2016-17* | |
| *8th year* | *AY 2015-16* | |
| *9th year* | *AY 2014-15* | |
| *10th year* | *AY 2013-14* | |
| | *AY 2012-13* | *beyond the block of 10 AYs* |
| | *AY 2011-12* | *beyond the block of 10 AYs* |
| | *AY 2010-11* | *beyond the block of 10 AYs* |
| | *AY 2009-10* | *beyond the block of 10 AYs* |

17. Thus, the learned A.R. submitted that the assessment year 2009–10 to 2012–13 would be beyond the block of 10 assessment years as per first proviso to section 153C and Explanation-1 to section 153A. The assessment made under section 153C dated 31/03/2022 for the assessment year 2009–10 would be time barred, is liable to be quashed. In support of this argument, reliance is placed on the following case laws:–

*i) PCIT v. Ojjus Medicare (P) Ltd [2024] 161 taxmann.com 160 (Del.);*
*ii) A.R. Safiullah v. ACIT, [2021] W.P. (MD) no.4327 of 2021 (Mad. HC) judgment dated 24/03/2021;*
*iii) CIT v. Jasjit Singh, [2023] 155 taxmann.com 155 (SC);*
*iv) Rakesh Bansal v. ACIT, [2024] 159 taxmann.com 1632 (Del. Trib.);*
*v) Bhagwati Suresh Modi v. ITO [2023] ITA no.3053 and 3054/Mum. /2023 (Mum-Trib); and*
*vi) RB Jewellers (P) Ltd. v. UOI, [2023] 157 taxmann.com 493 (Cal.).*

18. The learned Departmental Representative (*"the learned D.R."*) appearing for the Revenue submitted a report received from the Assessing Officer i.e., the DCIT, Central Circle-1, Raipur, in which it is the submission of the Revenue that the date of transmitting the documents from the Assessing Officer of the searched person i.e., DCIT, Central Circle-1, Raipur, to the Assessing Officer of the assessee-Company i.e., DCIT, Central Circle-1(1), Nagpur, is 21/01/2021, and it should be considered as the deemed date of search in the case of the assessee-Company i.e., non-searched person in this case and he has fairly submitted that the first year of the search would be assessment year 2021-22 in the case of the assessee-Company and thus, the learned D.R. has fairly accepted that from counting from the assessment year 2021-22 is taken as the first year of search in the case of the assessee-Company and the 10$^{th}$ (tenth) year would be the assessment year 2012-13 and from the assessment year 2009-10 to 2011-12 would be beyond the block of 10 years as per the first proviso to section 153C as amended by the Finance Act, 2017 w.e.f. 01/04/2017.

19. We have heard the submissions of the rival parties, considered the materials available on record and gone through the orders of the authorities as well as perused the contents of the paper book filed before us along with supporting case laws. We find that the learned D.R. furnished a copy of report of the Assessing Officer dated 16/05/2024, wherein it is clear that the documents/information related to the assessment year 2009–10 to 2010–11 have been transferred from the Assessing Officer of the searched person i.e., DCIT, Central Circle-1, Raipur, to the Assessing Officer of the assessee-Company i.e., DCIT, Central Circle-1(1), Nagpur on 21/01/2021, which is mentioned in the letter written by the Assessing Officer of the assessee-Company i.e., DCIT, Central Circle-1(1), Nagpur, dated 11/03/2022 to the Addl. CIT, Central Range, Nagpur, which is received by the Addl. CIT, Central Range, Nagpur on 11/03/2022. The contents of the report of the Assessing Officer are reproduced below:–

> *"Annexure-A*
> *An information has been received in this office on 21-1-21 from DCIT, Central Circle, Raipur dated 15-1-21 in the case of M/s.Maheshwari Coal Benefication & Infrastructure*

> *P Ltd to initiate proceedings under section 153C of the IT Act, 1961 for AYs 09-10 & 10-11."*

20. Similarly, for the assessment year 2011-12 to 2013-14, in the report of the Assessing Officer dated 16/05/2024 submitted by the learned D.R. before us, wherein also, it is clear that the documents/information related to the assessment year 2011–12 to 2013–14 has been transferred from the Assessing Officer of the searched person i.e., DCIT, Central Circle-1, Raipur, to the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur, which is mentioned in the letter written by the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur, dated 29/11/2021 to the Addl. CIT, Central Range, Nagpur, which is received by the Addl. CIT, Central Range, Nagpur, on 29/11/2021. The contents of the report of the Assessing Officer are extracted below:–

> *"Annexure-A*
> *An information has been received in this office from DCIT, Central Circle, Raipur dated 15-1-21 in the case of M/s.Maheshwari Coal Benefication & Infrastructure P Ltd to initiate proceedings under section 153C of the IT Act, 1961 for AYs 11-12 to 13-14."*

21. On a perusal of the submissions made by both the learned Counsel of the parties, we are in complete agreement that in case of *"non-searched person"*, the reference to the date of initiation of the search under section 132 of the Act in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person (i.e., the *"non-searched person"*) and thus, the deemed date of search shall be 21/01/2021 which means, as per the Explanation-1, it is clear as to the manner of computation of the 10 assessment years which clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made, there cannot be any doubt that since search was made in this case on 21/01/2021 i.e., the deemed date of search, the assessment year was 2021-22. The end of the assessment year 2021-22 is 31/03/2022, the computation of 10 years has to run backwards from the said date i.e., 31/03/2022, and

thus, the first year will of–course be the search assessment year itself. In that event, the 10 assessment years will be as follows:–

| | | |
|---|---|---|
| *1st year* | *AY 2021-22* | |
| *2nd year* | *AY 2020-21* | |
| *3rd year* | *AY 2019-20* | |
| *4th year* | *AY 2018-19* | |
| *5th year* | *AY 2017-18* | |
| *6th year* | *AY 2016-17* | |
| *7th year* | *AY 2015-16* | |
| *8th year* | *AY 2014-15* | |
| *9th year* | *AY 2013-14* | |
| *10th year* | *AY 2012-13* | |
| | *AY 2011-12* | *beyond the block of 10 AYs* |
| | *AY 2010-11* | *beyond the block of 10 AYs* |
| | *AY 2009-10* | *beyond the block of 10 AYs* |

22. The case on hand is the appeal being ITA no.108/Nag./2024, ITA no.109/Nag./2024 and ITA no.110/Nag./2024. Which pertain to the assessment year 2009–10, 2010-11 and 2011–12 respectively. It is obviously beyond the 10 year outer ceiling limit prescribed by the statute. The terminal point is the 10th year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond, when the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the Department for which, following case laws are relied on:–

*i)* ***PCIT v. Ojjus Medicare (P) Ltd.*** *[2024] 161 taxmann.com 160 (Del.); which concluded as under:–*

> *"91. Tested on the aforesaid precepts, it would be manifest that AY22-23 would form the first year of the block of 10 AYs and with the maximum period of 10 AYs terminating in AY13-14. We, in this regard also bear in consideration the following instructive passages as appearing in the decision handed down by a ld Judge of the Madras HC in AR Safiullah (2021) (Mad HC). We deem it appropriate to extract the following paragraphs from that decision:*
>
> > *9. Explanation-1 is clear as to the manner of computation of the 10 AYs. It clearly and firmly fixes the starting point. It is the end of the AY relevant to the PY in which search is conducted or requisition is made.*

> *There cannot be any doubt that since search was made in this case on 10-4-18, the AY is 19-20. The end of the AY19-20 is 31-3-20.*

*The computation of 10 years has to run backwards from the said date i.e., 31-3-20. The first year will of course be the search AY itself. In that event, the 10 AYs will be as follows:*

| | |
|---|---|
| *1st year* | *19-20* |
| *2nd year* | *18-19* |
| *3rd year* | *17-18* |
| *4th year* | *16-15* |
| *5th year* | *15-16* |
| *6th year* | *14-15* |
| *7th year* | *13-14* |
| *8th year* | *12-13* |
| *9th year* | *11-12* |
| *10th year* | *10-11* |

*The case on hand pertains to AY09-10. It is obviously beyond the 10 year outer ceiling limit prescribed by the statute.*

*The terminal point is the 10$^{th}$ year calculated from the end of the AY relevant to the PY in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.*

*10. In the case on hand, the statute has prescribed one mode of computing the 6 years and another mode for computing the 10 years. Section 153A(1)(b) states that the AO shall assess or reassess the total income of 6 years immediately preceding the AY relevant to the PY in which search is conducted. Applying this yardstick, the 6 years would go up to 13-14. The search AY, namely, 19-20 has to be excluded. This is because, the statute talks of the 6 years preceding the search AY. But, while computing the 10 AYs, the starting point has to be the end of the search AY. In other words, search AY has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the FA, 2017 intended to bring in 4 more years over and above the 6 years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.*

*11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject AY lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the WP cannot be in doubt."*

*In our considered opinion, the decision in AR Safiullah (2021) (Mad HC) correctly expounds the legal position and the interpretation liable to be accorded to the identification of the 10 AYs which are spoken of in ss. 153A and 153C.*

*K. Summary of conclusions*

*119. We thus record our conclusions as follows:*

*B. Both section 153A and 153C embody non-obstante clauses and are in express terms ordained to override sec139, 147 to 149, 151 and 153. By virtue of the 2017 Amending Act, significant amendments came to be introduced in section 153A. These included, inter alia, the search assessment block being enlarged to 10 AYs consequent to the addition of the stipulation of "relevant AY" and which was defined to mean those years which would fall beyond the 6 year block period but not later than 10 AYs. The block period for search assessment thus, came to be enlarged to stretch up to 10 AYs. The 2017 Amending Act also put in place certain pre-requisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant AY". The pre-conditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "likely to amount to" Rs.50 lakhs or more in the "relevant AY" or in aggregate in the "relevant AYs".*

*D. The first proviso to section 153C introduces a legal fiction on the basis of which the commencement date for computation of the 6 year or the 10 year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO.*

*The identification of the starting block for the purposes of computation of the 6 and the 10 year period is governed by the first proviso to section 153C, which significantly shifts the reference point spoken of in section 153A(1), while defining the point from which the period of the "relevant AY" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the first proviso of section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the SC in Jasjit Singh (SC). The aforesaid legal position also stood reiterated by the SC in Vikram Sujitkumar Bhatia (SC). The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.*

*F. While the identification and computation of the 6 AYs hinges upon the phrase "immediately preceding the AY relevant to the PY" of search, the 10 year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation-1 of section 153A requires us to reckon it "from the end of the AY". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the 6 year period and employing the expression "from the end of the AY" while speaking of the 10 year block."*

ii) ***A.R. Safiullah v. ACIT**, [2021] (Mad.) judgment dated 24/03/2021, W.P. (MD) no.4327 of 2021, concluded that-*

*"2. The petitioner is an IT assessee. His premises were searched on 10-4-18. Pursuant to the said search, the respondent issued notices u/s153A requiring the petitioner to file his ROI for various AYs. One such notice issued for the AY09-10 is impugned in this WP. The only question that arises for my determination is whether the AO herein is possessed of the power to issue the same. The respondent has filed a detailed counter affidavit and the ld standing counsel took me through its contents.*

*3. The contest between the parties is as regards Expl.-1 to section 153A(1). It reads as under:*

*"For the purposes of this sub-sec, the expression "relevant AY" shall mean an AY preceding the AY relevant to the PY in which search is conducted or requisition is made which falls beyond 6 AYs but not later than 10 AYs from the end of the AY relevant to the PY in which search is conducted or requisition is made."*

*The above explanation assigns a particular meaning to the expression "relevant AY". It precedes the AY relevant to the PY in which the search is conducted. The search was conducted on 10-4-18.*

*According to sec2(34), "PY" means the PY as defined in sec3. As per sec3, for the purposes, "PY" means the FY immediately preceding the AY." "AY" has been defined in sec2(9) as the period of 12 months commencing on the 1st day of April every year. As per sec3(21) of the General Clauses Act, "FY' shall mean the year commencing on the 1st day of April. Since the search had taken place on 10-4-18, the AY will be 19-20. The PY would be 18-19.*

*4. The ld standing counsel pointed out that prior to the amendment made vide FA, 2017 wef., 1-4-17, section 153A mandated the AO to issue notice for 6 AYs immediately preceding the AY relevant to the FY in which the search is initiated. Since the search AY is 19-20, the 6 AYs preceding the same would be*

| | |
|---|---|
| *1* | *18-19* |
| *2* | *17-18* |
| *3* | *16-17* |
| *4* | *15-16* |
| *5* | *14-15* |
| *6* | *13-14* |

*Following the changes and insertion made by the FA, 2017 wef, 1-4-17, the provision reads as under: Section 153A-*

*The argument of the standing counsel is that since prior to 1-4-17, the statutory provision contemplated issuance of notice for 6 AYs and wef., 1-4-17, it has been extended to 10 years, it obviously means 4 more AYs beyond the 6 AYs originally covered u/s153A prior to 1-4-17. Therefore, the remaining 4 relevant AYs to be covered would be*

| | |
|---|---|
| *7* | *12-13* |
| *8* | *11-12* |
| *9* | *10-11* |
| *10* | *09-10* |

*Of course, this extended period would be covered only subject to certain conditions. In the case on hand, the only dispute is as to how the period of 10 years is to be computed.*

*5. The ld standing counsel wants me to look at the explanatory notes (Para 80.4) to FA, 2017 (CBDT's Circular No.2/2018 in FNo.370142/15/2017-TPL dt.15-2-18) to understand Expl.-I. It reads as under:*

*"However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including sec132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A relating to search assessments has been amended to provide that notice under the said sec can*

*be issued for an AY or years beyond the sixth AY already provided up to the tenth AY."*

*The ld standing counsel would point out that in the provision, there are clearly 2 limbs. The first limb says that the AO shall assess or reassess the total income of 6 years immediately preceding the AY relevant to the PY in which the search is conducted. The second limb enables the AO to go up to 10 AYs. The stand of the respondent is that the search AY should not be included while computing the 10 AYs u/s153 A. Otherwise, AY13-14 will come under both i.e., under the original category of 6 years and also under the extended category of 10 years.*

*He would strongly urge that the very purpose of introducing the amendment was to extend the reach of the AO by 4 more years.*
*In other words, apart from the 6 AYs already provided for, the long arm of the authority must go up to the 4 more years. Otherwise, the very purpose of the amendment would be lost.*

*6. The contention of the petitioner's counsel is that the provision talks of 2 categories, namely, 6 years and 10 years and that different yardsticks have been prescribed for computing the 2 periods. On the other hand, the ld standing counsel would contend that the statutory provision talks of 6 years and 10 years, the second category "10 years" must be understood as "6 plus 4 years".*

*7. The principles of interpreting a taxation statute have been authoritatively laid down by the CB of the SC in Dilip Kumar & Co (2018) 9 SCC 1 (SC). It was held therein that other tools of interpretation such as contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material in taxation statutes. There is no room for any intendment. Regard must be had to the clear meaning of the words. Equity has no place. One has to strictly look to the language used. There is no room for searching intendment nor drawing any presumption. Nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute. (Para 29). This judgment is now a leading authority for the proposition that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted would have no application to construction of an exemption notification, as in such a case it is for the assesee to show that he comes within the purview of exemption.*

*8.…I agree with the submission that section 153A is intended to unearth tax evasion. But I can endorse the stand of the respondent as regards computation of the period of 10 years only if there is ambiguity or obscurity in Explanation-1. To me, there is absolutely no ambiguity.*

*9. Explanation-1 is clear as to the manner of computation of the 10 AYs. It clearly and firmly fixes the starting point. It is the end of the AY relevant to the PY in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10-4-18, the AY is 19-*

*20. The end of the AY19-20 is 31-3-20.*

*The computation of 10 years has to run backwards from the said date i.e., 31-3-20. The first year will of course be the search AY itself. In that event, the 10 AYs will be as follows:*

| | |
|---|---|
| *1st year* | *19-20* |
| *2nd year* | *18-19* |
| *3rd year* | *17-18* |

| | |
|---|---|
| *4th year* | *16-15* |
| *5th year* | *15-16* |
| *6th year* | *14-15* |
| *7th year* | *13-14* |
| *8th year* | *12-13* |
| *9th year* | *11-12* |
| *10th year* | *10-11* |

*The case on hand pertains to AY09-10. It is obviously beyond the 10 year outer ceiling limit prescribed by the statute.*

*The terminal point is the tenth year calculated from the end of the AY relevant to the PY in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.*

*10. In the case on hand, the statute has prescribed one mode of computing the 6 years and another mode for computing the 10 years. Section 153A(1)(b) states that the AO shall assess or reassess the total income of 6 years immediately preceding the AY relevant to the PY in which search is conducted. Applying this yardstick, the 6 years would go up to 13-14. The search AY, namely, 19-20 has to be excluded. This is because, the statute talks of the 6 years preceding the search AY. But, while computing the 10 AYs, the starting point has to be the end of the search AY. In other words, search AY has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the FA, 2017 intended to bring in 4 more years over and above the 6 years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.*

*11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject AY lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the WP cannot be in doubt.*

*12. The notice impugned in the WP is quashed. The WP stands allowed. Consequently, connected misc. petitions are closed."*

iii) ***CIT v. Jasjit Singh*** *[2023] 155 taxmann.com 155 (SC) concluded that-*

*"4. Notice was issued by the concerned jurisdictional AOs to the said assessees who contended that the period for which they were required to file returns, commenced only from the date the materials were forwarded to their AOs. The Revenue, on the other hand, urged that the date (relatable to the period for which 6 years returns were to be filed by the assessee) was to be from the date when the search and seizure proceedings were conducted, in respect of the main assessee u/s132.*

*9. It is evident on a plain interpretation of section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the que of abatement but also with regard to the date from which the 6 year period was*

*to be reckoned, in respect of which the returns were to be filed by the third party whose premises are not searched and in respect of whom the specific provision under section 153C was enacted. The Revenue argued that the proviso (to section 153C(1)) is confined in its application to the que of abatement.*

*10. This Court is of the opinion that the Revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation (Del HC) adopted, the AO seized of the materials of the search party, u/s132 would take his own time to forward the papers and materials belonging to the third party, to the concerned AO.*

*In that event if the date would virtually "relate back" as is sought to be contended by the Revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is disproportionate. For instance, if the papers are in fact assigned under section 153C after a period of 4 years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of section 153C supports the interpretation which this Court adopts."*

*iv)* ***Rakesh Bansal v. ACIT*** *[2024] 159 taxmann.com 1632 (Del. Trib), concluded as under–*

*"5. A satisfaction note was recorded by the ACIT, Cen-Cir-16, New Delhi in the case of Shri Rakesh Jain being the "searched person". Satisfaction note reads as under:*

*"Search u/s132 was conducted in the case of Rakesh Jain group on 2-11-17."*
*6. Satisfaction note was also drawn by the AO of the other person (the assessee) on 24-9-21 which reads as under:*

*"Action u/s132 was conducted in Rajkesh Jain Group of cases by the Inv.Wing, New Delhi on 2-11-17."*

*7. Assessment proceedings were initiated against the assessee and assessment order was framed u/s143(3) on 30-12-21 by which the returned income of Rs.3,99,140 was assessed under section 153C at Rs. 1,63,99,140.*

*8. Challenge is validity of this assessment order framed u/s 153C for the reason that it is invalid because the impugned AY is beyond the block of 6 AYs, as per the Act.*

*9. It is a settled proposition of law that as per section 153C, for taking action under section 153C, date of search in the case of the other person would be date of receiving books of account or documents or assets allegedly belonging to the other person and seized in the course of search of the searched person.*
*In other words, date of recording of the satisfaction in the case of the searched person qua the other person becomes date of search in the case of other person (the assessee in the present case).*

*10. This has been well settled by Jasjit Singh (2023) (SC). Relevant findings read as under:*

*"9. It is evident on a plain interpretation of section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the que of abatement but also with regard to the date from which the 6 year period was to be reckoned, in respect of which the returns were to be filed by the third party whose premises are not searched and in respect of whom the specific provision under section 153C was enacted. The*

*Revenue argued that the proviso (to section 153C(1)) is confined in its application to the que of abatement."*

*11. In light of the aforementioned ruling of the Hon'ble SC in the case of the assessee, date of search would be 22-2-21 and the impugned AY14-15 is beyond the block of 6 AY starting from AY15-16.*

*12. Considering the facts of the case in totality, in light of the decision of the Hon'ble SC, we have no hesitation in quashing the impugned assessment order. Gr.No.1 is allowed."*

v) ***Bhagwati Suresh Modi v. ITO*** *[2023] (Mum-Trib), ITA no.3053, 3054/Mum./2023, for A.Y. 2008–09 to 2011–12 order dated 28/04/2023 held as under:–*

> *"3. Search took place u/s132 on 6-3-18 in case of Satyam, Sangani, Shaligram group of companies. During search residential premises of Viral K Patel, Ahd, was also covered as he is the key person handling the cash transaction relating to M/s.Satyam Developers Ltd. During the course of search certain incriminating documents and digital data was found and seized.*
>
> *5. Therefore, the information in the seized documents related to the assessee. Accordingly, a satisfaction note by the ITO(IT)-3(2)(1), Mum was recorded on 31-3-21 and respective notice under section 153C were issued to the assessee for AY08-09 to AY17-18.*
>
> *6. For AY08-09, assessee has not filed any ROI u/s139.*
>
> *7. In this case, the satisfaction of the ld AO i.e., Jt.CIT, Cen-Cir-,2(2), Ahd, being the AO of the searched person was recorded on 18-2-21 and satisfaction of the ld AO of the assessee was recorded on 31-3-21 for all these years.*
>
> *8. The respective reasons were provided to the assessee. On 15-11-21, the assessee was also provided with seized material found being a ledger account of the assessee from the Tally data. The assessee was also provided with satisfaction note of the ld AO. assessee filed objections which were disposed off by the ld AO on 9-12-21. assessee was given many opportunities but did not elicit any response and therefore, finally SCN dt.16-12-21 was issued.*
>
> *19. In the present case, search on 6-3-18, was carried out on Satyam group. Satisfaction note in case of the assessee was recorded on 31-3-21 for AY08-09 to AY11-12 and AY12-13 to AY17-18.*
>
> *According to first proviso to section 153C the date of search shall be the date of receiving the books of account or documents etc. by the AO of the assessee. As there is no information available about the dates of receiving such material, the date of satisfaction note by the ld AO of the assessee i.e., 31-3-21, shall be the date of search.*
>
> *20. According to Explanation-1 to section 153A the income of the assessee can be assessed from AY11-12 to AY20-21 being 10 AYs from the date of recording of the satisfaction. Therefore, on this basis the assessment made for AY08-09 to AY10-11 which are beyond 10 years block are barred by limitation."*

iv) ***R.B. Jewellers (P) Ltd. v. UOI*** *[2023] 157 taxmann.com 493 (Cal.) concluded that-*

> *"2. By this WP, petitioner has challenged the impugned initiation of assessment proceeding u/s153A and the notice u/s142(1) issued in course of aforesaid impugned proceeding relating to AY10-11 mainly on two grounds; firstly that the criteria for initiating proceeding u/s153A has not been fulfilled since no*

*incriminating document or materials have been found in course of search and seizure and secondly on the ground that the impugned assessment proceeding relating to AY10-11 is barred by limitation on the basis of search and seizure held on 13-4-19.*

*5. So far as the ground of challenge by the petitioner that the impugned assessment proceeding is barred by limitation, Mr.Mazumder has relied on AR Safiullah (2021) (Madras HC) dt.24-3-21 the respondent has taken a stand in their affidavit-in-opposition that it has not accepted the said decision of the Hon'ble Madras HC and it intends to challenge the same by filing SLP but till date it has not filed any SLP against the said judgment.*

*6. Mr. Dudhoria, ld advocate representing the respondent IT Authority could not satisfy with his submission or from record that any incriminating documents or materials were found against the petitioner in course of search and seizure in que or that the impugned assessment proceeding has been initiated before the expiry of limitation as provided u/s153A Explanation-1 and he also could not distinguish both the aforesaid judgments upon which Mr.Mazumder has relied either on facts or law.*

*7. Considering the facts and circumstances of the case as appears from record and submission of the parties and the judgments relied upon by them, I am of the considered view that the impugned proceeding u/s153A and all subsequent proceedings relating to AY10-11 on the basis of search and seizure dt.13-4-19 is not sustainable in law and accordingly the same were quashed."*

23. Thus, we find that the assessment year 2009-10, 2010-11 and 2011-12 is beyond the block of 10 year as per first proviso to section 153C read with Explanation-1 to section 153A and, therefore, notice issued under section 153C and assessment made under section 153C by the Assessing Officer for the assessment year 2009-10, 2010-11 and 2011-12 is barred by limitation and is invalid, bad in law and is hereby quashed for the want of valid assumption of jurisdiction on the part of the Assessing Officer. Thus, it is concluded as under:–

(a) Appeal being ITA no.108/Nag./2024, for the assessment year 2009-10, vide additional ground no.1, raised by the assessee is allowed;

(b) Appeal being ITA no.109/Nag./2024, for the assessment year 2010-11, vide additional ground no.1, raised by the assessee is allowed;

(c) Appeal being ITA no.110/Nag./2024, for the assessment year 2011-12, vide additional ground no.1, raised by the assessee is allowed; and

(d) Appeal being ITA no.111/Nag./2024, for the assessment year 2012-13, vide additional ground no.1, raised by the assessee is dismissed.

24. We now proceed to adjudicate the issue with respect to the Satisfaction Note recorded by the Assessing Officer of the searched person. This issue is involved in the following appeals:-

**ITA no.108/Nag./2024**
**A.Y. 2009-10**

**ITA no.109/Nag./2024**
**A.Y. 2010-11**

**ITA no.110/Nag./2024**
**A.Y. 2011-12**

**ITA no.111/Nag./2024**
**for A.Y. 2012-13 and**

**ITA no.112/Nag./2024**
**for A.Y. 2013-14**

25. The learned A.R. contended that the common issue involved in these appeals is that, there is no satisfaction recorded by the Assessing Officer of the searched person (i.e., M/s.RKTC Group/Suresh Agrawal, Kolkata, director of M/s.Rashi Steel & Power P. Ltd, Kolkata) and also by the Assessing Officer of the assessee-Company. Since both the Assessing Officers are different, there is no mention in the assessment orders in respect of any *'satisfaction note'* recorded by the Assessing Officer of the searched person for the alleged escapment of the income for the assessment year 2009–10 to 2013–14. In absence of a valid *'satisfaction note'* recorded by the Assessing Officer of the searched person, it must be recorded separately for each assessment year, which is sine qua non/pre-requisite/pre-condition for assuming the valid jurisdiction under section 153C for each such assessment year separately.

26. The following grounds have been raised by the assessee in the respective appeals:–

***ITA No.108/Nag./2024***
***Assessment year : 2009-10***

*Ground no.1:*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as there is no satisfaction recorded by the AO of the searched person (i.e., RKTC Group) and also by the AO of the assessee-Co, since both the AOs are different; there is no mention of any 'satisfaction note' recorded for the alleged escaped income*

*of Rs.60 lakhs for impugned AY09-10 in the assessment order; in absence of a valid 'satisfaction note' recorded, which is a pre-requisite, pre condition for assuming valid jurisdiction u/s153C, search assessment made u/s144 rws.153C would be invalid and is liable to be quashed."*

***ITA No.109/Nag./2024***
***Assessment year : 2010–11***

*Ground no.1:*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as there is no satisfaction recorded by the AO of the searched person (i.e., RKTC Group) and also by the AO of the assessee-Co, since both the AOs are different; there is no mention of any 'satisfaction note' recorded for the alleged escaped income of Rs.4,43,55,000 for impugned AY10-11 in the assessment order; in absence of a valid 'satisfaction note' recorded, which is a pre-requisite, pre condition for assuming valid jurisdiction u/s144 rws.153C, search assessment made u/s153C would be invalid and is liable to be quashed."*

***ITA No.110/Nag./2024***
***Assessment year : 2011–12***

*Ground no.1:*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as there is no satisfaction recorded by the AO of the searched person (i.e., RKTC Group) and also by the AO of the assessee-Co, since both the AOs are different; there is no mention of any 'satisfaction note' recorded for the alleged escaped income of Rs.32,46,300 for impugned AY11-12 in the assessment order; in absence of a valid 'satisfaction note' recorded, which is a pre-requisite, pre condition for assuming valid jurisdiction u/s153C, search assessment made u/s143(3) rws.153C would be invalid and is liable to be quashed."*

***ITA No.111/Nag./2024***
***Assessment year : 2012–13***

*Ground no.1:*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as there is no satisfaction recorded by the AO of the searched person (i.e., RKTC Group) and also by the AO of the assessee-Co, since both the AOs are different; there is no mention of any 'satisfaction note' recorded for the alleged escaped income of Rs.22,46,300 for impugned AY12-13 in the assessment order; in absence of a valid 'satisfaction note' recorded, which is a pre-requisite, pre condition for assuming valid jurisdiction u/s153C, search assessment made u/s143(3) rws.153C would be invalid and is liable to be quashed."*

***ITA No.112/Nag./2024***
***Assessment year : 2013–14***

*Ground no.1:*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as there is no satisfaction recorded by the AO of the searched person (i.e., RKTC Group) and also by the AO of the assessee-Co, since both the AOs are different; there is no mention of any 'satisfaction note' recorded for the alleged escaped income of Rs.75,00,000 for impugned AY13-14 in the assessment order; in absence of a valid 'satisfaction note' recorded, which is a pre-requisite, pre condition for assuming valid jurisdiction u/s153C, search assessment made u/s143(3) rws.153C would be invalid and is liable to be quashed."*

27. The learned A.R. for the assessee submitted that though the said satisfaction note was not available on record at the time of filing the appeal before the Tribunal, however, during the course of hearing, the learned Departmental Representative furnished letter dated 16/11/2024, enclosing therewith a letter dated 15/01/2021, issued by the DCIT, Central Circle, Raipur, addressed to the DCIT, Central Circle–1(1), Nagpur, enclosing therewith a *"consolidated satisfaction note"* prepared by the Assessing Officer of the searched persons for the assessment year 2009–10 to 2019–20, which are placed on record. For better appreciation of the facts, it is necessary to reproduce the contents of the letter dated 15/01/2021, issued by the DCIT, Central Circle–2, Raipur, to the DCIT, Central Circle–1(1), Nagpur, which are as under:–

*"F. no.DCIT(C)–2/RPR/RKTC/Sharing Information/20120–21/2026*
*dated 15/01/2021*

*To*
*The Dy. Commissioner of Income Tax*
*Central Circle–1(1), Nagpur*

*Sir,*

*Sub:– Assessment proceedings u/s 153C of the I.T. Act, 1961, in the case of M/s. Maheshwari Coal Benefication and Infrastructure Pvt. Ltd., (PAN–AAECM9298D), House no.647, Behind 16 Kholi, Tikrapara, Bilaspur, CG – regarding.*

*Kindly refer to the above and find enclosed herewith Satisfaction Note drawn in the case of Mis Maheshwari Coal Beneficiation and Infrastructure Pvt. Ltd.. PAN-AAECM9298D along with Proforma for recording satisfaction u/s 153C of the I.T. Act. 1961.*

*2. In this regard, you are requested to kindly initiate assessment proceedings u/s 153C of the Act for A.Ys 2009-10 to 2018-19 and kindly issue notice u/s 143(2) of the Act under compulsory manual scrutiny for A.Y.2019-20, at the earliest. In case, this case does not fall under your jurisdiction, you are requested to forward this letter to the Jurisdictional A.O. with intimation to this office.*

*Encl: As above.*

*Yours faithfully,*
*Sd//*
*(Sunny Kachhwaha)*
*Deputy Commissioner of Income Tax*
*Central Circle–2, Raipur"*

*Proforma for recording satisfaction u/s 153C of the I.T. ACT, 1961*
*(To be filled by the Assessing Officer of the person referred to in section 153A)*

| | | |
|---|---|---|
| *1.* | *Name of the Group Searched* | *RKTC Group, Korba* |
| *2.* | *Name of PAN of the person referred to in Section 153A* | *Suresh Kumar Agrawal*<br>*PAN – ACIPA8846Q* |
| *3.* | *Name and PAN of the person referred to in Section 153C* | *M/s. Maheshwari Coal Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAFCM9298D* |
| *4.* | *Date of initiation of search in case of* | *22/01/2019* |

| | | |
|---|---|---|
| | *the person referred to in Section 153A* | |
| *5.* | *Name, address and PAN of the person in whose case action under section 153C is proposed* | *M/s. Maheshwari Coa Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAECM9298D*<br>*House no.647, Behind 16 Kholi, Tikrapara Bilaspur, CG* |
| *6. to 7.* | ……. | …….. |
| *8.* | *Satisfaction of the Assessing officer of the person referred to in section 153A that the seized material referred to in S. No.6 belongs to the person referred to in S. No.5* | *Documents seized from the above mentioned premises belong to/show the person referred to in Sl. No. 5 as one of the party involved in the transaction. The physical verification of the seized documents and statement of the person referred to in Sl. No.3 u/s 132(4) of the I.T. Act. 1961 prove that the seized material referred to in S.No.6 belongs to the person referred to in S. No.5.* |
| *9.* | *Assessment year involved* | *A.Y.2009-10*<br>*A.Y.2010-11*<br>*A.Y.2011-12*<br>*A.Y.2012-13*<br>*A.Y.2013-14*<br>*A.Y.2014-15*<br>*A.Y.2015-16*<br>*A.Y.2016-17*<br>*A.Y.2017-18*<br>*A.Y.2018-19*<br>*A.Y.2019-20* |

*Yours faithfully,*
*Sd//*
*(Sunny Kachhwaha)*
*Deputy Commissioner of Income Tax*
*Central Circle–2, Raipur"*

*<u>Satisfaction Note before issuance of Notice u/s 153C of the I.T. Act, 1961</u>*

*A search and seizure action was conducted on RKTC Group, Korba, on 22.01.2019 and concluded on 22.03.2019. In search, 35 premises were covered u/s 132(1) of the I.T. Act.*

*2. During the course of search action at the office premises of Shri Suresh Kumar Agrawal, one f the Directors of M/s. Rashi Steel and Power Pvt. Ltd. at no.28 & 29, 2nd Floor, 9 Mangoe Lane, Hare Street, Kolkata on 22.01.2019, many documents were found and seized ……*

*3. It is also pertinent to mention here that the findings of the search also reveal that the assessee company has Income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years (falling beyond the sixth year), it is therefore, necessary to initiate assessment proceedings u/s 153C of the I.T. Act, 1961 in the case of M/s.Maheshwari Coal Beneficiation and Infrastructure Pvt. Ltd., PAN-AAECM9298D for the A.Ys 2009-10 to 2018-19 and u/s 143(3) of the 1.T. Act, 1961 for A.Y.2019-20."*

*Yours faithfully,*
*Sd//*
*(Sunny Kachhwaha)*
*Deputy Commissioner of Income Tax*
*Central Circle–2, Raipur"*

28. The learned A.R. submitted that there is no mention in the assessment order in respect of any *'satisfaction note'* recorded by the Assessing Officer of the searched person (i.e., Suresh Agrawal, Kolkata) for the alleged escaped income represented in the form of asset of ₹ 50 lakh or more (i.e., in aggregate) for the assessment year 2009–10 to 2013–14 in the hands of the assessee (i.e., such other person) which must be separately recorded for each assessment year which means, that should have been prepared/recorded *'separate satisfaction note'* for *'different assessment years'.* In the absence of 'separate satisfaction note' recorded by the Assessing Officer of the searched person in respect of the alleged escaped income for the 'relevant assessment years' which represented in the form of asset of ₹ 50 lakh or more (i.e., in aggregate), which is a pre-requisite, sine qua non, pre-condition for assuming valid jurisdiction under section 153C over such other person for the relevant assessment year, the assessment made under section 153C for the assessment year 2009-10 to 2013-14 would be invalid for want of valid jurisdiction to issue notice under section 153C and further making assessment under section 153C, on the part of the Assessing Officer, would be liable to be quashed. In support of his arguments, the learned A.R. relied upon the following case laws:–

*Agni Vishnu Ventures P. Ltd. v. DCIT, [2024] (Mad.) 157 taxmann.com 242;*
*PCIT v. Gali Janardhana Reddys, [2023] (Kar.) 152 taxmann.com 332;*
*PCIT v. Smt G Lakshmi Aruna, [2023] (Kar.) 150 taxmann.com 107;*
*DCIT v. Sunil Kumar Sharma [2024] (Kar.) 159 taxmann.com 179.*

- It is necessary to mention here that the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue in CIT v. Sunil Kumar Sharma reported as [2024] 165 taxmann.com 846 (SC);
- In the matter of Gali Janardhana Reddys (supra), the SLP filed by the Revenue has also been dismissed which is reported as [2023] 157 taxmann.com 392; and
- In the matter of Smt. G. Lakshmi Aruna (supra), the SLP filed by the Revenue has also been dismissed which is reported as [2024] 159 taxmann.com 183.

29. The learned A.R. for the assessee further relied on the following judicial pronouncements for the argument that the satisfaction note must be recorded by the Assessing Officer of the searched person before transmitting the

documents to the Assessing Officer of the non–search person when there are two different Assessing Officers and it also must be a separate satisfaction note recorded for each year separately and further it is submitted by the learned A.R. that the separate satisfaction note must be recorded by the Assessing Officer of the non–searched person i.e., the assessee company before issuing notice under section 153C of the Act which must be reflected its determination of undisclosed income of the assessee company for the respective assessment year(s), this is sine qua non for usurping jurisdiction for initiating proceedings under section 153C of the Act which is absent in the present case. In support of such arguments, the following case laws have been relied upon:–

*i)* ***Agni Vishnu Ventures (P) Ltd. v/s DCIT*** *(2024) 157 taxmann.com 242 (Madras HC) concluded that-*

> *"77. The ingredients of section 153C are:*
> *Satisfaction of the AO who is AO of the section 153A noticee that money/ bullion/ jewellery/ other valuable article or thing/ books of account or documents (incriminating materials) seized/ requisitioned belongs to/ pertain to or any information contained, relates to, a third party.*
> *Recording of satisfaction as above.*
> *Handing over of the incriminating material to the AO having jurisdiction over the third party.*
> *Recording of satisfaction by the AO of the third party that the incriminating material has a bearing on the determination of total income of the third party.*
> *Upon condition of recording of the satisfaction of both officers as above, notices be issued to assess/ reassess the income of the third party in accordance with the procedure stipulated u/s153A.*
> *78. In my considered view, there is a vital distinction between the object, intention as well as the express Judge of section 153A and 153C.*
> *Section 153A addresses the searched entity and the procedure set evidently a notch higher for this reason. There is no discretion or condition precedent u/s153A to the issuance of notice save the conduct of a search u/s132 or making of a requisition u/s132A. Upon the occurrence of one of the aforesaid events, it is <u>incumbent</u> upon the office to issue notice u/s153A to the searched entity in line with the procedure stipulated.*
> *79. Section 153C however requires the satisfaction of 2 conditions prior to issuance of notice:*
> *Recording of satisfaction by the AO of the searched entities that some of the incriminating materials relate to a third party.*
> *Recording of satisfaction by the AO of the third party that the incriminating materials have a bearing on the determination of the total income of that third party.*
> *80. Notice u/s153C would have to be issued only upon confront satisfaction of both conditions as aforesaid. To this extent, there is, in my considered opinion, a clear and marked distinction between the section 153A and 153C.*
> *The contention of the Revenue that a mandate is cast upon the AO of the third party to issue notice u/s153C for all the years comprising the block, mechanically and automatically, is thus rejected.*

*81. To clarify it is only where the satisfaction note recorded by the receiving AO, i.e., the AO of the third party reflects a clear finding that the incriminating material received has a bearing on determination of total income of the third party for 6 AYs immediately preceding the AY relevant to the PY in which search is conducted or requisition is made, that such notice would have to be issued for all the years.*
*82. It thus, flows from the provision that the receiving AO must apply his mind to the materials received and ascertain precisely the specific year to which the incriminating material relates. It is only when this determination/ ascertainment is complete that the flood gates of an assessment would open qua those particular years. The issuance of a notice cannot be an automated function unconnected to this exercise of analysis and ascertainment by an AO.*
*83. The construction of section 153A and 153C is consciously different and is seen to apply different yardsticks to an entity searched and a third party, such yardstick being more exacting in the case of the former. The process of assessment is demanding and an assessee, once in receipt of a notice, is bound by the stringent procedure under the Act, till finalisation of the process."*

ii) *SLP of the revenue has been dismissed by the Hon'ble SC in the case of **PCIT v. Gali Janardhana Reddy** (2023) 157 taxmann.com 392 (SC) dt.4-12-23, against the judgment of the Hon'ble Karnataka HC in the case of **Gali Janardhana Reddy** (2023) 152 taxmann.com 332 (Karnataka HC) dt.31-3-23 wherein, Hon'ble Karnataka HC has concluded as under:*

*"58. Even otherwise, the requirement of recording of satisfaction note is clearly borne out of the provisions contained in section 153C. Calcutta Knitwears (2014) (SC) has held that the recording of satisfaction note is pre-requisite and the same must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person. Several Hon'ble HCs have held that the section 153C are pari materia to the sec158BD, which was the subject matter of interpretation before the Hon'ble SC in Calcutta Knitwears (2014) (SC). The aforesaid reliance are squarely applicable to the present case on hand in the given facts and circumstances of the case wherein certain incriminating materials were found during the course of search against the assessee as alleged.*
*59. Insofar as the case of Gopi Apartment (2014) (All HC), the Alld HC has held that recording of satisfaction before initiating proceedings is a sine qua non and must be recorded at the time of handing over of documents to the AO having jurisdiction over such other person. The initiation of proceedings against such other person is dependent upon the satisfaction being recorded and the same must be recorded before issuance of notice to such other person u/s153C. It was further held that even in a case where AO of both the persons is the same and there is no requirement of physical handing over of documents, the recording of satisfaction is still a must as the same is the foundation upon which subsequent proceedings against the other person is initiated. In the aforesaid case of Gopi Apartment (2014) (All HC), the Hon'ble Alld HC held as under:-*
*"(1) The first stage comprises of a search and seizure operation u/s132 or proceeding u/s132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' u/s153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the AO of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the AO having jurisdiction over 'such other person'.*

*(2) The second stage commences from the recording of such satisfaction by the AO of the 'searched person' followed by handing over of all the requisite documents etc. to the AO of such 'other person', thereafter followed by issuance of the notice of the proceedings u/s153C rws.153A against such 'other person'.*
*The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' u/s153C.*

*Even in a case, where the AO of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory".*
*60. In the facts of the present case, it is an admitted position that the satisfaction note was not recorded by the AO of the searched person and thus, the Trib passed an order quashing the assessment on account of lack of jurisdiction to proceed against the assessee u/s153C. The said order does not suffer from any infirmities but the Trib has rightly quashed the assessment on account of lack of jurisdiction. These are the contentions that have been made by the ld counsel for the assessee. Therefore, the ld counsel for the assessee prays for dismissal of this appeal preferred by the revenue.*
*67. In the present case on hand, the Trib had arrived at a conclusion in ITA No.1444-1450/2014. It is seen that the Trib has not only followed Gopi Apartment (2014) (All HC), but the Trib has also considered and followed Calcutta Knitwears (2014) (SC), and Manish Maheshwari (2007) (SC).*
*In the facts and circumstances of the present case on hand relating to initiation of proceedings, has been discussed based upon the materials. No satisfaction was recorded by the AO of the searched person because it is seen that the so-called satisfaction note prepared by the AO in his capacity as AO of the searched person, it could not be shown by the Revenue that any satisfaction note was prepared by him as the AO of the searched person.*
*Therefore, it is to be accepted that no satisfaction was recorded by the AO of the searched persons and therefore, the order of the Trib and Gopi Apartment (2014) (All HC), Calcutta Knitwears (2014) (SC) and Manish Maheshwari (2007) (SC) are applicable to the given facts and circumstances of the case. These judgments were followed by the Trib to hold that the notice issued by the AO u/s153C deserves to be quashed and accordingly had proceeded to quash the assessment orders framed by the AO u/s153C rws.143(3). Accordingly, the addl. ground was allowed in all the 7 years. …..*
*The judgment rendered by the Trib does not suffer from any infirmity or absurdity to call for interference the said judgment and further no warranting circumstances arise. Consequently, these appeals deserve to be rejected.*
*68. In terms of the aforesaid reasons, we are of the opinion that this appeal requires to be dismissed as being devoid of merits."*

iii) *Similar position of law laid down by the Hon'ble Karnataka HC in the case of **Smt G Lakshmi Aruna** (2023) 150 taxmann.com 107 (Karnataka HC) dt.31-3-23; against which, SLP of the revenue has been dismissed by the Hon'ble SC in the case of **PCIT v. G Lakshmi Aruna** (2024) 159 taxmann.com 183 (SC) dt.11-12-23.*

iv) *Thereafter, the Hon'ble Karnataka HC in the case of **Sunil Kumar Sharma** (2024) (Kar HC) dt.22-1-24, has concluded that-*

> *"26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."*
>
> *It is further held –*
>
> *"53. Further, satisfaction note is required to be recorded u/s153C for each AY and in the impugned proceedings, a consolidated satisfaction note has been recorded for different AYs, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the Revenue."*

*v) The Hon'ble High Cuort of Delhi, in the case of **SPCIT v. Pavitra Realcon Pvt. Ltd.** (2024) 340 CTR (Del.) 225 (Del. HC) has concluded that-*

> *"34. Reliance can also be placed upon the decision in the case of CIT vs. Micron International Ltd. 2015 SCC Online Del 7321, whereby, it was held that the jurisdictional defects cannot be cured under s. 292B of the Act and they render the entire proceedings null and void.*
>
> *35. In the present case, it is seen that the Revenue has failed to allude to any steps which were taken to determine that the seized material belonged to the respondent-assessee group. Notably, the satisfaction note has also been prepared in a mechanical format and it does not provide any details about the incriminating material. Therefore, a failure on the part of the Revenue to manifest as to how the material gathered from the search of Jain group of companies belonged to the respondent-assessee group and the same is incriminating, vitiates the entire assessment proceedings."*

30. The learned Departmental Representative submitted a report dated nil received from the Assessing Officer i.e., DCIT, Central Circle-1, Raipur wherein it is the submission of the Revenue that the satisfactgion note is recorded by the Assessing Officer of the searched person for A.Y. 2009–10 to 2019–20 and requested to take action under section 153C for the assessment year 2009–10 to 2018–19 and under section 143(2) for the A.Y. 2019–20.

31. We have heard the submissions of the both the learned Counsel appearing for the parties and considered the materials available on record and gone through the the paper book filed before us along with supporting case laws. We find that the learned D.R. has furnished a report dated 16/05/2024 of the Assessing Officer wherein it is clear that the documents / information related to the assessment year 2009-10 and 2010-11 has been

transferred from the Assessing Officer of the searched person i.e., DCIT, Central Circle, Raipur, to the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur on 21/01/2021, which is mentioned in the letter written by the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur, vide letter dated 11/03/2022 to the Addl.CIT, Central Range, Nagpur, which is received by the Addl.CIT, Central Range Nagpur on 11/03/2022. The contents of the report of the Assessing Officer are reproduced below:–

*Proforma for recording satisfaction u/s 153C of the I.T. Act, 1961*
*(To be filled by the Assessing Officer of the person referred to in section 153A)*

| | | |
|---|---|---|
| *1.* | *Name of the Group Searched* | *RKTC Group, Korba* |
| *2.* | *Name of PAN of the person referred to in Section 153A* | *Suresh Kumar Agrawal*<br>*ACIPA8846Q* |
| *3.* | *Name and PAN of the person referred to in Section 153C* | *M/s. Maheshwari Coal Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAFCM9298D* |
| *4.* | *Date of initiation of search in the case of the person referred to in Section 153A* | *22/01/2019* |
| *5.* | *Name, address and PAN of the person in whose case action under section 153C is proposed* | *M/s. Maheshwari Coa Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAECM9298D*<br>*House no.647, Behind 16 Kholi, Tikrapara Bilaspur, CG* |
| *6. to 7.* | ……. | …….. |
| *8.* | *Satisfaction of the Assessing officer of the person referred to in section 153A that the seized material referred to in S.No.6 belongs to the person referred to in S. No.5* | *Document seized from the above mentioned premises belongs to/show the person referred to in Sl. No. 5 as one of the party involved in the transaction.*<br>*The physical verification of the seized documents and statement of the person referred to in Sl. No. 3 u/s 132(4) of the I. T. Act, 1961 prove that the seized material referred to in S. No. 6 belongs to the person referred to in Sl. No.5* |
| *9.* | *Assessment year involved* | *A.Y.2009–10*<br>*A.Y.2010–11* |

*Yours faithfully,*
*Sd/–*
*(Yadav Akash Bhaskar)*
*Deputy Commissioner of Income Tax*
*Central Circle–1(1), Nagpur"*

*"Annexure-A*
*An information has been received in this office on 21-1-21 from DCIT, Central Circle, Raipur dated 15-1-21 in the case of M/s.Maheshwari Coal Benefication & Infrastructure P Ltd to initiate proceedings u/s153C of the IT Act, 1961 for AYs 09-10 & 10-11.*

*……*
*……*
*In view of the above the seized material bearing impact on the part of the total income of the assessee. Therefore, I am satisfied to issue notice u/s 153 C of the IT Act, 1961, to initiate assessment proceedings u/s 153C of the IT Act, 1961 for A.Ys 2009-10 & 2010-11."*

*Sd/–*
*(Yadav Akash Bhaskar)*
*Asstt. Commissioner of Income Tax*
*Central Circle–1(1), Nagpur"*

32. Similarly, for the assessment year 2011-12 to 2013-14, in the report of the Assessing Officer dated 16/05/2024, submitted by the learned D.R. before us, wherein also it is clear that the documents/information related to the assessment year 2011-12 to 2013-14 has been transferred from the Assessing Officer of the searched person i.e., DCIT, Central Circle, Raipur, to the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur, which is mentioned in the letter written by the Assessing Officer of the assessee i.e., DCIT, Central Circle-1(1), Nagpur, dated 29/11/2021 to the Addl.CIT, Central Range, Nagpur, which is received by the Addl.CIT, Central Range Nagpur, on the same day i.e., 29/11/2021. The contents of the report by the Assessing Officer are reproduced below:–

*Proforma for recording satisfaction u/s 153C of the I.T. ACT, 1961*
*(To be filled by the Assessing Officer of the person referred to in section 153A)*

| | | |
|---|---|---|
| *1.* | *Name of the Group Searched* | *RKTC Group, Korba* |
| *2.* | *Name of PAN of the person referred to in Section 153A* | *Shri Suresh Kumar Agrawal*<br>*(ACIPA8846Q)* |
| *3.* | *Name and PAN of the person referred to in Section 153C* | *M/s. Maheshwari Coal Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAFCM9298D* |
| *4.* | *Date of initiation of search in the case of the person referred to in Section 153A* | *22/01/2019* |
| *5.* | *Name, address and PAN of the person in whose case action under section 153C is proposed* | *M/s. Maheshwari Coa Beneficiation and Infrastructure Pvt. Ltd.*<br>*PAN – AAECM9298D*<br>*House no.647, Behind 16 Kholi, Tikrapara Bilaspur, CG* |
| *6. to 7.* | *…….* | *……..* |
| *8.* | *Satisfaction of the Assessing officer of the person referred to in section 153A that the seized material referred to in S. No.6 belongs to the person referred to in S. No.5* | *1)As per annexure A (Copy Enclosed) & Documents seized from the above mentioned premises belongs/show the person referred to in Sl. No 5 as one of the party involved in the transaction.* |

| | | |
|---|---|---|
| | | *The physical verification of the seized documents and statement of the person referred to in Sl. No. 3 u/s 132(4) of the IT Act, 1961 prove that the seized material referred to in Sl. No. 6 belongs to the person to in Sl. No. 5.*<br>*In view of the above the seized material bearing impact on the part of the total income of the assessee. Therefore, I am satisfied to issue notice u/s 153C of the IT Act 1961.* |
| *9.* | *Assessment year involved* | *A.Y.2011-12*<br>*A.Y.2012-13*<br>*A.Y.2013-14* |

*Yours faithfully,*
*Sd/–*
*(Yadav Akash Bhaskar)*
*Asstt. Commissioner of Income Tax*
*Central Circle–1(1), Nagpur"*

*"Annexure-A*
*An information has been received in this office from DCIT, Central Circle, Raipur dated 15-1-21 in the case of M/s.Maheshwari Coal Benefication & Infrastructure P Ltd to initiate proceedings u/s153C of the IT Act, 1961 for AYs 11-12 to 13-14.*
*……..*
*……..*
*In view of the above the seized material bearing impact on the part of the total income of the assessee. Therefore, I am satisfied to issue notice u/s 153 C of the IT Act, 1961, to initiate assessment proceedings u/s 153C of the IT Act, 1961 for A.Ys 2011-12 to 2013- 14."*

*Sd/–*
*(Yadav Akash Bhaskar)*
*Asstt. Commissioner of Income Tax*
*Central Circle–1(1), Nagpur"*

33. In view of the aforesaid discussion, we find that it is an admitted position that the consolidated satisfaction note was recorded by the Assessing Officer of the searched person before transmitting the documents/ information to the Assessing Officer of the non-searched person i.e., the assessee in this case for the assessment year 2009–10 to 2019–20 i.e., for 11 years and thereafter the documents have been transferred on 21/01/2021 to the Assessing Officer of the non–searched persons i.e., the assessee company and subsequently the Assessing Officer of the assessee company has further recorded consolidated satisfaction note for the assessment year 2009–10 and 2010–11 and thereafter the Assessing Officer further recorded another consolidated satisfaction note for the assessment year 2011–12 to 2013–14, which is clear from the above discussions. In support of this findings, we rely on the judgment of the Hon'ble Karnataka High Court

rendered in Sunil Kumar Sharma (supra) wherein it has been held that satisfaction note is required to be recorded under section 153C for each assessment year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different assessment year by both the Assessing Officers i.e., the Assessing Officer of the searched person has recorded consolidated satisfaction note for the assessment year 2009–10 to 2019–20 and thereafter the Assessing Officer of the assessee has recorded consolidated satisfaction note for the assessment year 2009–10 and 2010–11 and another consolidated satisfaction note for the assessment year 2011–12 to 2013–14. There is no co–relation with the documents year–wise to clearly point out as to how the documents pertain to the assessee. Thus, we hold that the assessment order made under section 153C for the assessment year 2009-10 to 2013-14 is treated as invalid, bad–in–law and unsustainable in the eyes of law for want of valid assumption of jurisdiction on the part of the Assessing Officer.

34. Thus, we conclude as under:–

(a) Appeal being ITA no.108/Nag./2024, for the assessment year 2009-10, vide ground no.1, raised by the assessee is allowed;

(b) Appeal being ITA no.109/Nag./2024, for the assessment year 2010-11, vide ground no.1, raised by the assessee is allowed;

(c) Appeal being ITA no.110/Nag./2024, for the assessment year 2011-12, vide ground no.1, raised by the assessee is allowed;

(d) Appeal being ITA no.111/Nag./2024, for the assessment year 2012-13, vide ground no.1, raised by the assessee is allowed; and

(e) Appeal being ITA no.112/Nag./2024, for the assessment year 2013–14, vide ground no.1, raised by the assessee is allowed.

35. We now proceed to adjudicate the issue with respect to the undisclosed asset found in the relevant assessment years in accordance with the provisions of fourth proviso to section 153A(1) r/w Explanation–2 thereof as per amendment made by the Finance Act, 2017 w.e.f. 01/04/2017. This issue involved in the following appeals:–

**ITA no.108/Nag./2024**
**A.Y. 2009-10**

**ITA no.109/Nag./2024**
**A.Y. 2010-11**

**ITA no.110/Nag./2024**
**A.Y. 2011-12**

**ITA no.111/Nag./2024**
**for A.Y. 2012-13 and**

**ITA no.112/Nag./2024**
**for A.Y. 2013-14**

36. During the course of hearing, the learned A.R. for the assessee submitted that the assessment made under section 153C of the Act vide order dated 31/03/2022, for the assessment year 2009–10 to 2013–14, i.e., *'relevant assessment year / assessment year(s)'* as per section 153A(1) as amended by the Finance Act, 2017 (w.e.f. 01/04/2017), the addition made by Assessing Officer on unexplained cash credits under section 68; the Assessing Officer has not made any addition on *'undisclosed asset'* which is sine qua non/pre-condition for assuming valid jurisdiction for making assessment under section 153C for *'relevant AY'* as per *'fourth proviso'* to section 153A(1) read with Explanation-2, whether or not, in absence of this, the assessment made under section 153C of the Act would be valid and/or would be liable to be quashed.

37. Following grounds of appeal along with additional grounds have been raised by the assessee for the assessment year 2009–10:–

> *"Ground no.2*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as without having jurisdiction to issue notice u/s153C, as the reason for issuing notice u/s153C does not come within the purview of 4th proviso to section 153A(1) sets out certain further conditions which is required to be fulfilled before issuing notice u/s153C; in absence of valid assumption of jurisdiction u/s153C, assessment made u/s144 rws.153C would be invalid & is liable to be quashed."*
>
> *Additional Gr.No.2:*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY09-10, i.e., 'relevant AY' as per section 153A(1) as amended by FA, 2017 (wef.1-4-17); addition made on unexplained cash credits u/s68 of Rs.60,00,000; the AO has not made any addition on undisclosed 'asset' which is sine qua non/ pre-condition for assuming valid jurisdiction for making assessment u/s153C for 'relevant AY' as per 'fourth proviso' to section 153A(1) read with 'Expln-2'; in absence of this, assessment made u/s153C would be invalid & is liable to be quashed; relied on Goldstone Cements Ltd (2023) (Gau HC); Fortune Vanijya (P) Ltd (2023) (Gau HC)."*

38. The assessee has also raised additional grounds of appeal in ITA No. 109/Nag./ 2024, A.Y. 2010-11.

> *Ground no.2*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as without having jurisdiction to issue notice u/s153C, as the reason for issuing notice u/s153C does not come within the purview of 4th proviso to section 153A(1) sets out certain further conditions which is required to be fulfilled before issuing notice u/s153C; in absence of valid assumption of jurisdiction u/s153C, assessment made u/s144 rws.153C would be invalid & is liable to be quashed."*
>
> *Additional Ground no.2*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY10-11, i.e., 'relevant AY' as per section 153A(1) as amended by FA, 2017 (wef.1-4-17); addition made on unexplained cash credits u/s68 of Rs. 4,43,55,000; the AO has not made any addition on undisclosed 'asset' which is sine qua non/ pre-condition for assuming valid jurisdiction for making assessment u/s 153C for 'relevant AY' as per 'fourth proviso' to section 153A(1) read with 'Expln-2'; in absence of this, assessment made u/s153C would be invalid & is liable to be quashed; relied on Goldstone Cements Ltd (2023) (Gau HC); Fortune Vanijya (P) Ltd (2023) (Gau HC)."*

39. In the appeal of the assessee bearing ITA No.110/Nag./2024, for the assessment year 2011-12, following additional grounds of appeal have been raised:–

> *Ground no.2*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as without having jurisdiction to issue notice u/s153C, as the reason for issuing notice u/s153C does not come within the purview of 4th proviso to section 153A(1) sets out certain further conditions which is required to be fulfilled before issuing notice u/s153C, more so, reason for escaped income of Rs.32,46,300 is below the limit of Rs.50 lakhs; in absence of valid assumption of jurisdiction u/s153C, assessment made u/s143(3) rws.153C would be invalid & is liable to be quashed."*
>
> *Additional Ground No.2*
> *"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY11-12, i.e., 'relevant AY' as per section 153A(1) as amended by FA, 2017 (wef.1-4-17); addition made on unexplained cash credits u/s68 of Rs.32,46,300; the AO has not made any addition on undisclosed 'asset' which is sine qua non/ pre-condition for assuming valid jurisdiction for making assessment u/s153C for 'relevant AY' as per 'fourth proviso' to section 153A(1) read with 'Expln-2'; in absence of this, assessment made u/s153C would be invalid & is liable to be quashed; relied on Goldstone Cements Ltd (2023) (Gau HC); Fortune Vanijya (P) Ltd (2023) (Gau HC)."*

40. In the appeal of the assessee bearing ITA No.111/Nag/ 2024, for the assessment year 2012-13 along with following additional ground of appeal has been raised:–

*Ground no.2*
*"On the facts & circumstances of the case and in law, assessment made u/s153C is invalid as without having jurisdiction to issue notice u/s153C, as the reason for issuing notice u/s153C does not come within the purview of 4th proviso to section 153A(1) sets out certain further conditions which is required to be fulfilled before issuing notice u/s153C, more so, reason for escaped income of Rs.22,46,300 is below the limit of Rs.50 lakhs; in absence of valid assumption of jurisdiction u/s153C, assessment made u/s143(3) rws.153C would be invalid & is liable to be quashed."*

*Additional Ground no.2*
*"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY12-13, i.e., 'relevant AY' as per section 153A(1) as amended by FA, 2017 (wef.1-4-17); addition made on unexplained cash credits u/s68 of Rs.22,46,300; the AO has not made any addition on undisclosed 'asset' which is sine qua non/ pre-condition for assuming valid jurisdiction for making assessment u/s153C for 'relevant AY' as per 'fourth proviso' to section 153A(1) read with 'Expln-2'; in absence of this, assessment made u/s153C would be invalid & is liable to be quashed; relied on Goldstone Cements Ltd (2023) (Gau HC); Fortune Vanijya (P) Ltd (2023) (Gau HC)."*

41. In the appeal of the assessee bearing ITA No.112/Nag./2024, for the assessment year 2013-14 following additional ground of appeal has been raised:

*Additional Ground no.1*
*"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY13-14 is invalid; it is 'relevant AY' as per section 153A(1); alleged documents/ information found in searched premises, which is in possession of the AO, does not constitute 'asset' as per fourth proviso to section 153A(1) which is sine qua non for issuing notice u/s153C for the 'relevant AY'; in absence of a valid assumption of jurisdiction u/s153C for the 'relevant AY', assessment made u/s153C would be invalid & is liable to be quashed."*

*Additional Ground No.2*
*"On the facts & circumstances of the case and in law, assessment made u/s153C dt.31-3-22 for AY13-14, i.e., 'relevant AY' as per section 153A(1) as amended by FA, 2017 (wef.1-4-17); addition made on unexplained cash credits u/s68 of Rs.1,65,00,000; the AO has not made any addition on undisclosed 'asset' which is sine qua non/ pre-condition for assuming valid jurisdiction for making assessment u/s153C for 'relevant AY' as per 'fourth proviso' to section 153A(1) read with 'Expln-2'; in absence of this, assessment made u/s153C would be invalid & is liable to be quashed; relied on Goldstone Cements Ltd (2023) (Gau HC); Fortune Vanijya (P) Ltd. (2023) (Gau HC)."*

42. The learned A.R. for the assessee submitted that the alleged documents found in the searched premises of Shri Sresh Agrawal, Kolkata, which has been transmitted to the Assessing Officer of the assessee-Company, does not constitute asset as defined in the fourth proviso to section 153A(1) and Explanation-2 to section 153A, which is sine qua non for issuing notice under section 153C for the 'relevant AY/ AYs' of section 153A(1) as amended by the

Finance Act, 2017 (w.e.f. 01/04/2017); assessment made under section 153C dated 31/03/2022 for the assessment year 2009-10 to 2013-14, which is 'relevant AY/ AYs' as per section 153A(1) as amended by the Finance Act, 2017 (w.e.f. 01/04/2017) and additions have been made on account of unexplained loans and advances, share capital/share application money as unexplained cash credits under section 68 and the Assessing Officer has not made any addition on undisclosed asset which is sine qua non/pre-condition for assuming valid jurisdiction for making assessment under section 153C for the 'relevant AY/ AYs' as per 'fourth proviso' to section 153A(1) r/w Explanation-2 to section 153A as amended by the Finance Act, 2017 (w.e.f. 01/04/2017), the addition on account of unexplained cash credit could not have been made by the Assessing Officer, unless he first made the addition of undisclosed asset; as the Assessing Officer has not made any addition on account of undisclosed asset. There was no jurisdictional fact in the hands of the Assessing Officer or in his possession when he assumed jurisdiction under section 153C for the assessment year 2009-10 to 2013-14 in the first place itself. When the very usurpation of jurisdiction under section 153C is bad in law for want of jurisdiction, the Assessing Officer would be precluded from making any other addition in the relevant AY/ AYs, the action fo the Assessing Officer in making addition under section 68 in the relevant AY/ AYs would be invalid for want of jurisdiction. In support of these arguments, he relied on the judgments of the Hon'ble Gauhati High Court in Fortune Vanijya (P) Ltd., [2023] 156 taxmann.com 191 (Gau.) and Goldstone Cements Ltd. [2023] 156 taxmann. com 529 (Gau.).

43. Per–contra, the learned Departmental Representative supported the assessment order passed by the Assessing Officer.

44. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record and the paper book filed before us along with supporting case laws. We are in agreement with the learned A.R. for the assessee that in the issue in hand, it is very clear that only if any of the specified 'asset/s' as defined in Explanation-2 is unearthed during the course of search and the acquisition of such an asset being

unexplained or undisclosed, which is valued ₹ 50 lakh or more (in aggregate) that the Assessing Officer can be said to be in possession of the jurisdictional fact to initiate proceedings under section 153A for the relevant AY/ AYs i.e., extended period beyond the period of 6 years i.e., assessment year 2009-10 to 2013-14. Since in this case, the deemed date of search is construed as 21/01/2021 and the search year is considered as assessment year 2021–22, therefore, 6 years will end on up to assessment year 2015-16, and therefore, beyond the assessment year 2015-16, it would be considered as relevant AY/AYs for this purpose, and thus, the assessment year 2009-10 to 2013-14 would be considered as relevant AY/ AYs.

45. For the sake of argument, now let us assume that the Assessing Officer had validly invoked the jurisdiction under section 153C for extended period of relevant AY/AYs (i.e., in this case A.Y. 2009-10 to 2013-14), then, in such an event, it has to be borne in mind that firstly, the Assessing Officer had to make addition in respect of the purported undisclosed asset valued at ₹ 50 lakh or more (in aggregate) and only thereafter the Assessing Officer can venture to make any other additions/disallowance which are not in the nature and character of *'Asset'* but represents undisclosed/ unexplained income / expenditure / credit etc.

46. Perusal of the assessment order impugned before us, shows that that Assessing Officer did not make any addition/s in respect of escaped/ undisclosed asset in the relevant assessment year 2009-10 to 2013-14.

47. We, therefore, find ourselves in agreement with the contention of the learned A.R. for the assessee that unless the Assessing Officer made addition of ₹ 50 lakh or more (in aggregate) in relation to the escaped / undisclosed asset, he could not assume jurisdiction to make addition on other items (viz. liabilities like credit entry, etc.) for the reason that, because in such a scenario, it bellies the claim of the Assessing Officer in issuing notice under section 153C / 153A, the Assessing Officer is in possession of the jurisdictional fact i.e., undisclosed asset valued ₹ 50 lakh or more has escaped assessment, which constitutes the key to open the lock and then re-

assess the income of the assessee for the extended period of relevant AY / AYs; It is therefore, incumbent upon the Assessing Officer to show that the key used for opening the lock for the concluded the extended period of relevant AY / AYs is the most appropriate key to unlock and thereby reopen the proceedings for bringing to charge any other items of escaped / unexplained income unearthed in the course of search. However in a case where, either the assessee demonstrates that the key used by the Assessing Officer for reopening the assessment is either incorrect or where the Assessing Officer himself abandons the jurisdictional fact in the course of assessment proceedings, then as a corollary, it has to be held that the key used by the AO for opening the lock was incorrect and thereby the lock placed earlier on the concluded assessment remained unopened and, therefore, the Assessing Officer could not enter upon the arena of reassessing the income of the assessee. So, when the Assessing Officer failed to make any addition for the undisclosed asset, then it tantamount to admission that there was no jurisdictional fact present before the Assessing Officer in the first place, and the necessary corollary is that he has wrongly assumed jurisdiction under section 153C for the impugned assessment year 2009-10 to 2013-14 (i.e., the extended period of relevant AY / AYs) and therefore, Assessing Officer cannot proceed further to make other items of additions/ disallowances. In such a scenario, the Assessing Officer has no other option but to drop the assessment proceedings. He may, however, proceed again if there is any new / fresh jurisdictional fact before him, of–course, subject to limitation. For arrivintg at such conclusion by us, we rely on the judgement of the Hon'ble Bombay High Court in CIT v/s Jet Airways India Ltd., [2011] 331 ITR 236 (Bom.) and Ranbaxy Laboratories Ltd. v/s CIT, [2011] 12 taxmann.com 74 (Del.). Though these judgments were rendered in the context of reopening under section 147 of the Act, however, the ratio decidendi will apply in the facts of the present case, because, like section 147 / 148, the Assessing Officer gets the authority to assess / reassess the income of a searched person or other person under section 153A / 153C of the Act for the extended AY / AYs (beyond the period of 6 assessment years) only if he has in his possession the jurisdictional fact, as discussed in the forgoing paragraphs. If

the Assessing Officer is found to have assumed jurisdiction erroneously on mistaken belief about the existence of jurisdictional fact or ultimately drops it (after making enquiries in the course of assessment) while framing the reassessment order, then the Assessing Officer cannot legally proceed further with the assessment/ reassessment and/ or make any other items of additions / disallowances, because the jurisdictional fact on the strength of which he assumed section 153C jurisdiction is absent or not in existence. In the light of the aforesaid discussion and in our considered opinion, this plea of learned A.R. for the assessee is well founded and deserves to be accepted. In view of the above and on a perusal of the impugned assessment order, we note that the only addition made by the Assessing Officer in the assessment year 2009–10 to 2013-14 was on account of unexplained cash credit represented by loans and advances and share capital / share application monies under section 68 of the Act are as under:–

| *A.Y.* | *Addition made by the Assessing Officer* |
|---|---|
| *09-10* | *Addition made by AO of Rs.60,00,000 on the count of loans/ advances treating it as unexplained cash credits u/s68* |
| *10-11* | *Addition made by AO of Rs.4,43,55,00,000 on the count of loans/ advance treating it as unexplained cash credits u/s68* |
| *11-12* | *Addition made by AO of Rs.32,46,300 on the count of loans/ advances treating it as unexplained cash credits u/s68* |
| *12-13* | *Addition made by AO of Rs.22,46,300 on the count of loans/ advances treating it as unexplained cash credits u/s68* |
| *13-14* | *Addition made by AO of Rs.1,30,00,000 on the count of share capital/ share application money treating it as unexplained cash credits u/s68 & Rs.35,00,000 on the count of loans/ advances treating it as unexplained cash credits u/s68* |

48. As noted above, the additions on account of unexplained cash credit and that too share capital / unsecured loans & advances, which is in the nature of liability could not have been made by Assessing Officer unless he first made an addition of undisclosed asset valued at ₹ 50 lakh or more, in aggregate for relevant AY / AYs. So in the present case, as there was no addition made by the Assessing Officer on account of undisclosed asset, we can safely infer that there was no jurisdictional fact in the hands of the Assessing Officer or in his possession when he assumed jurisdiction under section 153C for the assessment year 2009-10 to 2013-14 in the first place itself.

49. In this case, as there was no addition made by the Assessing Officer on account of undisclosed assets, ex consequenti, an inference deserves to be drawn that there was no 'jurisdictional fact' for the Assessing Officer to assume jurisdiction under section 153C for the assessment year 2009-10 to 2013-14. The usurpation of jurisdiction under section 153C is bad in law, for want of jurisdiction as the Assessing Officer was precluded from making any other addition in the assessments yeaer 2009-10 to 2013-14. Therefore, the action of the Assessing Officer in making addition under section 68 for the relevant assessment year 2009-10 to 2013-14 is untenable in the eyes of law. For coming to such conclusion, we rely on the following case laws:–

*i)* ***CIT v. Fortune Vanijya (P) Ltd.*** *[2023] 156 taxmann.com 191 (Gau.) wherein the Court concluded as under:–*

> *"19. As a consequence, we have no hesitation in holding that the AO did not have in his charge, any "Jurisdictional fact "(on or prior to 5-12-19) to invoke and issue notice u/s153C to the assessee. The extended jurisdiction to invoke/assess 7th to 10th AY is conferred on the AO by authority of law and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact. It is imperative that before issuance of notice u/s153C (for the extended period) the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in possession qua the assessee for AY11-12 valued at Rs. 50 lacs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s153A for 7th to 10th AY. At the cost of repetition, it is pertinent to mention that the assessee had disclosed the sale transactions and liquidation of shares in his regular books of accounts and the liquidation of shares were received in bank. Thus the aforementioned assets cannot be termed as undisclosed assets. It has been appositely concluded in the concurrent decisions of the CITA and ITAT that it cannot be held that the allegedly undisclosed assets have escaped assessment.*
>
> *20. It has emerged from the foregoing discussions that the addition made by the AO in AY11-12 was on account of unexplained 'cash credit' represented by sale proceeds of Rs.9,63,00,000 u/s68. The additions on account of unexplained 'cash credit', could not have been made by the AO, unless he initially made an addition of undisclosed 'asset' valued at Rs. 50 lacs or more. In this case, as there was no addition made by the AO on account of undisclosed assets, ex consequenti, an inference deserves to be drawn that there was no 'jurisdictional fact' for the AO to assume jurisdiction u/s153C for AY11-12. The usurpation of jurisdiction u/s153C is bad in law, for want of jurisdiction as the AO was precluded from making any other addition in the assessment for AY11-12. Therefore, the AO's action of addition u/s68 for the relevant AY11-12 is untenable in the eyes of law."*

*ii)* ***CIT v. Goldstone Cements Ltd.*** *[2023] 156 taxmann.com 529 (Gau.) wherein the Court concluded that-*

*"8. While considering the appeals and the COs, the ld Trib framed pertinent ques for adjudicating the appeals. The Que No.(A), formulated by the ITAT, reads as below:-*

*"(A) Whether, AO had validly assumed jurisdiction to issue notice u/s153A upon the assessee for AY11-12 in terms of fourth proviso to section 153A read with Explanation-2?"*
*After discussing the material available on record, considering the submissions advanced on behalf of the revenue and the assessee, the ld Trib recorded the following findings on the above question:-*
*"8.22. From our discussion it is clear that, only if any of specified 'asset/s' as defined in Expl.-2 is unearthed during the course of search and the acquisition of such an 'asset' being unexplained or undisclosed, which is valued Rs.50 lakhs or more, that the AO can be said to be in possession of the jurisdictional fact to initiate proceedings u/s153A for 7th-10th AY (AY11-12, in the instant case). Now, to understand the alternate gr.of argument of Shri Dudhwewala, let us for the sake of argument, assume that the AO had validly invoked the jurisdiction u/s153A for AY11-12.Then in such an event, it has to be borne in mind that, first the AO had to make addition in respect of the purported undisclosed asset valued at Rs.50 lakhs or more; and only thereafter the AO can venture to make any other additions/ disallowance which are not in the nature & character of 'Asset' but represents undisclosed/ unexplained income/ expenditure/credit etc. Perusal of the assessment order impugned before us, shows that that AO did not make any addition/s in respect of escaped/ undisclosed asset in the relevant AY11-12. We therefore, find ourselves in agreement with Shri Dudhwe that, unless the AO made addition/s of Rs.50 lakhs or more in relation to escaped/ undisclosed asset, he could not assume jurisdiction to make addition/s on other items (viz. liabilities like credit entry etc.) The reason is simple, because in such a scenario, it bellies the claim of the AO in issuing notice u/s153A, that he is in possession of the jurisdictional fact i.e., undisclosed asset valued Rs.50 lakhs or more has escaped assessment, which constitutes the key to open the lock and then re-assess the income of the assessee for the 7th to 10th AY. It is therefore, incumbent upon the AO to show that the key used for opening the lock for the concluded 7th to 10th AY is the most appropriate key to unlock and thereby reopen the proceedings for bringing to charge any other items of escaped/unexplained income unearthed in the course of search. However in a case where, either the assessee demonstrates that the key used by the AO for reopening the assessment is either incorrect or where the AO himself abandons the jurisdictional fact in the course of assessment proceedings, then as a corollary, it has to be held that the key used by the AO for opening the lock was incorrect and thereby the lock placed earlier on the concluded assessment remained unopened and therefore, the AO could not enter upon the arena of reassessing the income of the assessee. So, when the AO fails to make any addition for the 'undisclosed asset', then it tantamount to admission that there was no jurisdictional fact present before the AO in the first place, and the necessary corollary is that he has wrongly assumed jurisdiction u/s153A for AY11-12 and therefore, AO cannot proceed further to make other items of additions/ disallowances. In such a scenario, the AO has no other option but to drop the assessment proceedings. He may however proceed again, if there is any new/ fresh jurisdictional fact before him, of course, subject to limitation. For this conclusion of ours, we rely on Jet Airways & Ranbaxy Laboratories Ltd. Though these judgments were rendered in the context of reopening u/s147, however the ratio decidendi will apply in the present case, because, like sec147/148, the AO gets the authority to assess/ reassess the income of a searched person or other person u/s153A/ 153C for the extended AYs (7th to 10th AYs) only if he has in his possession the jurisdictional fact, as discussed. If the AO is found to have assumed jurisdiction erroneously on mistaken belief about the existence of jurisdictional fact or ultimately drops it (after making enquiries in the course*

> *of assessment) while framing the reassessment order; then the AO cannot legally proceed further with the assessment/ reassessment and/or make any other items of additions/ disallowances, because the jurisdictional fact on the strength of which he assumed sec 153A jurisdiction is absent or not in existence. In the light of the aforesaid discussion, and in our considered opinion, this alternate plea of Shri Dudhwewala is well founded and deserves to be accepted.*
> *8.23. In view of the above and on perusal of the impugned re-assessment order, we note that the only addition made by the AO in AY11-12 was on account of unexplained cash credit represented by share application monies of Rs. 5,38,35,000 u/s68. According to the AO, the source of source of the monies received from shareholder, M/s Hari Trafin P Ltd was not properly explained, and therefore the same was added as unexplained cash credit u/s68. As noted above, the additions on account of unexplained cash credit and that too share capital, which is in the nature of 'liability' could not have been made by AO, unless he first made an addition of undisclosed 'asset' valued at Rs.50 lakhs or more. So in this case, as there was no addition made by AO on account of undisclosed asset, we can safely infer that there was no jurisdictional fact in the AO's hand or in his possession when he assumed jurisdiction u/s153A for AY11-12 in the first place itself. As, the very usurpation of jurisdiction u/s153A is found to be bad in law for want of jurisdiction, the AO was precluded from making any other addition in the assessment for AY11-12. Hence, the AO's action of making addition u/s68 in the relevant AY11-12 is held to be unsustainable for want of jurisdiction and is therefore, is quashed. The assessee thus succeeds on this ground raised in the cross objections and the same is allowed."*

50. In our opinion, as the very usurpation of jurisdiction under section 153C is found to be bad in law for want of jurisdiction, the Assessing Officer was precluded from making any other addition in the assessments made for the assessment year 2009-10 to 2013-14. Hence, the action of the Assessing Officer in making addition under section 68 in the relevant assessment year 2009-10 to 2013-14 is held to be unsustainable for want of jurisdiction and is, therefore, it is invalied and bad- in law. Therefore, in view of the aforesaid discussions, we hold that the Assessing Officer's action of making addition under section 68 of the Act for the relevant assessment year 2009-10 to 2013-14 is untenable in the eyes of law and it is hereby quashed. Thus, it is concluded as under:–

(a) ITA No.108/Nag./2024, A.Y. 2009-10, Ground no.2 and Additional Ground No.2 is allowed.

(b) ITA No.109/Nag./2024, A.Y. 2010-11, Ground no.2 and Additional Ground no.2, is allowed.

(c) ITA No.110/Nag./2024, A.Y. 2011-12, Ground no.2 and Additional Ground no.2, is allowed.

(d) ITA No.111/Nag./2024, A.Y. 2012-13, Ground no.2 and Additional Ground no.2, is allowed.

(e) ITA No.112/Nag./2024, A.Y. 2013-14, Additional Ground no.1 & 2 are allowed.

51. Now we deal with the issue on account of approval granted on 31/03/2022, under section 153D of the Act by the Addl. CIT, Central Range–1, Nagpur, for making assessment under section 153C of the Act for the assessment year 2009–10 to 2013–14, being invalid, without application of mind, stereo typed in a routine and mechanical manner. This issue involved in the following appeals:–

**ITA no.108/Nag./2024**
**A.Y. 2009-10**

**ITA no.109/Nag./2024**
**A.Y. 2010-11**

**ITA no.110/Nag./2024**
**A.Y. 2011-12**

**ITA no.111/Nag./2024**
**for A.Y. 2012-13 and**

**ITA no.112/Nag./2024**
**A.Y. 2013-14**

52. The common ground no.4, raised by the assessee in the assessment year 2009–10 to 2012–13 and similarly the same issue is raised in ground no.3, for the assessment year 2013–14 and the same is reproduced herein below:–

> *"4. On the facts & circumstances of the case and in law, approval granted u/s153D dt.31-3- 22 is invalid as it is granted on the same day itself on the basis of letter dt.31-3-22 (i.e., same day) by the AO i.e., DCIT, Central Circle-1(1), Nagpur, approval is in mechanical & routine manner without application of mind by AddI.CIT, merely a formality, an empty ritual; in absence of a valid approval as mandated by law u/s153D, search assessment made u/s144 rws.153C would be invalid and is liable to be quashed."*

53. Insofar as the facts of the issue in hand for our adjudication is concerned, during the course of hearing, the learned A.R. argued that a separate approval dated 31/03/2022, granted under section 153D of the Act for each assessment year i.e., A.Y. 2009-10 to 2013-14 are individually invalid, as it is granted on the same day itself i.e., on 31/03/2022 on the basis of letter dated 31/03/2022, issued by the Assessing Officer for seeking approval from the Addl. CIT, though it is separate approval for each year, but

it is stereo-typed, copy–paste approval, which is also in a mechanical & routine manner without application of mind by the Addl. CIT. Moreso, without even considering the facts of the case; without pointing out the mistake / error committed by the Assessing Officer in the impugned draft assessment orders put up before the Addl. CIT for seeking separate approval for assessment year 2009–10 to 2013–14.

54. Thereafter, on the same day itself, i.e., on 31/03/2022, the Addl. CIT has granted separate approval dated 31/03/2022, under section 153D of the Act for each assessment year i.e., 2009–10 to 2013–14. The approval under section 153D dated 31/03/2022, so granted by the Addl. CIT, is reproduced herein below:–

*"F.No.Addl. CIT/CR–1/NGP/153D/2021–22* *Date: 31.03.2022*
*To,*
*The Deputy Commissioner of Income Tax*
*Central Circle–1(1), Nagpur*

*Sub: Approval U/s 153D of I.T. Act in the case of M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd., PAN:AAECM9298D for A.Y. 2011–12 reg.*
*Ref: Letter F. no.DCIT CC–1(1)/Approval U/S 153D/MCBIPL/2021–22, dated 31.03.2022.*

*2. I have perused the draft assessment order submitted by you in the case M/s. Maheshwari Coal Benfication & Infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2011–12 vide above referred letter. Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the assessment order u/s 143(3) r.w.s. 153C of the IT Act, 1961 for A.Y. 2011–12 in respect of the following case:–*

| *Sr. no.* | *Name of the Assessee* | *Section* | *A.Y.* |
|---|---|---|---|
| *1.* | *M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. PAN: AAECM9298D* | *U/s 143(3) r.w.s. 153C of the I.T. Act, 1961* | *2011–12* |

*Sd/–*
*(MILIND V. PATIL)*
*Addl. Commissioner of Income Tax*
*Central Range–1, Nagpur"*

*"F.No.Addl. CIT/CR–1/NGP/153D/2021–22* *Date: 31.03.2022*
*To,*
*The Deputy Commissioner of Income Tax*
*Central Circle–1(1), Nagpur*

*Sub: Approval U/s 153D of I.T. Act in the case of M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd., PAN:AAECM9298D for A.Y. 2012–13 reg.*
*Ref: Letter F. no.DCIT CC–1(1)/Approval U/S 153D/MCBIPL/2021–22, dated 31.03.2022.*

*2. I have perused the draft assessment order submitted by you in the case M/s. Maheshwari Coal Benfication & Infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2012–13 vide above referred letter. Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the assessment order u/s 143(3) r.w.s. 153C of the IT Act, 1961 for A.Y. 2012–13 in respect of the following case:–*

| *Sr. no.* | *Name of the Assessee* | *Section* | *A.Y.* |
|---|---|---|---|
| *1.* | *M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. PAN: AAECM9298D* | *U/s 143(3) r.w.s. 153C of the I.T. Act, 1961* | *2012–13* |

*Sd/–*
*(MILIND V. PATIL)*
*Addl. Commissioner of Income Tax*
*Central Range–1, Nagpur"*

*"F.No.Addl. CIT/CR–1/NGP/153D/2021–22* *Date: 31.03.2022*
*To,*
*The Deputy Commissioner of Income Tax*
*Central Circle–1(1), Nagpur*

*Sub: Approval U/s 153D of I.T. Act in the case of M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd., PAN:AAECM9298D for A.Y. 2013–14 reg.*
*Ref: Letter F. no.DCIT CC–1(1)/Approval U/S 153D/MCBIPL/2021–22, dated 31.03.2022.*

*2. I have perused the draft assessment order submitted by you in the case M/s. Maheshwari Coal Benfication & Infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2013–14 vide above referred letter. Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the assessment order u/s 143(3) r.w.s. 153C of the IT Act, 1961 for A.Y. 2013–14 in respect of the following case:–*

| *Sr. no.* | *Name of the Assessee* | *Section* | *A.Y.* |
|---|---|---|---|
| *1.* | *M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. PAN: AAECM9298D* | *U/s 143(3) r.w.s. 153C of the I.T. Act, 1961* | *2013–14* |

*Sd/–*
*(MILIND V. PATIL)*
*Addl. Commissioner of Income Tax*
*Central Range–1, Nagpur"*

55. The learned A.R. for the assessee further argued that the separate approval dated 31/03/2022, granted under section 153D for each assessment year separately for assessment year 2009-10 to 2013-14 are invalid, as it is granted on the same day itself on 31/03/2022 on the basis of letter dated 31/03/2022 by the Assessing Officer for seeking approval from the Addl. CIT, though it is separate approval for each assessment year, but it is stereo-type/

copy-paste approval for all the 5 years which is granted in mechanical / routine manner without application of mind by the Addl. CIT, without even perusing the facts of the case and without even perusing assessment record of the case; without pointing out the glaring mistakes / error committed by the Assessing Officer in the draft assessment order put up before him for seeking approval, which is enumerated as under:–

a) Issue of *"time barred by limitation"* has not been cared by Addl. CIT:

The assessment for the assessment year 2009-10 to 2013-14, has been assessed under section 153C of the Act. A search under section 132 of the Act was conducted on 22/01/2019, upon the searched person i.e., M/s. RKTC Group, Korba, Shri Suresh Agrawal, Kolkata, Director of M/s.Rashi Steel & Power P. Ltd, Kolkata. The Addl. CIT has not cared that the amended provisions of law under section 153A / 153C by the Finance Act, 2017 (w.e.f. 01/04/2017) would only be applicable in this case, since the search under section 132 has been conducted upon the searched person on 22/01/2019. The amended section 153A / 153C w.e.f. 01/04/2017 has been completely ignored by the Addl. CIT while granting such mechanical approval in routine manner on the same day itself (i.e., 31/03/2022) without even perusing / reading / verifying the assessment records / files of the assessee. The Addl. CIT has not even perused/ read / verified the assessment records / files that whether there was satisfaction note recorded by the Assessing Officer of the searched person was available or not in the assessment records, before transmitting the documents to the Assessing Officer of the non-searched person, which is sine qua non for initiating and framing assessment under section 153C. The Addl. CIT has not even verified that there are two different Assessing Officers are involved i.e., one is the DCIT, Central Circle-1, Raipur and second one is the DCIT, Central Circle-1(1), Nagpur, and it is sine qua non for assuming jurisdiction. It is mandatory to record satisfaction note by the Assessing Officer of the searched person (i.e., DCIT, Central Circle-1, Raipur) before transmitting the documents / records / information to the Assessing Officer of the assessee-Company i.e., non-searched person (i.e.,

DCIT, Central Circle-1, Nagpur). The Addl.CIT has not even perused the assessment records / files wherein date of transmitting the documents is 21/01/2021 and not applied his mind to the fact that it would be deemed date of search and therefore, on his part, the Addl. CIT has not pointed out the glaring mistake of the Assessing Officer for computation of block period of 10 assessment years as per Explanation–1 to section 153A by the Finance Act, 2017 (w.e.f. 01/04/2017) which is a jurisdictional fact / pre-condition / sine qua non for usurping / assuming jurisdiction under section 153C for the assessment year 2009–10 to 2011–12 (i.e., 3 consecutive years) and for issuing notice under section 153C for assessment year 2009-10 to 2011–12. The learned A.R. further argued that the Addl. CIT has not cared that in absence of this jurisdictional fact, whole proceedings for the assessment year 2009–10 to 2011–12 would be vitiated amd to be held as invalid, bad in law, and therefore, there would be futile exercise to give his mechanical approval dated 31/03/2022 under section 153D. Approval granted on the same day itself (i.e., letter seeking approval on 31/03/2022 by the Assessing Officer to Addl .CIT), itself proves that Addl. CIT has not even perused the assessment records and not even read the draft assessment order. For computation of 10 assessment years from the search year, the documents have been transferred on 21/01/2021 and thus, search year would be the assessment year 2021–22 for the assessee under section 153C, as the first year and the tenth year would be assessment year 2012–13 and thus the assessment year 2009–10 to 2011–12 would be clearly beyond the block of 10 assessment years. Had the Addl. CIT applied his mind on these vital facts of the case, he would have certainly not give approval under section 153D for the assessment year 2009–10 to 2011–12. Had there been application of mind, he would not have approved the draft assessment order for the assessment year 2009–10 to 2011–12, which is time barred as per Explanation-1 to section 153A of the Act by the Finance Act, 2017 (w.e.f. 01/04/2017). The Addl. CIT has not cared that the assessment made under section 153C on 31/03/2022 for the assessment year 2009-10 to 2011-12, is time barred as per first proviso to section 153C. The date of search shall be the date of receiving the documents / material by the Assessing Officer of the assessee. The date of receipt of the

documents is 21/01/2021 and this date shall be considered as the date of search and thus the assessment year 2009-10 to 2011-12 would be beyond the block of 10 assessment years as per Explanation–1 to section 153A. The learned A.R. further argued that the assessment made under section 153C for the assessment year 2009-10 to 2011-12 is time barred, as there is a complete violation of first proviso to section 153C and there is also violation of Explanation-1 to section 153A, which is not cared by Addl. CIT.

b) Issue of 'relevant AY/AYs' for the assessment year 2009–10 to 2013–14; Explanation-1 to section 153A(1) of the Act; fourth proviso to section 153A(1) & Explanation-2 of the fourth proviso, has not been cared by Addl.CIT:

The learned A.R. contended that the assessment year 2009–10 to 2013-14 comes under *'relevant AY/ AYs'* as per provisions of Explanation-1 to section 153A(1) and the Addl.CIT has not cared that the documents found in searched premises (i.e., Suresh Agrawal, Kolkata) has been transferred to the Assessing Officer of the assessee-Company on 21/01/2021, which is in possession of the Assessing Officer of the assessee-Company, does not constitute *'asset'* as per fourth proviso to section 153A(1) and Explanation-2 of the fourth proviso which is sine qua non for issuing notice under section 153C for the *'relevant AY/ AYs'*. There is a violation of fourth proviso to section 153A(1). It is not cared by the Addl .CIT while granting such mechanical approval. The learned A.R. further argued that the Addl.CIT has also not cared that the Assessing Officer has not made any addition on account of undisclosed assets in the assessment year 2009–10 to 2013–14, which comes to the *'relevant AY/ AYs'* as per Explanation-1 to section 153A(1) and it is mandatory to make first addition on account of undisclosed assets, then only, he would be empowered to make any other addition on certain independent issue of unexplained cash credits under section 68 of the Act. This fact has not been cared by the Addl. CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2009–10 to 2013–14.

c) <u>The Addl. CIT has not cared that the Assessing Officer has made addition under section 68 of the Act when there is no credits appearing in the books of account and when there is also opening balance appearing which was brought forward from preceding years</u>

The learned A.R. for the assessee argued that in the draft assessment order for assessment year 2009–10 to 2013–14, the Assessing Officer has made addition on account of unexplained cash credits under section 68 while there is no such credit entry appearing / recorded / found credited in the books of account of the assessee-Company in the assessment year 2009–10 to 2013-14, which is sine qua non for applying section 68 which is absent in these cases and the Addl. CIT has not cared while granting such mechanical approval on 31/03/2022. Similarly, in the draft assessment order for assessment year 2013-14, the Assessing Officer has made addition of ₹ 35 lakh on account of unexplained cash credits under section 68 of the Act while it is an opening balance of ₹ 35 lakh as on 01/04/2012 which was brought forward from preceding year and thus, it is unsustainable in the eyes of law, as there is no fresh credits appearing in the books of account which also goes against the provisions laid down under section 68 of the Act. The Addl.CIT also did not care to note while granting such mechanical approval on 31/03/2022 for assessment year 2013-14.

56. The learned A.R. for the assessee submitted that though, there is separate approval for each year is granted, but it is stereo-type approval in same manner, in same fashion, in mechanical manner, merely on formality for all the 5 years i.e., the assessment year 2009-10 to 2013-14 separately. The Addl. CIT has not even recorded any single word of his own satisfaction in the approval order passed under section 153D. The learned A.R. submitted that it is an simpliciter approval merely for formality, however, he has recorded in the approval dated 31/03/2022, granted under section 153D that he perused the draft assessment order, but he has not pointed out the defect / discrepancies / inconsistencies in the draft assessment order and he has not even recorded that he perused the assessment records / files for the impugned years involved therein. The learned A.R. further submitted that the

Addl CIT has not perused/verified the assessment files / records with regard to opening balances of loan accounts which are added by the Assessing Officer under section 68 which is invalid as per mandate of section 68, as only fresh credits during the year concerned are liable to be assessed under section 68. The learned A.R., in support of his arguments, relied upon the following case laws:

*i) PCIT v. MDLR Hotels P Ltd (2024) 166 taxmann.com 327 (Del HC);*
*ii) PCIT v. Anuj Bansal (2024) 165 taxmann.com 2 (Del HC);*
*iii) PCIT v. Subash Dabas (2024) (Del HC) dt.17-5-24; ITA No.243/2023 & CNAPPL.20652/ 2023*
*iv) PCIT v. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Del HC);*
*v) ACIT v. Serajuddin & Co (2023) 150 taxmann.com 146 (Ori HC);*
*vi) SVP Southwest Industries Ltd v. DCIT (2024) (Mum-Trib) dt.30-4-24; ITA No.1275/ Mum/ 2022;*
*vii) SMW Ispat (P) Ltd v. ACIT (2024) 163 taxmann.com 119 (Pune-Trib);*
*viii) Subhash Bhawnani v. DCIT (2023) 37 NYPTTJ 807 (Indore-Trib) dt.25-5-23, ITA No.38 to 40/Ind/ 2020;*
*ix) Mysore Finlease P Ltd. (2024) (Del-Trib) dt.10-1-24, ITA No.8821/Del/ 2019 11-12;*
*x) Inder International v. ACIT (2021) 213 TTJ 251 (Chd-Trib) dt.7-6-21, ITA No.1573/Chd/ 2018;*
*xi) Arch Pharmalabs Ltd v. ACIT (2021) (Mum-Trib) dt.7-4-21, ITA No.3752, 7597/Mum /2012; and*
*xii) Sanjay Duggal v. ACIT (2021) (Del-Trib) dt.19-1-21, ITA No.1813/Del/ 2019.*

57. The learned Departmental Representative vehemently supporting the impugned order passed the Assessing Officer submitted that the separate approval dated 21/03/2022, granted under section 153D of the Act by the Addl. CIT for the assessment year 2009–10 to 2013–14 is a valid approval after due application of mind by the Addl. CIT which was after considering all the facts and material available on record and the approval so granted by the Addl. CIT is in accordance with law.

58. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record which consist of Paper Book furnished by the learned A.R. and gone through the case laws relied upon. We find that the Addl.CIT has granted approval under section 153D for making assessment under section 153C for the assessment year 2009-10 to 2013-14 separately for each assessment year. The respective

approval so granted under section 153D of the Act for each assessment year has been reproduced above.

59. From perusal of the approval granted under section 153D of the Act dated 31/03/2022, cited supra, it emerges that it is granted on the same day itself on 31/03/2022 on the basis of letter dated 31/03/2022 by the Assessing Officer for seeking approval, though it is separate approval for each year but it is stereo-type approval, in mechanical & routine manner, though it is recorded that he has perused the draft assessment order but he has not pointed out the mistake / error committed by the Assessing Officer in the alleged draft order i.e., for example –

(a) The issue of *"time barred by limitation"* has not been cared by the Addl.CIT for the assessment year 2009-10 to 2011-12, since in this case, assessment has been made under section 153C due to search under section 132 was conducted upon a third party on 22/01/2019 and the Addl. CIT has not cared that the amended provisions of law under section 153A / 153C by the Finance Act, 2017 (wef 01/04/2017) would only be applicable in the case of the present-assessee, since search under section 132 has been conducted upon the searched person on 22/01/2019, amended section 153A/153C wef 01/04/2017 has been completely ignored by the Addl. CIT while granting such mechanical approval in routine manner/stereo type on the same day itself (i.e., 31/03/2022) without even perusing / reading / verifying the assessment records / files of the assessee, the Addl.CIT has not even seen / perused the assessment records files wherein date of transmitting the documents is 21/01/2021 and not applied his mind to the fact that it would be deemed date of search and therefore, on his part, he has not pointed out the glaring mistake of the Assessing Officer for computation of block period of 10 assessment years as per Explanation-1 to section 153A by the Finance Act, 2017 (w.e.f. 01/04/2017) which is a jurisdictional fact / pre-condition / sine qua non for usurping / assuming jurisdiction under section 153C for the assessment year 2009-10 to 2011-12 (i.e., 3 consecutive years) and for

issuing notice under section 153C for the assessment year 2009-10 to 2011-12, he has not cared that in the absence of this jurisdictional fact, the whole proceedings for the assessment year 2009-10 to 2011-12 would be vitiated and to be held as invalid, bad in law, and therefore, there would be a futile exercise to give his mechanical approval under section 153D for the assessment year 2009-10 to 2011-12. The approval granted on the same day itself (i.e., letter seeking approval on 31/03/2022 by the Assessing Officer to Addl.CIT), which itself proves that Addl. CIT has not even perused the assessment records and not even read / seen / perused the draft assessment order; for computation of 10 assessment years from the search year. The documents has been transferred on 21/01/2021 and thus, search year would be 2021-22 for the assessee under section 153C as the first year and the tenth year would be the assessment year 2012-13 and thus, the assessment year 2009-10 to 2011-12 would be clearly beyond the block of 10 assessment years. Had the Addl.CIT applied his mind on these vital facts of the case, he certainly would have not given approval under section 153D for the assessment year 2009-10 to 2011-12. Had there been application of mind, he would not have approved the draft assessment order for the assessment year 2009-10 to 2011-12 which is time barred as per Explanation-1 to section 153A by the Finance Act, 2017 (wef.01/04/2017), the Addl.CIT has not cared that the assessment made under section 153C dated 31/03/2022 for the assessment year 2009-10 to 2011-12 is time barred, as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the Assessing Officer of the assessee, the date of receipt of the documents is 21/01/2021 shall be considered the date of search for the assessee company and thus, the assessment year 2009-10 to 2011-12 would be beyond the block of 10 assessment years as per Explanation-1 to section 153A, the assessment made under section 153C for the assessment year 2009-10 to 2011-12 is time barred and there is a violation of first proviso to section 153C. There is

also violation of provisions of Explanation–1 to section 153A which is not cared by the Addl.CIT.

(b) That for the assessment year 2009–10 to 2013–14 which comes under 'relevant AY / AYs' as per Explanation-1 to sec153A(1) and Addl.CIT has not cared that documents / material i.e., ledger accounts found in searched premises (i.e., Suresh Agrawal, Kolkata) has been transferred to the Assessing Officer of the assessee-Company on 21/01/2021 by way of consolidated satisfaction note recorded by the Assessing Officer of the searched person, which is in possession of the Assessing Officer of the assessee-Company, does not constitute 'asset' as per fourth proviso to section 153A(1) and Explanation-2 of the fourth proviso which is sine qua non for issuing notice under section 153C for the 'relevant AY/ AYs', there is a violation of fourth proviso to section 153A(1), which is not cared by the Addl.CIT while granting such mechanical approval.

(c) More so, thereafter, the Addl.CIT has also not cared that the Assessing Officer has not made any addition on account of 'undisclosed assets' for the assessment year 2009–10 to 2013–14 which comes to the 'relevant AY/ AYs' as per Explanation-1 to section 153A(1) and it is mandatory to make first addition on the count of 'undisclosed assets', then only, he would be empowered to make any other addition on certain independent issue of unexplained cash credits under section 68 etc. This fact has not been cared by the Addl.CIT while granting such mechanical approval on 31/03/2022 fpr the assessment year 2009–10 to 2013–14.

(d) Further, in the draft assessment order for the assessment year 2009-10 to 2013-14, the Assessing Officer has made addition on account of unexplained cash credits under section 68 whereas, there is no such credit entry is appearing / recorded/ found credited in the books of account of the assessee-Company in the assessment years, which is sine qua non for applying section 68 which is absent in these

cases which is not cared by the Addl.CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2009-10 to 2013-14 for example, in the draft assessment order for the A.Y. 2013-14, the Assessing Officer has made addition of ₹ 35 lakh on account of unexplained cash credits under section 68, whereas, it is an opening balance of ₹ 35 lakh as on 01/04/2012 which brought forward from earlier year(s) and thus, it is unsustainable in the eyes of law as there is no fresh credits appearing in the books of account, which is against the law laid down under section 68. It is also not cared by Addl.CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2013–14.

(e) Though, there is separate approval for each year is granted, but it is stereo-typed approval in same manner, in same fashion, in mechanical manner, merely on formality for all the 5 years i.e., A.Y. 2009-10 to 2013-14 separately, he has not even recorded any single word of his own satisfaction in the approval order passed under section 153D. It is an simpliciter approval merely for formality, he has recorded in the approval granted under section 153D 31/03/2022 that he perused the 'draft assessment order' but he has not pointed out the defects / discrepancies / inconsistencies in the 'draft assessment order' as he has not verified the deemed date of search which only would be applicable for 'Non-searched person' i.e., the assessee-Company, which should have been the date of receiving the document from the Assessing Officer of the searched person, as he has not even recorded that he perused the assessment records/ files for the impugned years involved therein. He has not even verified that opening balances of loan accounts are also added by the Assessing Officer under section 68 which is invalid as per mandate of section 68, as only fresh credits during the year concerned are liable to be assessed under section 68, which is ignored by the Addl.CIT while granting such mechanical approval. He has not even cared that in the absence of required

'satisfaction note' for each year separately, entire assessment under section 153C would be vitiated.

60. In the present case before us, we noted that the Addl.CIT did not mention anything in the approval order passed under section 153D dt.31/03/2022, even though for each year separately, towards his process of deriving satisfaction so as to exhibit his due application of mind. The Addl.CIT has failed to satisfactorily record its concurrence. Even the approval granted by the Addl.CIT does not refer to any seized material/assessment records/ satisfaction note or any other documents which could suggest that the Addl.CIT has duly applied his mind before granting approvals. We noted that the Addl.CIT merely approved the letter and the relevant para is noted in above paras. We noted that the relevant para of the above approval letter (i.e., for A.Y. 2013-14) merely says that *"I have perused the draft assessment order submitted by you in the case of the assessee for AY13-14 vide above referred letter. Accordingly, an approval u/s153D is hereby accorded to pass the assessment order u/s143(3) rws.153C for AY13-14"* which clearly proves that the Addl.CIT had routinely given approval to the Assessing Officer to pass the order only on the basis of contents mentioned/ dotted lines in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. From the said approval granted on the same day itself on 31/03/2022, it can be easily inferred that the said order was approved solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order. Thus, the sanctioning authority has, in effect, abdicated his statutory functions and delightfully relegated his statutory duty to the subordinate Assessing Officer, by virtue of whose action, the Addl.CIT was supposed to supervise. The Addl.CIT, without any consideration of merits in proposed additions with reference to the satisfaction note/incriminating material collected in search etc., has proceeded to grant a simplicitor approval. This

approach of the Addl.CIT has rendered the approval to be a mere formality and cannot be considered as actual approval in law.

61. We also find that as per the scheme for framing search assessments, the Assessing Officer can pass the search assessment order under section 153A or under section 153C only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Addl.CIT in terms of section 153D. This is a mandatory requirement of law. The said approval granting proceedings by the Addl.CIT is a quasi judicial proceeding requiring application of mind by the Addl.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme, it is the bounden duty of the Assessing Officer to seek to place the draft assessment order together with copies of the satisfaction note/seized documents before the Addl.CIT well in time much before the due date of completion of search assessment. In the present case, approval under section 153D granted on the same day on 31/03/2022 on the basis of letter dated 31/03/2022 by the Assessing Officer for seeking approval, and thus, proper procedure has not been followed by the Assessing Officer as well as the Addl.CIT.

62. The Addl.CIT is supposed to examine the satisfaction note for the concerned year, seized documents, questionnaires raised by the Assessing Officer on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Assessing Officer and the conclusions drawn by the Assessing Officer vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, has to be performed by the Addl.CIT in a judicious way after due application of mind.

63. Even though, as vehemently argued by the learned Departmental Representative, the Addl.CIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and the 'Satisfaction Note'/documents received from the Assessing Officer of the searched person, still, the Addl.CIT, while granting

the approval under section 153D has to independently apply his mind dehors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Assessing Officer in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Assessing Officer and the Addl.CIT are merely guidance to the Assessing Officer and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Assessing Officer to frame the assessment after getting prior approval from Addl.CIT under section 153D. The Addl.CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions as nowhere the Act mandates so. The scheme mandates due application of mind by the Assessing Officer to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation / clarifications from the assessee on the contents of the seized documents.

64. When the scheme provides for a leeway to both the Assessing Officer as well as the Addl.CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Addl.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report/ satisfaction note, as argued by the learned D.R., has no substance.

65. In our considered opinion, if the arguments of the learned Departmental Representative are to be appreciated that the Addl.CIT need not apply his mind while granting approval of the draft assessment orders under section 153D, as it is not provided in section 153D, then it would make the entire approval proceedings contemplated under section 153D otiose. The law provides only the Assessing Officer to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Addl.CIT to grant judicious approval under section 153D to the draft assessment orders placed by the Assessing Officer.

66. We have gone through the approval granted by the Addl.CIT on 31/03/2022, the date mentioned in the table hereinabove under section

153D. The said approval letter clearly states that a letter dated 31/03/2022 was filed by the Assessing Officer before the Addl.CIT seeking approval of draft assessment order under section 153D. The Addl.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 31/03/2022 for various assessment years in the case of the assessee.

67. There is no recording of satisfaction by the Addl.CIT in the impugned approval order as to whether the assessment records/ assessment folders/ files/ seized materials or any incriminating documents or other connected documents and papers/ various statements recorded under section 132(4) and section 131(1A) of the assessee or any other person/ appraisal report of the Investigation Wing of the Department/ materials on hand with the Department at the time of initiation of search or material evidences gathered were placed for its verification and the same were duly verified and/or examined by him as mandated under section 153D. In the absence of compliance of the above mandate, the approval order dated 31/03/2022, passed under section 153D becomes an empty formality without due process of law and, thus, not sustainable. This is nothing but an approval by way of mere mechanical exercise accepting the draft assessment order without any independent application of mind by the Addl.CIT. Following case laws are relied on:–

(i) ***Sahara India (Firm) Luck v. CIT*** *(2008) 169 Taxman 328 (SC), the Hon'ble SC explained as under:*

> *"8. There is no gainsaying that recourse to the said provision cannot be had by the AO merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief CIT or the CIT in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the AO, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the sec is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief CIT or the CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the AO. The approval must reflect the application of mind to the facts of the case."*

(ii) ***Dharampal Satyapal Ltd*** *(2019) (Gau HC) Manu/GH/07070/2018 has held as under:*

*"28. 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 coexist 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."*

(iii) ***PCIT v. MDLR Hotels P Ltd*** *(2024) 166 taxmann.com 327 (Del HC) dt.30-7-24, concluded that-*

*"3. It is the aforesaid facts which appear to have constrained the Tribunal to observe as follows:*
*"13. We have given thoughtful consideration to the orders of the authorities below and have carefully perused all the relevant documentary evidences brought on record. We have also gone through each and every approval granted by the Addl.CIT, Cent-Range- 2, New Delhi vis-a-vis, each and every proposal made by the DCIT, Cent-Cir-15, New Delhi.*
*14. The issue which we have to decide is, can these approvals be treated as fulfilling the mandate of sec153D vis-a-vis legislative intent of the said sec in the statute. Sse153D reads as under:*
*16. The Legislative intent is clear from the above, in as much as, prior to the insertion of sec 153D, there was no provision for taking approval in cases of assessment and reassessment in cases where search has been conducted. Thus, the legislature wanted the assessments/ reassessments of search and seizure cases should be made with the prior approval of superior authorities which also means that the superior authorities should apply their minds on the material 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 authorities have to approve the assessment order.*
*19. Thus, the worthy Addl.CIT, Cen-Range-2, New Delhi gave approval*
*To 246 assessment order by a single approval letter u/s153D by mentioning as under:*
*"The above draft orders, as proposed, are hereby accorded approval with the direction to ensure that the orders are passed well before limitation period. Further, copies of final orders so passed be sent to this office for record."*
*20. In our considered opinion, there is no whisper of any seized material sent by the AO with his proposal requesting the approval u/s153D. All the requests for approval are exhibited at pages 123 to 135 of the Convenience Compilation.*
*21. Even the approval granted by the Addl.CIT, Cent-Range-2, New Delhi does not refer to any seized material/assessment records or any other documents which could suggest that the Addl.CIT, Cent-Range-2, New Delhi has duly applied his mind before granting approvals."*
*4. We note that dealing with an identical challenge of approval having been accorded mechanically and without due application of mind had arisen for our consideration in Pioneer Town Planners (P) Ltd [2024] 160 taxmann.com 652 (Del HC) and where we had held as follows :*
*13. The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority u/s151 for reopening of assessment proceedings as per sec148.*
*15. A plain reading of the aforesaid provision would indicate that sec151 stipulates that the PCCIT or CCIT or PCIT or CIT must be "satisfied", on the reasons recorded by the AO, that it is a fit case for the issuance of such notice. Thus, the satisfaction of the prescribed authority is a sine qua non for a valid approval as per the said Sec.*
*16. A perusal of the proforma attached as Annex-II in the instant appeal would suggest that though the ACIT has appended his signatures by writing in his hand- "Yes, I am satisfied", however, the PCIT has merely written "Yes"*

*without specifically noting his approval, while recording the satisfaction that it is a fit case for issuance of notice u/s148.*

*17. Thus, the incidental que which emanates at this juncture is whether simply penning down "Yes" would suffice requisite satisfaction as per sec151. Reference can be drawn from the decision of this Court in NC Cables Ltd, wherein, the usage of the expression "approved" was considered to be merely ritualistic and formal rather than meaningful. The relevant paragraph of the said decision reads as under:-*

*"11. Sec151 clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the ITAT cannot be disturbed."*

*18. Further, this Court in Central India Electric Supply Co Ltd [2011] has taken a view that merely rubber stamping of "Yes" would suggest that the decision was taken in a mechanical manner. Paragraph 19 of the said decision is reproduced as under:-*

*"19. In respect of the first plea, if the judgments in Chhugamal Rajpal (1971) (SC), Chanchal Kumar Chatterjee (1974) (Cal) and Govinda Choudhury and Sons (1977) (Orissa) are examined, the absence of reasons by the AO does not exist. This is so as along with the proforma, reasons set out by the AO were, in fact, given.*

*However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by an Under Secretary underneath a stamped Yes against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least which is expected is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority."*

*19. In the case of Chhugamal Rajpal, the Hon'ble SC refused to consider the affixing of signature alongwith the noting "Yes" as valid approval and had held as under:-*

*"5. --- Further the report submitted by him u/s151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice u/s148. We are also of the opinion that the CIT has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice u/s148. To Que 8 in the report which reads "whether the CIT is satisfied that it is a fit case for the issue of notice u/s148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice u/s148. The important safeguards provided in secs147 and 151 were lightly treated by the ITO as well as by the CIT. Both of them appear to have taken the the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."*

*20. This Court, while following Chhugamal Rajpal in the case of Ess Advertising (Mauritius) SNC Et Compagnie [2021] (Del HC), wherein, while granting the approval, the ACIT has written- "This is fit case for issue of notice u/s148. Approved", had held that the said approval would only amount to endorsement*

*of language used in sec 151 and would not reflect any independent application of mind. Thus, the same was considered to be flawed in law.*
*21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority u/s151 must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment u/s148. The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of sec 151 as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose.*
*22. So far as the decision relied upon the Revenue in the case of Meenakshi Overseas P Ltd is concerned, the same was a case where the satisfaction was specifically appended in the proforma in terms of the phrase- "Yes, I am satisfied". Moreover, paragraph 16 of the said decision distinguishes the approval granted using the expression "Yes" by citing Central India Electric Supply (2011) (Del HC), which has already been discussed above. The decision in the case of Experion Developers P Ltd would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval.*
*23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression "Yes" could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of "Yes" in the case of Central India Electric Supply (2011) (Del HC).*
*5. In view of the aforesaid, we find no justification to interfere with the view expressed by the Tribunal. No substantial queof law arises. The appeals fail and shall stand dismissed.*
*6. While disposing of these set of appeals, we take note of the following observations that were made in ITA 8/2024: -*
*"4. Accordingly, while we dismiss the instant appeal following the reasons assigned in the earlier case of Anuj Bansal, we leave the que pertaining to the effect and impact of sec144A as well as of the provisions contained in the Search and Seizure Manual, 2007, open to be addressed in appropriate proceedings."*
*7. In the facts of the present case and those which have come to be recorded by the Tribunal, we find that there arises no occasion for us to examine the said issue. The same be accordingly kept open to be addressed in appropriate proceedings."*

(iv) ***PCIT v. Anuj Bansal*** *(2024) 165 taxmann.com 2 (Del HC) dt.13-7-23, concluded that-*

*"7. The Tribunal has via the impugned order set aside the additions made qua the income of the asseessee inter alia, on the Gr. that there was no application of mind by the Addl.CIT in granting approval u/s153D.*
*8. To be noted, an assessment order was framed qua the asseessee u/s153A, rws.143(3).*
*9.1. The respondent had declared an income amounting to Rs.87,20,580. However, while making the additions, strangely, the AO noted that the returned income was Rs.11,00,460.*
*10. There were 2 additions made by the AO. The first addition was made qua cash deposited in the bank, amounting to Rs.15,04,35,000. The second addition was made with regard to cash introduced via an entry operator i.e., one, Mr Vipin Garg. The amount added qua this aspect was pegged at Rs.1,54,07,100.*
*11. Despite these additions, which would have taken the assessed income well beyond what was crystallised by the AO i.e., 1,65,07,560, the ACIT failed to notice the error.*

*12. This aspect was brought to the fore by the Tribunal in the impugned order. The Trib, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.*
*12.1. More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.*
*13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:*
*"17.1. However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the ld Addl.CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580. Similarly, when the total assessed income as per the AO comes to Rs.16,69,42,560, the Addl.CIT could not have approved the assessed income at Rs.1,65,07,560 had he applied his mind. The addition of Rs. 15,04,35,000 made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.*
*17.2. Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (Del Trib). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the AO seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original ROI as well as total assessed income and the Addl.CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl.CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s153D has been granted in a mechanical manner and without application of mind and thus, it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s153D. In view of the above discussion, we hold that the order passed u/s153A rws.43(3) has to be quashed, thus ordered accordingly. The Gr. raised by the Assessee is accordingly allowed".*
*14. In this appeal, we are required to examine whether any substantial que of law arises for our consideration.*
*15. Having regard to the findings returned by the Trib, which are findings of fact, in our view, no substantial que of law arises for our consideration.*
*The Tribunal was right that there was absence of application of mind by the ACIT in granting approval u/s153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to sec292B.*
*16. We are not inclined to interdict the order of the Trib."*

*(v)* ***PCIT v. Subash Dabas*** *(2024) (Del HC) dt.17-5-24; ITA No.243/2023 & CNAPPL.20652/2023, concluded that-*

*"11. Recently, in Shiv Kumar Nayyar (2024) (Del HC), we had an occasion to deal with an almost identical issue i.e., grant of approval u/s153D in a mechanical manner and without application of mind. The relevant discussion of the said decision in Para no.10 to 15, is reproduced hereunder as:-*
*"13. Reliance can also be placed upon Serajuddin and Co (Ori HC) to understand the exposition of law on the issue at hand. Para no.22 of the said decision reads as under:-*
*"22. As rightly pointed out by ld counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the*

*requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D. There are 3 or 4 requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order."*

*14. During the course of arguments, ld counsel for the assessee apprised this Court that the SLP preferred by the Revenue against Serajuddin, came to be dismissed by the SC vide order dt. 28-11-23 in SLP(C) Diary no.44989/2023.*

*15. A similar view was taken by this Court in Anuj Bansal (Del HC), whereby, it was reiterated that the exercise of powers u/s153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval u/s153D cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind."*

*12. A perusal of the discussion extracted hereinabove would lead us to safely conclude that after placing reliance on various judicial pronouncements, this Court was of the opinion that approval u/s153D cannot be accorded in a casual or mechanical manner. Rather, the said exercise involves due application of mind which must be reflected in the order of approval passed by the concerned statutory authority.*

*13. In the instant case, with respect to the inappropriate approval accorded by the relevant authority, the Tribunal has made a categorical finding, which reads as under:-*

*"36. A perusal of the approval sought by the AO shows that he has requested to grant necessary approval u/s153D for the cases completed u/s153A/143(3). A combined perusal of the approval sought by the AO, the approval given by the Addl.CIT and the copy of remand report of the AO show that there is only some namesake approval given by the Addl.CIT on the very same day on which the AO sought approval. The Addl.CIT without verifying the records has given approval in a mechanical manner. This is more so evident from the fact that the opening balance of unsecured loans of Rs.8 crores was added by the AO, which is not a small amount and the number of unsecured loan creditors are only four and not very large. We find merit in the argument of the ld counsel for the assessee that the ld Addl.CIT received draft assessment order in 35 cases and approved all cases in one go on the same day and the AO not only passed the orders on the very same day but also prepared demand notices after completion of tax calculation and penalty notices etc. which is not possible within a span of few hours."*

*37. However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the ld Addl.CIT before granting the approval. Had there been application of mind, he would not have approved the addition of Rs.8 crores in respect of M/s.Tirupati Real Tech Pvt Ltd and Rs.7 1akhs in respect of M/s.Golden Buildmart P Ltd which are opening balances and the very same amounts were added in the preceding AY. Even the AO in his remand report has also admitted the mistake that the addition of an amount of Rs.8 crores, was the opening balance and the mistake is apparent from record and needs to be rectified."*

*14. It is, therefore, discernible from the impugned order of the ITAT which reckons a categorical finding, and rightly so, that the approval u/s153D has been granted without due application of mind in the present case. Admittedly, the ITAT notes that the Addl.CIT has approved the draft assessment order without verifying the record which was made available before the said*

*authority. It is further seen that the approval in the present case was accorded on the same day when it was sent to the concerned authority. It is also noteworthy that 35 draft assessment orders were approved by the Addl.CIT in one go on the said day.*
*15. Thus, in light of the decision rendered by us in Shiv Kumar Nayyar (2024) (Del HC), it is seen that the present appeals do not raise any substantial queof law. Consequently, the appeals stand dismissed and pending application(s), if any, are disposed of.*

(vi) ***PCIT v. Shiv Kumar Nayyar*** *(2024) 163 taxmann.com 9 (Del HC) dt.15-5-24, concluded that-*

*"13. Reliance can also be placed upon Serajuddin and Co (2023) (Ori HC) to understand the exposition of law on the issue at hand. Para no.22 of the said decision reads as under:-*
*"22. As rightly pointed out by ld counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Mannual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D. There are 3 or 4 requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order."*
*14. During the course of arguments, ld counsel for the assessee apprised this Court that the SLP preferred by the Revenue against Serajuddin, came to be dismissed by the SC vide order dt. 28-11-23 in SLP(C) Diary no.44989/2023.*
*15. A similar view was taken by this Court in Anuj Bansal (Del HC), whereby, it was reiterated that the exercise of powers u/s153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval u/s153D cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.*
*16. In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-*
*"10. We have gone through the approval granted by the ld Addl.CIT on 30-12-18 u/s153D which is enclosed at page 36 of the PB of the assessee. The said letter clearly states that a letter dt.30-12-18 was filed by the ld AO before the ld Addl.CIT seeking approval of draft assessment order u/s153D. The ld Addl.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30-12-18 for 7 AYs in the case of the assessee and for 7 AYs in the case of Smt Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the PB which contains information obtained by Smt.Neetu Nayyar from Central Public Information Officer who is none other than the ld Addl.CIT, Central Range-S, New Delhi, under RTI Act, wherein, it reveals that the ld Addl.CIT had granted approval for 43 cases on 30-12-18 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the PB which contains the approval u/s153D, 14 cases pertained to*

*the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assessees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld Addl.CIT to grant judicious approval u/s153D for 43 cases on a single day is the subject matter of dispute before us. Further, sec153D provides that approval has to be granted for each of the AY whereas, in the instant case, the ld Addl.CIT has granted a single approval for all AYs put together."*
*17. Notably, the order of approval dt.30-12-20 which was produced before us by the ld counsel for the assessee clearly signifies that a single approval has been granted for AYs 11-12 to 17-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.*
*18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through judicial pronouncements discussed hereinabove, we are unable to find any substantial que of law which would merit our consideration."*

*(vii)* ***PCIT v. Dilip Construction P Ltd*** *(2023) 7 NYPCTR 892 (Ori HC) held as under:*

*"4. We find similarity in facts found in the case by the Trib. The approval does not even say the Jt.CIT had perused the files. As such, the contention sought to be raised in the appeal is covered by Serajuddin & Co (2023) (Ori HC). In the circumstances, the appeal and applications are dismissed."*

*(viii)* ***ACIT v. Serajuddin & Co*** *(2023) 150 taxmann.com 146 (Ori HC) dt.15-3-23, concluded that-*

*"16. That such an approval of a superior officer cannot be a mechanical exercise has been emphasized in several decisions. Illustratively, in the context of sec142(2A) which empowers an AO to direct a special audit. The obtaining of the prior approval was held to be mandatory. Rajesh Kumar (2007) 2 SCC 181 (SC) observed as under:*
*"58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the AO if he was found to have adopted a wrong approach or posed a wrong que unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/ or the entries made therein. While exercising its power, the AO has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief CIT or the CIT, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given."*
*17. It is therefore, not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the approval is granted mechanically, it would vitiate the assessment order itself. In Sahara India (Firm) Luck, the SC explained as under:*
*"8. There is no gainsaying that recourse to the said provision cannot be had by the AO merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief CIT or the CIT in terms of the*

*said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the AO, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the sec is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief CIT or the CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the AO. The approval must reflect the application of mind to the facts of the case."*

*18. The contention of the Revenue in those cases that the non-compliance of the said requirement does not entail civil consequences was negatived. Reiterating the view expressed in Rajesh Kumar, the SC in Sahara India (Firm) Luck held as under:*

*"29. In Rajesh Kumar (2007) 2 SCC 181 it has been held that in view of sec 136, proceedings before an AO are deemed to be judicial proceedings. Sec136, stipulates that any proceeding before an IT Authority shall be deemed to be judicial proceedings within the meaning of sec 193 and 228 of IPC, 1860 and also for the purpose of sec196 of IPC and every IT Authority is a court for the purpose of sec195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case, but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of sec136. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: Maneka Gandhi (1978) 1 SCC 248 and SL Kapoor v. Jagmohan (1980) 4 SCC 379).*

*30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order u/s142(2A) does entail civil consequences, the rule audi alteram partem is required to be observed."*

*20. The non-compliance of the requirement was held to have vitiated the notice for reopening of the assessment. Likewise, in Syfonia Tradelinks P Ltd (2021) (Del HC) the Del HC disapproved of the rubber stamping by the superior officer of the reasons furnished by the AO for issuance of the sanction.*

*22. As rightly pointed out by ld counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D.*

*There are 3 or 4 requirements that are mandated therein,*

*(i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind;*

*(ii) the final approval must be in writing;*

*(iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.*
*23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Addl.CIT seeking his approval or of the Addl.CIT having granted such approval. Interestingly, the assessment orders were passed on 30-12-10 without mentioning the above fact. These 2 orders were therefore, not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.*
*25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of sec153D and that such approval is not meant to be given mechanically.*
*The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders themselves.*

*(ix)* ***SVP Southwest Industries Ltd v. DCIT*** *(2024) (Mum-Trib) dt.30-4-24; ITA No.1275/ Mum/ 2022, which concluded as under:*

*"39. Thus, the approval granted by the ld Addl.CIT is identically worded as approval considered by Seerajuddin & Co (2023) 150 taxmann.com 146 (Ori HC) as per para No.22 of that decision, where there was not even a token mention of the draft orders having been pursued by the Addl.CIT. The letter simply grants approval. The bare minimum requirement of the approving authority having to indicate what thought process involved is also missing in the aforementioned approval order.*
*47. We are not on the issue that how the ld approving authority would approve all such orders on one day on 26-2-21 because it may be possible for a person to approve all such orders if he is in know of things since the stage of commencement of the assessment proceedings. However, we are unable to understand and appreciate the situation where the glaring mistakes in the assessment order as stated above and also fact of approval with approval No. and date of approval is mentioned in the draft assessment order itself which is sent for approval of the approving authority. This itself forces us to state that all such approval granted u/s153D by the approving authority in all these appeals are without application of mind. Neither the interest of revenue, nor the principle of fair play and natural justice were taken care of while approving draft orders of the AO.*
*48. In view of above cumulative facts and respectfully following the decision of the Hon'ble Orissa and Allahabad HC as well as the decision of the coordinate benches placed in PB No.4, we hold that the approval granted u/s153D in assessment orders in all such appeals are without application of mind and therefore, the assessment made by the ld AO are quashed.*
*49. Thus, Gr.No.1 in appeal of the assessee is allowed in all these 34 appeals filed by the assessee holding that approval granted u/s153D is without application of mind and hence, the assessment orders are annulled."*

*(x)* ***Subhash Bhawnani v. DCIT*** *(2023) 37 NYPTTJ 807 (Indore-Trib) dt.25-5-23, ITA Nos. 38 to 40/Ind/2020; AY12-13, 16-17 & 17-18, held that-*

*"9. … Thus, ld AR contested, there is no recording of satisfaction by the ld Addl.CIT in the impugned approval order as to whether the assessment records/ assessment folders/ files/ seized materials or any incriminating documents or other connected documents and papers/ various statements recorded u/s132(4) and sec131(1A) of the assessee or any other person/ appraisal report of the Investigation Wing of the Department/ materials on hand with the Department at the time of initiation of search or material evidences gathered were placed for its verification and the same were duly*

*verified and/or examined by him as mandated u/s153D. In the absence of compliance of the above mandate, the approval order dt.25-12-18 passed u/s153D becomes an empty formality without due process of law and, thus, not sustainable.*
*The ld Addl.CIT, in fact, abdicated his statutory functions and delightfully relegated the statutory duty to his subordinate being the Dy.CIT, Central-1, Bhopal adopting a shortcut method. Merely, an undertaking given by the ld AO was considered to be adequate by the Addl.CIT to accord approval in all assessments involved without considering any merit in the proposed adjustments with reference to appraisal report, incriminating material collected in search etc.; this is nothing but an approval by way of mere mechanical exercise accepting the draft assessment-order without any independent application of mind by Addl.CIT. Ld AR submitted that the power to grant approval u/s153D is not to be exercised casually or any routine manner, rather the concerned authorities are expected to grant approval upon examination of the entire materials before approving the draft assessment-order and the authority is legally required to ensure due application of mind. Ld AR strongly contended that the Revenue does not have any evidence to show that the approval was granted with due diligence upon exercising adequate time and upon examining the materials needs to be considered in terms of the statutory provisions. Clearly, therefore, the approval is violative of the mandate of sec153D and therefore not sustainable at all. Ld AR argued that the case of assessee is fully covered by the decision of Hon'ble Co-ordinate Bench in ITA No.70 to 76/Ind/2020, Gurumukhdas Contractors (P) Ltd which is in fact a case of one of the group-entities part of the same search/ assessment proceeding and deal with by same AO and Addl.CIT in the same manner; therefore, the view taken therein by the Hon'ble Co-ordinate Bench is applicable to assessee without any hesitation. Still to strengthen assessee's case, ld AR also relied upon the Trib, Cuttack Bench in ITA No.25 to 28/CTK/2012, Serajuddin & Co, dt.21-1-22 where an identical issue was decided in favour of assessee and against revenue and the assessment orders passed by authorities on bad approval u/s153D has been quashed. With these vehement submissions, ld AR prayed to quash the assessment-order passed by AO."*

(xi) ***Mysore Finlease P Ltd*** *(2024) (Del-Trib) dt.10-1-24, ITA No.8821/del/2019 11-12, held as under:*

*"8. Per contra, the ld DR vehemently argued that the role of Jt.CIT, Cen-Range is totally different from the role of a Jt.CIT in the normal range. He argued that in a Cen-Range, the Jt.CIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the ld AO from time to time while issuing various questionnaires to the assessee. The Jt.CIT in Cen-Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the ld AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Jt.CIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the ld AR has no force. Further, the ld DR vehemently argued that bare reading of sec153D talks only about existence of approval from the Jt.CIT. There is no mention of application of mind on the part of the Jt.CIT or the approving authority in the said sec. The expression 'application of mind' is only provided by the Judicial decisions and not provided in the statute. Hence, the ld DR argued that literal interpretation is to be given to the sec153D which does not provide for application of mind of the approving authority and hence, any other interpretation contrary to the same would only result in re-writing the law.*

*9. We find, as per the scheme, for framing search assessments, the ld AO can pass the search assessment order u/s153A or u/s153C only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Jt.CIT in terms of sec153D. This is a mandatory requirement of law. The said approval granting proceedings by the Jt.CIT is a quasi judicial proceeding requiring application of mind by the Jt.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme, it is the bounden duty of the AO to seek to place the draft assessment order together with copies of the seized documents before the Jt.CIT well in time much before the due date of completion of search assessment. The Jt.CIT is supposed to examine the seized documents, quenaires raised by the ld AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the quenaires issued by the ld AO and the conclusions drawn by the ld AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Jt.CIT in a judicious way after due application of mind. Even though as vehemently argued by the ld DR, the Jt.CIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Jt.CIT, while granting the approval u/s153D has to independently apply his mind dehors the conclusions drawn either by the Investigation Wing in the appraisal report or by the AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the AO and Jt.CIT are merely guidance to the AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the AO to frame the assessment after getting prior approval from Jt.CIT u/s153D. The Jt.CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions as no where the Act mandates so. The scheme mandates due application of mind by the ld AO to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation/ clarifications from the assessee on the contents of the seized documents. When the scheme provides for a leeway to both the AO as well as the Jt.CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Jt.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the ld DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the AO and the Jt.CIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. In our considered opinion, if the arguments of the ld DR are to be appreciated that the Jt.CIT need not apply his mind while granting approval of the draft assessment orders u/s153D as it is not provided in sec153D, then it would make the entire approval proceedings contemplated u/s153D otiose. The law provides only the AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Jt.CIT to grant judicious approval u/s153D to the draft assessment orders placed by the ld AO.*

*10. Let us now examine whether in the aforesaid background of the scheme, whether the approval in terms of sec153D has been granted by the Jt.CIT in a judicious way after due application of mind or not, in the instant case.*

*11. We have gone through the approval granted by the Jt.CIT on the date mentioned in the table hereinabove u/s153D. The said approval letter clearly states that a letter dt.29-12-17 was filed by the ld AO before the Jt.CIT seeking approval of draft assessment order u/s153D. The Jt.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 29-12-17 for various AYs in the case of various assessees. In any event, whether is it humanly possible for an approving authority like the Jt.CIT to grant judicious approval u/s153D for 40 cases for various AYs on a single day is the subject*

*matter of dispute before us. Further, sec153D provides that approval has to be granted for each of the AY whereas, in the instant case, the Jt.CIT has granted a single approval for all AYs put together. We find that the reliance placed by the ld AR on Serajuddin & Co (Ori HC) dt.15-3-23 is well founded. The que before the Hon'ble Ori HC is as under:-*
*"Whether on the facts and circumstances the ITAT was correct in holding that the approving authority has not applied his mind for giving approval u/s153D?"*
*15. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s153D has been granted by the Jt.CIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual.*
*Such an approval has neither been mandated by the provisions nor endorsed by the Hon'ble Ori HC; Hon'ble Alld HC and Hon'ble Jurisdictional HC (Del HC) referred to supra. Hence, we find lot of force in the arguments advanced by the ld AR in support of the addl.grs raised for all AYs u/c before us for all the assessees. Accordingly, the Addl.grs raised by all the assessees for all the AYs u/c are hereby allowed."*

*(xii)* ***Inder International v. ACIT*** *(2021) 213 TTJ 251 (Chd-Trib) dt.7-6-21, ITA No.1573/ Chd/ 2018; AY16-17, held that-*

*"15. ….In the present case before us, we noted that the Addl.CIT did not mention anything in the approval memo towards his process of deriving satisfaction so as to exhibit his due application of mind. We noted that the Addl.CIT merely approved the letter and the relevant para is noted in above paras. We noted that the relevant para of the above approval letter merely says that "Necessary statutory approval u/s153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith..." which clearly proves that the Addl.CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved solely relying upon the implied undertaking obtained from the AO in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination/ investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his statutory functions and delightfully relegated his statutory duty to the subordinate AO, whose action the Addl.CIT was supposed to supervise. The Addl.CIT in short appears to have adopted a short-cut in the matter and an undertaking from AO was considered adequate by him to accord approval in all assessments involved. Manifestly, the Addl.CIT, without any consideration of merits in proposed additions with reference to incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Addl.CIT, Central has rendered the approval to be a mere formality and cannot be considered as actual approval in law. Hence, we quash the assessment framed u/s153A on this Addl. Gr. alone.*
*16. Needless to say that we need not adjudicate the Gr.s raised on merits by the assessee as we have already quashed the assessment on jurisdictional issue that the statutory approval granted u/s153D is without application of mind by the Addl.CIT."*

*(xiii)* ***Arch Pharmalabs Ltd v. ACIT*** *(2021) (Mum-Trib) dt.7-4-21, ITA No.3752, 7597/Mum/ 2012, held as under:*

*"11.5. At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/ her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s153D to complete assessments u/s143(3) rws.153A in the following case on the basis of draft assessment orders..." which clearly proves that the Addl.CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/ or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the AO in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination/ investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/ her statutory duty to the subordinate AO, whose action the Addl.CIT, was supposed to supervise. The addl.CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Addl.CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Addl.CIT, Central has rendered the Approval to be a mere formality and can not be countenanced in law.*

*11.6. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s153D. Such perfunctory approval has no legal sanctity in the eyes of the law. Shreelekha Damani (Mum-Trib) approved by jurisdictional HC subsequently as reported in 307 CTR 218 affirms the plea of the assessee.*

*11.7. Very recently, Sanjay Duggal (Del-Trib) dt.19-1-21 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority u/s153D. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the assessee against maintainability of hollow approval u/s153D totally devoid of any application of mind. The approval so granted under the shelter of sec153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various AYs as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence, quashed."*

(xiv) ***Sanjay Duggal v. ACIT*** *(2021) (Del-Trib) dt.19-1-21, ITA No. 1813/Del/2019, held as under:*

*"11.5. Dharampal Satyapal Ltd (2019) (Gau HC) 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 coexist 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 u/s 153A or 153C, the Jt.CIT (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 AO during the course of assessment proceedings. Therefore, necessarily at the time of grant of approval of the assessment made by the AO, the Jt.CIT is required to verify the above issues, apply his mind that whether they have been properly appreciated by the AO while framing the assessment orders or not. The Jt.CIT is also required to verify whether the required procedure have been followed by the AO 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 AO to pass assessment order or reassessment order in search cases, then, it is the duty of the Jt.CIT 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 2 folds; on one hand, he has to apply his mind to secure in build for the Department against any omission or negligence by the AO in taxing right income in the hands of right person and in right AY and on the other hand, Jt.CIT 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 AO creating baseless tax liability on the assessee and thus, the Jt.CIT has to discharge his duty as per Law. Thus, granting approval u/s153D is not a mere formality, but, it is a supervisory act which requires proper application of administrative and judicial skill by the Jt.CIT on the application of mind and this exercise should be discernable from the Orders of the approval u/s153D.*

*11.7. In the following Orders of various Benches of the Trib, it is held that while granting approval u/s153D, the Jt.CIT shall have to peruse all the incriminating material and other seized material on record and proper procedure if have been adopted by the AO and appraisal report as well. The Jt.CIT shall apply his mind to such material on record before granting his approval, otherwise, it will be invalid and bad in Law. We may refer to such Orders as under:*

*13. In the present cases various approvals were granted by the Jt.CIT, Central Range-1, New Delhi, and forwarding letter of the AO are placed on record in all the cases. In all the cases as per the forwarding letter of the AO only assessment records were forwarded to the Jt.CIT, Range-1, New Delhi at the time of granting approval. Therefore, it is evident that the Jt.CIT being the Approving Authority was neither having seized material nor the appraisal report or other material at the time of granting approval. In the approval u/s153D there is a reference to the AO letter only. There is no reference to the seized material or record or notice u/s142 and reply of the assessee and if procedure for its inspection or perusal is there. There is no material considered by the Jt.CIT. Ld Counsel for the assessee has pointed out that assessee has suffered serious prejudice because of non-application of mind on the part of the Jt.CIT while granting approval u/s153D because the AO has made several double or triple additions on account of share capital, investments, FDRs purchased, loans, capital gains because these were created out of bank deposits made in the bank accounts of the assessees after the money transferred from the account of M/s. Alfa India. No telescopic benefit have been given as it was out of the source deposited in the bank accounts of the assessees. Netting of the money left have also not been considered and even the ld CIT(A) without considering the same has enhanced the assessments in some of the cases of the assessee. No steps have been taken by the AO for rectifying their mistakes when assessee filed petition for rectification u/s154. Thus, there was inconsistencies and double additions made by the AO in various AYs. It may also be noted that in the present case the facts stated in the impugned orders*

*are that the sales of liquor are made by M/s. JIL to M/s. MAPSCO and Singla Group of cases and that part of the sale proceeds have been transferred to the account of M/s.Alfa India instead of paying the entire sale consideration to M/s.JIL. Thus, the nature of total receipt/ addition is the sale proceeds originally to be received by M/s.JIL. If the part of the sale proceeds which were to be received by M/s. JIL and when transferred to the account of M/s.Alfa India Ltd., the entire part sale receipts cannot be the income either in the hands of M/s. JIL or M/s. Alfa India or the assessees who may be the conduit as argued before us. The AO has failed to consider the concept of real income for the purpose of determining the correct tax liability and correct determination of income of the assessees. We rely upon Godhra Electricity Co Ltd (SC). This fact is also not verified and considered by the Jt.CIT while granting approval u/s153D. It may be noted here that entire sale proceeds when cannot be added in the hands of M/s JIL as income which is also not done in the case of M/s. JIL, rightly so, how the same sale proceeds could be added as income in the hands of assessees u/s68 is not understandable.*

*Thus, the Approving Authority without application of mind and in a most mechanical and technical manner granted approval u/s153D even without reference to any reason in the Order u/s153D. We, even, otherwise failed to understand that in search cases how an approval can be granted to an AY which is required to be based only on incriminating material without verification of those material and its reference in the appraisal report. The Jt.CIT even in approval did not mention if assessment record is seen by him.*

*14. Another interesting aspect that has come to the notice on the basis of various documents submitted for approval as well as request for approval by the AO to the Jt.CIT. We make a specific reference to letter dt.29-12-17 written by ACIT, Central Circle-4, New Delhi, which is placed at page 144 of the PB. This letter dt.29-12-17 is a request for obtaining approval u/s153D in the case of Shri Rajnish Talwar and family wherein the approval in the case of Shri Rajnish Talwar for AY10-11 to 16-17 is sought for. The AO send the draft assessment order along with assessment records of the above named assessee. In para 4 of the letter, AO stated as under:*

*"It is certified that all issues raised in the appraisal reports have been duly examined with reference to the seized impounded material."*

*15. Thus, the Jt.CIT acted on certificate given by the AO without satisfying himself to the record/ seized material etc., The AO sent only assessment records to the Jt.CIT for his approval. The identical is fact in the case of all the request for approval made by the AO but factual position noted above established that even assessment records have not been seen by the Jt.CIT. The AO sent draft assessment orders for 7 AYs on 29-12-17 which were got approved on 30-12-17 merely on the basis of draft assessment order. The Jt.CIT in the approval Order dt.30-12-17 also mentioned that AO to ensure all the assessment proceedings are conducted as per procedure and Law. It would show that even JCIT was not satisfied with the assessment proceedings conducted by the AO as per Law and records.*

*16. In some of the cases the approval was granted on the date the request was made for approval by the AO. In all those cases merely draft assessment order and the assessment folders were available with the AO. For example in the case of Shri Sanjay Duggal family, in the case of Ms. Kritika Talwar on the same date the approval was granted and that too merely on the basis of the assessment records and draft assessment order and in most of the cases approval has been granted either on the same day or on the next day. Further, there is no reference that seized material as well as appraisal report have been verified by the Jt.CIT. It is not clarified whether assessment record is also seen by the Jt.CIT. It may also be noted that even in some of the Talwar group of cases approval is granted prior to 30-12-17 but in main cases of Shri Sanjay Duggal and Rajnish Talwar the approval is granted on 30-12-17. Therefore, without granting approval in the main cases how the Jt.CIT satisfied himself with the assessment orders in group cases which is also not explained.*

*Therefore, the approval granted by the Jt.CIT in all the cases are merely technical approval just to complete the formality and without application of mind as neither there was an examination of the seized documents and the relevance of various observations made by the Investigation Wing in appraisal report. Thus, we hold the approval u/s153D have been granted without application of mind and is invalid, bad in Law and is liable to be quashed."*

*(i) SMW Ispat (P) Ltd v. ACIT (2024) 163 taxmann.com 119 (Pune-Trib) held as under:*

*"15. Heard both the parties and perused the material available on record. Coming to the main contention of non-application of mind by the approving authority. The ld AR placed reliance primarily on Serajuddin & Co (2023) (Ori HC). The relevant portion of the said judgment is reproduced here-in-below for ready reference:*

*"22. As rightly pointed out by ld counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law.*

*25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of sec153D and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders themselves."*

*16. On careful reading of the above judgment, we note that the Hon'ble HC was pleased to observe that there should be some indication that the approving authority examined relevant material in detail while granting the approval u/s153D. The approval u/s153D is a mandatory requirement and such approval is not meant to be given mechanically. Such approval granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders. We find in the present case that the AO sought approval u/s153D on 18-3-16, the Jt.CIT granted approval on 21-3-16 and the final assessment order u/s143(3) rws.153A was passed on 30-3-16 which clearly indicates that the approving authority granted approval in one day mechanically without examining the relevant material. According to the AO, the case of the assessee was covered by search action u/s132 conducted at Bhilwara concerning Mantri-Soni Group of Jalna/ Bhilwara and their family members and business concerns at the business and resi-premises of different members/ associate which is evident from para 1 of the assessment order. Admittedly, the AO sought approval u/s153D in 49 assessment orders vide letter dt. 18-3-16 which is on record placed on by the ld DR on 9-10-23. The approving authority has to examine number of evidences, documents, statements of various persons etc. recorded which were necessarily to be taken into consideration while granting approval u/s153D by the Jt.CIT. On an examination of the approval dt.21-3-16 which is on record placed by the ld DR*

*on 9-10-23, we find no such indication of examination of evidences, documents, statements of various persons etc. at least, no reference whatsoever made by the Jt.CIT i.e., approving authority. Thus, we find the facts and circumstances in the present case are similar to the facts of the case before the Serajuddin & Co (2023) (Ori HC) and the ratio laid down therein is applicable to the present case. Therefore, the Jt.CIT granted approval u/s153D mechanically without application of mind which resulting in vitiating the present final assessment order dt.30-3-16 u/s143(3) rws.153A.*

*17. We find the Department of Revenue filed SLP against the decision of Hon'ble HC of Orissa in the case of M/s. Serajuddin & Co. before the Hon'ble SC. The Hon'ble SC was pleased to dismiss the SLP © Diary No. 44989/2023. The relevant decision is reproduced as under:*

*"ACIT v. M/s.Serajuddin And Co. Date: 28-11-23*

*UPON hearing the counsel the Court made the following ORDER*

*Delay condoned. Having regard to facts and circumstances of the case, we are not inclined to interfere in the matter. The SLP is dismissed. Pending application(s) shall stand disposed of."*

*18. On careful reading of the above, we note that the Hon'ble SC declined to interfere in the finding recorded by Serajuddin & Co (Ori HC) holding that the approval u/s153BD is mandatory requirement and such approval is not meant to be given mechanically, further, approval granted mechanically without application of mind vitiates the assessment orders.*

*22. The ld AR placed on record S Goyanka Lime & Chemicals Ltd (2015) (MP). On a careful examination of the same, we note that in pursuance of search, the assessments processed u/s143(1) were reopened by issuing a notice u/s148 on the basis of certain reasons recorded. The assessee objected to the same before the AO, which was rejected. The AO completed the assessment u/s143(3) rws.147. The CIT(A) quashed the said reassessment by holding the action of Jt.CIT in according sanction was without application of mind which was done in a mechanical manner. The ITAT upheld the order of CIT(A). The Hon'ble MP HC dismissed the appeal of Revenue by observing no que of law involved warranting reconsideration. The relevant extract of the said decision as under for ready reference :*

*"7. We have considered the rival contentions and we find that while according sanction, the Jt.CIT, IT has only recorded so "Yes, I am satisfied". In Arjun Singh, the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-*

*"The CIT acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the CIT did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."*

*8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Jt.CIT, which accords sanction for issuing notice u/s148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*

> *9. As far as explanation to sec151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.*
>
> *10. In view of the concurrent findings recorded by the ld appellate authorities and the law laid down in Arjun Singh (MP HC), we see no que of law involved in the matter, warranting reconsideration.*
>
> *11. The appeals are, therefore, dismissed."*
>
> *23. We find the Department of Revenue filed SLP before the Hon'ble SC against the decision of S Goyanka Lime & Chemicals Ltd (MP HC). The Hon'ble SC dismissed the SLP in favour of the assessee which reported in (2015) 64 taxmann.com 313 (SC) which is at page No.162 of the case laws PB. We find the facts and circumstances relating to challenging the approval granted by the Jt.CIT on 21-3-16 are similar to the facts in the case of S Goyanka Lime & Chemicals Ltd (MP HC). Therefore, the ratio laid down by S Goyanka Lime & Chemicals Ltd (MP HC) which was confirmed by the Hon'ble SC is applicable to the facts on hand, therefore, the approval granted by the Jt.CIT on 21-3-16 is invalid, consequently, the final assessment order dt.30-3-16 passed u/s143(3) rws.153A is liable to be quashed.*
>
> *24. Further, Sahara India (Firm) (2008) (SC), while discussing the requirement of prior approval, opined that the requirement of previous approval of the CCIT or the CIT in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the AO, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Sec is not turned into an empty ritual. The Hon'ble SC was pleased to hold 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.*
>
> *25. In view of our discussion made here-in-above, considering the submissions of ld AR, ld DR, case laws relied on and respectfully following Serajuddin & Co (2023) (Ori HC) which was confirmed by the Hon'ble SC vide order dt.28-11-23 in SLP(C) No.026338/2023, we hold that the approval dt.21-3-16 granted by the Jt.CIT u/s153D is without application of mind, therefore, invalid under law. Consequently, the final assessment order dt.30-3-16 passed u/s143(3) rws.153A fails and quashed."*

68. Therefore, approval given by the Addl.CIT, in our opinion, is invalid in the eyes of law and, therefore, hold that approval gvien under section 153D was granted in a mechanical manner and without application of mind and hence, it is treated as invalid and bad in law and consequently vitiated the assessment orders for want of valid approval under section 153D. In view of the above discussion, we hold that the impugned order passed under section 153C r/w section 143(3) / 144 of the Act is hereby quashed. Thus, we hold as under:–

a) Ground no.4, in the appeal being ITA No.108/Nag./2024, A.Y. 2009-10, is allowed;

b) Ground no.4, in the appeal being ITA No.109/Nag./2024, A.Y. 2010-11, is allowed;

c) Ground no.4, in the appeal being ITA No.110/Nag./2024, A.Y. 2011-12, is allowed;

d) Groundn no.4, in the appeal being ITA No.111/Nag./2024, A.Y. 2012-13, is allowed; and

e) Ground no.3, in the appeal being ITA No.112/Nag./2024, A.Y. 2013-14, is allowed.

69. Now we proceed to adjudicate the issue on merits which relates to the addition made on account of unexplained cash credit under section 68 of the Act. This issue arose in the following appeals:–

**ITA no.108/Nag./2024**
**A.Y. 2009-10**

**ITA no.109/Nag./2024**
**A.Y. 2010-11**

**ITA no.110/Nag./2024**
**A.Y. 2011-12**

**ITA no.111/Nag./2024**
**for A.Y. 2012-13 and**

**ITA no.112/Nag./2024**
**A.Y. 2013-14**

70. Ground no.5 and Additional Grounds no.3 and 4, relates to addition on account of unexplained cash credit under section 68 of the Act in assessment year 2009–10, 2010–11. 2011–12, 2012–13 and 2013–14. The only difference in the said grounds are variation in figures and name of parties involved. Rest the facts and circumstances of the issue in the aforesaid assessment years are identical. The year–wise connected grounds to the said issue are reproduced below:–

*Ground no.5 (A.Y. 2009–10)*

> *On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.60,00,000 made u/s68 on count of unexplained cash credits, while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY09-10; addition is not justifiable in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted."*

*Ground no.5 (A.Y. 2010–11)*

*"On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.4,43,55,000 made u/s68 on count of unexplained cash credits, while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY10-11; addition is not justifiable in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted."*

*Ground no.5 (A.Y. 2011–12)*

*"On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.32,46,300 made u/s68 on count of unexplained cash credits, while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY11-12; addition is not justifiable in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted."*

*Ground no.5 (A.Y. 2012–13)*

*"On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.22,46,300 made u/s68 on count of unexplained cash credits, while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY12-13; addition is not justifiable in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted."*

*Ground no.4, 5 and Additional Grounds no.3 & 4, in A.Y. 2013–14*

*Ground no.4*

*On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.1,30,00,000 made u/s68 on count of unexplained cash credits, while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY13-14; addition is not justifiable in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted."*

*Ground no.5*

*On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.35,00,000 made u/s68 on count of unexplained cash credits, while, it was opening balance as on 1-4-12 and there is no fresh credits appearing in the books of account of the assessee-Co in the impugned AY13-14; addition is not justified; addition is liable to be deleted."*

*Additional Ground no.3*

*On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.5,00,000 made u/s68 on count of unexplained cash credits while, there is no such credit entry is appearing in the books of account of the assessee-Co in the impugned AY13-14; addition is not justified in absence of any corroborative material/ evidence brought on record by the AO; addition is liable to be deleted.*

*Additional Gr.No.4:*

*On the facts & circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.1,25,00,000 made u/s68 on count of unexplained cash*

> *credits, which had already recorded in the books of account and it had also included in IDS, 2016 dt.29-9-16 of Rs.5,25,00,000 made for AY13-14 on the count of impugned share capital received in the AY13-14 & paid due taxes thereon, which is much prior to the date of search on 22-1-19; it had also accepted in reassessment order made u/s147 rws.143(3) dt.22-12-17 by the ld AO; further addition on the same count, would be tantamount to double addition on the same income, would be highly unjustified and is liable to be deleted.*

71. Ground no.4, raised in assessment year 2013–14, is not pressed, hence dismissed.

72. Now, we deal with the common issue which relates to the unexplained cash credit under section 68 of the Act. The assessment made by the Assessing Officer for the assessment year 2009–10 and 2010–11 under section 153C r/w section 144 and for the assessment year 2011–12 to 2013–14 under section 153C r/w section 143(3) of the Act.

73. The Assessing Officer made addition under section 68 of the Act on account of unexplained cash credit as the assessee failed to respond to the statutory notices issued by the Assessing Officer for the assessment year 2009–10 and 2010–11. However, the assessee made submissions / filed reply for the assessment year 2011–12 to 2013–14.

74. On appeal, the learned CIT(A) confirmed the assessment order passed by the Assessing Officer.

75. Before us, the learned A.R. for the assessee-Company submitted that the alleged sum of ₹ 60 lakh has not been credited in the books of account of the assessee-Company in the assessment year under consideration that there is no credit entry is appearing/ recorded/ entered in the books of account of the assessee-Company. Addition made under section 68 on account of unexplained cash credits on the count of alleged ledger account/ transactions found at the third party premises, which is not entered/ recorded/ appeared in the books of account of the assessee-Company, hence, the addition is not sustainable in the eyes of law as per the provisions of section 68 of the Act which is unjustified. Such addition made under section 68 merely on presumption and surmises is not sustainable in the eyes of law. The learned

A.R. further submitted that there is no credit entry of ₹ 60 lakh is entered/ recorded in the books of account of the assessee-Company in the assessment year 2009–10 which relates to alleged party 'Raj Roadways' as mentioned in the assessment order. The addition made of ₹ 60 lakhs under section 68 is not sustainable without there being a cash credit entry recorded in the books of account of the assessee-Company in the assessment year 2009–10. In the assessment order dated 31/03/2022 made under section 153C at Page–2, there is a mention of *'Raj Roadways'* against which the Revenue pleaded that a ledger account was found at third party premises of Shri Suresh Agrawal, Kolkata, the alleged accommodation entry provider as per the statement recorded under section 132(4) in respect of Shri Suresh Agrawal, Kolkata on 22/01/2019 to 25/01/2019 and on 14/03/2019, on a separate search action under section 132 conducted upon Shri Suresh Agrawal, Kolkata, the director of M/s.Rashi Steel & Power P. Ltd, Kolkata, on 22/01/2019 (i.e., Suresh Agrawal, Kolkata, who is director of the assessee-Company also but he is not involved in any of the affairs/ business of the assessee-Company since last 9-10 years, he is not even in touch with the assessee-Company in any manner since last 9-10 years). The alleged party *'Raj Roadways'*, which is not even transacted/ related/ linked/ pertain to the assessee-Company in the assessment year 2009-10 in any manner and on this count also, the Assessing Officer made addition of Rs.60 lakh under section 68 in assessment year 2009-10 on merely presumption and surmises, which is unjustified. In support of these argument, the learned A.R. relied on the decision of the Hon'ble Delhi High Court rendered in Usha Stud Agricultural Farms Ltd (2008) 183 taxmann.com 277 (Del HC); and the decision of the Co–ordinate Bench of the Tribunal, Chennai Bench, in Ravindra Arunachala Nadar, reported as (2021) 129 taxmann.com 275 (Chen-Trib) wherein one of us Judicial Member of this Bench is one of the parties to this order.

76. The learned Departmental Representative supported the order passed by the aothorities below.

77. We have heard both the counsels, perused the records, documents, paper book submitted with supporting case laws before us. Apart from that,

impugned addition of ₹ 60 lakh, has been made by the Assessing Officer which is not the part of the books of account of the assessee-Company in the assessment year 2009–10, as there is no entry found credited in the books of account of the assessee-Company in the assessment year 2009-10. It means, no fresh credits received which is credited in the books of account and in such a situation, addition made under section 68 on account of unexplained cash credits is invalid and unsustainable in the eyes of law for the impugned assessment years under consideration. For this legal proposition, we rely on the judgment of the Hon'ble Delhi High Court rendered in Usha Stud Agricultural Farms Ltd. (supra) and the Co–ordinate Bench decision of the Tribunal rendered in Ravindra Arunachala Nadar (supra) as under:–

*i)* ***CIT v. Usha Stud Agricultural Farms Ltd*** *(2008) 183 taxmann.com 277 (Del HC) the Court concluded as under-*

> *"2. Brief facts of the case are that the assessee filed ROI for the AY99-00 on 27-12-99. The assessment order was passed on 22-3-02 u/s143(3)/147 and it was noticed by the AO that the assessee had shown an advance of Rs.15 lacs from one Bhai Manjeet Singh. The assessee was asked to furnish the details of this advance. It was explained by the assessee that this was received towards advance breeding charges. Thereafter, the assessee was asked to file confirmation from Bhai Manjeet Singh, which he failed to do so and accordingly, the AO made this addition of Rs.15 lacs u/s68.*
> *3. Aggrieved against the order passed by the AO, the assessee filed an appeal before the CIT(A) and the appeal of the assessee was allowed. Against the order of CIT(A), the Revenue filed an appeal before the Trib, that is, ITA No.1527/Del/2003 for the AY99-00 and the same was dismissed by the Del-Trib, vide the impugned order.*
> *4. It has been contended by ld counsel for the Revenue that despite several opportunities, the assessee had failed to file confirmation from Bhai Manjeet Singh and, therefore, the AO was justified in making addition u/s68.*
> *6. Here, the CIT(A) has deleted the addition of Rs.15 lacs mainly on the ground that this credit balance of Rs.15 lacs is being reflected in the accounts of the assessee over the past 4 to 5 years or so and hence, this was not a fresh credit entry of the PY u/c and these credit entries were already made and accounted for in the AY95-96 and 97-98 which were introduced in the form of advance against breeding stallions owned by the assessee and thus, these credit entries did not relate to the year u/c for being considered u/s68.*
> *Since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the assessee, does not pertain to the year u/c, under these circumstances, the AO was not justified in making the impugned addition u/s68 and as such no fault can be found with the order of the Trib which has endorsed the decision of the CIT(A). The above being the position, no fault can be found with the view taken by the Trib."*

*ii)* ***Ravindra Arunachala Nadar v. ACIT*** *(2021) 129 taxmann.com 275 (Chen-Trib) dt.23-2-21, held as under:*

> *"9. Coming to invocation of sec68, the AO has simultaneously invoked sec68 in addition to sec41(1), to bring into tax, said credit for the impugned AYs, but fact remains is that all these credits were brought forward from earlier FYs for which necessary evidences has been placed on record.*
> *On perusal of evidences filed by the assessee, we find that the credits in the name of S/Shri ARKA. Karutha Pandian, KA Sekar and K. Sivasundarapappa and Late ARK Arunachala Nadar, was received in FY07-08.*
> *Similarly, credit in the name of Smt. Swarnalatha was received in the FY06-07, likewise credit on account of land advance from Shri Kumar was received in the FY05-06.*
> *From the above, it is very clear that none of the credits were received during the current FY.*
> *Therefore, in our considered view these credits cannot be brought to tax as unexplained cash credits u/s68, because in order to bring any credits within the ambit of sec68, said credits should be found in the books of accounts of the assessee maintained for any PY and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee in the hands of the AO is not satisfactory.*
> *In this case, none of the credits were received during the current FY and further, the assessee has offered explanation about source and nature of credits and further proved the identity/ creditworthiness and genuineness of transactions. Therefore, these credits cannot be brought to tax even u/s68.*
> *This view is fortified by Usha Stud Agricultural Farms Ltd (2008) (Del HC), where it was held as under:-*
> *"When the credit balance in the accounts of the assessee did not pertain to the year u/c, the AO was not justified in making the addition u/s68 and no fault could be found with the order of the Trib endorsing the decision of the CIT(A)."*
> *Sooraj Leathers (Chen-Trib) ITA No. 305/Mds/2016 had considered an identical issue and after considering relevant facts held as under:-*
> *"If the liabilities are old, no credit has been made in so far those credits in the books of accounts in the AY u/c, sec68 cannot be applied. This view of ours is supported by Usha Stud Agricultural Farms Ltd (2008) (Del HC), cited supra wherein held that credit balance in the account of the assessee did not pertain to the year u/c, the AO was not justified in making the addition u/s68. Hence, in our opinion, the liabilities which were not credited in the PY relevant to the AY u/c, the the sec68 cannot be applied and the AO is directed to exclude the same from the addition u/s68 after duly verifying the same."*
> *10. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that the ld AO was erred in making additions towards credits shown in the books of accounts u/s41(1)/68.*
> *The ld CIT(A) without appreciating facts, has simply confirmed additions made by the AO. Hence, we reverse the findings of the CIT(A) and direct the AO to delete additions made towards sundry creditors u/s41(1) & 68."*

78. We also find that the said sum is not found credited in the books of account of the assessee-Company in the assessment year 2009–10, which is sine qua non/ pre-requisite/ pre-condition for making addition under section

68 on account of unexplained cash credits and in absence of this pre-condition of recording of credit entry in the books of account which is mandatory for applying section 68, the addition is unjustified. Thus, we conclude that addition of ₹ 60 lakh made in the assessment year 2009-10 is merely on presumption, surmises and conjectures without bringing any material/ evidence on record by the Revenue for substantiating its contention that it is an undisclosed income in the hands of the asseseee-Company for the assessment year 2009-10.

79. Insofar as the addition on account of unexplained cash credit under section 68 of the Act, involved in the assessment year 2013–14, we find that the addition of ₹ 1.25 crore has been made by the Assessing Officer, out of which ₹ 20 lakh was received from Natural Housing P. Ltd. and ₹ 15 lakh received from Shivkori Consultatnts P. Ltd. as share application money in the assessment year 2013-14 which was recorded in the books of account. The sum of ₹ 35 lakh has been declared as income shown in IDS (Income Declaration Scheme), 2016 dated 29/09/2016 and due taxes was paid by the assessee. Further, in respect of the amount of ₹ 50 lakh received as share application money from M/s.Suraksha Projects Ltd. in the assessment year 2013-14, which was recorded in the books of account and has been declared income shown in IDS, 2016 (supra) and due taxes has been paid by the assessee. Further, for ₹ 40 lakh received as share application money from Shridhan Jewellery P. Ltd. in the assessment year 2013–14, which was recorded in the books of account and has been declared income shown in IDS, 2016 (supra) and due taxes has been paid by the assessee-Company; on 11/10/2016 as per the surrender made in survey under section 133A dated 26/09/2016 on account of share capital / share application money by the assessee and hence, further making addition of ₹ 1,25,00,000 by the Assessing Officer in assessment made under section 153C on 31/03/2022 would tantamount to be double addition on the same amount which had already been offered for taxation by the assessee, which we hold to be unsustainable in the eyes of law, and hence, the addition of ₹ 1,25,00,000 lakh is liable to be deleted. Consequently, we set aside the impugned order

passed byt the learned CIT(A) and delete the addition made under section 68 of the Act on account of cash credit. Thus, Ground no.5, raised by the assessee in the assessment year 2009–10, 2010–11, 2011–12 & 2012–13 is allowed and ground no.5 and additional grounds no.3 and 4 for the assessment year 2013–14, are hereby allowed.

80. Now we take up the issue which relates to unabated year in which no incriminating material found during the course of search from the premises of the searched person and no cross–examination has been provided by the Revenue.

81. The aforesaid issue is involved in the following assessment year:–

2009–10 – ground no.3 and 6
2010–11 – ground no.3 and 6
2011–12 – ground no.3 and 6
2012–13 – ground no.3 and 6
2013–14 – ground no.2 and 6

82. The learned A.R. for the assessee submitted that the year of assessment year 2009-10 to 2013-14 was an unabated/ completed assessment on the deemed date of search i.e., on 21/01/2021 for the non-searched person when the documents has been transmitted from the Assessing Officer of the searched person to the Assessing Officer of the assessee. No assessment was pending for the assessment year 2009–10 to 2013-14 on the deemed date of search on 21/01/2021. There is no incriminating material found from the searched premises of Shri Suresh Agrawal, Kolkata (i.e., the searched person who is director of the assessee-Company residing at Kolkata) which has direct nexus/ bearing on determination of income of the assessee-Company (i.e., non-searched person) for the impugned assessment year 2009-10 to 2013-14, and in the absence of this factual finding given by the Assessing Officer, addition could not be made for an unabated/ completed year (i.e., A.Y. 2009-10 to 2013-14) on the deemed date of search on the assessee-Company (i.e., on 21/01/2021). This is sine qua non for making any addition for an unabated year on the date of search and in absence of this, impugned addition made by

the Assessing Officer is unjustified and bad in law. For these arguments, the learned A.R. relied on judgments of the Hon'ble Supreme Court in PCIT v. Abhisar Buildwell (P) Ltd. (2023) 149 taxmann. com 399 (SC) and DCIT v. UK Paints (Overseas) Ltd (2023) 150 taxmann. com 108 (SC).

83. The learned Departmental Representative has not made any effective argument to counter the submissions made by the learned A.R.

84. Since we have already quashed the assessments made under section 153C of the Act for the assessment year 2009–10 to 2013–14, on various legal issues and also delete the addition made under section 68 of the Act for the assessment year 2009–10 to 2013–14, hence, the issues involved in grounds no.3 and 6 raised in assessment year 2009–10 to 2012–13 and grounds no.2 and 6 raised in assessment year 2013–14 being academic in nature hence not adjudicated by us which are left open.

85. In the result, appeals for the assessment year 2009–10 to 2013–14 are partly allowed.

Order pronounced in the open Court on 26/12/2024

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **V. DURGA RAO** | **K.M. ROY** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

**NAGPUR, DATED: 26/12/2024**

*Copy of the order forwarded to:*

*(1) The Assessee;*
*(2) The Revenue;*
*(3) The PCIT / CIT (Judicial);*
*(4) The DR, ITAT, Mumbai; and*
*(5) Guard file.*

True Copy
By Order

*Pradeep J. Chowdhury*
*Sr. Private Secretary*

Sr. Private Secretary
ITAT, Nagpur