**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

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

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

| | |
|---|---|
| **ITA no.113/Nag./2024** (Assessment Year – 2014–15) | **ITA no.114/Nag./2024** (Assessment Year – 2015-16) |
| **ITA no./115/Nag./2024** (Assessment Year – 2016–17) | **ITA no.116/Nag./2024** (Assessment Year – 2017–18) |
| **ITA no.117/Nag./2024** Assessment Year – 2018–19 | **ITA no.118/Nag./2024** (Assessment Year – 2019–20) |

**ITA no.119/Nag./2024**

**(**Assessment Year : 2020-21)

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 against 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)–3, Nagpur, ["*learned CIT(A)*"], for the assessment years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

2. A search and seizure action under section 132 of the Act was conducted on the assessee (i.e., Maheshwari Coal) situated at Bilaspur, on 11/07/2019, along with Shri Anil Mundra, director of the assessee, wherein some documents found/seized from the searched premises of the assessee. Notices dated 16/09/2020, under section 153A of the Act issued for the assessment year 2014-15 to 2019-20 and separate assessment order dated 29/09/2021, was passed under section 143(3) r/w section 153A for the assessment year 2014-15 to 2019-20. Notice dated 11/06/2021 under section 143(2) was issued and the assessment made under section 143(3) for the assessment year 2020–21 on 29/09/2021. The facts and circumstances along with the issues involved in all the seven appeals are almost identical and for sake of convenience, all the appeals are taken up for adjudication together.

3. We, at the very onset, proceed to dispose off the following appeals which involve the issues in respect of unabated / completed assessment on the date of search, wherein no incriminating materials were found during the course of search.

**ITA no.113/Nag./2024**
**A.Y. 2014–15**

**ITA no.114/Nag./2024**
**A.Y. 2015–16**

**ITA no.115/Nag./2024**
**A.Y. 2016–17**

4. The grounds raised for the year under consideration are as under:–

| *Additions made by AO* | *AY 2014-15* | *AY 2015-16* | *AY 2016-17* |
|---|---|---|---|
| *Unexplained cash credits u/s 68* | *₹12,00,000* | - | |
| *Interest on unsecured loans disallowed by AO and added as undisclosed income* | *₹3,99,600* | *₹4,42,757* | *₹2,68,490* |
| *Total* | *₹15,99,600* | *₹4,42,757* | *₹2,68,490* |

5. The issue involved in ground no.3, 4, 5 and 6, in the assessment year 2014–15, relates to the addition made on account of unexplained cash credit

under section 68 of the Act. The grounds no.3 to 6, are reproduced below for A.Y. 2014–15:–

> *"3. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.12,00,000 on the count of unsecured loan treating it as unexplained credits u/s68, when, on the date of search (i.e., 11-7-19), AY14-15 had already been completed, since scrutiny assessment u/s143(3) had been completed on 18-8-16; no assessment was pending for AY14-15; there is no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee-Company which is linked with the addition of Rs.12,00,000 for AY14-15; in absence of this, addition is not sustainable in the eyes of law while making search assessment for an unabated AY; addition is liable to be deleted; relied on Abhisar Buildwell (P) Ltd (2023) (SC).*
>
> *4. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.3,99,600 on the count of interest on unsecured loan treating it as bogus, when, on the date of search (i.e., 11-7-19), AY14-15 had already been completed, since scrutiny assessment u/s143(3) had been completed on 18-8-16; no assessment was pending for AY14-15; there is no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee-Company which is linked with the addition of Rs.3,99,600 for AY14-15; in absence of this, addition is not sustainable in the eyes of law while making assessment for an unabated AY; addition is liable to be deleted; relied on Abhisar Buildwell (P) Ltd (2023) (SC).*
>
> *5. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.12,00,000 on the count of unsecured loan treating it as unexplained u/s68, when it is opening balance as on 1-4-13 brought forward from earlier year and no fresh cash credit received during AY14-15; it had already accepted in scrutiny assessment completed u/s143(3) dt.18-8-16; more so, it had already been repaid on 4-10-18 prior to the search conducted on 11-7-19; the addition is not justified, is liable to be deleted."*
>
> *6. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.3,99,600 on the count of interest treating it as bogus, when TDS has been deducted on such interest expenses claimed; it had already been accepted in scrutiny assessment completed u/s143(3) dt.18-8-16; more so, the alleged sum had already been repaid on 4-10-18 prior to the search conducted on 11-7-19; the addition of Rs.3,99,600 is not justified, is liable to be deleted."*

6. The assessee is engaged in the business of wholesale trading business of coal, filed its return of income for the year 2014–15, on 25/11/2014, under section 139(1) of the Act, disclosing total income of ₹ 27,17,190. A notice dated 16/09/2020, under section 153A of the Act was issued through online portal to the assessee requiring the assessee to file its return of income within 30 days of receipt of notice. Accordingly, the assessee filed its return of income on

27/01/2021, declaring total income at ₹ 27,17,190. The assessee, in response to the notice issued by the Assessing Officer under section 142(1) of the Act, filed detailed submissions/reply along with connected documents as sought by the Assessing Officer in the above notice.

7. There was a search and seizure operation was also conducted under section 132(1) of the Act on RKTC Group, Korba, and Suresh Agrawal, Director of Rashi Steel & Power Pvt. Ltd., Kolkata, on 22/01/2019, and thereafter a statement was recorded on 22/01/2019 and 14/03/2019, of Suresh Agrawal, wherein he has stated that the below named three concernes are bogus concern which provided accommodation entries to several parties:–

| *Sr. no.* | *Loan creditors* | *Opening balance as on 1-4-13* | *Interest credited during the year* |
|---|---|---|---|
| *1.* | *Best Advisory P. Ltd.* | *–* | *₹1,08,000* |
| *2.* | *Gazal Textiles* | *₹12,00,000* | *₹1,29,600* |
| *3.* | *Lily Abasan P. Ltd.* | *–* | *₹1,62,000* |
| | *Total* | | *₹3,99,600* |
| | | | *Addition made by AO* |

However, according to the learned A.R. for the assessee, the factual position of entries recorded in the books of account which is placed on record is as under:–

| *Loan creditors* | *Opening balance as on 1-4-13* | *Interest credited during the year* | *Closing balance as on 31-3-14* | *(repaid prior to the date of search, i.e., on 11-7-19)* |
|---|---|---|---|---|
| *Best Advisory P Ltd* | *10,00,000* | *1,08,000* | *11,08,000* | *repaid on 4-10-18* |
| *Gazal Textiles* | *12,00,000* | *1,29,600* | *13,29,600* | *repaid on 4-10-18* |
| *Lily Abasan P Ltd* | *15,00,000* | *1,62,000* | *16,62,000* | *repaid on 4-10-18* |
| *Total* | | *3,99,600* | | |
| | | *Addition made by AO* | | |

8. On the above basis, the Assessing Officer made addition of ₹ 12 lakh on account of unexplained cash credit under section 68 of the Act and ₹ 3,99,600, on account of interest paid on such bogus unsecured loans.

9. 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.

10. Before us, the learned Counsel, Shri Sunil Kumar Agrawal, appearing for the assessee, submitted that the assessee is engaged in wholesale trading & transportation of Coal, Coal handling, washing, loading & unloading; having turnover of ₹ 24.86 crore for A.Y. 2014-15, turnover of ₹ 23.88 crore for A.Y. 2015-16 and turnover of ₹ 36.97 crore for A.Y. 2016-17, which are audited under section 44AB of the Act. He submitted that the assessee company purchases Coal from South Eastern Coal Fields, Gevra- Dipka- Korba (CG) and sell the same to various parties. However, the details of return of income filed under section 139(1) and under section 153A for the assessment year 2014–15 to 2016-17 are given as under:–

| *A.Y.* | *ROI filed under section 139(1) on* | *Income returned under section 139(1) (in Rs.)* | *ROI filed under section 153A on* | *Income returned under section 153A (in Rs.)* | *Due date for issue of notice under section 143(2)* | *On the date of initiation of search (i.e., on 11-7-19)* |
|---|---|---|---|---|---|---|
| *2014-15* | *25-11-14* | *27,17,190* | *27-1-21* | *27,17,190* | *30-9-15* | *Unabated assessment as scrutiny assessment u/s143(3) has been completed on 18-8-16 and no assessment was pending on the date of search on 11-7-19* |

| | | | | | | |
|---|---|---|---|---|---|---|
| *2015-16* | *23-10-15* | *-2,39,58,442* | *27-1-21* | *-2,39,58,442* | *30-9-16* | *Unabated assessment as scrutiny assessment u/s143(3) has been completed on 22-12-17 and no assessment was pending on the date of search on 11-7-19* |
| *2016-17* | *5-10-16* | *2,23,56,280* | *27-1-21* | *2,23,56,280* | *30-9-17* | *Unabated assessment as scrutiny assessment u/s143(3) has been completed on 28-12-18 and no assessment was pending on the date of search on 11-7-19* |

11. The learned A.R. for the assessee submitted that there is no incriminating material/ document found during the course of search from the premises of the assessee for the addition of ₹ 12 lakh and ₹ 3,99,600, when the assessment year 2014-15 is unabated assessment on the date of initiation of search, i.e., on 11/07/2019. Search and seizure under section 132 has been conducted on 11-7-19, which is concluded on 12/07/2019, in the business premises of the assessee at H.No.697, Behind 16 Kholi, Tikrapara, Bilaspur; Notice under section 153A was issued on 16/09/2020 to the assessee for filing the ROI under section 153A for AY14-15, and in response to, the assessee has filed ROI under section 153A on 27/01/2021 by showing same returned income of ₹ 27,17,190 as was earlier filed on 25/11/2014 under section 139 of the Act.

12. The learned A.R. further submitted that the Assessing Officer has made addition of ₹ 12 lakh, on account of unsecured loan treating it as unexplained credits under section 68 of the Act when, on the date of search (i.e., 11/07/2019), the assessment year 2014–15 had already been unabated / completed, since scrutiny assessment under section 143(3) had been completed on 18/08/2016 and no assessment was pending for the assessment year 2014-15 on the date of search and there was no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee which is linked with the addition of ₹ 12 lakh for the assessment

year 2014-15 and in the absence of this, addition is not sustainable in the eyes of law while making assessment for an unabated assessment year.

13. Similarly, addition of ₹ 3,99,600, on account of interest on unsecured loan treating it as bogus, when, on the date of search i.e., 11/07/2019, for the assessment year 2014-15 had already been unabated / completed, since scrutiny assessment under section 143(3) had been completed on 18/08/2016 (prior to the date of search) and no assessment was pending for the assessment year 2014-15 on the date of search i.e., 11/07/2019 and also, there is no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee which is linked with the impugned addition of ₹ 3,99,600, for assessment year 2014-15 and hence, addition is not sustainable in the eyes of law while making assessment for an unabated assessment year and as such addition is liable to be deleted. In support of these arguments, reliance is placed on the decision of the Hon'ble Supreme Court in PCIT v/s Abhisar Buildwell (P) Ltd., [2023] 149 taxmann.com 399 (SC).

14. Further, the learned A.R. submitted that the addition of ₹ 12 lakh and ₹ 3,99,600, have been made under section 68, only on the basis of statement of one Suresh Agrawal, Kolkata, director of M/s.Rashi Steel & Poweer P. Ltd, Kolkata, under section 132(4) was recorded on 14/03/2019, as alleged by the Assessing Officer, in their separate search proceedings under section 132 on 22/01/2019 on M/s.RKTC Group, Korba and Suresh Agrawal, Kolkata.

15. The A.R. for the assessee further submitted that it was the claim of the Revenue that Suresh Agrawal, Kolkata, the alleged accommodation entry provider as per the statement recorded under section 132(4) of Suresh Agrawal, Kolkata on 14/03/2019 on a separate search action under section 132 conducted upon Suresh Agrawal, Kolkata, director of M/s. Rashi Steel & Power P. Ltd, Kolkata, on 22/01/2019 (i.e., Suresh Agrawal, Kolkata, who is also director of the assessee but he is not involved in any of the affairs/ business of the assessee

since last 9–10 years. He is not even in touch with the assessee in any manner since last 9–10 years). It is submitted that without providing copy of such statement of Suresh Agrawal, Kolkata and without providing cross-examination of Suresh Agrawal, Kolkata who is director of M/s.Rashi Steel & Power P. Ltd, Kolkata, which is used by the Assessing Officer against the assessee, when such person, though is director of the assessee, but he was not in touch with the assessee or its director Shri Anil Mundra, then, in such a situation, the Assessing Officer was duty bound to make cross–examination of Suresh Agrawal, Kolkata, when the assessee repeatedly requested the Revenue to make cross–examination of Suresh Agrawal, Kolkata, and in the absence of this, it would be violation of principle of natural justice which would fatal the assessment. For these arguments, reliance is placed on the following case laws:–

- *PCIT v. JPM Tools Ltd (2022) 154 taxmann.com 44 (Del HC);*
- *PCIT v. E-City Projects Luck PLtd (2022) 143 taxmann.com 423 (Ori HC);*
- *PCIT v. Anand Kumar Jain (huf) (2021) 432 ITR 384 (Del HC);*
- *Divya Exim P Ltd v. DCIT (2024) 159 taxmann.com 1370 (Del-Trib);*
- *DCIT v. Frost Falcon Distilleries Ltd (2021) 214 TTJ 388 (Del-Trib);*
- *Andaman Timber Industries v. CCE, (2015) 281 CTR 241 (SC)*

16. Learned A.R. further submitted that the addition of ₹ 12 lakh on account of unsecured loan taken from M/s.Gazal Textiles & Finance P. Ltd, Kolkata (Address: 40, Western Street, 3rd Floor, Bowbazar, Kolkata); Addition of ₹ 3,99,600 on account of interest on such unsecured loan taken from Best Advisory P. Ltd., M/s.Gazal Textiles, Lily Abasan P. Ltd., details of which are as under:–

| *Loan creditors* | *Opening balance as on 1-4-13* | *Interest credited during the year* | *Closing balance as on 31-3-14* | *(repaid prior to the date of search, i.e., on 11-7-19)* |
|---|---|---|---|---|
| *Best Advisory P Ltd* | *10,00,000* | *1,08,000* | *11,08,000* | *repaid on 4-10-18* |
| *Gazal Textiles* | *12,00,000* | *1,29,600* | *13,29,600* | *repaid on 4-10-18* |
| *Lily Abasan P Ltd* | *15,00,000* | *1,62,000* | *16,62,000* | *repaid on 4-10-18* |
| *Total* | | *3,99,600* | | |
| | | *Addition made by AO* | | |

17. On merits of the case, the learned A.R. submitted that the unsecured loan amount of ₹ 12 lakh was opening balance as on 01/04/2013, which brought was forward from the preceding year (i.e., from the assessment year 2013-14) and thus, it is not a fresh cash credit as appearing in the books of the assessee in the assessment year 2014–15. Thus, it cannot be added in the assessment year under consideration under section 68 of the Act. For such arguments, the learned A.R. relied on the following case laws:–

- *CIT v/s Usha Stud Agricultural Farms Ltd. (2008) 183 taxmann.com 277 (Del.); and*
- *Ravindra Arunachala Nadar v/s ACIT (2021) 129 taxmann.com 275 (Chen-Trib).*

18. Further, it is submitted that similarly, addition of ₹ 3,99,600 on account of interest on such unsecured loan taken from M/s.Gazal Textiles & Finance P Ltd, Kolkata; Best Advisory P Ltd; Lily Abasan P. Ltd. is unjustified and is liable to be deleted, because all the 3 aforesaid unsecured loan amounts to the said loan creditors had been repaid on 04/10/2018 (i.e., prior to the date of search on 11/07/2019) and confirmations of those loan creditors along with the bank statement of the assessee reflecting the payments made to the said loan creditors, has been submitted before the Assessing Officer. Without considering the same, the Assessing Officer has made addition, which is unjustified and is liable to be deleted. Reliance is placed on the following case laws:–

- *CIT v/s Ayachi Chandrashekhar Narsangji, [2014] 42 taxmann.com 251 (Guj.)*
- *ACIT v/s Vashu Bhagnani, ITA No.5648/Mum/2016, (Mum.) dt. 30/05/2018;*
- *Shri Krishnabhagwan R. Sharma v/s ACIT ITA No.73 & 82/Rjt/2015, dated 20/07/2022 (Rajkot-Trib)*

19. The learned Departmental Representative has relied upon the order of the authorities below.

20. We have heard the submissions of the rival counsels and considered all the materials on record and the paper book filed before us along with supporting

judgments. Insofar as the incriminating material is concerned, for an unabated year, we find that the Hon'ble SC in the case of PCIT v. Abhisar Buildwell (P) Ltd (2023) 149 taxmann.com 399 (SC) dated 24/04/2023, concluded that-

*i)* ***PCIT v. Abhisar Buildwell (P) Ltd*** *(2023) 149 taxmann.com 399 (SC) dt.24-4-23, held as under:*

> *"7.2. Thereafter in Saumya Construction (Guj), the Guj HC, while referring Kabul Chawla (Del HC) and after considering the entire scheme of block assessment u/s153A, had held that in case of completed assessment/ unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to reopen the completed assessment. In paras 15 & 16, it is held as under:***
> *8. For the reasons stated here in below, we are in complete agreement with the view taken by Kabul Chawla (2015) (Del HC) and Saumya Construction (2016) (Guj), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.*
> *9.1. That prior to insertion of sec153A in the statute, the relevant provision for block assessment was u/s158BA.*
> *The erstwhile scheme of block assessment u/s158BA envisaged assessment of 'undisclosed income' for 2 reasons, firstly that there were 2 parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment u/s158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions to make assessment qua income other than undisclosed income.*
> *Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% u/s113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, sec153A came to be inserted and brought on the statute.*
> *U/s153A regime, the intention of the legislation was to do away with the scheme of 2 parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate.*
> *Thus, after introduction of sec153A and in case of search, there shall be block assessment for 6 years. Search assessments/ block assessments u/s153A are triggered by conducting of a valid search u/s132. The very purpose of search, which is a pre-requisite/ trigger for invoking the sec153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments u/s153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.*
> *10. On a plain reading of sec153A, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice u/s153A to the person, requiring him to furnish the ROI in respect of each AY falling within 6 AYs immediately preceding the AY relevant to the PY in which such search is conducted or requisition is made and assess or reassess the same. Sec 153A reads as under:*

*11. As per the sec153A, in case of a search u/s132 or requisition u/s132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each AY falling within 6 AYs.*

*However, it is required to be noted that as per the second proviso to sec153A, the assessment or re-assessment, if any, relating to any AY falling within the period of 6 AYs pending on the date of initiation of the search u/s132 or making of requisition u/s132A, as the case may be, shall abate.*

*As per sec153A(2), if any proceeding initiated or any order of assessment or reassessment made under sub-s.(1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-s. (1) or sec153, the assessment or reassessment relating to any AY which has abated under the second proviso to sub-s. (1), shall stand revived w.e.f. the date of receipt of the order of such annulment by the CIT.*

*Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/ reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire 6 years period/ block assessment period.*

*The intention does not seem to be to re-open the completed/ unabated assessments, unless any incriminating material is found with respect to concerned AY falling within last 6 years preceding the search.*

*Therefore, on true interpretation of sec153A, in case of a search u/s132 or requisition u/s132A and during the search any incriminating material is found, even in case of unabated/ completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income.*

*However, in case during the search no incriminating material is found, in case of completed/ unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings u/s147/48, subject to fulfillment of the conditions mentioned in sec147/148, as in such a situation, the Revenue cannot be left with no remedy.*

*Therefore, even in case of block assessment u/s153A and in case of unabated/ completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment u/s147/ 148 has to be saved, otherwise the Revenue would be left without remedy.*

*12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/ completed assessment, the AO can assess or reassess the income/ total income taking into consideration the other material is accepted, in that case, there will be 2 assessment orders, which shall not be permissible under the law.*

*At the cost of repetition, it is observed that the assessment u/s153A is linked with the search and requisition u/s132 and 132A. The object of sec153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire 6 years block assessment period even in case of completed/ unabated assessment.*

*As per the second proviso to sec153A, only pending assessment/ reassessment shall stand abated and the AO would assume the jurisdiction*

*with respect to such abated assessments. It does not provide that all completed/ unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to sec153A and sec153A(2) would be redundant and/ or rewriting the said provisions, which is not permissible under the law.*

*13. For the reasons stated hereinabove, we are in complete agreement with the view taken by Kabul Chawla (Del HC) and Saumya Construction (Guj) and the decisions of the other HCs taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

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

*(i) that in case of search u/s132 or requisition u/s132A, the AO assumes the jurisdiction for block assessment u/s153A;*

*(ii) all pending assessments/reassessments shall stand abated;*

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

*(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/ unabated assessments. Meaning thereby, in respect of completed/ unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search u/s132 or requisition u/s132A.*

*However, the completed/ unabated assessments can be re-opened by the AO in exercise of powers u/s147/ 148, subject to fulfillment of the conditions as envisaged/ mentioned u/s147/148 and those powers are saved.*

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

21. Further, we find that the Assessing Officer has used this statement (i.e., pre-search statement recorded on 22/01/2019 at third party premises at Kolkata) of Suresh Agrawal, Kolkata, director of M/s.Rashi Steel & Power P Ltd, Kolkata on oath recorded on 14/03/2019 in the course of a separate search conducted in the case of a third party (i.e., search of Suresh Agrawal, Kolkata, director of M/s.Rashi Steel & Power P Ltd, Kolkata on 22/01/2019 which is a pre-search statement of third party at third party premises at Kolkata) for making the additions in the hands of the assessee in the assessment made under section 153A for unabated assessments on the date of search on the assessee (i.e., on

11/07/2019) i.e., A.Y. 2014-15, 2015-16 and 2016-17, which is unabated assessments for the assessee, since on the date of search on 11/07/2019, no assessments were pending for the A.Y. 2014-15, 2015-16 and 2016-17.

22. We also find that as per the mandate of section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in section 153A), then the only legal recourse available to the Deptt was to proceed in terms of section 153C by handing over the same to the Assessing Officer who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material i.e., being the statement recorded under section 132(4). The assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed; On this count alone, we conclude that the alleged additions made in assessments made under section 153A for unabated years i.e., A.Y. 2014-15, 2015-16 & 2016-17 on the date of search (i.e., 11/07/2019) on the assessee, in the absence of any incriminating material found during the course of search from the premises of the assessee on 11/07/2019, which relates to the alleged additions made for A.Y. 2014-15, 2015-16 & 2016-17, is invalid, unjustified and hereby it is deleted by relying upon the following case laws:–

*i)* ***PCIT v. JPM Tools Ltd*** *(2022) 154 taxmann.com 44 (Del HC), held as under:*

> *"12. Ld predecessor DB of this Court in Best Infrastructure (India) (P) Ltd (2017) (Del HC) has held that statements recorded u/s132(4) do not by themselves constitute incriminating material. The relevant portion of the said judgment is reproduced here-in-below:*
>
> > *"36. Turning to the facts of the present case, requires to be noted that the statements of Mr.Anu Aggarwal, portions of which have been extracted hereinbefore, make plain that the surrender of the sum of Rs.8 crores was only for the AY in que and not for each of the 6 AYs preceding the year of search.*
> > *Secondly, when Mr.Anu Aggarwal was confronted with A-1, A-4 and A-11 he explained that these documents did not pertain to any undisclosed income and had, in fact been accounted for. Even these, therefore, could not be said to be incriminating material qua each of the preceding AYs.*

*37. Fourthly, a copy of the statement of Mr.Tarun Goyal, recorded u/s132(4), was not provided to the assessees. Mr.Tarun Goyal was also not offered for the cross-examination. The remand report of the AO before the C(A) unmistakably showed that the attempts by the AO, in ensuring the presence of Mr.Tarun Goyal for cross-examination by the assessees, did not succeed. The onus of ensuring the presence of Mr. Tarun Goyal, whom the assessees clearly stated that they did not know, could not have been shifted to the assessees. The onus was on the Revenue to ensure his presence. Apart from the fact that Mr.Tarun Goyal has retracted his statement, the fact that he was not produced for cross- examination is sufficient to discard his statement.*

*38. Fifthly, statements recorded u/s132(4) do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal.*

*Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in Smt.Dayawanti Gupta where the admission by the assessees themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the assessees were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr.Anu Aggarwal or Mr.Harjeet Singh contained any such admission.*

*39. For all the aforementioned reasons, the Court is of the view that the Trib was fully justified in concluding that the assumption of jurisdiction u/s153Aqua the assessees herein was not justified in law."*

*13. In any event, in the present cases, as the assessees were denied the opportunity to cross-examine Mr.Rajesh Agarwal, despite a specific request, this Court is in agreement with the Trib that his statement needs to be excluded and cannot be relied upon as a piece of evidence to make any addition. In fact Andaman Timber Industries (2015) (SC) has held-*

*"...not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as amounted to violation of principles of natural justice because of which the assessee was adversely affected."*

*14. Consequently, this Court is of the view that no substantial que of law arises for consideration in the present batch of appeals and accordingly, the same are dismissed along with pending applications."*

*ii)* ***PCIT v. E-City Projects Lucknow (P) Ltd*** *(2022) 143 taxmann.com 423 (Orissa HC) held as under:*

*"5. On 6-8-14 a search and seizure operation was carried out u/s132 in the business premises of the company and the resi-premises of the Directors at Cuttack.*

*On 29-4-15 notices u/s 153A were issued pursuant to which ROI for the respective AYs were filed by the Assessee on 10-8-15 again disclosing 'Nil' income. This was followed by notices u/s142(1) and 143(3) being served on the Assessee.*

*6. For AY12-13 the assessment was completed by the AO on 28-12-16 determining the total income as Rs.6.92 crores and on the same date, a separate assessment order was passed for AY13-14 determining the total*

*income as Rs.3.06 crores. The appeals filed by the Assessee against the respective assessment orders were dismissed by the CIT(A) by order dt.13-11-17. Being aggrieved, the assessee preferred further appeals to the ITAT which have been allowed by the respective impugned orders for the 2 AYs.*

*7. The ITAT noted that for both AYs in que, the Assessee claimed to have received a corresponding loan amount from UAPL i.e. Rs.6.92 crores by cheque for the AY12-13 and Rs. 3.06 crores through banking channels for the AY13-14.*

*The fact that the Investigating Officer (IO) examined the Directors of the UAPL was also not in dispute. The both the loans were disclosed by the Assessee in the returns filed in the books of account produced before the AO.*

*8. For AY12-13 the ITAT noted that the time limit for issuance of notice u/s 143(2) with reference to the original return filed by the Assessee on 30-9-12 expired on 30-9-13 and by that date, no notice was issued to the Assessee. Thus, the original ROI became final on 30-9-13 i.e., before the date of search.*

*In other words, the assessment of AY12-13 had not abated.*

*During the course of search, tally account of the Assessee was found which also evidenced the fact of disclosure of the loan amounts received from UAPL through banking channels. This was prior to the date of search.*

*9. It is in the above context that the Assessee contended that for AY12-13 the addition of Rs.6.92 crores as unexplained cash credit u/s 68 was unwarranted and that proceedings initiated u/s153A were without jurisdiction since no incriminating material was found during search and the assessment of the said AY had not abated.*

*10. The Assessee's contention was that a copy of the assessment order dt.28-3-14 passed in the case of UAPL for AY08-09 was produced and the Assessee had therefore, discharged the initial onus of showing the identity of the creditor, the genuineness of the transaction as well as the creditworthiness of the creditor. The loan amount of Rs. 3.06 crores had been repaid in the FY14-15. The further contention was that since the assessment proceedings had commenced in Aug, 2015 the Assessee had no control or influence over the Directors of UAPL to compel them to appear before the AO.*

*On the other hand, the AO could have required them to appear before him for examination but he did not exercise the power available with him under the Act for that purpose. Therefore, no adverse inference could be drawn against the Assessee.*

*11. As regards AY12-13 it was noted by the ITAT that it was an unabated assessment and unless there was incriminating material, no addition could be made.*

*In particular it was noticed that the statement of the two persons of UAPL was recorded on 13-11-14 i.e., after the search was completed on 7-11-14. Therefore, such statements could not be material unearthed during the course of search.*

*Nevertheless, in those statements there was nothing brought out to show that cash was received from the Assessee by UAPL in lieu of the cheque issued by UAPL to the Assessee. Further, the name of the Assessee did not appear in the statement made to the IO by the Directors of the UAPL. The said loan amount of Rs.3.06 crores was not mentioned by them as an accommodation entry.*

*12. Further, the said 2 persons were not allowed to be cross- examined by the Assessee. As regards the observation of the CIT(A) that the lack of opportunity to the Assessee to cross examine the Directors of UAPL was not fatal to the addition made by the AO, the ITAT found the said proposition to be contrary to the law explained by Andaman Timber Industries (2015) (SC), where it was held as under:*

> *"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."*

*13. This Court has in Smt Jami Nirmala [2021] (Ori HC) and Smt Smrutisudha Nayak [2022] (Ori HC) relied on Kabul Chawla [2015] (Del HC) where inter alia it was observed as under:*

> *"…(iv) Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this section only on the basis of the seized material.*
>
> *(vii) Completed assessments can be interfered with by the AO while making the assessment u/s 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

*14. Since the findings of the ITAT are factual, based on the documents placed on record and have not been shown to be perverse by the Revenue and are consistent with the settled legal position as explained above, the Court finds that no error has been committed by the ITAT in either order deleting the additions sought to be made by the AO.*

*15. The Court is therefore, not inclined to frame the ques as urged by the Revenue in these two appeals."*

iii) ***PCIT v. Anand Kumar Jain (Huf)*** *(2021) 432 ITR 384 (Del HC) held as under:*

> *"2. Briefly, the facts of the case are that the assessee purchased shares of an unlisted Pvt Ltd Co in 2010. This unlisted-Co then merged with another unlisted-Co, M/s.Focus Industrial Resources Ltd and shares of this merged entity were allotted to the assessee. Subsequently, the merged entity allotted further bonus shares to the assessee and thereafter, it was listed on the BSE. Assessee sold these shares on the stock exchange in 2014 and earned a huge profit which was claimed as exempt income on account of being LTCG.*
>
> *3. A search was conducted u/s132 on 18-11-15 at the premises of the assessee (being Anand Kumar Jain (HUF), its coparceners and relatives) as well as at the premises of one Pradeep Kumar Jindal.*
>
> *During the search, statement of Pradeep Kumar Jindal was recorded on oath u/s132(4) on the same date, wherein he admitted to providing*

*accommodation entries to Anand Kumar Jain (HUF) and his family members through their CA. The AO framed the assessment order detailing the modus operandi as to how the cash is provided to accommodation entry operator in lieu of allotment of shares of a Pvt Co. Thereafter, when the matter was carried up in appeal before the CIT(A), the findings of AO were affirmed. However, in further appeal before the Trib, the said findings were set aside vide the impugned order.*

*6. We have considered the contentions of Mr.Sharma, however, we feel that the instant appeals do not raise any que of law, much less substantial que of law for our consideration. The relevant portion of the impugned order reads as under:*

> *"5. We find that the ld counsel for the assessee has drawn our attention towards the relevant portion of the judgment/ decision of the Hon'ble SC, Hon'ble HCs and various Benches of the Trib on the legal issue on which he argued, ld counsel for the assessee further submitted that admittedly from assessee's own premises during search u/s132 no incriminating material was found and no adverse statement is there on record of the assessee u/s132(4) and it is an admitted fact before us that mere basis of un-confronted statement of Shri Pradeep Kumar Jindal recorded u/s132(4) in his own separate search action and on the basis of un-confronted material for the said search u/s132(4), which in our considered opinion, cannot be made as a sole basis for making the additions u/s153A without recourse of mandatory and exclusive provisions under the Act like u/s153C which specifically covered the extant situation.*
>
> *In our opinion, the decision of the Hon'ble SC, Hon'ble HCs and the various Benches of the Trib are directly applicable in the present case wherein they have adjudicated and decided the similar issue in favour of the assessee by accepting the similar arguments of the ld counsel for the assessee.*
>
> *5.1. As regards the arguments advanced by ld DR are concerned, the same are not applicable in the present case because keeping in view the assessment order passed by the AO we have not seen from the proceedings of the AO regarding providing any statement of Shri Pradeep Kumar Jindal to the assessee meaning thereby the Revenue Authorities have not provided the statement of Shri Pradeep Kumar Jindal to the assessee and also did not provide the opportunity of cross examination of Sh.Pradeep Kumar Jindal, on which basis the addition has been made and the sec153A have been wrongly applied in the case of the assessee.*
>
> *Therefore, we do not find any cogency in the arguments advanced by the ld DR and the case laws cited by him in support of his contention are not applicable here."*

*7. The preliminary que u/c before us is whether a statement u/s132(4) constitutes incriminating material for carrying out assessment u/s153A. A reading of the impugned order reveals that the statement of Mr.Jindal recorded u/s132(4) forms the foundation of the assessment carried out u/s153A. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr.Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by*

*the assessee, he denied having known Mr.Jindal. Since there was insufficient material to support the additions, the Trib deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot reappreciate evidence while exercising jurisdiction u/s 260A.*

*8. Next, we find that, the assessment has been framed u/s153A, consequent to the search action. The scope and ambit of sec153A is well defined. Kabul Chawla (2015) (Del HC), concerning the scope of assessment u/s153A, has laid out and summarized the legal position after taking into account the earlier decisions of this Court as well as the decisions of other HCs and Tribs. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr.Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the explanation to sec132(4). However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations,empower the AO to frame the block assessment. Best Infrastructure (I) (P) Ltd (2017) (Del HC) has inter alia held that:*

> *"38. Fifthly, statements recorded u/s132(4) do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (2016) (Del HC)."*

*9. In Harjeev Aggarwal (2016) (Del HC), this Court had held as follows:*

> *"23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded u/s132(4) would by itself be sufficient to assess the income, as disclosed by the assessee in its statement, under the Chapter XIV-B.*
>
> *24. In our view, a plain reading of s.158BB(1) does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words 'evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to sec132(4). However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation.*
>
> *25. (…) However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken.*
>
> *Now, if the sec132(4) are read in the context of sec158BB(1) r/w sec158B(b), it is at once clear that a statement recorded u/s132(4) can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material*

*discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment.*

*The undisclosed income of an assessee has to be computed on the basis of evidence and material found during search. The statement recorded u/s132(4) may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/ material found during search in order to for an assessment to be based on the statement recorded.*

*27. It is also necessary to mention that the aforesaid interpretation of sec132(4) must be r/w the explanation to sec132(4) which expressly provides that the scope of examination u/s132(4) is not limited only to the books of accounts or other assets or material found during the search. However, in the context of sec158BB(1) which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded u/s132(4) can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.*

*28. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded u/s132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assessees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.*

*29. In Naresh Kumar Agarwal (2014) (AP HC), a DB of Tel and AP HC held that a statement recorded u/s132(4) which is retracted cannot constitute a basis for an order u/s158BC."*

*10. Now, coming to the aspect viz the invocation of sec153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of sec153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in sec153A), then the only legal recourse available to the Deptt was to proceed in terms of sec153C by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed u/s153A on the basis of alleged incriminating material (being the statement recorded u/s132(4)). As noted above, the assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure u/s153C has not been followed. On this count alone, we find no perversity in the view taken by the Trib. Therefore, we do not find any substantial que of law that requires our consideration."*

*iv)* ***Divya Exim (P) Ltd v. DCIT*** *(2024) 159 taxmann.com 1370 (Del-Trib) held as under:*

> *"7.1 It is the case of the assessee that additions/ disallowances could not be made in the assessment framed u/s153A de-horse reference to any incriminating material found in the course of search in the hands of the assessee. It is further case of the assessee that any adverse statement of a third party (Pradeep K.Jindal in the instant case recorded u/s132(4)) cannot be read as incriminating material found in the course of search in the case of these assessee(s). Thus, the statement recorded in the course of search in that case cannot be imported in the case of the captioned assessee(s) for the purposes of salutary condition of existence of incriminating material at the time of search in the hands of assessee(s). The statement of third person thus has no nexus whatsoever with any material of incriminating material found in the course of search at the premises of the assessee which is the genesis of proceedings u/s153A as held in Abhisar Buildwell (SC).*
> *7.2. The appeal of the assessee thus, hinges around one pertinent legal point as to whether, while making assessment u/s153A, the Revenue is entitled to interfere with unabated assessment which stood concluded either u/s143(1) or u/s143(3) and not pending at the time of search in the absence of any incriminating material unearthed as a result of search in the case of assessee.*
> *8. As pointed out on behalf of the assessee, there is a total absence of reference to any incriminating material which may have any bearing to the impugned additions/ disallowances except some statement of witness Mr.Pradeep Kumar Jindal adverse to assessee in an all together different search proceedings. The Hon'ble Del HC has observed in identical fact situation that statement of Pradeep K.Jindal extracted in his search cannot be construed to be incriminating material in the case of assessee herein. As a corollary, it is manifest that additions/ disallowances have been made without reference to any specific incriminating material/ document found as a result of search and seizure action u/s132 and such additions are solely based on deposition made by a witness against the assessee in the course of search in that case. Besides, the integrity of confession obtained is unknown. No cross examination of the witness was provided to the assessee either and consequently, such statement is unworthy of reliance.*
> *9. Guided by the principles laid down in Abhisar Buildwell (P) Ltd (SC) and Ananad Kumar Jain (HUF) (Del HC), we find force in the legal plea raised on behalf of the assessee. Hence, in the absence of any incriminating material in an unabated assessment additions/ disallowances made by AO in all captioned appeals requires to be quashed. In this view of the matter, we do not consider it necessary to adjudicate other legal and factual aspects concerning additions/ disallowances."*

*v)* ***DCIT v. Frost Falcon Distilleries Ltd*** *(2021) 214 TTJ 388 (Del-Trib) held as under:*

> *"5. The ld CIT(A) deleted the addition made by the AO in respect of 3 parties, however, upheld the addition of Rs.75 lakhs in respect of the share capital/ share premium received by the assessee from one M/s.Aachman Vanijya (P) Ltd. The ld CIT(A) deleted the addition in respect of 3 parties*

*observing that no incriminating material was found during the search action in respect of the investment made by the said 3 parties. Further, that the original assessment for the year u/c stood completed on the date of search. He, in this respect relied upon Kabul Chawla (2015) (Del HC) and Jaipuria Infrastructure Developers (P) Ltd (Del-Trib) ITA No.5522 & 5523/Del/2015, wherein, it has been held that in case of completed assessments, no addition can be made in the absence of any incriminating material.*

*6. However, in the case of share capital/ share premium received from M/s.Aachman Vanijya (P) Ltd., the ld CIT(A) referred to the statement recorded of Sh.Kashi Prasad Chotia, director of M/s.Aachman Vanijya (P) Ltd during the survey action carried out at the premises of the said company, wherein, he had stated that he was only dummy director of the company and that M/s.Aachman Vanijya (P) Ltd was a paper concern and no genuine business activities were carried out by the said company. Further that the said company used to provide accommodation entries. The ld CIT(A) relied upon S Ajit Kumar (2018) 302 CTR 177 (SC), wherein it has been held that any material or evidence found/ collected in survey, which has been simultaneously made at the premises of a connected person, can be utilised while making the Block Assessment in respect of an assessee u/s158BB rws.158BH. He, therefore, confirmed the addition of Rs.75 lakhs in respect of the share capital/ share premium received by the assessee from the aforesaid company.*

*7. The Revenue, therefore, has come in appeal before us contesting the action of the ld CIT(A) in deleting the addition in respect of the remaining 3 parties amounting to Rs.4,75,00,000 and whereas the assessee has come in appeal contesting the confirmation of addition of Rs.75 lakhs in respect of share premium/ share capital received from M/s.Aachman Vanijya (P) Ltd.*

*8. We have heard. Admittedly, the original assessment in this case was already completed and not abated as on the date of search. It is also an admitted fact that no incriminating material was found in the premises of the assessee during the search action relating to the aforesaid share capital/ share premium received by the assessee.*

*Now, the ld CIT(A) while deleting the addition in respect of the 3 parties has relied upon Kabul Chawla (2015) (Del HC) and other HCs, wherein, it has been held that in case of completed assessment, no addition can be made in the absence of any incriminating material. We do not find any infirmity in the order of the ld CIT(A) in this respect.*

*9. However, so far as the confirmation of addition by the ld CIT(A) in respect of share capital/ share premium received from M/s.Aachman Vanijya (P) Ltd. is concerned, we find that the ld CIT(A) has relied upon S Ajit Kumar (2018) (SC), wherein, the Hon'ble SC has held that any material or evidence found/ collected in a survey action which has been simultaneously made at the premises of a connected person can be utilised while making the block assessment in respect of an assessee u/s158BB r/w sec158BH. The Hon'ble SC in this respect has held that the words "and such other materials or information as are available with the AO and relatable to such evidence" occurring in sec158BB will cover the material found or collected in a simultaneous a survey action at the premises of the connected person. However, we note that the aforesaid proposition was laid down by the Hon'ble SC in relation to the block assessment made u/s158BB r/w sec158BH. However, the said s.158BB and 158BH are not applicable for the AY u/c. The assessment for the AY u/c in this case has been framed under the sec153A, wherein, such words as referred to by the Hon'ble SC does not*

> *exist. Moreover, we find that the statement relied upon by the ld CIT(A) of one Sh. Kashi Prasad Chotia, dummy director of the M/s.Aachman Vanijya (P) Ltd. is otherwise not trustworthy and is not enough to make addition based solely on the said statement. Mr.Kashi Prasad Chotia in the survey action had stated that he was dummy director only, which means, he was not aware of the actual activity of the said company i.e., M/s.Aachman Vanijya (P) Ltd. He had further stated that he was not aware about the commission paid but the details of the commission earned could be furnished by the Sh.Pramod Baid, who was the key person in the company. When he was asked as to what was the nature of business of M/s Aachman Vanijya (P) Ltd, he replied that all such information in respect of M/s Aachman Vanijya (P) Ltd could be given by Sh.Pramod Baid only. Except the aforesaid statement of Sh.Kashi Prasad Chotia, no other incriminating material or evidence has been referred in the assessment order, in respect of survey action carried out in the case of M/s.Aachman Vanijya (P) Ltd. The statement of said Sh.Kashi Prasad Chotia has not been confronted to the assessee. The ld counsel for the assessee in this respect has relied upon Andaman Timber Industries (2015) (SC) dt.2-9-15, wherein, the Hon'ble SC has held that where the assessee had not been given an opportunity to cross examine the witness, who made statement such bald statement, cannot be made the sole basis to make addition. Since, the words "and such other materials or information as are available with the AO and relatable to such evidence" do not find mention under the sec153A and further it has been held time and again by the various HC that addition can be made in case of completed assessment as on the date of search only on the basis of incriminating material found during the search action, hence, in our view, the action of the ld CIT(A) in confirming the addition of Rs.75 lakhs on the basis of sole statement of one dummy director, recorded during the survey action in case of that company, without confronting the same to the assessee, cannot be held to be justified. The impugned addition is, therefore, ordered to be deleted.*
>
> *In view of the above discussion, the appeal of the Revenue is hereby dismissed, whereas the appeal of the assessee is allowed."*

23. On the issue of the alleged unsecured loan which has been re–paid by the assessee in subsequent year and the Revnue has not disputed the same. It is legally well settled now that when the loan amount has been squared–up in subsequent years, addition cannot be made on account of unexplained cash credit under section 68 of the Act and further if no fresh credits are appearing in the books of account or it is brought forward from earlier years, then it cannot be added as addition under section 68 of the Act in the relevant assessment year. In this regard, we rely on the following case laws:–

i) ***CIT v/s Ayachi Chandrashekhar Narsangji*** *(2014) 42 taxmann.com 251(Guj.) wherein it has been held as under:–*

*"3. On appeal before the CIT(A) the assessee reproduced the letter dt.22-12-08 written by the assessee to the AO along with the confirmation letter of Shri Ishwar Adwani submitting that he had given loan of Rs.145 lakhs to the assessee by cheques and considering the same and considering the fact that the aforesaid loan amount of Rs.145 lakhs came to be repaid to said Shri Ishwar Adwani in the next AY and considering the identity of the donors, creditworthiness and the genuineness of the loan transactions, CIT(A) deleted the additions made by the AO.*
*4. ..the Tribunal dismissed the appeal preferred by the revenue confirming the order passed by the CIT(A) deleting the aforesaid addition…the revenue has preferred the present TA with the aforesaid substantial que of law.*
*5. The only contention on behalf of the revenue is that on the last day of passing the order, communication dt.22-12-08 of the assessee along with the confirmation letter of Shri Ishwar Adwani confirming the loan/ advance of Rs.145 lakhs given to the assessee, was produced before the AO i.e., on the day, the AO passed the order and thereafter, the same was reproduced before the CIT(A) and the CIT(A) considered the same, the CIT(A) ought to have remanded the matter to enable the AO to hold further inquiry and, therefore, it is requested to admit/ allow the present TA.*
*6. Having heard Shri Pranav Desai, ld counsel appearing on behalf of the revenue and on perusal of the order passed by the CIT(A) confirmed by the Tribunal, it appears that CIT(A) was satisfied with respect to the genuineness of the transaction and creditworthiness of Shri Ishwar Adwani and, therefore, deleted the addition of Rs.145 lakhs made by the AO. It is required to be noted that as such an amount of Rs.100 lakhs vide Che.No.102110 and an amount of Rs.60 lakh vide Che.No.102111 was given to the assessee and out of the total loan of Rs.160 lakhs, Rs.15 lakh vide Che.No.196107 was repaid and, therefore, an amount of Rs.145 lakhs remained outstanding to be paid to Shri Ishwar Adwani. It has also come on record that the said loan amount has been repaid by the assessee to Shri Ishwar Adwani in the immediate next FY and the Deptt has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the Tribunal. No que of law, much less substantial que of law arises in the present TA. Hence, the present TA deserves to be dismissed and is accordingly dismissed."*

ii) ***Shri Krishnabhagwan R Sharma*** *v. ACIT, ITA No.73, 82/Rjt/2015, dt.20-7-22 (Rajkot-Trib) held as under:*

> *"8.3.…It is observed that the copy of relevant bank statement was filed by the assessee before the ld CIT(A) as an 'additional evidence' pointing out that both the creditors were paid the amount in que through banking channel during the subsequent year.*
> *It was also submitted by the assessee before the ld CIT(A) that the confirmation of both the creditors along with PAN were placed before the AO, but no inquiry whatsoever was made by him to verify the relevant credits before treating the same as unexplained.*
> *This submission made by the assessee along with the 'additional evidence' was forwarded by the ld CIT(A) to the AO for verification, but besides objecting to the admission of the additional evidence, nothing was pointed out by the AO in his remand report submitted to the ld CIT(A) challenging the stand of the assessee on merit of the issue.*

*On verification of the additional evidence filed by the assessee, the ld CIT(A) found that both the credits in que were duly cleared by the assessee by making payments through banking channel in the subsequent year.*
*He also found that the issue was squarely covered by Ayachi Chandrasekhar Narsangji (2014) (Guj HC) cited on behalf of the assessee wherein it was held that where the repayment of loan was accepted by the Deptt in the subsequent year, no addition on account of the same could be made in the preceding year on account of unexplained cash credit.*
*Respectfully following the said decision of the Hon'ble jurisdictional HC, the ld CIT(A) deleted the addition made by the AO u/s68; and, keeping in view all the facts of the case, we find no infirmity in the impugned order of the ld CIT(A) on this issue warranting any interference. The same is accordingly upheld and the Gr.No.6 of the Revenue's appeal is dismissed."*

iii) ***ACIT v. Vashu Bhagnani*** *ITA No.5648/Mum/2016; dt.30-5-18, (Mum-Trib), held as under:*

*"3. Briefly stated, the facts of the case are that the AO received information from the Inv. Wing of the IT Deptt, that a search and seizure operation was carried out in Shri Bhanwarlal Jain Group on 3-10-13, wherein it was found that Shri Jain along with his associates had provided accommodation entries in the form of ULs/ deposits/ purchase entries to a large number of parties through various benami concerns controlled by them, by taking equivalent amount of cash. The assessee, proprietor of Pooja Construction, was one of the beneficiaries of accommodation entries from M/s.Daksh Diamonds operated by Shri Jain and Group. Based on the said information, the AO reopened the assessment by issuing notice u/s148 on 28-3-14. On the basis of the statement recorded u/s132(4)/131 during the course of search, the AO made an addition of Rs.50 lakhs of ULs shown by the assessee during the impugned AY and an amount of Rs.4,50,000 towards intt payment.*
*4. Aggrieved by the order of the AO, the assessee filed an appeal before the ld CIT(A). The ld CIT(A) held that (i) the AO has solely relied upon the statement of Shri Bhawarlal Jain and did not carry out any worthwhile independent inquiry in the matter, (ii) the AO has totally ignored the documentary evidence submitted by the assessee, (iii) even if some of the transactions entered into by the above parties are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by these parties were bogus or non-genuine including the transactions related to the assessee. With the above reasons, the ld CIT(A) held that merely based on the statement of a third person without any corroborative evidence will not make the transactions, in que, non-genuine or bogus transaction. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as bogus or paper transaction. Thus, the ld CIT(A) deleted the addition of Rs.50 lakhs and Rs. 4,50,000 made by the AO.*
*6. On the other hand, the ld counsel of the assessee submits that the assessee had received an amount of Rs.50 lakhs from M/s.Daksh Diamonds during the AY07-08. Also the assessee had paid interest @ 9% on such borrowed money and TDS has been deducted on the same. It is stated that the assessee is into the business of movie making and construction which requires re-financing. The above party had financed the assessee for which*

*it had paid interest to them after deducting applicable TDS. Further it is stated that the assessee's own capital is of Rs.15.93 crores and has a bank loan of Rs.4.19 crores. Hence, the assessee will not enter into such accommodation transaction of Rs.50 lakhs. The assessee has paid tax of Rs.45.80 lacs in AY07-08. It is stated that the assessee had submitted the copies of ITR and loan confirmation of the above party. Also the bank statements were provided to the AO which were reflecting the receipt of funds from the parties and payment of interest by the assessee. It is finally stated that the AO has made the addition based on the ground that the lender belonged to so-called Shri Bhanwarlal Jain and Group and the transaction was a bogus one, without giving any opportunity to the assessee to cross-examine the party in spite of repeated requests made. Also the assessee provided to the AO all the documents which can prove that the transaction was genuine which was ignored. The ld counsel of the assessee files a PB containing (i) Ledger Confirmation, (ii) Bank Statement of Daksh Diamonds, (iii) IT return copy of Mr.Ritesh Siraya (Prop. Daksh Diamonds) for AY07-08, (iv) Financial of M/s Daksh Diamonds for AY07-08 (v) Ledger account of M/s Daksh Diamonds for the period 3-7-06 to 6-9-10 and (vi) P&L account, balance sheet and IT return of the appellant for AY07-08. It is clarified by him that the above documents were filed before the AO and CIT(A).*

*7. Here is a case, clearly defined by the accounts. The ledger account of Daksh Diamonds appearing in the books of accounts of the assessee shows that on 3-7-06, the assessee received Rs.30 lakhs vide che.No.812561 and Rs.20 lakhs vide che.No.812562- being amounts received towards loan from Daksh Diamonds (Indusland Bank Ltd, Opera House Branch, Indusland House, 425 Mumbai-04).*

*On 6-5-10 the assessee issued che.No.265949 amounting to Rs.20 lakhs being cheque to Daksh Diamonds towards refund of loans. Further, on 22-6-10 the assessee issued che.No.263943 amounting to Rs.30 lakhs being cheque to Daksh Diamonds towards refund of loans. The transactions were routed through Vijay Bank. The ledger confirmation by Daksh Diamonds tell the same facts. The search and seizure action conducted by the Deptt in Bhanwarlal Jain Group took place on 3-10-13. The loans taken by the assessee from Daksh Diamonds in the year 2006 was refunded in the year 2010. One has to respect the transactions which occurred more than 3 years before the search and seizure action by the Deptt. Thus, the addition made by the AO without any documents is devoid of merit. Accordingly, we uphold the order of the ld CIT(A)."*

iv) ***CIT v. Usha Stud Agricultural Farms Ltd.*** *(2008) 183 taxmann.com 277 (Del HC) held 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."*

v) ***Ravindra Arunachala Nadar v. ACIT*** *(2021) 129 taxmann.com 275 (Chen-Trib) wherein speaking through one of us Judicial Member, 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 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."*

24. Thus, we find on merits also and addition of ₹ 12 lakh for the assessment year 2014–15 on account of unsecured loan treating it as unexplained under section 68, when it is opening balance as on 01/04/2023 brought forward from earlier year and no fresh cash credit received during the assessment year 2014-15, it had already accepted in scrutiny assessment completed under section 143(3) dt.18/08/2016/ Moreso, it had already been repaid on 04/10/2018 which is prior to the search conducted on 11/07/2019, addition of ₹ 12 lakh is not justified hence deleted and consequently, the interest of ₹ 3,99,600, on such unsecured loans is also deleted. For coming to such conclusion, we rely on the judgment of the Hon'ble Delhi High Court in Usha Stud Agricultural Farms Ltd, (2008) 183 taxmann.com 277 (Del HC) and the judgment of the Hon'ble High Court of Gujarat in Ayachi Chandrashekhar Narsangji (2014) 42 taxmann.com 251(Guj.).

25. In the assessment year 2015–16 and 2016–17, being ITA no.114/Nag./ 2024, A.Y. 2015–16 and ITA no.115/Nag./2024, A.Y. 2016–17, similar issue in respect of of interest paid on unsecured loan has been raised in ground no.3 and 4, in both the appeals. The grounds no.3 and 4, raised in ITA no.114/Nag./2024 and ITA no.115/Nag./2024, are reproduced below:–

*A.Y. 2015–16*
*"3. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.4,42,757 on the count of interest on unsecured loan treating it as bogus, when, on the date of search (i.e., 11-7-19), AY15-16 had already been completed, since scrutiny assessment u/s143(3) had been completed on 22-12-17; no assessment was pending for AY15-16; there is no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee which is linked with the addition of Rs.4,42,757 for AY15-16; in absence of this, addition is not sustainable in the eyes of law while making assessment for an unabated AY; addition is liable to be deleted; relied on Abhisar Buildwell (P) Ltd (2023) (SC).*

*4. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.4,42,757 on the count of interest treating it as bogus, when TDS has been deducted on such interest expenses claimed; it had already been accepted in scrutiny assessment completed u/s143(3) dt.22-12-17; more so, the alleged sum had already been repaid on 4-10-18 prior to the search conducted on 11-7-19; the addition of Rs.4,42,757 is not justified, is liable to be deleted."*

*A.Y. 2016–17*
*3. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.2,68,490 on the count of interest on unsecured loan treating it as bogus, when, on the date of search (i.e., 11-7-19), AY16-17 had already been completed, since scrutiny assessment u/s143(3) had been completed on 28-12-18; no assessment was pending for AY16-17; there is no mention in the assessment order about any incriminating material found during the course of search from the premises of the assessee which is linked with the addition of Rs.2,68,490 for AY16-17; in absence of this, addition is not sustainable in the eyes of law while making assessment for an unabated AY; addition is liable to be deleted; relied on Abhisar Buildwell (P) Ltd (2023) (SC).*

*4. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.2,68,490 on the count of interest treating it as bogus, when TDS has been deducted on such interest expenses claimed; it had already been accepted in scrutiny assessment completed u/s143(3) dt.28-12-18; more so, the alleged sum had already been repaid on 4-10-18 prior to the search conducted on 11-7-19; the addition of Rs.2,68,490 is not justified, is liable to be deleted."*

26. The issue of no incriminating material found in the course of serarch for an unabated assessment on the date of search and the issue on merit i.e., addition on account of unexplained cash credit under section 68 of the Act and interest paid on such credits have already been decided by us vide Para-20 to 25, of this order, wherein we have decided this issue in favour of the assessee and against the Revenue for the detailed reasoning given therein. Consistent with the view taken by us, similar additions are deleted in these years also. Consequently, the

grounds no.3 and 4, are decided in favour fo the assessee by setting aside the impugned order passed by the learned CIT(A) for the assessment year 2015–16 and 2016–17 on grounds no.3 and 4 as well.

27. In the result, appeals for assessment year 2014–15, 2015–16 and 2016–17 are allowed.

**ITA no.116/Nag./2024**
**Assessment Year –2017–18**

28. Following grounds have been raised by the assessee:–

> *"Ground no.3:*
> *"On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.7,59,397 on the count of interest treating it as bogus, when TDS has been deducted on such interest expenses claimed; more so, the alleged sum had already been repaid on 4-10-18 prior to the search conducted on 11-7-19; the addition of Rs.7,59,397 is not justified, is liable to be deleted."*

29. The Assessing Officer has made following additions:–

| *Loan creditors* | *Opening bal. as on 1-4-16* | *Interest credited during the year* |
|---|---|---|
| *Best Advisory P Ltd* | *0* | *2,87,405* |
| *Gazal Textiles* | *0* | *1,00,684* |
| *Lily Abasan P Ltd* | *0* | *1,25,855* |
| *Origin Deal Trade P Ltd* | *0* | *2,03,502* |
| *Total* | *0* | *7,17,446* |
| | | *7,59,397 addition made by AO* |

30. On appeal, the learned CIT(A) has dismissed the appeal without going into the merit of the case.

31. Before us, the learned A.R. submitted that it is an abated / open assessment on the date of search on 11/07/2019, since on the date of search on 11/07/2019, notice under section 143(2) for A.Y. 2017-18 had already been issued by the Assessing Officer on 10/09/2018 which is certainly prior to the date of search, and hence, it was an abated/ open assessment on the date of search,

and thus, the assessment for the year 2017-18 was pending on the date of search.

32. The learned A.R. for the assessee submitted that addition of ₹ 7,59,397 for the assessment year 2017–18 on account of interest paid on unsecured loans taken from M/s.Gazal Textiles & Finance P Ltd, Kolkata (Address: 40, Western Street, 3rd Floor, Bowbazar, Kol); Best Advisory P Ltd; Lily Abasan P Ltd; Origin Deal Trade P Ltd. The factual position as contained in the books of account in respect of assessment year 2017–18 on the addition of interest paid on unsecured loans for ₹ 7,59,397, is as under:–

| *Loan creditors* | *Opening bal. as on 1-4-16* | *Interest credited during the year* | *Paid during the year* | *Closing bal. as on 31-3-17* | *(repaid prior to the date of search, i.e., on 11-7-19)* |
|---|---|---|---|---|---|
| *Best Advisory P Ltd* | *39,39,974* | *2,87,405* | *4,39,974* | *37,87,405* | *repaid on 4-10-18* |
| *Gazal Textiles* | *15,92,526* | *1,00,684* | *3,92,526* | *13,00,684* | *repaid on 4-10-18* |
| *Lily Abasan P Ltd* | *19,90,657* | *1,25,855* | *4,90,657* | *16,25,855* | *repaid on 4-10-18* |
| *Origin Deal Trade P Ltd* | *26,12,869* | *2,03,502* | *1,12,869* | *27,03,502* | *repaid on 4-10-18* |
| *Total* | | *7,17,446* | | | |
| | | *7,59,397 addition made by AO* | | | |

33. It is to be noted here that the issue relates to interest paid on unsecured loans for ₹ 7,59,397, for the assessment year 2017–18, is exactly similar to the issue decided by us in the assessment year 2014–15 to 2016–17, vide Para–22 to 25 above. Hence, consistent with the view taken therein, similar directions are issued to the Assessing Officer to delete such addition. Thus, ground no.3, is allowed.

34. Similar is the position for A.Y. 2018–19 and 2019–20, wherein addition of ₹ 7,62,813 and ₹ 4,13,429, respectively have been made by the Assessing Officer on account of interest paid on unsecured loan which has been re–paid in

subsequent year, therefore, applying the same ratio as aforesaid in the assessment year 2017–18, the impugned additions made in these years are directed to be deleted.

35. Additionally, we proceed to deal with the issue of validity of the approval granted under section 153D of the Act by the Addl. CIT.

36. This issue is involved in Ground no.1, in all the assessment year i.e., 2014–15, 2015–16, 2016–17, 2017–18, 2018–19 and 2019–20 is reproduced herein below:–

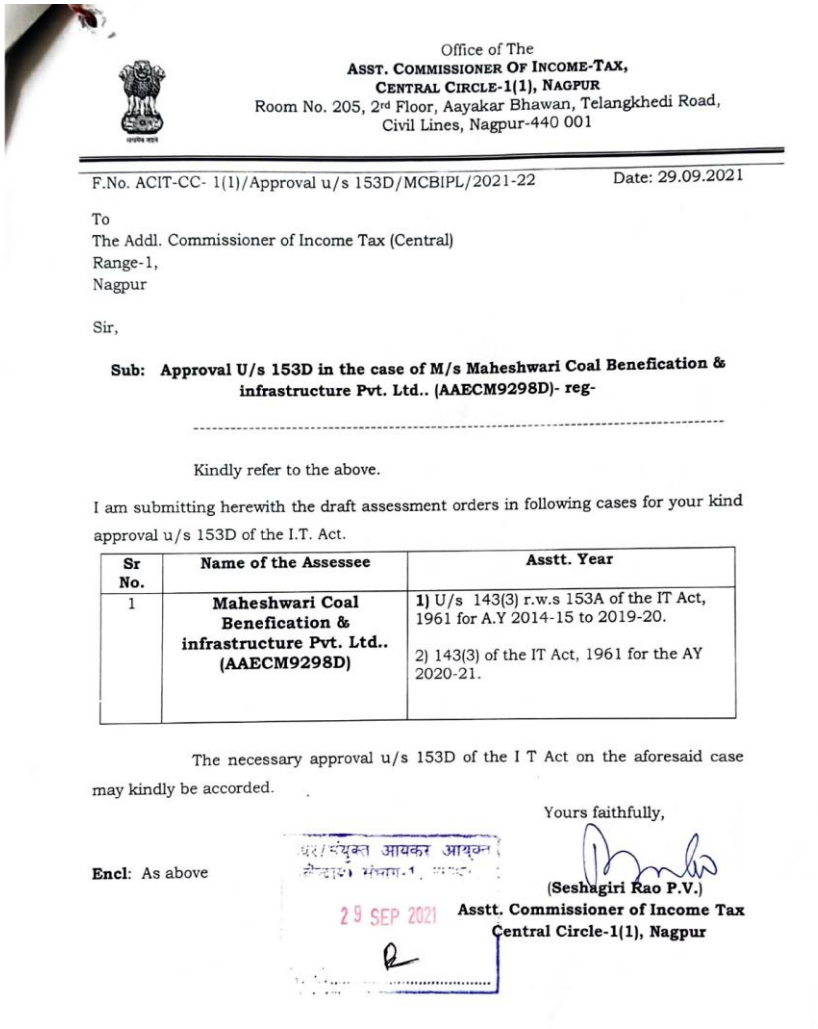
> *"1. On the facts and circumstances of the case and in law, approval u/s153D dt.29-9-21 is invalid as granted for making assessment u/s143(3) rws.153C, while assessee was the searched person u/s132 on 11-7-19; AY14-15 is not the searched year; approval ought to have been made for making assessment u/s153A which has wrongly been made by Addl.CIT in mechanical manner without application of mind by Addl.CIT; granted on same day itself on the letter dt.29-9-21 by the AO; in absence of a valid approval as mandated by law u/s153D, impugned assessment made would be invalid, bad in law and is liable to be quashed."*

37. Ground no.1, in the assessment year 2020–21, the issue raised by the assessee relates to validity of the approval granted under section 153D of the Act by the Addl. CIT, which is as under:–

> *"On the facts and circumstances of the case and in law, approval u/s153D dt.29-9-21 is invalid as granted in mechanical manner without application of mind by Addl.CIT; granted on same day itself on the letter dt.29-9-21 by the AO; in absence of a valid approval as mandated by law u/s153D, impugned assessment made would be invalid, bad in law and is liable to be quashed."*

38. A search was conducted on the assessee company under section 132 has on 11/07/2019 and therefore, the search year remains 2020–21. The assessment year 2014–15 to 2019–20 comes within the 6 assessment years immediately preceding the search year (i.e., assessment year 2020-21). For the assessment year 2014–15 to 2019–20, the assessment ought to have been completed only under section 153A of the Act and approval under section 153D of the Act ought to have been granted only under section 153A by the Addl.CIT.

39. In the present case, the Assessing Officer wrote a letter dated 29/09/2021 seeking approval under section 153D for the assessment year 2014-15 to 2020-21 (i.e., for 7 years) to the Addl.CIT for making assessment under section 143(3) r/w section 153A of the Act as under:–



Office of The
**ASST. COMMISSIONER OF INCOME-TAX,**
**CENTRAL CIRCLE-1(1), NAGPUR**
Room No. 205, 2rd Floor, Aayakar Bhawan, Telangkhedi Road,
Civil Lines, Nagpur-440 001

F.No. ACIT-CC- 1(1)/Approval u/s 153D/MCBIPL/2021-22 Date: 29.09.2021

To
The Addl. Commissioner of Income Tax (Central)
Range-1,
Nagpur

Sir,

**Sub: Approval U/s 153D in the case of M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd.. (AAECM9298D)- reg-**

Kindly refer to the above.

I am submitting herewith the draft assessment orders in following cases for your kind approval u/s 153D of the I.T. Act.

| Sr No. | Name of the Assessee | Asstt. Year |
|---|---|---|
| 1 | **Maheshwari Coal Benefication & infrastructure Pvt. Ltd.. (AAECM9298D)** | **1)** U/s 143(3) r.w.s 153A of the IT Act, 1961 for A.Y 2014-15 to 2019-20.<br>2) 143(3) of the IT Act, 1961 for the AY 2020-21. |

The necessary approval u/s 153D of the I T Act on the aforesaid case may kindly be accorded.

Yours faithfully,

**Encl**: As above

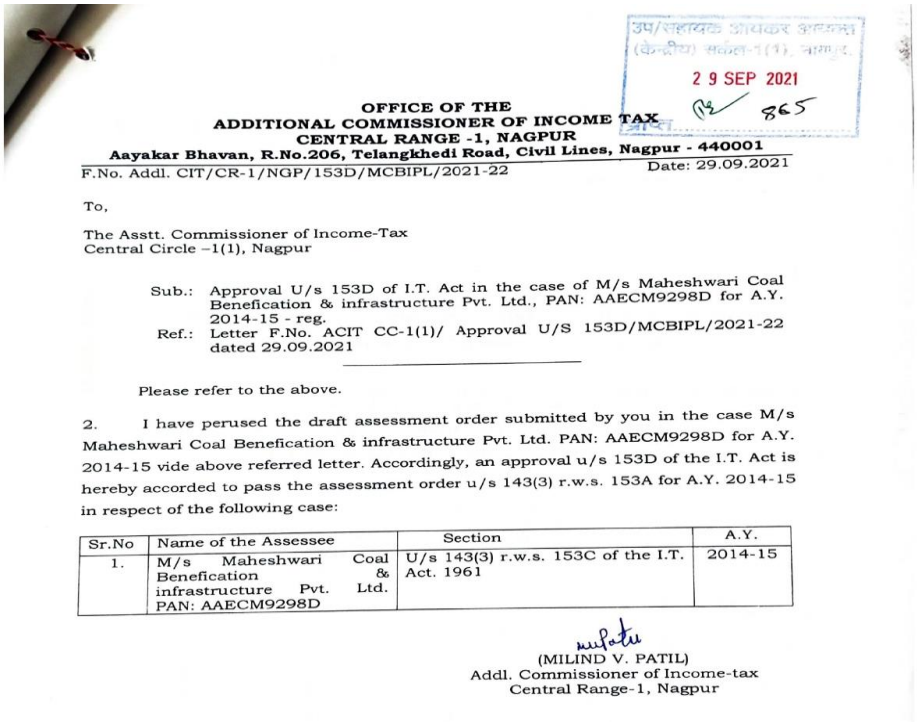
(Seshagiri Rao P.V.)
**Asstt. Commissioner of Income Tax**
**Central Circle-1(1), Nagpur**

29 SEP 2021

It is manifest that concomitant records lead culminating to the framing of the orders were never transmitted while granting approval under section 153D for the assessment year 2014–15 to 2020–21.

40. The Addl.CIT, thereafter, has granted approval under section 153D dated 29/09/2021 for the assessment year 2014-15 to 2019–20 which is a separately

issued for each assessment year for making assessment under section 143(3) r/w section 153C is reproduced as under:–



उप/सहायक आयकर आयुक्त
(केन्द्रीय) सर्कल-1(1), नागपुर
प्राप्त
2 9 SEP 2021
865

**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. Commissioner of Income-Tax
Central Circle –1(1), Nagpur

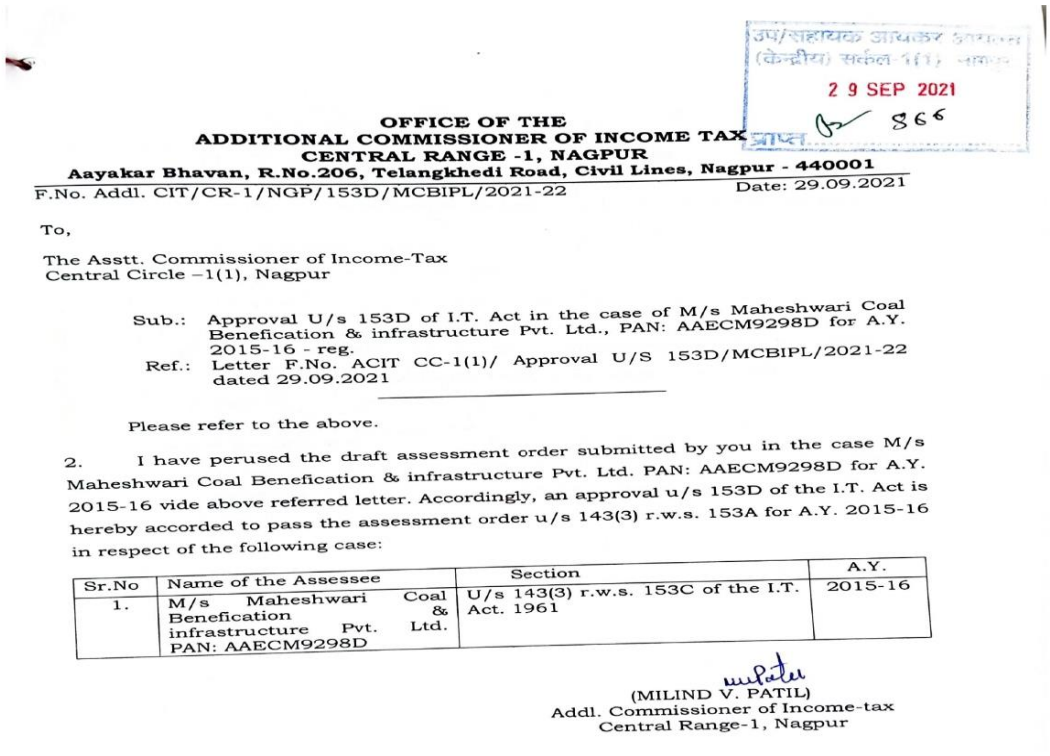
Sub.: Approval U/s 153D of I.T. Act in the case of M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd., PAN: AAECM9298D for A.Y. 2014-15 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2014-15 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. 153A for A.Y. 2014-15 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 | 2014-15 |

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur



उप/सहायक आयकर आयुक्त
(केन्द्रीय) सर्कल-1(1), नागपुर
प्राप्त
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**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. 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. 2015-16 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2015-16 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. 153A for A.Y. 2015-16 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 | 2015-16 |

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur

उप/सहायक आयकर आयुक्त
(केन्द्रीय) सर्कल-1(1), नागपुर
2 9 SEP 2021
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प्राप्त

**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. 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. 2016-17 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2016-17 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. 153A for A.Y. 2016-17 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 | 2016-17 |

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur

उप/सहायक आयकर आयुक्त
(केन्द्रीय) सर्कल-1(1), नागपुर
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प्राप्त

**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. Commissioner of Income-Tax
Central Circle –1(1), Nagpur

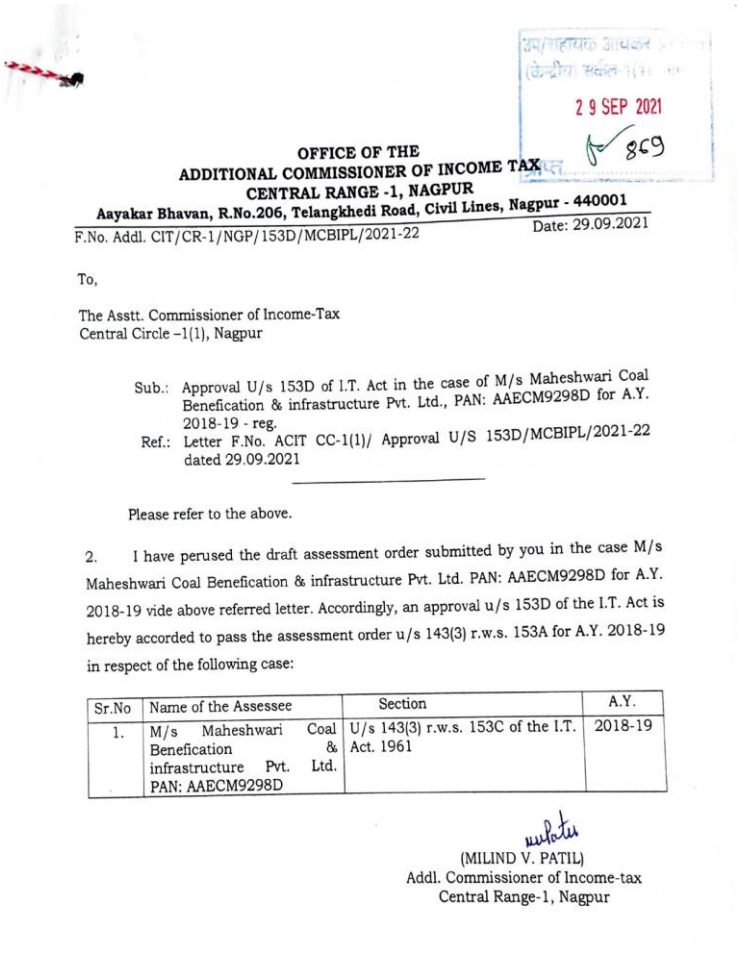
Sub.: Approval U/s 153D of I.T. Act in the case of M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd., PAN: AAECM9298D for A.Y. 2017-18 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2017-18 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. 153A for A.Y. 2017-18 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 | 2017-18 |

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur



2 9 SEP 2021

**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. 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. 2018-19 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2018-19 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. 153A for A.Y. 2018-19 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 | 2018-19 |

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur

*F. no.Addl.CIT/CR–1/NGP/153D/MCBIPL/2021–22* *Date: 29.09.2021*

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

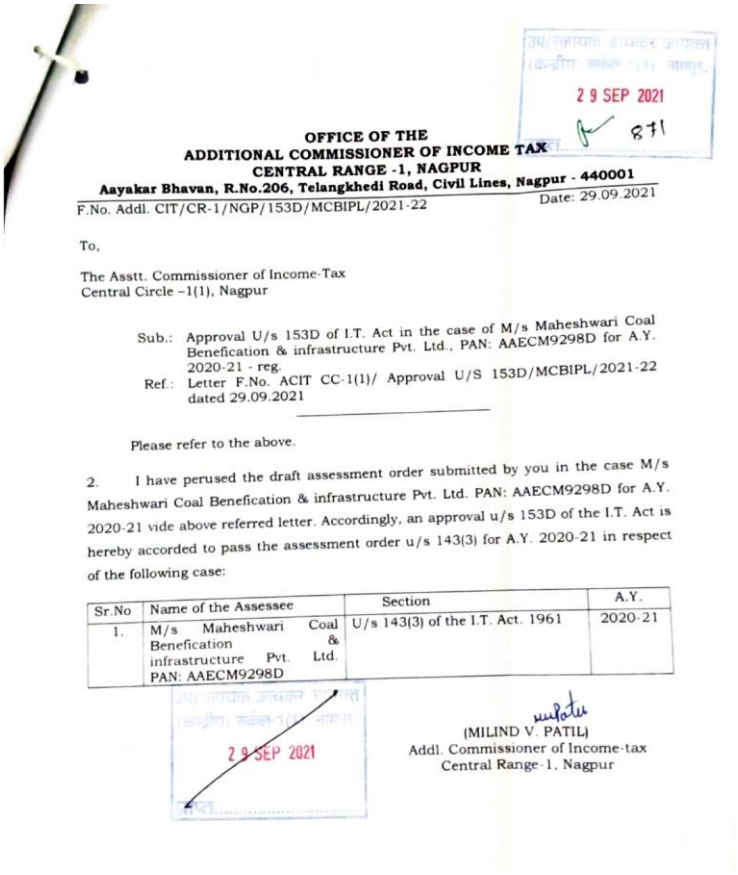
*Sub: Approval under section 153D of I.T. Act in the case of M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2019–20 – reg.*
*Ref: Letter F. no.ACIT CC–1(1)/Aproval u/s 153D/MCBIPL/2021–22 dated 29.09.2021.*

*Please refer to the above.*

*2. I have perused the draft assessment order submitted by you in the case M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2019–20 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. 153A for A.Y. 2019–20 in respect of the following case:*

| *Sr. no.* | *Name of the Assessee* | *Section* | *A.Y.* |
|---|---|---|---|
| *1.* | *M/s. Maheshwari Coal Benefication & Infrastructure Pvt. Ltd.* | *U/s 143(3) r.w.s. 153C of the I.T. Act 1961* | *2019–20* |

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



29 SEP 2021

**OFFICE OF THE**
**ADDITIONAL COMMISSIONER OF INCOME TAX**
**CENTRAL RANGE -1, NAGPUR**
**Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440001**

F.No. Addl. CIT/CR-1/NGP/153D/MCBIPL/2021-22 Date: 29.09.2021

To,

The Asstt. 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. 2020-21 - reg.
Ref.: Letter F.No. ACIT CC-1(1)/ Approval U/S 153D/MCBIPL/2021-22 dated 29.09.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case M/s Maheshwari Coal Benefication & infrastructure Pvt. Ltd. PAN: AAECM9298D for A.Y. 2020-21 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) for A.Y. 2020-21 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) of the I.T. Act. 1961 | 2020-21 |

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(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-1, Nagpur

41. The learned A.R. submitted that the Addl.CIT has granted approval under section 153D for the assessment year 2014-15 to 2019–20 separately on 29/09/2021 (i.e., on the same day itself in total 12 cases i.e., 7 cases in case of the assessee for the assessment year 2014-15 to 2020-21 and in 5 cases in case in respect of Shri Anil Mundra, director of the assessee for the A.Y. 2016-17 to 2020-21) for making assessment under section 143(3) r/w section 153C, which is invalid, bad in law and is in clear violation of provisions of section 153A and section 153D which shows complete non–application of mind on his part. It suffers from a patent legal defect at the threshold itself since the Addl.CIT ought

to have granted approval for making assessment under section 153A for the assessee which is a searched person as search under section 132 has been conducted upon the assessee on 11/07/2019, the assessment year 2014-15 to 2019–20 is not the search year. *Approval under section 153D ought to have been made for making assessment under section 153A while, it is granted for making assessment under section 153C which is completely a wrong approval given by the Addl. CIT in a mechanical manner without application of mind by the Addl.CIT*.

42. It is the submission of the Revenue that the same is a curable defect under section 292B and the impugned approval granted cannot be held to be bad for mere incorrect mentioning of section 153C in place of correct section 153A in the impugned approval order made under section 153D dated 29/09/2021 on account of the mistake by the Addl.CIT.

43. Per–contra, the learned A.R. for the assessee vehemently averted that there can be no dispute with regard to the application of section 292B to sustain a notice from being declared invalid merely on the ground of mistake committed by the Assessing Officer in the notice, however, the issue here is not with regard to the mistake / error committed by the Assessing Officer while seeking an approval from the Addl.CIT, but, whether there was due application of mind by the Addl.CIT while giving the necessary approval under section 153D for making assessment under section 153C in place of the correct section 153A. It is submitted that it is a settled principle of law that approval granted by such higher ranking officer for making assessment has to be on due application of mind on the material placed before him and it should be reflected in the approval granted. It cannot be a mechanical approval without examining the assessment records sent by the Assessing Officer. It is submitted that wrong mentioning of section 153C in place of correct section 153A in the impugned approval order passed under section 153D dated 29/09/2021 by the Addl.CIT is prima facie evidence of

non-application of mind on the part of the approving authority while granting the approval. For these arguments, reliance is placed on the judgment of the Hon'ble Jurisdictional High Court in Smt. Kalpana Shantilal Haria v/s ACIT, W.P (L) no.3063/2017, dated 22/12/2017, and the Co–ordinate Bench decision of the Tribunal, Gauhati Bench, in Sushanta Saha v/s ACIT, ITA no.159, 212, 213/Gty./2018 (Gau-Trib).

44. The second contention of the learned A.R. is that the Addl.CIT has granted approval even separately for each year under section 153D dated 29/09/2021 for the assessment year 2014–15 to 2020–21 without even perusing / verifying the facts / assessment records / files of the assessee. The Addl.CIT has not recorded any satisfaction on his own for approving the draft assessment order. The Addl.CIT has failed to satisfactorily record its concurrence with the contents of the draft order that how he was satisfied with. The Addl. CIT has only stated in the approval order passed under section 153D dated 29/09/2021 that he had perused the 'draft assessment order' which means, he is clearly saying rather admitting in clear terms that he has not perused the assessment records before granting such mechanical approval on 29/09/2021, as only on the basis of letter dated 29/09/2021 by the Assessing Officer for seeking approval from the Addl. CIT. Approval under section 153D dated 29/09/2021 is in mechanical/routine manner without application of mind by Addl.CIT, which is merely a formality, an empty ritual and as such it leads to flagrant violation of the rules of law.

45. The third contention of the learned A.R. is that while granting such mechanical approval dated 29/09/2021 under section 153D for the assessment year 2014–15 to 2020–21, the Addl.CIT has not cared about various mistakes inconsistencies / irregularities / discrepencies committed in the draft assessment order. He meticulously delineated as under:–

*A.Y. 2014–15 TO 2017–18*

*i) The Addl.CIT has not cared that addition of ₹ 12 lakh made under section 68 which is not fresh credits received during the assessment year 2014-15 and it has brought forward from earlier/preceding year i.e., assessment year 2013-14; and in such a situation, it*

*cannot be added under section 68 in as mistakenly proposed by the Assessing Officer and this mistake of the Assessing Officer has not been cared by the Addl.CIT. More particularly, the impugned loan amount had already been repaid on 04/10/2018 i.e., prior to date of search on 11/07/2019 which has been accepted by the Revenue and thus, it cannot be added under section 68 on this count also. However, this vital fact has also not been cared by the Addl.CIT and granted approval without even reading the draft assessment order and without perusing the assessment records and facts of the assessee.*

*ii) The Addl.CIT has also not cared that addition of ₹ 3,99,600 made on interest expenses paid on such unsecured loans which has been brought forward from earlier years. The Addl.CIT has not cared that the assessee is a searched person and the assessment year 2014–15 is an unabated year on the date of search on 11/07/2019 and addition cannot be made without there being any incriminating material found during the course of search from the premises of the assesssee-company which is linked with the addition of ₹ 12 lakh and ₹ 3,99,600. Addl.CIT has not cared anything and he has granted approval without caring the facts. The approval does not even say that the Addl.CIT had perused the files / case records of the assessee before granting such mechanical approval. ₹ 3,99,600 as interest paid on unsecured loans from 3 loan creditors and all the 3 loan accounts had repaid on 04/10/2018 i.e., prior to the date of search on 11/07/2019 and it had accepted by the revenue; this vital fact has not been cared by the Addl.CIT while granting such mechanical approval on the same day itself (i.e., in 12 cases) on 29/09/2021.*

*iii) there is more glaring mistake by the Addl.CIT is that the approval has been granted for assessment under section 143(3) r/w section 153C, while, assessee is a searched person and it has to be assessed only under section 153A for the assessment year 2014-15 to 2019–20 and certainly not under the section 143(3) in any condition. The scheme of section 153A and section 153C is on completely different fields and they are separate provisions of law & procedure are also completely different, however, ignoring all these things, the Addl. CIT granted such mechanical approval for section 143(3) r/w section 153C, without even seeing the files / records and even without perusing / reading the draft assessment order also. Because this type of mistake would only be possible when such high ranking officer granted such approval without even perusing / reading the draft assessment order / records / files etc., thus, it shows complete non application of mind on the part of the Addl. CIT, while granting such routine / mechanical approval under section 153D, which is not as per the mandate of law under section 153D.*

*iv) More particularly, one more mistake is there in the draft assessment order, that the Addl.CIT has not cared that the Assessing Officer has initiated penalty under section 271(1)(c) and not applied section 271AAB(1A) which only be applicable for a searched person under section 132 for initiation of penalty where search has been initiated on/or after the date (i.e., 15/12/2016). search has been conducted on 11/07/2019 and the only section would be applicable for initiating penalty would be section 271AAB(1A) which is absent in the draft order, not applied by the Assessing Officer which means, as per the mind of the Assessing Officer that he was making regular assessment under section 143(3) and thus, the Addl. CIT has made assessment under section 143(3) i.e., a regular assessment only which is not the requirement of law as mandated by section 153A. This glaring mistake of the Assessing Officer has not been cared by the Addl.CIT while granting such mechanical approval without even seeing/ reading/ perusing the draft order, as it reflects, thus, approval granted under section 153D is without application of mind, is invalid; and thus, assessment made under section 143(3) r/w section 153A dated 29/09/2021 would also be invalid. For such arguments, the learned A.R. made reliance on the following case laws:–*

- *Kalpana Shantilal Haria v. ACIT (2017) WP No.3063 of 2017 (Bom HC) dt.22-12-17;*
- *PCIT v. MDLR Hotels P Ltd (2024) 166 taxmann.com 327 (Del HC);*
- *PCIT v. Anuj Bansal (2024) 165 taxmann.com 2 (Del HC);*
- *PCIT v. Subash Dabas (2024) ITA No.243/2023 dt.17-5-24 (Del HC);*
- *PCIT v. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Del HC);*
- *PCIT v. Dilip Construction P Ltd (2023) 7 NYPCTR 892 (Ori HC) dt.28-6-23;*
- *ACIT v. Serajuddin & Co (2023) 150 taxmann.com 146 (Ori HC);*
- *SVP Southwest Industries Ltd v. DCIT, ITA No.1275/Mum/2022, dt.30-4-24;*
- *Sushanta Saha v. ACIT, ITA No.159, 212, 213/Gty/2018 dt.18-7-24 (Gau-Trib;*
- *Subhash Bhawnani v. DCIT; ITANo.38,40/Ind/ 2020 dt.25-5-23 (Indore-Trib)*
- *Mysore Finlease P Ltd ITA No.8821/del/2019 dt.10-1-24 (Del-Trib);*
- *Arch Pharmalabs Ltd v. ACIT ITA No.3752/Mum/2012 (2021) dt.7-4-21 (Mum-Trib),*
- *Inder International v/s ACIT (2021) 213 TTJ 251(Chd-Trib);*
- *Sanjay Duggal v. ACIT ITA No.1813/Del/2019 dt.19-1-21 (Del-Trib); and*
- *SMW Ispat (P) Ltd v. ACIT (2024) 163 taxmann.com 119 (Pune-Trib).*

***A.Y. 2018–19 TO 2020–21***

46. The learned A.R. submitted that the Addl.CIT has granted approval under section 153D dated 29/09/2021 for A.Y. 2018-19 to 2020–21 without even perusing/verifying the facts/ assessment records/files of the assessee. Approval under section 153D dated 29/09/2021 is in mechanical/routine manner without application of mind by the Addl.CIT, merely a formality, an empty ritual. The Addl.CIT has not cared that assessment made under section 143(3) for A.Y. 2018-19 and the Assessing Officer has made huge presumptive addition of ₹ 8,55,87,852 which is 40% GP estimation on extrapolated unaccounted sale of coal dust of ₹ 21,39,69,630 for A.Y. 2018-19, which is again based on extrapolated sale of succeeding years i.e., A.Y. 2019-20 and 2020-21, which is not permissible in the eyes of law. This vital fact has not been cared by such high ranking officer, i.e., the Addl.CIT, while granting such mechanical approval on the same day itself with a few hours (i.e., 29/09/2021); that such presumptive addition of ₹ 8,55,87,852 has no legal/valid basis in search assessment made

under section 143(3) r.w.s 153A in absence of any corroborative material/ evidence brought on record for the impugned A.Y. 2018-19 by the Assessing Officer and thus, this addition is unsustainable in the eyes of law. This fact has not been cared by the Addl.CIT while granting such approval dated 29/09/2021 under section 153D for A.Y. 2018-19.

47. The learned A.R. submitted that in the A.Y. 2018-19 to 2020–21, the Addl.CIT has not cared that books of account has not been rejected and section 145(3) has not been applied. No assessment has been made under section 144. There is no mention in the assessment order about any defect found in the books of accounts maintained by the assessee for A.Y. 2018-19 to 2020–21, thereafter also, without rejecting books of account and without applying section 145(3), estimation of gross profit has been made and made addition of ₹ 8,55,87,852 in the A.Y. 2018–19, which is unsustainable in the eyes of law. The addition made on estimation of income is not valid which is not sustainable in the eyes of law. This fact has also not been cared by Addl.CIT while granting such approval dt.29/09/2021 under section 153D for A.Y. 2018-19 to 2020–21.

48. It is submitted that the Addl.CIT has also not cared that addition of ₹ 8,55,87,852 for A.Y. 2018-19 on 40% gross profit estimation on backward extrapolation of suppressed/ unaccounted sales (i.e., unaccounted cash sale of coal dust), when there is no material/ evidence was found/ seized which pertain/ relate to A.Y. 2018-19, the year under consideration. The addition is not sustainable in the eyes of law. This fact has also not been cared by Addl.CIT while granting such approval for A.Y. 2018-19.

49. It is submitted that the Addl.CIT has not cared that addition of ₹ 7,62,813 made on interest exp. paid on unsecured loans which has been brought forward from earlier years; the approval does not even say that the Addl.CIT had perused the files/ case records of the assessee before granting such mechanical approval.

₹ 7,62,813 as interest paid on unsecured loans from 4 loan creditors and all the 4 loan accounts had repaid on 04/10/2018 i.e., prior to the date of search on 11/07/2019 and it had accepted by the revenue. This vital fact has not been cared by the Addl.CIT while granting such mechanical approval on the same day itself (i.e., in 12 cases), on 29/09/2021.

50. It is submitted that the Addl.CIT has only said in the approval letter under section 153D dated 29/09/2021 that he had perused the draft assessment order which means, he is clearly saying/ admitting in clear terms that he has not perused the assessment records before granting such mechanical approval on 29/09/2021, as only on the basis of letter dated 29/09/2021 by the Assessing Officer for seeking approval from him.

51. It is submitted that there is one more glaring mistake by the Addl.CIT is that the approval has been granted for assessment u/s143(3) r.w.s. 153C, while, assessee is a searched person and it has to be assessed only under section 153A for A.Y. 2018–19 and certainly not under the section 143(3) in any condition. The scheme of section 153A & section 153C is completely on different fields and they are separate provisions of law and procedure is also completely different. However, ignoring all these things, he granted such mechanical approval for section 143(3) r.w.s. 153C, without even seeing/ perusing the files/ records and even without perusing/ reading the draft assessment order also, because, this type of mistake would only be possible when such high ranking officer granted such approval without even perusing/ reading the draft assessment order/ records/ files etc. Thus, it shows complete and clear non application of mind on his part while granting such routine/ mechanical approval under section 153D on 29/09/2021 for A.Y. 2018-19, which is not as per the mandate of law under section 153D. For this argument, reliance is placed on Sushanta Saha (supra).

52. It is submission of the learned A.R. of the assessee is that, one more mistake is there in the draft order, that Addl.CIT has not cared that the Assessing

Officer has initiated penalty under section 270A and 271AAC and not applied section 271AAB(1A) which only be applicable for a searched person under section 132 for initiation of penalty where search has been initiated on or after the date 15/12/2016. Search has been conducted on 11/07/2019 and the only section would be applicable for initiating penalty would be section 271AAB(1A), which is absent in the draft order and not applied by the Assessing Officer. It means, as per the mind of the Assessing Officer that he was making regular assessment under section 143(3) and thus, has made assessment under section 143(3) i.e., a regular assessment only which is not the requirement of law as mandated by section 153A. This glaring mistake of the Assessing Officer has not been cared by the Addl.CIT while granting such mechanical approval without even seeing/ reading/ perusing the draft order, as it reflects, thus, approval granted under section 153D is without application of mind, is invalid and thus, assessment made under section 143(3) r.w.s. 153A dated 29/09/2021 would also be invalid and is liable to be quashed.

53. The learned A.R. submitted that the The Addl.CIT has granted approval under section 153D dated 29/09/2021 for A.Y. 2019-20 without even perusing/ verifying the facts/ assessment records/ files of the assessee. The Addl.CIT has not cared that assessment made under section 143(3) for A.Y. 2019-20 and the Assessing Officer has made huge presumptive addition of ₹ 10,69,84,815 which is 40% of the gross profit estimation on extrapolated unaccounted sale of coal dust of ₹ 26,74,62,038 for A.Y. 2019-20, which is again based on extrapolated sale of succeeding year i.e., A.Y. 2020-21, which is not permissible in the eyes of law. This fact has not been cared by Addl. CIT while granting such mechanical approval on the same day itself i.e., 29/09/2021. Such presumptive addition of ₹ 10,69,84,815 has no legal/ valid basis in search assessment made under section 143(3) rws 153A in absence of any corroborative material/ evidence brought on record by the Assessing Officer and thus, this addition is unsustainable in the

eyes of law; this fact has not been cared by the Addl.CIT while granting such approval under section 153D for A.Y. 2019-20.

54. The learned A.R. submitted that in the A.Y. 2019-20, the Addl.CIT has not cared that books of account has not been rejected; section 145(3) has not been applied no assessment has been made under section 144, there is no mention in the assessment order about any defect found in the books of accounts maintained by the assessee for A.Y. 2019-20, thereafter also, without rejecting books of account and without applying section 145(3), estimation of gross profit has been made and made addition of ₹ 10,69,84,815 which is unsustainable in the eyes of law, addition made on estimation of income is not valid, addition is not sustainable in the eyes of law. This fact has also not been corrected by Addl.CIT while granting such approval under section 153D for A.Y. 2019-20.

55. The learned A.R. submitted that the Addl.CIT has also not cared that addition of ₹ 10,69,84,815 for A.Y. 2019-20 on 40% gross profit estimation on backward extrapolation of suppressed/ unaccounted sales (i.e., unaccounted cash sale of coal dust), when there is no material/ evidence was found/ seized which pertain/ relate to A.Y. 2019-20, the year under consideration, the addition is not sustainable in the eyes of law. This fact has also not been corrected by Addl.CIT while granting such approval under section 153D for A.Y. 2019-20.

56. The learned A.R. submitted that the Addl.CIT has not cared that addition of ₹ 4,13,429 made on interet paid on unsecured loans which has been brought forward from earlier years. ₹ 4,13,429 as interest paid on unsecured loans from 4 loan creditors and all the 4 loan accounts had repaid on 04/10/2018 i.e., prior to the date of search on 11/07/2019 and it had accepted by the revenue. This vital fact has not been corrected by the Addl.CIT while granting such mechanical approval on the same day itself, i.e., on 29/09/2021.

57. The learned A.R. submitted that the Addl.CIT has only said in the approval letter under section 153D dated 29/09/2021 for A.Y. 2019-20 that he had perused the draft assessment order which means, he is clearly saying/ admitting in clear terms that he has not perused the assessment records before granting such mechanical approval on 29/09/2021, as only on the basis of letter dated 29/09/2021 by the Assessing Officer for seeking approval from him.

58. The learned A.R. submitted that these glaring mistakes committed of the Assessing Officer in the draft assessment order have not been correcrted by the Addl.CIT while granting such mechanical approval without even seeing/ reading/ perusing the draft assessment order, as it reflects, thus, approval granted under section 153D is without application of mind and thus, assessment made under section 143(3) r.w.s. 153A dated 29/09/2021 would also be invalid.

**A.Y. 2020-21**

59. The first contention of the learned A.R. that the Addl.CIT has granted approval under section 153D dated 29/09/2021 for A.Y. 2020-21 without even perusing/ verifying the facts/ assessment records/ files of the assessee, the Addl.CIT has not recorded any satisfaction on his own for approving the draft assessment order. The Addl.CIT has failed to satisfactorily record its concurrence with the contents of the draft order that how he was satisfied with. He has only said in the approval order passed under section 153D dated 29/09/2021 that he had perused the draft assessment order which means, he is clearly saying/ admitting in clear terms that he has not perused the assessment records before granting such mechanical approval on 29/09/2021, as only on the basis of letter dated 29/09/2021 by the Assessing Officer for seeking approval from him. Approval under section 153D dated 29/09/2021 for A.Y. 2020-21 is in mechanical/ routine manner without application of mind by Addl.CIT, merely a formality, an empty ritual.

60. Thereafter, it is the second contention of the learned A.R. that the Addl.CIT has not cared that assessment made under section 143(3) for A.Y. 2020-21 and the Assessing Officer has made huge presumptive addition of ₹ 13,37,31,019 which is 40% of the gross profit estimation on extrapolated unaccounted sale of coal dust of ₹ 33,43,27,548 for A.Y. 2020-21, which is based on 2 month's extrapolation/ estimation of ₹ 5,57,21,258 (working not given by the Assessing Officer that how he arrived on this figure) on dumb material (i.e., excel sheet of 15/04/2019 to 15/06/2019 on screen shot of mobile of Sandeep Agrawal, Nagpur, director of M/s. Swami Fuels, i.e., third party) which is not even pertained to the assessee. The third party Sandeep Agrawal has not been examined by the Assessing Officer for verifying the facts; this presumptive addition is not permissible in the eyes of law. This fact has not been cared by such high ranking officer, i.e., Addl.CIT, while granting such mechanical approval on the same day itself (i.e., 29/09/2021) that such presumptive addition of ₹ 13,37,31,019 has no legal/ valid basis in search assessment made under section 143(3) r.w.s. 153A in absence of any corroborative material/ evidence brought on record by the Assessing Officer and thus, this addition is unsustainable in the eyes of law; this fact has not been cared by the Addl.CIT while granting such approval under section 153D dated 29/09/2021 for A.Y. 2020-21.

61. It is submission of the learned A.R. that in the A.Y. 2020-21, the Addl.CIT has not cared that books of account has not been rejected section 145(3) has not been applied. No assessment has been made under section 144, there is no mention in the assessment order about any defect found in the books of accounts maintained by the assessee for A.Y. 2020-21, thereafter also, without rejecting books of account and without applying section 145(3), estimation of has been made and made addition of ₹ 13,37,31,019 in A.Y. 2020-21 in the regular assessment made under section 143(3) dated 29/09/2021 which is unsustainable in the eyes of law, hence, the addition made on estimation of income is invalid and not sustainable in the eyes of law. This fact has also not been cared by

Addl.CIT while granting such approval dated 29/09/2021 under section 153D for A.Y. 2020-21.

62. The learned A.R. further submitted that the Addl.CIT has also not cared that addition of ₹ 13,37,31,019 for A.Y. 2020-21 on 40% gross profit estimation on extrapolation of suppressed/ unaccounted sales (i.e., unaccounted cash sale of coal dust), which is based on 2 month's extrapolation/ estimation of ₹ 5,57,21,258 (working not given by the Assessing Officer that how he arrived on this figure) on dumb material (i.e., excel sheet of 15/04/2019 to 15/06/2019 on screen shot of mobile of Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels, i.e., third party) which is not even pertain to the assessee. The third party Sandeep Agrawal, has not been examined by the Assessing Officer for verifying the facts. This presumptive addition is not permissible in the eyes of law. This fact has not been cared by the Add. CIT, while granting such mechanical approval under section 153D for A.Y. 2020-21 on the same day itself (i.e., 29/09/2021). The Addl.CIT has only said in the approval letter under section 153D dated 29/09/2021 that he had perused the draft assessment order which means, he is clearly saying/ admitting in clear terms that he has not perused the assessment records before granting such mechanical approval on 29/09/2021, as only on the basis of letter dated 29/09/2021 by the Assessing Officer for seeking approval from him.

63. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record. In the present case before us, we noted that the Addl.CIT did not mention anything in the separate approval order passed under section 153D dated 29/09/2021 for A.Y. 2014-15 to 2020-21 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 dated 29/09/2021 on the same day itself within few hours i.e., on the basis of seeking approval by the

letter dated 29/09/2021 by the Assessing Officer which does not refer to any seized material/ assessment records or any other documents which could suggest that the Addl.CIT has duly applied his mind before granting approvals.

64. We noted that the Addl.CIT merely approved the letter dated 29/09/2021. We noted that the approval granted under section 153D for A.Y. 2014-15 merely says that *"I have perused the draft assessment order submitted by you in the case M/s. Maheshwari Coal for A.Y. 2014-15 vide above referred letter. Accordingly, an approval under section 153D is hereby accorded to pass the assessment order under section 143(3) r.w.s. 153A for A.Y. 2014-15 in respect of the following case: Section: U/s143(3) r.w.s.153C; AY2014-15"* 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 as it is issued for making assessment under section 143(3) r.w.s. 153C for A.Y. 2014-15, which clearly proves non application of mind by the Addl.CIT as he has not even cared that it is a case of section 153A. Similar is the position for the A.Y. 2015–16 to 2019–20.

65. From the said approval granted on the same day itself on 29/09/2021, it can be easily inferred that the said order was approved solely relying upon the dotted lines of the Assessing Officer in the form of draft assessment order. The Addl.CIT, without any consideration of merits in proposed additions with reference to the material collected in search etc., has proceeded to grant a simplicitor approval in wrong section i.e., 153C. This approach of the Addl.CIT has rendered the approval to be a mere formality and cannot be considered as actual approval in law.

66. We find, 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 seized documents along with assessment records/ files 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 29/09/2021 on the basis of letter dated 29/09/2021 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.

67. The Addl.CIT is supposed to examine the assessment records/ files/ 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 manner after due application of mind.

68. 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 documents seized, 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 Addl.CIT is 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.

69. 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, as argued by the learned Departmental Representative has no substance.

70. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both, the Assessing Officer and the Addl.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 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.

71. We have gone through the approval granted by the Addl.CIT on the date mentioned in the table hereinabove under section 153D i.e., on 29/09/2021. The said approval letter clearly states that a letter dated 29/09/2021 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 29/09/2021 for various assessment years i.e., for A.Y. 2014-15 to 2020-21 in the case of the assessee. There is no recording of satisfaction by the Addl.CIT in the impugned approval orders passed under section 153D dated 29/09/2021 although it is separately issued for A.Y. 2014-15 to 2020-21, but, it is stereo type in same fashion and it is also not recorded any satisfaction in the approval order that 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 passed under section 153D dated 29/09/2021 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. We rely on the following legal precedents to buttress our line of thinking:–

*(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, the Court 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)* ***Kalpana Shantilal Haria*** *v. ACIT (2017) (Bom HC) dt.22-12-17; WP No.3063 of 2017, held as under:*

> *"5. Our attention is invited to the sanction given by the Jt.CIT on the application by the AO seeking his approval in the prescribed form. The prescribed form filled by the AO indicated that the notice has been issued u/s147(b). The Jt.CIT has while granting the sanction has recorded the word "satisfied".*
> *6. The grievance of the petitioner is that there is no proper sanction in view of non application of mind by the Jt.CIT. The AO has invoked a law to sustain the impugned notice which is admittedly not in the statute and the Jt.CIT has yet approved it.*
> *7. Mr.Chanderpal, ld counsel appearing for the Revenue tendered a copy of the letter dt.19-12-17 issued to the petitioner wherein the AO has stated that the words "147(b)" were inadvertently filled in the prescribed form, instead of sec147 while obtaining the sanction from the Jt.CIT. It is further submitted on behalf of the Revenue that the same is a curable defect u/s292B. Therefore, the impugned notice cannot be held to be bad for mere incorrect mentioning of sec on account of the mistake.*
> *8. There can be no dispute with regard to the application of sec292B to sustain a notice from being declared invalid merely on the ground of mistake*

*in the notice. However, the issue here is not with regard to the mistake/ error committed by the AO while taking a sanction from the Jt.CIT but whether there was due application of mind by the Jt.CIT while giving the necessary sanction for issuing the impugned notice. It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be an mechanical approval without examining the proposal sent by the AO. Prima facie, it appears to us that if the Jt.CIT would have applied his mind to the application made by the AO, then the very first thing which would arise is the basis of the notice, as the law on which it is based is no longer in the statute. Non pointing out the mistake/ error by the Jt.CIT on the part of the AO is prima facie evidence of non-application of mind on the part of the sanctioning authority while granting the sanction."*

(iv) ***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."*

(v) ***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."*

(vi) ***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.*

(vii) ***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."*

*(viii)* ***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."*

*(ix)* ***ACIT v. Serajuddin & Co*** *(2023) 150 taxmann.com 146 (Ori HC) held as under:*

*"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 <u>inbuilt protection</u> 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.*

(x) ***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."*

(xi) ***Sushanta Saha v. ACIT*** *(2024) (Gau-Trib) dt.18-7-24, ITA No.159, 212, 213, 256 to 267/GTY/ 2018, held as under:*

*"9. We have heard rival contentions and perused the records placed before us. We first take up the issue as to whether proper approval was granted u/s153D. On going through the sec 153D, we observe that prior approval is*

*necessary for assessment in case of search or requisition. Sec153D provides that no order or reassessment order shall be passed by an officer below the rank of JCIT referred to in sec153A(1)(b) for the AY referred in 153B(1)(b) except with the prior approval of Jt.CIT. In the instant case, out of 7 AYs, 6 are framed u/s153A rws.143(3) in the AY14-15 has been framed u/s143(3). The approval of Draft Assessment Order for AY10-11 given by Addl.CIT on 3-12-16, reads as under:*

> *"I have perused the draft assessment order, appraisal report and seized material. On such perusal, the draft assessment order u/s153C, assessing total income at Rs.1,59,30,240 is approved u/s153D rw.153B(1)(b). Assessment record in one part is returned herewith."*

*10. Now exactly similar type of approval orders have been framed for all the remaining periods. Now, the apparent mistake is that though the assessment has been framed u/s153A (as the search was conducted in the assessee's premises) but in the approval order u/s153D, reference is made to assessment order prepared u/s153C. Assessment u/s153C is carried out in case of person other than person referred in sec153A. Assessment proceeding u/s153A and 153C are completely different proceedings. It thus, indicates that ld Addl.CIT has not properly examined the assessment records and the draft assessment order before granting approval u/s153D. We also notice that in the assessment order there is no mention about the approval, if any, received by the AO u/s153D. Before us, ld counsel for the assessee has indicated various mistakes, mis-match, anomalies and wrong figures in the assessment order which shows that when such draft assessment orders were sent to the Addl.CIT, same have not been examined by him at all and only mechanical approval was given for the sake of formality. Some of such mistakes referred by the ld counsel for the assessee in the written submission are stated below: ****

*11. All the above mistakes/ inconsistencies/ mismatch of figures indicate that the approving authority has not even read the draft assessment order and has not applied mind to the facts and assessment records and, therefore, the approval u/s153D clearly seems to be given in a mechanical and casual manner. Under these given facts and circumstances, when there is no proper approval u/s153D the assessment proceeding are illegal, bad in law and deserves to be quashed.*

*We take note of few of such decisions referred by the ld counsel for the assessee which are as follows:*

> *Smt. Moumita Saha Vs. ACIT, ITA No. 239/Gau/2017*
> *Subodh Agarwal (2023) 450 ITR 526 (All)*
> *Navin Jain (2021) 91 ITR 682 (Lucknow Trib.,)*
> *Sahara India (2008) 300 ITR 403 (SC)*
> *Kirtilal Klidas & Co 67 ITD 573 (Mad)*
> *Arch Pharmalabs Ltd ITA No. 6656/Mum/2017 dt. 07.04.2021*

*11(a). We reproduce below the decision of this Trib in Smt Moumita Saha (Gau-Trib) and the same reads as follows:*

> *"9. In view of the above mentioned case laws, the issue has been settled holding that the approval of the 153D cannot be granted in the mechanical manner rather the approving authority has to apply his mind by way of a speaking order showing that the concerned officer has gone through the contents of the assessment and he has satisfied himself with the draft assessment framed by the AO. However, as reproduced above, the approval in this case seems to be*

*an empty ritual as the approval letter does not speak of any application of mind by the concerned Addl.CIT/ Approving Authority. Therefore, in view of the settled legal proposition, the said approval granted by the ld Addl.CIT, in this case, is not a valid approval. Therefore, the assessment framed, in this case, becomes bad in law and the same is accordingly quashed. Since, we have quashed the assessment on the legal ground, the discussion on merits of the case will be rendered academic in nature. The appeal of the assessee is, therefore, allowed."*

*12. Respectfully following the ratio laid down by the Hon'ble courts and Tribunals and examining the facts of the case in light thereof, we are inclined to hold that in the given case since there is no proper approval u/s153D and that the approval is merely granted as a formality and in a mechanical manner and at nowhere indicates that the approving authority has made proper application of mind and therefore, the assessment proceedings pursuant to search action has not been carried out in accordance with law and, therefore, the assessment proceeding in que before us are hereby quashed. The common legal ground raised in gr.no.2 is hereby allowed."*

*(xii)* ***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."*

(xiii) ***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."*

(xiv) ***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."*

(xv) ***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."*

(xvi) ***Sanjay Duggal*** *v. ACIT (2021) (Del-Trib), ITA No. 1813/Del/2019, dated 19/01/2021 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."*

(xvii) ***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."*

72. Thus, the power to grant approval under section 153D is not to be exercised casually or in a 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. 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, we hold that the approval so granted is violative of the mandate of section 153D and, therefore, not sustainable at all. Consequently, the assessment made for the A.Y. 2014–15 to 2020–21, is held to be invalid and hence the same is hereby quashed for want of valid assumption of jurisdiction in the absence of valid and proper statutory approval under section 153D by the Addl. CIT.

**ITA no.117/Nag./2024**
**A.Y. 2018–19**

**ITA no.118/Nag./2024**
**A.Y. 2019–20**

**ITA no.119/Nag./2024**
**A.Y. 2020–21**

73. In Addl. Ground no.1, in all these three years relates to the issue that without rejecting the books of account and without framing assessment under section 144, gross profit estimation made; and in Addl. Ground no.2, involved in the assessment year 2018–19 and 2019–20, the issue relates to addition made on gross profit estimation on backward extrapolation of suppressed sales, when there is no material/ evidence found/ seized.

**ITA no.117/Nag./ 2024,**
**A.Y. 2018-19**

*Ground no.4:–*
*"On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.8,55,87,852 on the count of hypothetical GP estimation of 40% on hypothetically estimated sales of Rs.21,39,69,630 for AY18-19, which is again based on hypothetically estimated sales of Rs.26,74,62,038 for AY19-20, which is again based on hypothetically estimated sales of Rs.33,43,27,548 for AY20-21 which is again based on 2 months estimates of Rs.5,57,21,258 on dumb documents (i.e., 15-4-19 to 15-6-19) which has no relevance & not pertained to the assessee-Co; addition is merely on presumption, surmises & mathematical calculations is not justified in search assessment made without having any corroborative material evidence brought on record for AY18-19; is liable to be deleted."*

*Ground no.5:–*
*"On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.8,55,87,852 only on the basis of 'screen shot' of mobile of third party (Sandip Agrawal) and wrong inference drawn on the statement recorded of third party (Sandip Agrawal) u/s131 dt.13-8-19; while, the alleged 'third party statement' recorded at back of the assessee not confronted to the assessee & the person (Sandip Agrawal) has not been cross examined with the assessee, which is against the 'principle of natural justice' which makes the order nullity as held in Andaman Timber Industries (2015) (SC), Kishinchand Chellaram (1980) (SC), and hence, the addition is liable to be deleted."*

*Additional Ground no.1:–*
*"On the facts and circumstances of the case and in law, addition made of Rs.8,55,87,852 on the count of 40% GP estimation on estimated unaccounted sale of Rs.21,39,69,630, is invalid; books of account not rejected; sec145(3) not been applied; assessment made u/s143(3); without rejecting books of account & framing assessment u/s144, which is sine qua non for making 'best judgment assessment', any estimation of profit is not permissible in the eyes of law; addition is liable to be deleted, relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC)."*

*Additional Ground no.2:–*
*"On the facts and circumstances of the case and in law, addition made of Rs.8,55,87,852 is invalid; made for AY18-19 on 40% GP estimation on backward extrapolation of 'suppressed sales', when there is no incriminating material/ evidence was found/ seized which pertain/ relate to AY18-19; addition is not permissible in the eyes of law; is liable to be deleted."*

74. For the A.Y. 2018–19, the learned A.R. of the assessee submitted that the addition of ₹ 8,55,87,852 made on 40% gross profit estimation on extrapolated/ estimated unaccounted sale of coal dust of ₹ 21,39,69,630 for A.Y. 2018-19, which is again based on extrapolated/ estimated unaccounted sale of ₹ 26,74,62,038 for A.Y. 2019-20 (i.e., 80% of ₹ 33,43,27,548, extrapolated sale for A.Y. 2020-21) which is again based on extrapolated sale of ₹ 33,43,27,548 for A.Y. 2020-21, which is also based on 2 months' extrapolation/ estimation of ₹ 5,57,21,258 (working not given by the Assessing Officer that how he arrived on this figure) on dumb material (i.e., screen shot of mobile of Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels, from 15/04/2019 to 15/06/2019 i.e., in A.Y. 2020-21) which is not even pertained to the assessee, addition made is merely on presumption, surmises, mathematical calculation and extrapolation is not justified in search assessment made under section 153A r.w.s. 143(3) for A.Y. 2018-19, without having any corroborative material evidence brought on record by Assessing Officer.

75. It is submitted that the AO has made addition of Rs. 8,55,87,852 on the count of unaccounted sale of coal dust at ₹ 21,39,69,630 for A.Y. 2018-19 (i.e., 80% of ₹ 26,74,62,038, i.e., extrapolated sale of coal dust for A.Y. 2019-20); thereafter, he estimated 40% gross profit on such extrapolated/estimated sale of coal dust at ₹ 21,39,69,630, that would come to ₹ 8,55,87,852; the Assessing Officer has made addition on the basis of addition made in A.Y. 2019-20 of ₹ 10,69,84,815, by making gross profit estimation on extrapolated/ estimated sale of coal dust and nothing else has been brought on record for the impugned presumptive addition of ₹ 8,55,87,852, which had no valid/ admissible basis in

search assessment made under section 153A r.w.s. 143(3), addition is liable to be deleted.

76. Further, the learned A.R. submitted that the in the assessment made under section 143(3) r.w.s. 153A in A.Y. 2018-19 by making gross profit estimation on extrapolated unaccounted sale of coal dust, the books of account has not been rejected, provisions of section 145(3) has not been applied, no assessment has been made under section 144, no defect has been found in the books of accounts maintained by the assessee for A.Y. 2018-19. It is further submitted that without rejecting books of account and without applying section 145(3), estimation of gross profit on presumptive basis is not permissible in the eyes of law. The working of assessee's gross profit rate is based on presumption, surmises and conjectures, may be based on rejection of assessee's books of account under section 145(3), since the assessment having been made/completed under section 143(3) and after the assessee had produced its books of account, the que of invoking section 145(3) did not arise. The Assessing Officer has not rejected book of account by applying section 145(3), addition made on estimation of income is not valid and is liable to be quashed. In support of these arguments, the learned A.R. relied upon the following case laws:–

*(i) PCIT v. Forum Sales (P) Ltd (2024) 160 taxmann.com 93 (Del HC);*
*(ii) PCIT v. Marg Ltd (2017) 396 ITR 580 (Mad HC);*
*(iii) CIT v. Anil Kumar & Co (2016) 67 taxmann.com 278 (Kar HC);*
*(iv) Subhendu Kumar Subudhi v. CIT (2022) 136 taxmann.com 87 (Ori HC); and*
*(v) ACIT v. Intermedia Cable Communication P Ltd (2012) 19 taxmann.com 190 (Pune-Trib).*

77. It is submitted that addition made of ₹ 8,55,87,852 for A.Y. 2018-19 on 40% estimation on backward extrapolation of suppressed/ unaccounted sales (i.e., unaccounted cash sale of coal dust'), when there is no incriminating material/ evidence was found/ seized which pertain/ relate to A.Y. 2018-19, the year under consideration the addition is not permissible in the eyes of law. In support of these arguments the learned A.R. relied on the following case laws:–

*(i) PCIT v. Pilot Industries Ltd (2023) 146 taxmann.com 233 (Del HC);*
*(ii) PCIT v. Shri Pushkar Construction Co (2023) 154 taxmann.com 22 (Guj HC);*
*(iii) CIT v. CJ Shah & Co (2000) 246 ITR 671 (Bom HC);*
*(iv) Thakkar Popatlal Velji Sales Ltd. (2016) ITA No.2266 of 2013 dt.29-3-16 (Bom HC).*

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*Ground no.4:–*

*"On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.10,69,84,815 on the count of hypothetical GP estimation of 40% on hypothetically estimated sales of Rs.26,74,62,038 for AY19-20, which is again based on hypothetically estimated sales of Rs.33,43,27,548 for AY20-21 which is again based on 2 months estimates of Rs.5,57,21,258 on dumb documents (i.e., 15-4-19 to 15-6-19) which has no relevance & not pertained to the assessee-Co; addition is merely on presumption, surmises & mathematical calculations is not justified in search assessment made without having any corroborative material evidence brought on record for AY19-20; is liable to be deleted."*

*Ground no.5:–*

*"On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.10,69,84,815 only on the basis of 'screen shot' of mobile of third party (Sandip Agrawal) and wrong inference drawn on the statement recorded of third party (Sandip Agrawal) u/s131 dt.13-8-19; while, the alleged 'third party statement' recorded at back of the assessee not confronted to the assessee & the person (Sandip Agrawal) has not been cross examined with the assessee, which is against the 'principle of natural justice' which makes the order nullity as held in Andaman Timber Industries (2015) (SC), Kishinchand Chellaram (1980) (SC), and hence, the addition is liable to be deleted."*

*Additional Gr.No.1:–*

*"On the facts and circumstances of the case and in law, addition made of Rs.10,69,84,815 on the count of 40% GP estimation on estimated unaccounted sale of Rs.26,74,62,038, is invalid; books of account not rejected; sec145(3) not been applied; assessment made u/s143(3); without rejecting books of account & framing assessment u/s144, which is sine qua non for making 'best judgment assessment', any estimation of profit is not permissible in the eyes of law; addition is liable to be deleted, relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC)."*

*Additional Gr.No.2:–*

*"On the facts and circumstances of the case and in law, addition made of Rs.10,69,84,815 is invalid; made for AY19-20 on 40% GP estimation on backward extrapolation of 'suppressed sales', when there is no incriminating material/ evidence was found/ seized which pertain/ relate to AY19-20; addition is not permissible in the eyes of law; is liable to be deleted."*

78. The learned A.R. of the assessee submitted that the addition of ₹ 10,69,84,815 made on 40% gross profit estimation on extrapolated/ estimated unaccounted sale of coal dust of ₹ 26,74,62,038 for A.Y. 2019-20, which is again based on extrapolated/ estimated 'unaccounted sale of coal dust of ₹ 33,43,27,548 for A.Y. 2020-21, which is based on 2 month's extrapolation/ estimation of ₹ 5,57,21,258 (working not given by the Assessing Officer that how he arrived on this figure) on dumb material (i.e., screen shot of mobile of Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels, from 15/04/2019 to 15/06/2019 i.e., in A.Y. 2020-21) which is not even pertained to the assessee, the addition made is merely on presumption, surmises, mathematical calculation and extrapolation is not justified in search assessment made under section 153A rws 143(3) for A.Y. 2019-20, without having any corroborative material evidence brought on record by the Assessing Officer.

79. It is submitted that the Assessing Officer has made addition of ₹ 10,69,84,815 on the count of unaccounted sale of coal dust at ₹ 26,74,62,038 for A.Y. 2019-20 (i.e., 80% of ₹ 33,43,27,548, i.e., extrapolated sale of coal dust for A.Y. 2020-21). Thereafter, he estimated 40% gross profit on such extrapolated/estimated sale of coal dust at ₹ 26,74,62,038, that would come to ₹ 10,69,84,815; the Assessing Officer has made addition on the basis of addition made in A.Y. 2020-21 of ₹ 13,37,31,019 by making GP estimation on extrapolated/ estimated sale of coal dust and nothing else has been brought on record for the impugned presumptive addition of ₹ 10,69,84,815, which had no valid/ admissible basis in search assessment made under section 153A r.w.s. 143(3), and hence the learned A.R. prayed for deletion of the addition.

80. It is submitted that the Assessment made u/s143(3) in AY19-20 by making GP estimation on extrapolated unaccounted sale of coal dust; Books of account has not been rejected; sec145(3) has not been applied; no assessment has been

made u/s144; no defect has been found in the books of accounts maintained by the assessee for A.Y. 2019-20.

81. The learned A.R. submitted that without rejecting books of account and without applying section 145(3), estimation of gross profit on presumptive basis is not permissible in the eyes of law; working of assessee's gross profit rate is based on presumption, surmises and conjectures, may be based on rejection of assessee's books of account under section 145(3). Since the assessment having been made/completed under section 43(3), and after the assessee had produced its books of account, the question of invoking section 145(3) does not arise. The Assessing Officer has not rejected book of account by applying section 145(3), addition made on estimation of income is invalid and hence is liable to be deleted.

82. It is submitted that the addition made of ₹ 10,69,84,815 for A.Y. 2019-20 on 40% gross profit estimation on backward extrapolation of suppressed sales (i.e., unaccounted cash sale of coal dust), when there is no material/ evidence was found/ seized which pertain/ relate to AY19-20, the year under consideration, hence addition is not permissible.

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83. Without rejecting books of account and without framing assessment under section 144, gross profit estimation made is merely on presumption and surmises.

*Ground no.3:–*

*On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining the addition of ₹ 13,37,31,019, on account of hypothetical gross profit estimation of 40% on hypothetically estimated sales of ₹ 33,43,27,548, for A.Y. 2020–21, which is against based on two months' estimate of ₹ 5,57,21,258 on dumbed documents (i.e., 15/04/2019 to 15/06/2019) which has no relevance and not pertained to the assessee, addition made is merely on presumption, surmises and methemetical*

*calculations is not justified in search assessment made without having any corroborative material evidence brought on record for assessment year 2020–21, is liable to be deleted.*

*Ground no.3:–*

*"On the facts and circumstances of the case and in law, the ld CIT(A) has erred in sustaining addition of Rs.13,37,31,019 only on the basis of 'screen shot' of mobile of third party (Sandip Agrawal) and wrong inference drawn on the statement recorded of third party (Sandip Agrawal) u/s131 dt.13-8-19; while, the alleged 'third party statement' recorded at back of the assessee not confronted to the assessee & the person (Sandip Agrawal) has not been cross examined with the assessee, which is against the 'principle of natural justice' which makes the order nullity as held in Andaman Timber Industries (2015) (SC), Kishinchand Chellaram (1980) (SC), and hence, the addition is liable to be deleted."*

*Additional Ground no.1:–*

*"On the facts and circumstances of the case and in law, addition made of Rs.13,37,31,019 on the count of 40% GP estimation on estimated unaccounted sale of Rs.33,43,27,548, is invalid; books of account not rejected; sec145(3) not been applied; assessment made u/s143(3); without rejecting books of account & framing assessment u/s144, which is sine qua non for making 'best judgment assessment', any estimation of profit is not permissible in the eyes of law; addition is liable to be deleted, relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC)."*

84. The learned A.R. submitted that the addition of ₹ 13,37,31,019 made on hypothetical gross profit estimation of 40% on extrapolated/ estimated unaccounted sale of coal dust of ₹ 33,43,27,548 for A.Y. 2020-21, which is based on 2 months' extrapolation/estimation of ₹ 5,57,21,258 (working not given by the Assessing Officer that how he arrived on this figure) on dumb material (i.e., screen shot of mobile of Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels; from 15/04/2019 to 15/06/2019) which is not even pertained to the assessee, the addition made is merely on presumption, surmises, mathematical calculation & extrapolation is not justified in search assessment made under section 143(3) rws 153A for the search year i.e., A.Y. 2020-21, without having any corroborative material evidence brought on record by Assessing Officer.

85. The learned A.R. submitted that the assessee has audited turnover of ₹ 11,08,35,788 which includes service sales to M/s. Swami Fuels P Ltd. of ₹

2,90,34,541 (ledger account of ₹ 2,90,34,541, placed at Paper Book Page–22 to 24), the details of such facts are as under:–

| *Particulars* | *Amount (₹)* | *AO's allegation* |
|---|---|---|
| *Coal sale cess* | *3,90,75,888* | *It is not disputed* |
| *Coal sale* | *62,84,141* | |
| *Dolachar sale* | *3,63,36,983* | |
| *GST Coal sale* | *1,04,234* | |
| *Service sale (charges)* | *2,90,34,541* | *alleged that assessee has shown recorded handling charges @70 per MT and it is worked for ₹ 160 per MT with M/s.Swami Fuels, and thus, it is not recorded ₹ 90 per MT in the regular books of account (allegation of AO);* |
| | | *Alleged that ₹ 5,57,21,258 is 'unaccounted cash sale of coal dust' which is not recorded in the books of account for 2 months period (i.e., 16/04/2019 to 15/06/2019); AO has extrapolated the unaccounted cash sale of coal dust for whole year at ₹ 33,43,27,548, thereafter, the Assessing Officer applied/ presumed 40% gross profit on such 'extrapolated' cash sale of ₹ 33,43,27,548 and made addition of ₹ 13,37,31,019 as undisclosed profit earned by the assessee;*<br>*The Assessing Officer has not given any working of ₹ 5,57,21,258 that how he arrived at on this figure; there is no mention about any working of ₹ 5,57,21,258 for 2 months period;*<br>*Search has been conducted on 11/07/2019, while the Assessing Officer has thereafter, extrapolated for whole year which is quite impossible because, no transaction has been done/occurred with M/s.Swami Fuels from Jan, 2020 to Mar, 2020; more so, 77,936 MT in the month of June, 2019 was reduced to 30,375 MT in Aug, 2019 & 11,962 MT in Dec, 2019; thus, it was continuously reduced to 11,962 MT in Dec, 2019 and thereafter, no work done with M/s.Swami Fuels.* |
| *Total* | *11,08,35,787* | *(audited turnover)* |

86. The learned A.R. submitted that the whole dispute and allegation of the Assessing Officer is about unaccounted cash sale of coal dust of ₹ 33,43,27,548 for whole year, which is extrapolated on the estimates made by the Assessing Officer for 2 months period at ₹ 5,57,21,258 (working is not provided by the

Assessing Officer). Service sales/ charges to M/s.Swami Fuels of ₹ 2,90,34,541 in A.Y. 2020-21 i.e., for 9 months only because in January 2020 to March 2020, no work has been done.

87. Details of coal service charges (i.e., coal benefication charges and loading & unloading charges of coal handling) from M/s.Swami Fuels P. Ltd to assessee as per the books of account:–

| | *Coal service charges (i.e., coal benefication & loading & unloading of coal) Qty (in MT)* | *Amt (in ₹)* | |
|---|---|---|---|
| *April, 19* | *90,622 MT* | *63,43,578* | *from 15/04/19 to 16/06/2019 (for 2 months)* |
| *May, 19* | *70,135 MT* | *49,09,459* | |
| *June, 19* | *77,936 MT* | *54,55,624* | |
| *July, 19* | *45,593 MT* | *31,91,545* | |
| *Aug, 19* | *30,375 MT* | *21,26,318* | |
| *Sept, 19* | *37,927 MT* | *26,54,927* | |
| *Oct, 19* | *22,945 MT* | *16,06,157* | |
| *Nov, 19* | *27,279 MT* | *19,09,572* | |
| *Dec, 19* | *11,962 MT* | *8,37,361* | |
| *Jan, 20* | *No transaction with Swami Fuels* | *Nil* | |
| *Feb, 20* | | | |
| *Mar, 20* | | | |
| *Total* | | *₹2,90,34,541* | |

88. It is submitted that on the basis of service sales (charges) to M/s.Swami Fuels for 2 months period (15/04/2019 to 15/06/2019), the Assessing Officer has worked out the alleged unaccounted cash sale of coal dust at ₹ 5,57,21,258 for which working was not provided by the Assessing Officer, and the same is not recorded in the books of account, as alleged by the Assessing Officer. Thereafter, he extrapolated it for whole year at ₹ 33,43,27,548; thereafter, he applied 40% gross profit on such extrapolated cash sale of coal dust and made addition of ₹ 13,37,31,019 as undisclosed profit earned by the assessee. The Assessing Officer has not given any working for ₹ 5,57,21,258 as to how he arrived at on this figure. There is no mention in the assessment order for working of ₹ 5,57,21,258 for 2 months period. A search has been conducted on 11/07/2019, the Assessing

Officer has extrapolated for whole year which is not permissible in the eyes of law. More so, it is quite impossible, because, no transaction has been done/occurred with M/s. Swami Fuels from January 2020 to March 2020. Further, work has been continuously reduced as 77,936 MT in the month of June 2019 was reduced to 30,375 MT in August 2019 and 11,962 MT in December 2019 and thereafter, no work done with M/s.Swami Fuels. It is submitted that the Assessing Officer alleged in the assessment order dated 29/09/2021 at Page–16, Para–9.4) that –

> *"an excel sheet found in the data backup of PC at the "MCBIPL" office located at its railway siding near Sirgitti, Bilaspur, this excel sheet contains the details of labour charges payable by Swami Fuels PLtd to "MCIPL" for the services provided by MCBIPL for the period 1-5-19 to 15-5-19."*

89. It is submitted that the Assessing Officer has found the documents (i.e., excel sheet printed from computer) from 15/04/2019 to 16/06/2019, which has been show caused first time on 25/03/2021 to the assessee and the assessee has made reply on 21/06/2021, and denied about any such transaction and also requested for cross examine the person Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels P Ltd., but, the Assessing Officer has not considered the replies/ requests, which is reproduced as under:–

> *"reply in Pt.No.13, our reply with respect to the notice No.ITBA/AST/F/ 142(1)/2020-21/1031769742(1) dt.25-3-21 vide AY19-20 as follows:*
>
> *a. for the images that are referred in the given notice, we had like to bring your attention to the fact that we are unaware of any such reconciliation accounts, that were made by us or on our behalf. We deny any such transaction being made.*
> *b. We have not undergone any such arrangements mentioned in here. Our work contract had all the specifics which involved supports related to material handling and transportation and was excluding supply of coal/ dust or trade.*
> *c. There were supervisors deputed by M/s.Swami Fuels at the premises of 'MCBIPL', for looking after the swift operations of work and it can be very likely possible, that they would have used the computer system available at our work site and prepared any such labour report. We hold no responsibility for any such reports and transactions.*

*d. It is an equal shock to us regarding the role of our employee being played during the discussion of the amounts, which seems unreasonable and have no relevance to our company, these transactions are bogus in nature and should not be considered.*

*e. The given statement of reconciliation was neither made by MCBIPL or on behalf MCBIPL, and no such copies of reconciliation were found at our premise. Thus, we disagree to any such addition of the sum discussed with respect to extrapolation of income, we had like to highlight a fact that no business works same for all 12 months, and all business has its ups and lows, in the current scenario, these additions would just seem to be undue advantages of doubt."*

90. It is submitted that the details of coal dust sales presumed by the Assessing Officer for the period of 2 months i.e., 16/04/2019 to 15/06/2019, as under:–

| *period* | | *Amt* | | *Amt* | |
|---|---|---|---|---|---|
| *16-4-19 to 30-4-19* | *when there is no purchase of 'Coal dust' by the assessee* | *nil* | *the AO presumed 8,537 MT of 'dust supply (Malwa)' sold to M/s.Swami Fules* | *72,56,824* | *when there is no material/ evidence brought on record by the AO for unaccounted purchase of 'coal dust'* |
| *1-5-19 to 31-5-19* | | *nil* | *the AO presumed 17,784 MT of 'Coal dust supply' sold to M/s.Swami Fules* | *1,51,16,400* | |
| *1-6-19 to 15-6-19* | | *nil* | *the AO presumed 9,267 MT of 'Coal dust supply' sold to M/s.Swami Fules* | *78,76,950* | |
| | | | *Total* | *3,02,50,174 (AO taken at Rs.5,57,21,258 without any justification)* | |
| | | | | *the AO has extrapolated for whole year* | |

91. It is submitted that the allegation of the Assessing Officer is unsupportable on 2 counts that –

*(i) the assessee has understated the coal service charges (i.e., coal benefication and loading & unloading of coal) by ₹90 per MT (i.e., assessee has charged at ₹70 per MT as per the work contract made with M/s.Swami Fuels, while the Assessing Officer assumed that it should be ₹160 per MT); and*

*(ii) the assessee has sold coal dust to M/s.Swami Fuels P. Ltd. in cash, which is unaccounted.*

92. The learned A.R. submitted that both the allegations of the Assessing Officer are only based on presumption and surmises without having any basis for such bald estimation/ presumption. There is no corroborative material evidence found in the search premises of the assessee and/or no material/ evidence brought on record by the Assessing Officer from anywhere/ any information gathered/received from third party that the assessee has made any cash sales.

93. The learned A.R. further submitted that the assessment made for A.Y. 2020-21 under section 143(3) r.w.s. 153A on 29/09/2021 by ACIT, Central Circle-1(1), Nagpur, wherein, he has made addition of ₹ 13,37,31,019 on account of 40% gross profit estimation on extrapolated presumed unaccounted sales of coal dust & rack loading of ₹ 33,43,27,548 for whole year made to M/s.Swami Fuels P. Ltd. ("SFPL") on the basis of images from the mobile of Sandeep Agrawal, the director of M/s.Swami Fuels P. Ltd. which is mentioned in the assessment order at Page–18, Para–9.5, but, no enquiry/ no examination/ no verification has been made/ done/ conducted from the alleged person, Sandeep Agrawal, director of M/s.Swami Fuels, by issuing summons under section 131 to Mr.Sandeep Agrawal. The Assessing Officer was not having any credible material/ evidence in his possession for taking such adverse view against the assessee.

94. The learned A.R. further submitted that as alleged by the Assessing Officer in the assessment order dated 29/09/2021 at Page–16/Para–9.4 that –

> *"an excel sheet found in the data backup of PC at the "MCBIPL" office located at its railway siding near Sirgitti, Bilaspur, this excel sheet contains the details of labour charges payable by Swami Fuels P Ltd to "MCIPL" for the services provided by MCBIPL for the period 1-5-19 to 15-5-19."*

95. The learned A.R. submitted that this assertion of the Assessing Officer is wholly incorrect for the reason that he himself has mentioned that images were found in the mobile of Sandeep Agrawal. The Assessing Officer has himself stated in his assessment order that in the statement recorded on 29/07/2019 by

Sandeep Agrawal in which he has said that this reconciliation was between Sandeep Agrawal and his employee Nawal Agrawal from Bilaspur office (in the statement of Sandeep Agrawal under section 131 dated 29/07/2019, vide Question No.14). The learned A.R. relied on the following case laws:–

*(i) PCIT v. Umesh Ishrani [2019] 108 taxmann.com 437 (Bom HC);*
*(ii) CIT v. Lavanya Land (P) Ltd (2017) 297 CTR 204 (Bom HC);*
*(iii) DCIT v. SNJ Distillers P Ltd. (2020) 208 TTJ 968 (Chen-Trib);*
*(iv) ACIT v. Vibgyor Net Connections (2024) 228 TTJ 1 (Chen-Trib).*

96. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record. The first contention of the learned A.R. on the issue that without rejecting books of account and without framing assessment under section 144, gross profit estimation made in search assessment is not permissible in accordance with law.

97. Thus, we are in complete agreement with the first contention of the learned A.R. that the adhoc/estimated/ presumptive/ arbitrary addition of ₹ 8,55,87,852 made by the Assessing Officer for A.Y. 2018-19 is based on one mathematical calculation of 40% gross profit estimation basis based on extrapolated/ estimated/ presumptive unaccounted sale of coal dust of ₹ 21,39,69,630, for A.Y. 2018-19, which is itself again based on immediately preceding year's extrapolated/ estimated/ presumptive unaccounted sale of Coal dust of ₹ 26,74,62,038 for A.Y. 2019-20, i.e., also 80% of ₹ 33,43,27,548, extrapolated sale for A.Y. 2020-21, which is again based on preceding year's extrapolated/ sale of Coal dust of ₹ 33,43,27,548 for A.Y. 2020-21, which is also based on 2 month's extrapolation/ estimation of ₹ 5,57,21,258 for which working has not been given by the Assessing Officer in the assessment order that how he arrived on this figure what corroborative material he has brought on record for his un-substantiated action of presumptive addition in absence of any legally admissible material/documents having possessed by him, In our view, it is based on dumb

documents found at the third party premises as claimed by the learned A.R. of the assessee that it is on dumb material (i.e., screen shot of mobile of one Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels; from 15-4-19 to 15/06/2019, which is not even pertain to the assessee. We find that the addition made by the Assessing Officer is merely based on presumption, surmises, mathematical calculation & extrapolation which has no legal basis/ sanctity for doing this, is not justified in search assessment made under section 153A rws.143(3) for A.Y. 2018-19, without having any corroborative material evidence brought on record by the Assessing Officer / CIT(A) is completely unjustified and not sustainable.

98. We further find that the Assessing Officer has made addition of ₹ 8,55,87,852 for A.Y. 2018-19 on account of unaccounted sale of coal dust at ₹ 21,39,69,630 for A.Y. 2018-19, i.e., 80% of ₹ 26,74,62,038, whchi was extrapo–lated sale of coal dust for A.Y. 2019-20, and thereafter, he estimated 40% gross profit on such extrapolated/ estimated sale of coal dust of ₹ 21,39,69,630, that would come to ₹ 8,55,87,852. The Assessing Officer has made addition on the basis of addition made in the A.Y. 2019-20 of ₹ 10,69,84,815 by making gross profit estimation on extrapolated/ estimated sale of coal dust and nothing else has been brought on record for the impugned presumptive addition of ₹ 8,55,87,852 in A.Y. 2018-19, which had no valid/ admissible basis in search assessment made under section 153A r.w.s. 143(3) for A.Y. 2018-19 and such addition is unsustainable in law.

99. Further, we find that the assessments made under section 143(3) for the A.Y. 2018-19 to 2020–21 by making gross profit estimation on extrapolation of unaccounted sale of coal dust, books of account have not been rejected and section 145(3) has not been applied, no assessment has been made under section 144, no defect has been found in the books of accounts maintained by the assessee for A.Y. 2018-19 to 2020–21 and, therefore, any estimation of

income is not permissible in the eyes of law in search assessment made under section 143(3) and thus, the addition of ₹ 8,55,87,852, for the A.Y. 2018–19 is hereby deleted. Similar is the position for the addition of ₹ 10,69,84,815, in A.Y. 2019–20, and the same is also hereby deleted. For such analysis, we rely on the following case laws:–

i) ***PCIT v. Forum Sales (P) Ltd*** *(2024) 160 taxmann.com 93 (Del HC) held as under:–*

> *"19. A plain reading of the aforementioned provisions would indicate that the AO wields an authority to make additions on the basis of estimation of income upon fulfillment of the conditions mentioned in sec145(3).*
> *Once the AO is satisfied about the existence of irregularities in the books of account as per sec145(3), it shall proceed in the manner provided u/s144.*
> *At this juncture, what needs consideration is the que whether such an addition must be made only after the rejection of the books of account by the AO.*
> *20. Swananda Properties (P) Ltd (2019) (Bom HC) had an occasion to consider the said que and the same was accordingly answered as under:*
>
> > *"11. We note that the books of account of the respondent were rejected by the CIT(A) u/s145(3). However, the Trib found in the impugned order that the invocation of sec145(3) is unjustified as no defect was noted in the books of account to disregard the same.*
> > *We note that the CIT(A) in his order while rejecting the books of account does not specify the defect in the record. The basis of the rejection appears to be best judgment of assessment done by him. The rejection of the books should precede the BJA. On facts, the Revenue has not been able to show any defect in the respondent's records which would warrant rejection of the books and making a BJA. Thus, on facts the view taken by the Trib is a possible view. Therefore, no substantial que of law arises. Thus, not entertained."*
>
> *21. Anil Kumar & Co (2016) (Kar HC), has held that in cases where the Revenue had failed to reject the books of account and proceeded to an estimation of income without framing the assessment u/s144, such an action is unsustainable as per law. The relevant para of the said decision is reproduced as under:*
>
> > *"11. Insofar as the estimation of GP made by the AO modified by the CIT(A), Trib has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed u/s144 the said authorities were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable.*
> > *Sec145(3) lays down that the AO can proceed to make assessment to the best of his judgment u/s144 only in the event of not being satisfied with the correctness of the accounts produced by the assessee.*
> > *In the instant case the AO has not rejected the books of account of the assessee. To put it differently the AO has not made out a case*

*that conditions laid down in sec145(3) are satisfied for rejection of the books of account. Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, same would form the basis for computation of income.*

*In the instant case it is noticed that neither the AO nor CIT(A) have rejected the books of account maintained by the assessee in the course of the business.*

*As such Trib has rightly rejected or set aside the partial addition made by AO for arriving at GP and sustained by the CIT(A) and rightly held that entire addition made by the AO was liable to be deleted. The said finding is based on sound appreciation of facts and it does not give rise for framing substantial que of law."*

*22. In another case of Marg Ltd (2017) (Mad HC), the DB of the Mad HC has held that the rejection of books of account is sine qua non before the AO proceeds to make his own assessment. Para 4(c) of the said decision is reproduced as under:*

*"4(c). Therefore, it is sine qua non that the AO to come to a conclusion that the books of account maintained by the assessee are incorrect, incomplete or unreliable and reject the books of account before the proceeding to make his own assessment. In the instant case, there is no reference in the assessment order of the AO regarding rejection of books of account."*

*24. The series of judgments referred to hereinabove clearly allude to the settled position of law that the books of account have to be necessarily rejected before the AO proceeds to the BJA upon fulfilment of conditions mentioned in the Act.*

*The underlying rationale (fundamental basis) behind such an action is to meet the standards of correct computation of accounts for the purpose of a more transparent and precise assessment of income.*

*Therefore, any pick and choose method of rejecting certain entries from the books of account while accepting other, without an appropriate justification, is arbitrary and may lead to an incomplete, unreasonable and erroneous computation of income of an assessee.*

*25. In the present case, the Trib has made a categorical finding that despite the fact that the AO was provided with the requisite bills, vouchers and addresses of the transacting parties, it did not make any effort to confirm the veracity (reality) of the alleged bogus or inflated bills.*

*26. We, hereby, also take note of the observations made by the Trib in its order dt.22-10-18 in para 25, wherein, while affirming the deletion of additions vide order of the CIT(A), it was held as under:*

*"25. We find although the AO was having complete address of the parties, however, he did not bother to call for any information from the said parties if he had some doubts. The entire addition by disallowing of 40% of the purchases in our opinion is not justified when the books of account are not rejected. We find Yunus Haji Fazawala (Guj) has held that action of the AO in disallowing 25% of purchases by doubting its genuineness without rejecting the books of account cannot be sustained. The order of the Trib confirming the disallowance was accordingly reversed.*

*Since in the instant case also the books of account are not rejected, therefore, action of the CIT(A) in deleting such addition is justified.*

> *Further we find merit in the findings of the CIT(A) that if the action of the AO is accepted then profit of the assessee will be 32.90% for AY13-14 and 56.09% for AY14-15 which is illogical and absurd. Since the order of the CIT(A) on this issue is just and proper under the facts and circumstances of the case, therefore; we do not find any infirmity in the same. Accordingly the same is upheld and the ground raised by the Revenue is dismissed."*

*27. Also, the decisions relied upon by the Revenue do not essentially support its case as the facts of the cited cases are strikingly different from the case at hand and therefore, the same are distinguishable.*

*Though Unit Construction Co Ltd (Cal HC) would only have a persuasive value, however, a closer scrutiny of the same leads us to the conclusion that the said decision was rendered in the context of unexplained investments as per the scheme of sec69.*

*In Paradise Holidays, the issue pertained to the rejection of books of account without an appropriate justification and therefore, unlike the present case, the challenge was laid with respect to the rejection of books of account itself.*

*29. Admittedly, the addition of income as discussed in ques (B), (C) and (D) on estimate basis has been done without rejecting the books of account. In view of the aforesaid, we find that no substantial que of law arises in the present appeals."*

ii) ***PCIT v. Marg Ltd*** *(2017) 396 ITR 580 (Mad HC), held as under:–*

*"4(a) As stated supra, the assessee is a Public Ltd. Co. engaged in the business of civil construction and related services.*

*4(b). AO had made addition to the income returned by the assessee by estimating gross profit. The power to make such addition on estimate basis is available to the AO u/s144. Sec145 enables the AO to invoke the power u/s144 when certain conditions adumbrated in sec145(3) are satisfied. Therefore, it becomes necessary and useful to extract sec145(3), which reads as follows:*

> *"Sec145(3) Where the AO is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sec145(1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified u/s145(2), the AO may make an assessment in the manner provided in sec144."*

*4(c). Therefore, it is sine qua non that the AO to come to a conclusion that the Books of Accounts maintained by the assessee are incorrect, incomplete or unreliable and reject the books of accounts before the proceeding to make his own assessment. In the instant case, there is no reference in the assessment order of the AO regarding rejection of Books of Accounts.*

*4(d) Therefore, there is nothing on record to show that the AO came to the conclusion that the books of account maintained by the assessee are incorrect, incomplete, unreliable and as a consequence rejected the books of account.*

*4(e) Therefore, after setting out the plethora of case laws on this point, CIT(A) held that the accounts of the assessee cannot be rejected merely based on the perception of the AO that the assessee has declared low profit margin for certain projects when books of account have not been rejected.*

*Considering the factual position that there is no reference in the assessment order made by the AO regarding the books of account (this has been fairly admitted by the Revenue before Trib), we are not, therefore, labouring through the labyrinth of case laws relied on by CIT(A). The relevant portion pertaining to admission in this regard by the Revenue is at para 4 of the order of Trib and the same reads as follows:*

> *"4. On a query from the bench, whether the AO rejected the books of account during the course of assessment proceedings, the ld DR very fairly submitted that there is no reference in the assessment order in the rejection of books of account....."*

*4(f) As this factual position has been admitted, Trib, dismissed the appeal of the Revenue by holding that profits of an assessee cannot be estimated without rejecting the books of account.*

*4(g) Trib has expressed its considered opinion that only when an assessee is not maintaining books of account properly and the correct income cannot be estimated on the basis of the books of account, the books of account can be rejected. Trib has gone on to hold that the AO can estimate profit only thereafter."*

*iii)* ***CIT v. Anil Kumar & Co*** *(2016) 67 taxmann.com 278 (Kar HC) held as under:*

*"11. Insofar as the estimation of GP made by the AO modified by the CIT(A), Trib has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed u/s144 the said authorities were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable. Sec145(3) lays down that the AO can proceed to make assessment to the best of his judgment u/s144 only in the event of not being satisfied with the correctness of the accounts produced by the assessee.*

*In the instant case the AO has not rejected the books of account of the assessee. To put it differently the AO has not made out a case that conditions laid down in sec145(3) are satisfied for rejection of the books of account. Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, same would form the basis for computation of income.*

*In the instant case it is noticed that neither the AO nor CIT(A) have rejected the books of account maintained by the assessee in the course of the business. As such Trib has rightly rejected or set aside the partial addition made by AO for arriving at GP and sustained by the CIT(A) and rightly held that entire addition made by the AO was liable to be deleted. The said finding is based on sound appreciation of facts and it does not give rise for framing substantial que of law."*

*iv)* ***Subhendu Kumar Subudhi v. CIT*** *(2022) 136 taxmann.com 87 (Ori. HC) held as under:–*

*"9. Further, the re-working of the Assessee's GP rate for the AY in que appears to be based on surmises and conjectures, triggered as it were by the ITAT's rejection of the assessee's books of account u/s145.*

*Mr.Ray for the assessee is right in contending that with the assessment having been completed u/s143(3), and after the assessee had produced its books of account, the que of invoking sec145 did not arise.*

*10. The Court is satisfied that in rejecting the assessee's book of account u/s145, the ITAT committed a serious error. It proceeded on that basis to re-work the GP margin."*

v) ***ACIT v. Intermedia Cable Communication P Ltd*** *(2012) 19 taxmann.com 190 (Pune-Trib)held as under:–*

*"7. There was search u/s132 on the assessee. The revenue suspected the bona fide of subscribers base of the assessee and it was of view that the number of cable connections of the subscribers were suppressed. On the basis of statement of Director of the assessee-Co, namely, 'I' that they take 40% of a number of residential accommodation in the area as possible connectivity for planning purposes, the AO inferred to the conclusion that the asessee's books did not reflect the correct number of cable connections as accounted ones were far below the said 40%.*

*12. Ex consequenti to search u/s132, notices u/s153A was issued for all years u/c. After examining the contents of the returns, the scrutiny assessment was completed adopting the uniform basis of estimation at the rate of 40% of the electricity connection of the area. The AO complied the year-wise rate per cable connection and then assessments for all the 7 AYs were completed finally determining the undisclosed income of all the 7 years.*

*13. ……During the first appellate proceedings, the assessee queed the AO's basis of the estimation and principles to be followed by the AO in matters of assessments involving search and seizure actions like present one and mentioned in search assessment, there was no role for estimation such as 40% of MSEB connections.*

*The assessee argued that such weird and unfettered estimations were against the set principles of search and seizure assessments. The CIT(A) estimated the suppression of subscriber base by the assessee at 10% of the connections shown by the assessee.*

*On cross appeals, the assessee raised addl.grounds that the CIT(A) erred in confirming the estimation of the suppressed receipts without rejecting books of account in compliance with requirements of sec145(3) and that CIT(A) erred in confirming the estimation of the suppressed receipts in the completed assessment without any evidence in the search material.*

*25. ……It is the settled law that the books cannot be rejected u/s145 and resort to BJA, unless the AO record any finding that the books of account maintained by the assessee are incorrect rendering it impossible to deduce the profits. AO needs to indicate that he noticed any inconsistency or infirmity in the audit report- Madnani Construction Corpn P Ltd (2008) (Gauhati HC).*

*Thus, when no discrepancy is noticed in the accounts maintained by the assessee, AO cannot assume jurisdiction u/s145(3) as held by Anand Kumar Deepak Kumar (Del HC).*

*It is also relevant to mention that without enlisting the defects, incompletion and inaccuracies in the accounts of the assessee, AO cannot expressively or otherwise, invoke the sec145(3).*

*In Paras Dyeing & Printing Mills P Ltd (2011) (Ahd-Trib) that when no specific discrepancies or defects in the books of account of the assessee has been pointed out nor was any material brought to establish that purchases were inflated or receipts suppressed, there is no justification in invoking the*

*sec145. If there was no challenge to the transactions represented in the books, then it is not open to the Deptt to contend that what was shown by the entries is not the real state of affairs. There was no basis for rejection of books of account.*

*Thus, suspicion, however strong, it may be, is no ground for the AO for invoking the sec145(3). Thus, this the scope of the sec145(3), which provide authority to the AO to adopt best judgment in the manner provided u/s144.*

*30. Regarding the above argument relating to the contents of the statement of Shri Inamdar, it is evident that the said statement is unspecific, vogue and the same was made in connection with planning of the business i.e., in other words assessee purchases the required machinery with a capacity for gathering 40% of the electricity connections of an area. It should never mean that the assessee is providing cable connections to 40% of the electricity connections.*

*In our opinion, it constitutes a wild surmises, which should be rejected outright as done by the CIT(A) in the impugned order. Therefore, this statement of Shri Inamdar ought not to become a basis for rejection of books of account as the said statement failed to contribute to either incompleteness or inaccuracy of the accounts of the assessee for the 7 AYs u/c. The full sentence of the statement of Sri Inamdar reads that "Further for planning purpose, we take 40% as the possible connectivity" and we failed to understand how the AO can construe the same as conclusive evidence in support of the suppression of the cable connectivity of the assessee in the absence of any other corroborative evidences.*

*32. It is a settled law, the suspicion, however strong, it may be, never replaces the specific findings or evidences as they unambiguously throw light on the incompleteness and inaccuracy of the accounts of the assessee. It is not the case in here.*

*Therefore, there is no scope for any such surmises and suspicion in matters of rejection of books of account. It is the onus on the AO to enlist the defects or discrepancies or entries or failure of the assessee in maintaining some requisite books in the order before the books are rejected u/s145(3).*

*The AO might not have mentioned expressively the sec145(3) in the order but the requirement is, AO must enlist the defects or discrepancies or incompletion or inaccuracies of the accounts of the assessee. AO might not have mentioned expressively the sec145(3) in the order but the requirement is, AO must enlist the defects or discrepancies or incompletion or inaccuracies of the accounts of the assessee.*

*In the instant case, AO did not bother to honour the law in its true spirit. How AO can resort to estimation of income without rejection of accounts systematically maintained by the assessee for all the years u/c and also without invoking the sec145 after duly complying with the conditions specified in them? Should we encourage such callous approach of the AO, who did not bother to read the said provisions and conditions specified therein? AO's order does not contain a whisper about the sec145, while he proceeded to make BJA. This is not done. Therefore, in our considered opinion, the AO made a BJA in this case assuming jurisdiction u/s145(3) invalidly. Such assessments are unsustainable.*

*Therefore, CIT(A) did not approve the AO's decision rightly and he was silent on the issues relating to the sec145 and rejected the AO's basis i.e., 40% of the electricity connections of an area. He fixed the estimation at 10% of the same.*

> *We cannot approve the estimations of any kind i.e., 40% or 10% as the case may be, when the books of account of the assessee are not proved faulty on fronts of accuracy or incompleteness.*
> *It is a trite law that the onus is heavily on the AO when the books are to be rejected and the income of the assessee is estimated.*
> *Unless, the accounts are rejected for express reasons, which is not there in this case, and corroborated by the conclusive evidence, in consequinti, any decision on the estimation of income is unsustainable in law.*
> *Therefore, the rejection of books of account implied made by the AO confirmed by the CIT(A) is not proper and, therefore, cancelled.*
> *In consequinti, the estimation of income made by the AO for all 7 AYs adopting 40% of the electricity connections of the area as the basis has to be dismissed. Accordingly, the 'addl.ground' raised on the invalid jurisdiction of sec145(3) for all the 7 years is allowed."*

100. As per the second contention of the learned A.R. of the assessee, we find that addition made of ₹ 8,55,87,852 for A.Y. 2018-19 and ₹ 10,69,84,515, for A.Y. 2019–20 on 40% gross profit estimation on backward extrapolation of suppressed/ unaccounted sales (i.e., unaccounted cash sale of coal dust), when there is no material/ evidence was found/ seized which pertain/ relate to A.Y. 2018-19 and 2019–20 respectively, the presumptive addition is not permissible in the eyes of law. For such analysis, we rely on the following case laws:–

i) ***PCIT v Pilot Industries Ltd*** *(2023) 146 taxmann.com 233 (Del HC) held as under:–*

> *"2. Ld counsel for the appellant states that the Trib has erred in upholding the order of the CIT(A) and deleting the additions made on account of GP ignoring the fact that the said additions have been made after rejecting the books of account which did not reflect true and correct state of affairs of the Assessee-Co. He states that the Trib has erred in concurring with the view of CIT(A) that no addition can be made on the basis of the documents found during the course of search pertaining to different AYs.*
> *13. The appellate authorities below also noted that for the AY05-06 to AY08-09, there is no evidence available with respect to suppression of the GP by obtaining bogus purchase bills by the assessee and that the AO has merely relied upon the documents seized during the course of search for FY10-11 and 11-12 even when the present batch of cases pertains to the AY05-06 to 09-10."*

ii) ***PCIT v. Shri Pushkar Construction Co*** *(2023) 154 taxmann.com 22 (Guj HC) held as under:–*

> *"3. The facts are that a search was conducted u/s132 against one Ashit Haribhai Vora, who was active partner of the assessee-firm of Batter Group.*

*When the search was conducted on 4-12-14 at the residence, according to the Deptt, certain documents containing 37 pages were found and seized, which were incriminating documents relating to the project called Pushkar-III and Pushkar-IV developed by the assessee.*

*According to the Deptt, the documents reflected that the said documents contained certain details, including the details of cash as well as cheque received by the assessee firm in relation to the sale of the units in the project Pushkar-III and Pushkar-IV.*

*They were unaccounted money transactions pertaining to the period from AY11-12 to AY14-15.*

*3.1 The AO found that the cash received by the assssee against the sale of the units in the aforesaid projects was not referred in the regular books of account and ratio of on-money was about 41% of the actual sale consideration as recorded in the books pertaining to AY10-11 to 14-15. On-money consideration was worked out to be Rs.3,15,77,644. Consequentially, addition u/s143(3) was made in the income of the assessee by order dt.29-12-16.*

*4. The assessee appealed against the said order of addition before the CIT(A). The appellate authority by order dt. 28-3-18 directed the AO to delete the addition. The Revenue referred appeal before the Trib. The appeal came to be dismissed, which order is brought under challenge in this appeal proposing aforesaid substantial ques of law.*

*5. While deleting the addition on the gr. of on-money transaction as above, the appellate authority observed that the seized documents carry receipt of on-money in relation to the previous AYs, that is 10-11 to 14-15 only. It was found that for the year u/c, that is AY15-16, there was no clinching evidence of receipt of on-money against the units sold in that year. Any statement of any of the buyers was also not recorded, noticed the appellate authority.*

*Therefore, according to the appellate authority in absence of any clinching evidence excepting the receipt of on-money against the units sold in AY15-16, extrapolation of income was not justified.*

*5.2. The Trib also found that there was no evidence of receipt of on-money from the entire sales and the addition of income on some flimsy instances were not justified, extracting from para-7,*

> *"Further taking into consideration this particular fact that the search was carried out in the case of one Ashit Vora on 4-12-14 and the notices are issued in the case of the appellant on 18-6-16 followed by the assessment order passed on 29-12-16 we do not find any recording of statement of buyers whose sales have been recognized all the years by the ld AO. No clinching evidence of receipt of on-money on the entire sales made by the appellant is found in the absence of which extrapolation of income simply based on few flimsy instances is not sustainable."*

*5.3. The Trib thereafter held that the AO was required to confine himself on the incriminating material found during the course of search and that the Revenue could not have extrapolated the amount of on-money merely on presumption based on the instances which too did not relate to the year u/c. The reliance on the loose papers to treat the amounts as undisclosed income in absence of any other evidence supporting it for the relevant AY, was not justified and the addition in that regard deserve to be deleted. The Trib dismissed the appeal on merits.*

*6. The Trib confirmed the decision of the CIT by firstly observing that statement of buyers whose sales had been recognised in all the years were*

*not recorded by the AO. Secondly it found that there was dearth (lack) of evidence about the receipt of on-money on the until as well as made by the assessee and in absence of any clinching evidence additions were not sustainable.*
*It was also observed by the Trib that no material was found in the possession of the assessee which would closely demonstrate that the assessee in respect of the flats/ units other than those recorded in the seized documents were also charged on money from the customers. It was observed that there was no material which could lead to the conclusion that the assessee was in practice of charging on-money for sale of flats/ units.*
*6.1. In other words, the appellate authority as well as the Trib concurrently found that there was total dearth (lack, shortage) of evidence to come to conclusion that there was on-money transaction and that on such count it would not entitle the AO to make addition in the income. The material in the nature of loose papers were not reliable, it was observed.*
*More particularly, it was not related to the AY15-16 and nothing was there to show that the on-money was received in respect of sale of units/flats recognised to be the sale of AY concerned. The findings of the appellate authority and Trib are based on ground of absence of evidence. The decision is based on appreciation of evidence."*

*iii)* ***CIT v. C. J. Shah & Co.*** *(2000) 246 ITR 671 (Bom HC) held as under:–*

*"Search and seizure action was taken u/s132, pursuant to which loose sheets of paper came to be detected in the form of A3, A4 and A6.*
*The AO found that the said loose sheets indicated undisclosed sales for 3 months from 3-9-96, to 4-12-96, and on that basis he estimated undisclosed profit of Rs.3.40 crores.*
*2. Being aggrieved, the assessee preferred an appeal to the Trib.*
*On facts, the Trib found that the AO had estimated the turnover on a notional basis for the entire block period. The Trib found that according to the assessee the peak investment was of Rs.40,14,806 which was never disputed by the DR. The said peak investment was worked out on the basis of A3, A4 and A6. The figures mentioned in A3, A4 and A6 were only incoming and outgoing cash transactions and, therefore, the Trib came to the conclusion that on the basis of the said 3 files the addition of Rs.3.40 crores was arbitrary. The Trib found that there was no material to show the turnover during the block period. In the circumstance, the Trib allowed the appeal. Being aggrieved, the Deptt has now come in appeal before this court.*
*3. It is well settled that in cases where material is detected after search and seizure operations are carried out, the AO is required to determine the undisclosed income. In such cases additions are generally based on estimates. In matters of estimation some amount of latitude is required to be shown to the AO particularly when relevant documents are not forthcoming. However, it does not mean that the AO can arrive at any figure without any basis by adopting an arbitrary method of calculation.*
*In the present matter, A3, A4 and A6 nowhere records the turnover of the assessee as found by the Trib and yet on the wrong basis of the incoming and outgoing cash transactions, the AO has arrived at the turnover.*

*Moreover, the peak investment was Rs.40,14,806 for 3 months. However, there is no material seized to justify any figure to be included for a period earlier to the said period of 3 months.*
*In the circumstances, the Trib has recorded a finding of fact and has held that the addition of Rs.3.40 crores was totally unjustified. The entire finding of the Trib is based on the facts. No substantial que of law arises. Hence, the appeal is dismissed."*

iv) ***Thakkar Popatlal Velji Sales Ltd*** *(2016) (Bom HC) ITA No.2266 of 2013, judgment dated 29/03/2016; held as under:–*

*"Where the register evidencing the sales were found for certain period, the Revenue was entitled to extrapolate the sales recorded therein for the entire AY. The Hon'ble HC vide para 9 held as under:*

*"9. So far as the next submission on behalf of the Revenue viz., of extrapolation of evidence found during search is concerned, this Court in All Cargo Global Logistics Ltd (Bom HC) had negatived the Revenue's submission before it that the assessment u/s153A is not to be restricted only to the incriminating material found during the course of search but would extend to other material also.*
*Therefore, in the facts of present case this issue is covered by the decision of this Court in All Cargo Global Logistics Ltd (Bom HC) in favour of the assessee inasmuch as it restricts the assessment to be made only to the incriminating material found during the course of search.*

*The reliance upon HM Esufali HM Abdulali (SC) is inappropriate. This is so as it was passed under the sales-tax law and it proceeded the basis of BJA i.e., disregarding the assessee's books of account. It is not so in this case."*

**A.Y. 2020–21**

101. Insofar as the A.Y. 2020–21 i.e., the searched year, we are in complete agreement with the contention of the learned A.R. of the assessee that the impugned adhoc/ estimated/ presumptive/ arbitrary addition of ₹ 13,37,31,019 made on hypothetical gross profit estimation of 40% on extrapolated/ estimated unaccounted sale of coal dust of ₹ 33,43,27,548 for A.Y. 2020-21, which is based on 2 months' extrapolation/estimation of ₹ 5,57,21,258 for which working has not been given by the Assessing Officer in the assessment order that how he arrived on this figure and what corroborative material he has brought on record for his un-substantiated action of presumptive addition in absence of any legally admissible material/ documents having possessed by him, in our view, it is based on dumb documents found at the third party premises as claimed by the learned A.R. for the assessee that it is based on dumb material which is a screen shot of

mobile of one Sandeep Agrawal, Nagpur, director of M/s.Swami Fuels; from 15/04/2019 to 15/06/2019, which is not even pertain to the assessee. We find that the addition made by the Assessing Officer is merely based on presumption, surmises, mathematical calculation and extrapolation which have no legal basis/ sanctity for making such huge hypothetical presumptive addition hence it is unsustainable in the eyes of law. The Hon'ble Supreme Court in Dhakeshwari Cotton Mills Ltd. v/s CIT, [1954] 26 ITR 775 (SC) has held that although strict rules of Evidence Act do not apply to income tax proceedings, still assessment cannot be made on the basis of imagination and guess work. It has been held in the case of Umacharan Saha & Bros. Co. v/s CIT, 37 ITR 21 (SC) that suspicion, however strong cannot take place of evidence.

102. Further, we find that the assessment made under section 143(3) for the A.Y. 2020–21 by making 40% gross profit estimation on extrapolation of unaccounted sale of coal dust, books of account has not been rejected and section 145(3) has not been applied, no assessment has been made under section 144, no defect has been found in the books of accounts maintained by the assessee for A.Y. 2020–21. Therefore, in such a situation, any estimation of income is not permissible in the eyes of law in search assessment made under section 143(3) and thus, the presumptive addition of ₹ 13,37,31,019 for A.Y. 2020–21 is hereby deleted. We rely on the following case laws:–

*i)* ***PCIT v. Umesh Ishrani*** *[2019] 108 taxmann.com 437 (Bom HC) held as under:–*

> *"1. This Appeal is filed by the revenue to challenge the judgment of Trib. Following que is presented for our consideration;*
>
> > *"Whether, the Hon'ble ITAT was justified in deleting the addition on account of cash payment for purchase of shops by holding that the seized papers were not found from the premises of the assessee and hence, presumption u/s132(4A), u/s292C are not applicable, without appreciating that the seized papers were found during search in the premises of one of the partners Sri Laxmichand Rohira of the same firm for purchase of shops by the firm and in the said seized documents, amounts of cash paid by all the partners are noted and assessments made in the case of the said partner Shri Laxmichand Rohira relating to his share of cash payment has become final, and*

*therefore, that evidence is also relevant for assessment of other partners, including the assessee?"*

*2. The Assessee is an Indl. He was the partner of the firm. The IT Deptt had carried out search and seizure operation during which certain loose papers were collected. On the basis of loose papers additions were made in the hands of the individual partners and on protective basis on the hand of the firm.*

*While deleting such addition in case of the present assessee the Trib noted that the documents nowhere show that any payments were made by same persons, no enquiry or verification was made with the seller of the shops or the developer. Trib therefore, concluded that entries of the loose papers were not corroborated with any other evidence on record.*

*3. It can thus, be seen that the entire issue is based on appreciation of evidence on record. The Trib noted that the loose papers entries were not clear and not corroborated by any independent evidence. No que of law therefore arises. ITA is dismissed."*

ii) ***CIT v. Lavanya Land (P) Ltd*** *(2017) 297 CTR 204 (Bom HC) dt.23-6-17, held as under:*

*"21. Thereafter, in para20, the Trib considered the merits and once again, at great length. The particular argument revolving around the statement of Dilip Dherai and his answer to que No.24 was also considered in para 21 of the impugned order.*

*Then, in para22, the Trib refers to the additions made u/s69C.*

*After reproducing sec69C and adverting to the fact that Dilip Dherai has retracted his statement, the Trib arrived at the conclusion that merely on the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made.*

*The concurrent findings of fact would demonstrate that the essential ingredients of sec69C enabling the additions were not satisfied.*

*This is not a case of 'no explanation'. Rather, the Trib concluded that the allegations made by the authorities are not supported by actual cash passing hands.*

*The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another.*

*In that regard, the Trib found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands. It is in these circumstances that the Trib found that on both counts, namely, the legal issue, as also merits, the additions cannot be sustained. Eventually, the Trib held in para 25 as under:*

*"25. A perusal of the balance-sheet of the assessee show that the authorized, issued and subscribed paid-up capital is at Rs.1 lakh and the assessee had not done any business during the year u/c. With such a small corpus and no business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of accounts. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to*

*have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee.*
*In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore, be made u/s69C to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained."*

*iii)* ***DCIT v. SNJ Distillers P Ltd.*** *(2020) 208 TTJ 968 (Chen-Trib) held as under:–*

*"We, further are of the considered view that the impugned additions made by the AO on the basis of incriminating material being scribbling pad named 'Sharp Note Pad-4' is an inadequate material or rather no material at all and as such deserves to be ignored. Further, it is a settled position of law that statement recorded u/s132(4) is an important piece of evidence but reliability depends upon the facts of the case and particularly surrounding circumstances and in this case, the lower authorities reached to the conclusion on the basis of assumption resulting into fastening on the liability of the assessee on the basis of inadequate material coupled with statement recorded during the course of search. No doubt, statement of oath recorded u/s132(4) is a piece of evidence, when there is incriminating material supporting the said admission. In the absence of any corroborative evidence, merely on the basis of admission in statement recorded u/s132(4), no liability can be fastened on the assessee. The AO has not brought on record any material and reasons for rejection of assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why the AO did not proceed further to enquire into the unaccounted income as admitted by the assessee in the statement u/s132(4). This fact was also not taken care of and considered that in a case where there was a search operation, no assets or cash was recovered from the assessee in that situation which had permitted the assessee to make declaration of undisclosed income of Rs.31 crores for 3 AYs.*
*This principle is supported by Shree Ganesh Trading Co (2013) (Jhar HC).*
*Kailashben Manharlal Chokshi (Guj) had considered an identical issue and held that statement recorded at odd hours cannot be considered to be voluntary statement, if it is subsequently retracted and necessary evidence is laid contrary to said admission and therefore, admission on the basis of retracted statement u/s132(4) was not called for.*
*PV Kalyanasundaram (SC) held that que as to what is the actual sale price of the property, the implication of the contradictory statements made by the seller and whether reliance could be placed on the loose sheets recovered in the course of search are all ques of fact and not substantial ques of law.*
*Layers Exports (P) Ltd (2017) (Mum-Trib) had considered a similar issue in the light of loose papers found during the course of search and after considering relevant facts held that no addition could be made simply on the basis of uncorroborated noting in loose papers found during search because addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by*

*some unidentified person and having no evidentiary value, was unsustainable and bad in law.*

*12.10. In this case, on perusal of facts available on record, we are of the considered view that the additions made by the AO towards unaccounted cash receipts from vendors and suppliers recorded in alleged scribbling pad is not based on any cogent evidence or supported by any unaccounted assets and investments unearthed during the course of search, but solely on the basis of assumptions and presumptions. Further, suspicion however strong cannot take place of evidences which can be used against the assessee, when particularly the assessee has retracted his statement along with sworn affidavit and explained the reasons for giving admission at the time of search.*

*This principle is supported by Umacharan Shaw & Bros (1959) (SC). Further, the assessee has brought on record various reasons to prove that the alleged scribbling pad is part of purported statement and declaration obtained by the search team during the course of search, but it is not a cash book maintained by the assessee to record unaccounted cash received from various vendors and parties for inflation of expenditure to make various payments for expenditure. Had it been the case of the AO that the alleged scribbling pad and its contents was tested by cross examining the parties as stated by the AO in his assessment order, then obviously it would give raise to an occasion to the AO to rely on said documents to make additions. In this case, the AO has not made any effort to verify the entries recorded in the scribbling pad by making further enquiries and cross examining the alleged persons or suppliers named in the said incriminating document. Further, on perusal of incriminating documents found during the course of search, we find that nothing was emanating regarding name and address of persons from whom said amount was received and the nature of expenditure for which said amount was paid. In absence of any effort from the AO by way of further enquiries, merely on the basis of a dumb paper coupled with statement recorded during the course of search, additions made towards undisclosed income cannot be sustained, more particularly when said statement is no longer in operation.*

*12.11. As regards the argument of the ld DR that although Shri SN Jayamurugan, MD had retracted his statement, but other 2 statements recorded during the course of search is still in force and the persons who gave the statements have never retracted from the earlier statement recorded during the course of search, we find that when a statement were recorded from employee of assessee which were further vetted by the MD, then the earlier statement given by the employees are merged with the subsequent statement of a MD, because the person in charge of the affairs of the company is always MD, who is having knowledge of affairs of the company. Therefore, even though the employees statement were not retracted, the same cannot be considered as an evidence which can be used against the assessee when the MD of the assessee-Co has retracted his statement along with sworn affidavit explaining the reasons. Therefore, the arguments that the other 2 statements are sufficient enough to draw an adverse inference against the assessee cannot be accepted.*

*12.12. The CIT(A) without appreciating these facts has simply confirmed additions made by the AO towards undisclosed income on the basis of scribbling pad found during search. We, therefore, for above reasons reverse the findings of the ld CIT(A) and direct the AO to delete additions made*

*towards undisclosed income on the basis of scribbling pad for the AY14-15 to 17-18.*

iv) ***ACIT v. Vibgyor Net Connections*** *(2024) 228 TTJ 1 (Chen-Trib) held as under:–*

*"3. The brief facts of the case are that the assessee is a Part-firm, which is engaged in the business of developing and renting of immovable properties and interior infrastructures. A search u/s132, was conducted in the case of the assessee and its partners on 4-3-20. The said search was conducted consequent to search conducted in the case of M/s.Polisetty Somasundaram on 28-1-20.*

*During the course of search in the case of M/s.Polisetty Somasundaram, incriminating evidences in the form of cash book containing details of cash transactions were found and seized. The transactions entered in the cash book shown that on 31-3-15 'Bang' cash payment made Rs. 51,53,55,000 and also 'cash carrying charges to Bang', Rs.10,75,000. On further enquiry, it was found that M/s.Polisetty Somasundaram Gr. had purchased an immovable property at Bang on 23-12-15 for a consideration of Rs.99 crores from the assessee vide registered sale deed dt.23-12-15. During the course of search, u/s132, in the case of M/s.Polisetty Somasundaram, a sworn statement of Shri Yeluri Chandrasekhar Rao, AR of M/s.Polisetty Somasundaram, was recorded on 5-3-20 and confronted with the impounded excel sheet cash book. Shri Yeluri Chandrasekhar Rao had given explanation to cash book entries dt. 31-12-15 and stated that the firm has sent Rs.51,53,55,000 cash to Bang for purchase of tobacco from farmers in the Mysore region. He further admitted that on-money has been paid in connection with one property transactions at Bang. However, clearly denied that entries recorded on 31-12-15, cash payment to Bang, is nothing to do with property transactions with M/s.Vibgyor Net Connections. Further, during the course of search proceedings in the case of the assessee on 4-3-20, incriminating evidences forwarded by the Dy.DIT(Inv.) were confronted to Shri S Mahalingam, partner and founder of M/s.Vibgyor Net Connections, and in response to specific que, he has denied receipt of on-money towards sale of property to M/s.Polisetty Somasundaram on 23-12-15.*

*10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have also carefully considered the purported cash book found and seized in the premise of M/s.Polisetty Somasundaram, which has been extracted in the assessment order. The seized excel sheet cash book contained certain cash transactions and as per said cash book on 31-12-15, it was mentioned as 'cash carrying charges to Bang' Rs.10,75,000 and 'Bang' Rs.51,53,55,000. During the course of search, in the case of M/s.Polisetty Somasundaram on 28-1-20, a statement on oath u/s132(4), was recorded from Shri Yeluri Chandrasekhar Rao, AR of M/s.Polisetty Somasundaram and confronted with seized document. He was specifically queed about seized cash book and contents recorded therein and in response, he stated that on 31-12-15, a sum of Rs.51,53,55,000 has been sent to Bang for purchase of tobacco from farmers at Mysore region. He further stated that said cash payment at Bang is nothing to do with purchase of property from M/s.Vibgyor Net Connections on 23-12-15. Further, impounded cash book from the search of M/s.Polisetty Somasundaram has been confronted to Shri S. Mahalingam, managing partner of the assessee's firm during the course of search and a statement*

*u/s132(4), was recorded on 5-3-20, in which, the managing partner of the assessee's firm has denied receipt of any on-money for sale of property at Bang. The AO made addition towards purported on-money u/s69A, in the hands of the assessee on the ground that there is a close proximity between date of sale of property on 23-12-15 and reference of cash payment at Bang in the seized cash book on 31-12-15. According to the AO, although, both parties have denied exchange of on-money for sale of property, but the circumstantial evidences clearly suggest that there is a possibility of payment of on-money for purchase of property. Therefore, the AO opined that the assessee has received on-money of Rs.51,53,55,000 towards sale of property, and thus, made addition u/s69A.*

*11. We have given our thoughtful consideration to the reasons given by the AO to make addition u/s69A, in light of various averments made by the ld counsel for the assessee and we ourselves do not subscribe to the reasons given by the AO for simple reason that, the cash book in excel sheet seized in the case of M/s.Polisetty Somasundaram did not contain any reference to the name of the assessee or concerned property at Bang, which merely contain notings regarding cash of Rs.51,53,55,000 sent to Bang on 31-12-15 and the corresponding expenses incurred towards cash carrying charges. No further incriminating material was found during the course of search in the case of the assessee nor in the case of search of M/s.Polisetty Somasundaram with regard to alleged payment of on-money. Moreover, the date of transfer of property was on 23-12-15, whereas the alleged cash payment was purportedly made on 31-12-15, which is one week later than the sale of property. It is a common understanding that no prudent person will transfer the property and receive cash in subsequent date. Therefore, we are of the considered view that the seized excel sheet, cash book in the case of M/s.Polisetty Somasundaram is a 'dumb document' which cannot be relied upon to make additions in the case of the assessee, since it did not contain any information regarding the purpose, for which, the said cash was sent to Bang and the person to whom the cash was subsequently paid. In our considered view, although, circumstantial evidences can lead to draw an adverse inference against any person, but in absence of any corroborative evidences or admission of the person from whose possession such document was found, it is difficult to draw an adverse inference based on such document without any reference to name of the person and purpose for which said payment was made. In the present case, there is no admission of the transaction of on-money payment in the statement recorded u/s132(4), either in the case of M/s.Polisetty Somasundaram or in the case of the assessee. Shri Yeluri Chandrasekhar Rao, AR of M/s.Polisetty Somasundaram, has denied the payment of on-money by M/s.Polisetty Somasundaram in a statement recorded on 5-3-20. He further stated that cash of Rs. 51,53,55,000 has been sent to Bang on 31-12-15 for the purpose of purchase of tobacco in Mysore region and that the said cash is not connected in any way to the immovable property transactions dt.23-12-15 with the assessee. Further, Shri S Mahalingam, the Managing Partner of the assessee's firm had also denied receiving any on-money in cash from M/s.Polisetty Somasundaram in respect of the property transaction dt.23-12-15. From the above, it is evident that the sworn statement recorded during the course of search also do not reveal receipt of on-money of the assessee and they do not facilitate drawing any adverse inference against the assessee. Despite, absence of any incriminating evidences in the seized materials or any admission of on-money in the sworn statement, the AO*

*arrived at his findings regarding receipt of on-money for sale of property only on the basis of proximity of '9' days between the date of registration of property and date of sending cash to Bang, without any other material/ evidences to show that the said cash was utilized for the purpose of payment of on-money. In our considered view, the findings of the AO regarding payment of on-money based on a 'dumb document' is purely on suspicion, conjecture and surmise manner, but not based on any evidences.*
*In this regard, it is pertinent to refer to Daulatram Rawatmull (1964) (SC) where it has been clearly held that suspicion however so strong, but suspicion cannot take the place of evidence. Therefore, we are of the considered view that the AO is erred in making additions towards on-money u/s69A, without reference to any material which suggest payment of on-money merely on the basis of suspicion and surmise.*
*12. Coming back to grounds of appeal raised by the Revenue, the Revenue relied upon a specific que and answer in the statement recorded from Shri Yeluri Chandrasekhar Rao, where he has admitted that on-money has been paid in connection with some property transactions at Bang. But, fact remains that Shri Yeluri Chandrasekhar Rao categorically admitted that reference of cash sent to Bang on 31-12-15 is for the purpose of purchase of tobacco from the farmers in Mysore region, and that said cash is not connected in any way to the immovable property transactions dt.23-12-15 with the assessee. In our considered view, whether Shri YC Rao has substantiated his claim of purchase of tobacco with details of the farmers and evidences by way of invoices, etc., does not lead to any evidences of receipt of on-money by the assessee when there is no reference to either the name of the assessee or the concerned property at Bang in the relevant entry in the seized cash book. The entry merely shows carrying of cash to Bang without revealing the purpose. If the purpose as explained by Shri YC Rao of M/s.Polisetty Somasundaram is not substantiated by proper evidences, cannot be viewed adversely against the assessee unless there is an evidence to show that the cash carried to Bang on 31-12-15, was paid to the assessee. In our considered view, the contentions of the Revenue on the basis of statement of Shri YC Rao amounts to a clear misleading or misinterpretation of the said statement going by the contents of answer given by him in response to a specific que. If you go by relevant part of the statement, more particularly, que No.9 and answer given by him, it is very clear that, he has admitted to have paid on-money over and above registered value in respect of some property transactions made at Bang, but he has categorically denied making any on-money payment to the assessee. This is further fortified by the findings of the AO that the recorded sale consideration in the registered document at Rs. 99 crores is much more than the guideline value of the property at Rs. 43.31 crores and this position has indirectly confirmed or indicated the stand of the assessee that there is no possibility of receipt of on-money. In our considered view, the AO is clearly erred in coming to the conclusion that there is a possibility of receipt of on-money on the basis of recorded sale consideration as per sale deed and guideline value by the SRO, even though, the facts are contrary to the observations of the AO. Had it been the case of the AO that recorded sale consideration was lesser than the SRO guideline value, then there could have been a suspicion that the sale consideration has been suppressed on record and on-money payment has been made. However, in the present case, there is no scope for such suspicion, because, the recorded sale consideration is almost double the amount of guideline value of the property*

*as per the SRO. Therefore, we are of the considered view that the contention of the Revenue on the basis of statement of Shri YC Rao that circumstantial evidences clearly suggest payment of on-money to the assessee is totally misplaced and devoid of merits.*

*In this regard, reliance is placed on K Bhuvanendran (2008) 303 ITR 235 (Mad), wherein, the Hon'ble Madras High Court held that additions made towards on-money receipt in the hands of the seller based solely on the statement of buyer recorded during the course of search is not tenable when no other material is available to show that on-money was paid. There is no evidence to show that there is under statement of sale consideration as per registered document. The above judgment is clearly applicable to the case of the assessee, since no other material is available regarding payment of on-money and there is no evidence to show that there is no understatement of sale consideration.*

*Reliance is also placed on Smt S Jayalakshmi Ammal (2016) 74 taxmann.com 35 (Mad), wherein, it was held that no additions can be made on the basis of a mere statement regarding payment of on-money without any corroborative evidence. In the present case, in our considered view, there was no evidence with the AO and further, there is admission from the buyer and the seller regarding payment of on-money and thus, in our considered view, the que of making additions towards on-money does not arise.*

*13. The AO relied upon the excel sheet called cash book found in the premise of M/s Polisetty Somasundaram to make addition u/s69A. But, said incriminating material does not refer to either the name of the assessee or its partners nor reference to the property transaction between the assessee and M/s Polisetty Somasundaram. We have gone through the purported cash book relied upon by the AO which has been extracted in the assessment order. The relevant entry in the seized material contained the narration Bang against the date 31-12-15 and the amount of Rs. 51,53,55,000 was noted against the same. The AO based on said entry coupled with date of transfer of property presumed that the assessee has received on-money for sale of property. In our considered view, the conclusion arrived at by the AO is purely on suspicion and surmise manner, because, said document does not contain the nature of transaction nor the purpose, for which, money has been sent to Bang. Therefore, we are of the considered view that no arbitrary addition to the income can be made by the AO based on a 'dumb document' or a vague notings unless any other corroborative evidences which shows that the entries contained in 'dumb document' are true and correct.*

*This legal position is supported by DK Gupta (2008) 174 Taxman 476 (Del HC), wherein, it was held that a 'dumb document' without any corroborative evidence or finding that the alleged document have materialized into transaction giving rise to income cannot be used as evidence for making addition to the income.*

*This legal position is further fortified by Umesh Ishrani (2019) (Bom HC).*

*A similar view has been taken by A Johnkumar (2022) (Chen-Trib). Therefore, we are of the considered view that additions made by the AO u/s69A, on the basis of 'dumb document' cannot be sustained.*

*14. The ld DR contended that legal presumption u/s132(4A) and 292C cannot be given restrictive interpretation so as to consider applicable only to the searched person and not to other person. In our considered view, the arguments of the ld DR is not legally tenable, because the impugned excel*

> *sheet representing cash book containing the entry regarding carrying of cash to Bang was found and seized during the course of search of a third party i.e., M/s Polisetty Somasundaram. Further, said incriminating material was not seized during the course of search in the case of the assessee. Therefore, sec132(4A) and 292C, cannot be pressed into service in the case of the assessee with respect to the contents of the said seized material so as to draw a rebuttal presumption that the transaction of carrying of cash noted in the impugned documents is relating to the assessee and that the same is true and correct, since said provision operates only against the searched person in whose possession the relevant materials were found.*
> *In this regard, it is relevant to refer to Gaurangbhai Pramodchandra Upadhyay, in R/TA No.98 of 2020, dt.25-2-20, wherein, the Hon'ble Gujarat High Court in para No.8 of the order observed that since the documents were not found or recovered from the possession of the assessee, no presumption u/s132(4A) as well as sec292C, could be drawn against the assessee in such circumstances.*
> *Dharmaraj Prasad Bibhuti v.ITAT (2019) 109 taxmann.com 388 (Pat HC) held at para No.29 of their order that presumption u/s292C, can be drawn only on such person from whose possession or control books of accounts or other documents, money, bullion or other valuable article are commonly found during the course of search. Even if it is considered for any reason that the sec132(4A) and 292C are applicable to the assessee, the same has no bearing on the issue under consideration, because, in the said document there is no reference to the name of the assessee or the concerned property at Bang in the relevant entry in the seized cash book. Therefore, we are of the considered view that sec132(4A) and 292C, at best lead to a rebuttal presumption that carrying of cash to the said extent by M/s Polisetty Somasundaram is true and correct. But, the rebuttal presumption cannot extend to the receipt of such cash by the assessee in absence of any reference to the name of the assessee or the concerned property at Bang in the relevant document. Thus, we reject the ground taken by the Revenue.*
> *17. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the AO is erred in making addition towards alleged on-money received by the assessee towards transfer of property as unexplained money u/s69A. The ld CIT(A) after considering relevant facts has rightly deleted the additions made by the AO, and thus, we are inclined to uphold the findings of the ld CIT(A), and dismiss the appeal filed by the Revenue."*

103. Insofar as ground no.2, for A.Y. 2014–15 to 2019–20 and ground no.7 in A.Y. 2014–15, ground no.6 in A.Y. 2018–19 and 2019–20 are concerned, since the assessment made for the A.Y. 2014–15 to 2019–20 is quashed for want of valid assumption of jurisdiction in absence of valid and proper statutory approval under section 153D by the Addl. CIT, these grounds became academic in nature, hence left unadjudicated.

104. Since the assessment made for the A.Y. 2020–21 is quashed as discussed above for want of valid assumption of jurisdiction in the absence of valid and

proper statutory approval under section 153D by the Addl. CIT, consequently, the remaining grounds become academic in nature and hence no separate adjudicatin is required.

105. In the result –

Appeal in ITA no.113/Nag./2024, for A.Y. 2014–15, is partly allowed.
Appeal in ITA no.114/Nag./2024, for A.Y. 2015–16, is partly allowed.
Appeal in ITA no.115/Nag./2024, for A.Y. 2016–17, is partly allowed.
Appeal in ITA no.116/Nag./2024, for A.Y. 2017–18, is partly allowed.
Appeal in ITA no.117/Nag./2024, for A.Y. 2018–19, is partly allowed.
Appeal in ITA no.118/Nag./2024, for A.Y. 2019–20, is partly allowed.
Appeal in ITA no.119/Nag./2024, for A.Y. 2020–21, is 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