

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.122, 123 & 124/RPR/2024
निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2015-16

Kamlesh Kumar Kesharwani
112, Janta Colony, Gudhiyari,
Raipur (C.G.)-492 001
PAN: AEWPK6876Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-1(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.135, 136 & 138/RPR/2024
निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2015-16

The Deputy Commissioner of Income Tax-(Central)-1,
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Kamlesh Kumar Kesharwani
112, Janta Colony, Gudhiyari,
Raipur (C.G.)-492 001
PAN: AEWPK6876Q

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal &
Vimal Kumar Agrawal, CAs

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

सुनवाई की तारीख / Date of Hearing : 26.11.2024

घोषणा की तारीख / Date of Pronouncement : 10.02.2025

आदेश / ORDER

PER BENCH:

The captioned cross-appeals filed by the assessee and the revenue are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), Raipur-3, dated 05.02.2024 and 02.02.2024, which in turn arises from the respective orders, viz. (i) order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 24.12.2018 for A.Y.2013-14; (ii) order passed by the A.O u/s. 143(3) of the Act, dated 23.12.2016 for A.Y.2014-15; AND & (iii) order passed by the A.O u/s. 143(3) r.w.s. 147 of the Act, dated 30.11.2017 for A.Y. 2015-16. As the facts and issues involved in the captioned appeals are more or less inextricably interlinked and in fact

interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the cross-appeals filed by the assessee and the revenue in ITA No.122/RPR/2024 & ITA No.135/RPR/2024 for assessment year 2013-14, wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

"1. On the facts and circumstances of the case and in law, reopening u/s.148/147 is invalid; it is merely on change of opinion as based on findings of survey conducted upon assessee u/s.133A on 15-3-16 which had been considered in original assessment made u/s.143(3) dt.31-3-16 and addition had also been made on such count; reopening of concluded assessment made u/s.143(3) dt.31-3-16 in absence of any fresh/new material, be treated merely on change of opinion on the same material facts, is not permissible in the eyes of law, is liable to be quashed; relied on Siemens Energy Industrial Turbo India (P) Ltd (2024) (Bom HC); Mira Bhavin Mehta (2024) (Bom HC); Godrej Projects Development (P) Ltd (2024) (Born HC); Kelvinator (2010) (SC); Marico Ltd (2020) (SC); Techspan India PL (2018) (SC); Usha International Ltd (2012) (Del HC) (Full Bench).

2. On the facts and circumstances of the case and in law, approval u/s.151(2) dt.6-2-18 by Jt.CIT is invalid; approval u/s.151 on wrong facts mentioned in "Proposal Form" (Sl.No.8 & 9) that assessment is proposed to be made first time, while it was earlier assessed u/s.143(3) dt.31-3-16 by ITO-2(2); without pointing out the mistake/ error committed by AO in the "Proposal Form" put up before her; non application of mind by Jt.CIT while granting such mechanical approval on her part; in absence of a valid approval as mandated by law u/s.151, reopening u/s.148/147 would be invalid and would be liable to be quashed; relied on Kalpana Shantilal Haria (2017) (Bom HC); Mumtaz Haji Mohmad Memon (2018) (Guj); Sunrise Education Trust (2018) (Guj); Sea Glimpse Investments (P) Ltd (2021) (Bom HC); Synfonia Tradelinks (P) Ltd (2021) (Del HC); Chhugamal Rajpal (1971) (SC)."

3. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,22,08,002 on count of

adhoc estimation of GP of 10% on alleged bogus purchases of Rs. 14,41,32,250 without giving any basis for such arbitrary estimation; while the assessee is a trader in goods i.e., paddy, rice and broken rice; corresponding sales has been accepted; there cannot be a case of "bogus purchase" in case of a "trader in goods" wherein corresponding sales quantity of goods is not disputed by the revenue; addition of Rs.1,22,08,002 is unjustified; is liable to be deleted.

4. On the facts & circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.1,22,08,002 on count of adhoc estimation of GP of 10% on alleged bogus purchases of Rs.14,41,32,250 without giving any basis for such arbitrary estimation; revenue has rejected books of account-, applied sec. 145(3); estimation of GP made @10% but assessment not made u/s.144; in such a situation, assessment made u/s.143(3) would be invalid; addition is liable to be deleted & assessment is liable to be quashed.

5. On the facts & circumstances of the case and in law, Id. CIT(A) has erred in sustaining addition of Rs.10,00,000 on the count of arbitrary estimation of unexplained investment in bogus purchases; addition made merely on presumption & surmises without bringing any material/ evidence on record; addition is unjustified and is liable to be deleted.

6. On the facts & circumstances of the case and in law, ld. CIT(A) has erred in sustaining addition of Rs.5,99,982 on the count of mistake in the original assessment made u/s.143(3) dt.31-3-16 as in such assessment, expenses of Rs.26,70,479 was disallowed while addition was made mistakenly of Rs.20,70,497; it is a factual mistake which is liable to be deleted.

7. The appellant craves leave to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

On the other hand, the revenue has assailed the impugned order on the following grounds of appeal before us:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,38,25,061/- out of total addition of Rs.3,60,33,063/-, ignoring his own finding in his order that "there is no doubt regarding bogus purchases of Rs.14,41,32,250/- had been made

by the assessee" whereby he has upheld the basic finding of AO in entirety?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,38,25,061/- out of total addition of Rs.3,60,33,063/-, ignoring the ratio of several judgements including the following in which 100% disallowance on account of bogus purchases has been upheld:

a) Para 6 of N.K. Industries Ltd. [2016] 72 taxmann.com 289 (Gujarat), in which SLP of the assessee has been dismissed vide [2017] 84 taxmann.com 195 (SC)?

b) Decision of ITAT Mumbai in the case of Soman Sun City in I.T.A. No. 2960/Mum/2016?

3. Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,38,25,061/- out of total addition of Rs.3,60,33,063/-, by assuming that the assessee had made alternative actual purchases when the assessee not proved the same with any verifiable documents?"

3. Succinctly stated, the assessee had filed his return of income for A.Y.2013-14 on 30.09.2013, declaring an income of Rs.7,28,440/-. Original assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act, dated 31.03.2016 determining the income of the assessee at Rs.33,00,380/-.

4. The A.O based on information that had surfaced during the survey conducted u/s.133A of the Act by the Jt. CIT, Range-1, Raipur on Nagrik Sahakari Bank Ltd. Raipur as well as the office/premises of three other rice millers and two brokers on 15.03.2016, viz. (i) that the assessee had made bogus purchases of Rs.14,41,32,250/- from six tainted parties; and (ii) that the assessee had made unexplained investment of Rs.10 lacs for

carrying out the aforesaid unaccounted transactions reopened his concluded assessment u/s. 147 of the Act. Notice u/s.148 of the Act, dated 26.03.2018 was issued to the assessee. In compliance, the assessee filed his return of income on 03.05.2018, declaring an income of Rs.14,44,910/-.

5. During the course of the assessment proceedings, the A.O observed that the assessee had claimed to have purchased paddy/broken rice from outside state and from local parties aggregating to Rs.14,41,32,250/-, as under:

S. No.	Name of the party	Total purchase	Peak purchase amount (Rs.)	Date of peak purchase
1.	M/s. Bajrang Food Product, Raipur	7,97,24,750/-	10,00,000/-	14.01.2013
2.	M/s. Shrikhand Agrotech, Raipur	2,37,55,000/-	5,35,000/-	28.11.2012
3.	M/s. Eaden Rice Mill, Raipur	2,69,10,000/-	4,65,000/-	01.09.2012
4.	M/s. Sakshi Gopal Corporation, Raipur	22,12,500/-	3,68,750/-	10.12.2012
5.	M/s. Shiv Shankar Chawal Udyog, Raipur	37,70,000/-	4,71,250/-	11.12.2012
6.	M/s. Hardha Agency	77,60,000/-	5,35,000/-	27.11.2012
	Total	14,41,32,250/-		

6. The A.O observed that a survey operation u/s.133A of the Act was conducted at the business premises of Shri Sanjay Sharma, Hanuman market, Raipur and the assessee, viz. Shri Kamlesh Kesharwani, commission Agent, Ramsagarpara, Raipur, as well as three rice millers of Tilda on 15.03.2016, which revealed that certain rice millers would procure bogus bills from brokers/entry operators without any actual purchase of goods. It was observed by the A.O that substantial incriminating material evidencing the aforesaid facts were found in the course of the survey proceedings. The A.O also noticed that survey action was carried out in the case of Nagarik Sahakari Bank, Raipur where some of the brokers/entry operators maintained their bank accounts. It was further observed by him that the brokers/entry operators had in their respective statements recorded on oath u/s.131 of the Act had admitted of having provided bogus bills to rice traders and millers without any actual supply of goods. Also, it was noticed by the A.O that certain rice millers in their statements admitted of being involved in the nefarious activity of providing bogus bills without any corresponding sales of goods. After deliberating at length on the modus-operandi that was adopted by the brokers/entry operators and certain rice millers who had admitted of their involvement in providing/facilitating bogus bills in lieu of commission, and referring to their statements which were recorded u/s.131 of the Act a/w.

those recorded in the course of their cross-examination by the rice millers who were alleged by them as beneficiaries, the A.O observed that brokers viz. Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamelsh Kesharwani (the assessee), Shri Ghanshuam Rijwani and Shri Narad Sahu had stated on oath that they had provided bogus entries or bogus bills to various rice millers. It was also observed by him that the assessee had failed to substantiate the genuineness of the purchases that he had claimed to have made from the aforementioned parties on the basis of supporting documentary evidences, viz. delivery challans etc.

7. The A.O based on the aforesaid information/material called upon the assessee vide his "Show Cause Notice"/letter dated 21.11.2018 to put forth an explanation as regards two issues, viz. (i) as to why the purchases of Rs.14.41 crore (approx.) that he had claimed to have made from the aforementioned six parties may not be held as bogus and 25% of their value be not added as his income; and (ii) that as to why an addition of Rs.10 lacs towards unexplained investment in making the aforementioned unaccounted transactions be not made in his case. As the assessee failed to substantiate the authenticity of the impugned purchase transactions that he had claimed to have made from the aforementioned six parties, therefore, the A.O taking cognizance of certain material aspects, viz. (i) that the notices/letters issued u/s. 133(6) to all the aforementioned six parties for confirmation of the transactions were either returned or not responded

by them; (ii) the bank accounts of the aforementioned parties revealed that the amounts received by them towards sale consideration through cheques or RTGS were on the same day withdrawn in the form of cash leaving a miniscule amount of balance in their bank account; (iii) that the assessee had failed to produce transportation details evidencing the supply of goods from the aforementioned parties; and (iv) that the suppliers had neither accounted for the purchases made by the assessee nor paid taxes thereon, thus, concluded that the assessee had not made any genuine purchases of Rs.14.41 crore (approx.) from the aforementioned parties. Accordingly, the A.O after drawing support from certain judicial pronouncements held the purchases that the assessee had claimed to have made from the aforementioned parties as bogus and disallowed 25% of the aggregate value of the same i.e. Rs.3,60,33,063/- (25% of Rs.14,41,32,250/-).

8. Apart from that, the A.O made an addition towards peak amount of Rs.10 lacs towards unexplained investment which the assessee would have made for carrying out the aforementioned unaccounted transactions. Accordingly, the A.O vide his order passed u/s.143(3) r.w.s. 147 of the Act, dated 24.12.2028 after, inter alia, making the aforesaid additions determined the income of the assessee at Rs.4,09,00,425/-.

9. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the same. Apropos the addition of Rs.3,60,33,063/- (supra) that was made by the A.O by disallowing 25% of the impugned purchases, the CIT(Appeals) held a conviction that the quantification of the profit which the assessee would have made by purchasing the goods not from the aforementioned bogus/hawala parties but at a discounted value from the open/grey market could safely be determined by adopting the GP rate of 10% (as was prevailing in the trade line of rice milling and trading). Accordingly, the CIT(Appeals) taking cognizance of the fact that the assessee had already disclosed GP rate of 1.53% (as per his audited books of accounts), thus, made the balance GP addition of 8.47% [10% (-) 1.53%] on the value of the bogus purchases of Rs.14.41 crore (approx.) and thus, scaled down the addition on the aforesaid issue to an amount of Rs.1,22,08,022/-. Apropos the addition towards unaccounted investment of Rs.10 lacs that was made by the A.O, the CIT(Appeals) finding no infirmity in the view taken by the A.O, upheld the same.

10. Both the assessee and the revenue being aggrieved with the order of the CIT(Appeals) have carried the matter in appeal before us.

11. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

12. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold submitted, that as the case of the assessee had been reopened u/s.147 of the Act based on a "change of opinion", therefore, the consequential assessment framed by the A.O u/s. 143(3) r.w.s. 147 of the Act, dated 24.12.2018 cannot be sustained and is liable to be struck down on the said count itself. The Ld. AR in support of his aforesaid contention had relied on the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Kelvinator India Limited reported in 320 ITR 561 (SC)**. Elaborating further on his contention, the Ld. AR submitted that the original assessment in the case of the assessee was framed by the A.O vide his order passed u/s.143(3) of the Act, dated 31.03.2016, Page 26-33 of APB. The Ld. AR submitted that the A.O while framing the assessment had, inter alia, held that the assessee had not made genuine sale of 143295 Qnts. of paddy/rice/broken rice and had only provided accommodation entries. The Ld. AR submitted that the A.O based on his aforesaid observation had after, inter alia, treating the assessee as an accommodation entry provider made an addition of commission income @ Rs.5/- per Qntl. i.e. 143295 Qntl X Rs.5/- per Qntl.=Rs. 7,76,475/-.

13. Carrying his contention further, the Ld. AR submitted that purchases of Rs.14,41,32,250/- that were held by the A.O as bogus purchases formed part of his total purchases of Rs.2,03,12,76,610/- i.e. 143295 Qntls. of paddy/rice/broken rice made during the subject year. The Ld. AR on being called upon to fortify his aforesaid claim had taken us through the synopsis filed by him dated 28.10.2024. The Ld. AR on being called upon to substantiate the veracity of the aforesaid facts and figures as was canvassed before us, had drawn our attention to the assessee's trading and profit and loss account dated 31.03.2013, which revealed the total purchases of Rs.20,31,27,610/- and the corresponding sales of Rs.20,39,52,845/-. Carrying his contention further, the Ld. AR submitted that the alleged bogus purchases of Rs.14,41,32,250/- (supra) pertained to the purchases that were made by the assessee from 6 parties (out of 11 parties). The Ld. AR to buttress his aforesaid claim had taken us through a "Chart" forming part of Synopsis-1 (filed on 28.10.2024). The Ld. AR based on his aforesaid contention, submitted that now when the A.O vide his order passed u/s. 143(3) of the Act, dated 31.03.2016 had held 1,43,295 Qntls. of sales (out of total sales for the year) as bogus sales for which accommodation entries were provided by the assessee and had worked out an addition @ Rs.5/- per Qntl. aggregating to Rs.7,16,475/-, therefore, reopening of his case by observing that the assessee had not made genuine purchases of goods but only procured bogus purchase bills from six

concerns mentioned in the “reasons to believe”, had thus, resulted to an observation conflicting with the earlier view that was arrived by his predecessor while framing the original assessment u/s. 143(3) of the Act. The Ld. AR submitted that as initiation of proceedings u/s. 147 of the Act was based on a “change of opinion”, therefore, the consequential assessment framed was liable to be struck down for want of valid assumption of jurisdiction on the part of the A.O.

14. We have thoughtfully considered the contentions advanced by the Ld. AR on the issue of the validity of the jurisdiction that was assumed by the A.O for initiating the reassessment proceedings u/s. 147 of the Act, which as per him were based on a “change of opinion”, and are unable to persuade ourselves to concur with the same. A perusal of the “reasons to believe” based on which the concluded assessment of the assessee was reopened by the A.O vide reasons recorded dated 05.02.2018, Page 5 to 7 of APB, reveals that the case of the assessee had been reopened for the reason, viz. the post survey investigation of the bogus concerns, revealed that the assessee during the subject year had made bogus purchases of Rs.14.41 crore (approx.) from them. Apart from that the assessee had in the course of the assessment proceedings for A.Y.2014-15 and A.Y.2015-16 admitted that he was in receipt of commission income of Rs.5/- per Qntl. from the business of providing of bogus bills by tenbogus benami concerns, which though were projected as proprietorship concerns of

certain individuals but were actually owned by him. Also, the A.O observed that the respective individuals who were projected as proprietors of the aforesaid concerns had by their respective “affidavit” deposed that they were merely acting on behalf of the assessee, viz. Shri Kamlesh Keshwarni. Accordingly, it transpires that the A.O had initiated the reassessment proceedings inter alia, for the reason that as per the information that had surfaced in the course of the survey proceedings conducted u/s. 133A of the Act u/s. 133A of the Act on 15.03.2016, revealed that the purchases of Rs.14,41,32,250/- made by the assessee in his proprietary concern, viz. M/s. Keshwarni Rice Mills (supra) were actually bogus purchases i.e. goods which though were projected to have been purchased from the aforementioned 6 parties were actually procured from the open/grey market. Apart from that, the case of the assessee was, inter alia, reopened for the reason that the commission income of Rs.5/- per Qntl. earned by the assessee by providing bogus purchase bills through his bogus benami concerns had escaped assessment.

15. As the reopening of the concluded assessment in the case of the assessee was, inter alia, based on the aforesaid reasons i.e. facts which were not there before the A.O while framing the original assessment, therefore, we are unable to comprehend as to how the present reassessment proceedings initiated by him could be brought within the meaning of “change of opinion” as had been claimed by the Ld. AR. We,

thus, are of the view that the claim of the assessee that his concluded assessment was reopened based on a mere “change of opinion” cannot be accepted and is accordingly, rejected.

16. Apropos, the Ld. AR’s claim that as no trading transactions during the subject year were carried out in the aforementioned ten bogus benami concerns, therefore, reopening of the case on the said count itself is also not sustainable, we are unable to concur with the same. The **Hon’ble Supreme Court** in the case of **Raymond Woollen Mills Ltd. Vs. Income-Tax Officer And Ors. (1999) 236 ITR 34 (SC)**, had held, that what is required for validly initiating proceedings u/s.147 of the Act is the availability of some material on the basis of which the department could reopen the case and the sufficiency and correctness of the said material is not a thing to be considered at the stage of reopening. Accordingly, in the backdrop of the judgment of the Hon’ble Apex Court in Raymond Woolen Mills Ltd. (supra), we are of the view that now when, viz. (i) there was information available before the A.O while framing the assessment in case of the present assessee for A.Y.2014-15 and 2015-16, i.e. the admission of the assessee that he owned 10 bogus benami concerns which were engaged in the business of providing bogus purchase bills, and that he had earned a commission income of Rs.5/- per quintal on the transactions carried out by the said benami concerns; and (ii) that the post survey investigation of the bank accounts of 6 bogus parties revealed that the

assessee had during the subject year made purchases of Rs.14.41 crore (supra) from them i.e. facts which were not available before his predecessor while framing the original assessment in his case vide order passed u/s. 143(3) of the Act, dated 31.03.2016 for A.Y.2013-14, therefore, the same sufficed as a material, based on which, his concluded assessment for the subject year had validly been reopened, for the reason, that his income chargeable to tax had escaped assessment.

17. Although the Ld. AR in support of his aforesaid contention had relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **Shourya Infrastructure (P) Ltd. Vs. ITO, 157 taxmann.com 730**, but the same being distinguishable on facts would not carry his case any further. In the aforesaid case, the Hon'ble High Court had observed that as the A.O while framing the original assessment u/s.143(3) of the Act, dated 28.02.2014 had scrutinized the transaction of sale of land and accepted the assessee's claim, therefore, he could not have thereafter, based on a mere "change of opinion" that the sale transaction of the subject land was on capital account and provisions of Section 50C of the Act were applicable, initiated the proceedings u/s.147 of the Act. As observed by us hereinabove, in the present case of the assessee, the facts, viz. (i) that the assessee owned 10 bogus benami concerns through which accommodation entries were being provided by him to certain beneficiaries was not there before the A.O in the course of the original assessment proceedings; and

(ii) that the post survey investigation of the bank accounts of the 6 hawala parties revealed that the assessee had during the subject year made purchases of Rs.14.41 crore (supra) from them, were not there before his predecessor while framing the original assessment vide his order passed u/s. 143(3), dated 31.03.2016, therefore, the reopening of his concluded assessment could not be held to be based on a mere “change of opinion”.

18. Apropos the Ld. AR's contention that as the appropriate authority i.e. Jt.CIT, Range-1, Raipur had without application of mind granted approval u/s. 151 of the Act, therefore, the issuance of notice u/s. 148 of the Act and framing of the impugned assessment was liable to be struck down on the said count itself, we are unable to concur with the same. The Ld. AR submitted that the Jt. CIT, Range-1, Raipur at Sr. No.8 & 9 of the proposal form of approval, Page 2 of APB had therein recorded his observation in the respective columns wherein information/details were sought, viz. (i) whether the assessment was proposed to be made for the first time : Yes; and (ii) the income originally assessed u/s. 143(3) of the Act : NA. The Ld. AR submitted that as in the case of the assessee original assessment was framed by the A.O u/s. 143(3) of the Act, dated 31.03.2016, therefore, the Jt. CIT, Range-1, Raipur has lost sight of the said material fact and based on incorrect facts granted the approval. Also, the Ld. AR submitted that as required at Sr. No.9 (b) of the proposal form, wherein in case of an under assessment/original assessment which has

been made subject to excessive loss or depreciation was to be mentioned, the Jt. CIT, Range-1, Raipur had mentioned as “NA”. For the sake of clarity, the approval granted by the Jt.CIT, Range-1, Raipur is culled out as under:

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 148 & FOR OBTAINING THE APPROVAL OF THE ADDL./JOINT COMMISSIONER OF INCOME TAX/ COMMISSIONER OF INCOME TAX/ CHIEF COMMISSIONER OF INCOME TAX		
1.	Name and address of the assessee	Shri Kamlesh Kumar Kesharwani H. No. 112, Janta Colony, Gudhiyar, Raipur.
2.	PAN/GIR No.	AEWPK6876Q
3.	Status	Individual
4.	District/circle/range	Circle-1(1), Raipur.
5.	Assessment year in respect of which it is proposed to issue notice u/s 148	2013-14
6.	The quantum of income which has escaped assessment.	Rs.3,76,33,045/-
7.	Whether the provisions of section 147 are applicable.	Yes. In terms of explanation 2(c)(i) of section 147, where an assessment has been made but income chargeable to tax has been underassessed.
8.	Whether the assessment is proposed to be made for first time. If the reply is in the affirmative please state, (a) Whether any voluntary return had already been filed (b) If so, the date of filing the said return.	Yes. 30.09.2013
9.	If the answer to item 8 is in negative, please state, (a) The income originally assessed u/s 143(3). (b) Whether it is a case of under assessment/ assessment at too low rate, assessment which has been made the subject of excessive loss or Depreciation.	NA
10.	Whether the provisions of section 150(1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147.	NA
11.	Reasons for the belief that income has escaped assessment. Signature of the A.O. Dated: 06.02.2018	As per annexure. [Signature] ACIT
12.	Whether the Jt. Commissioner of Income Tax is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148	Yes. This is a fit case [Signature] श्रीमल शारदा वरमा संयुक्त आयकर आयुक्त परिसंक्र-1, रायपुर (छ.प्र.)
13.	Whether the Commissioner of Income Tax is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148	

19. We have given thoughtful consideration to the aforesaid contentions of the Ld. AR and find no substance in the same. On a careful perusal of the approval granted by the Jt. CIT, Range-1, Raipur at Sr. No.7, it

transpires that he had categorically stated that the case of the assessee was reopened u/s. 147 of the Act as per “Explanation 2(c)(i)” of Section 147 of the Act. For the sake of clarity, Sr. No.7 of the proposal of approval is culled out as under:

7.	Whether the provisions of Section 147 are applicable	Yes In terms of explanation 2(c)(i) of Section 147, where an assessment has been made but income chargeable to tax has been underassessed.
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(emphasis supplied by us)

We find that as per “Explanation 2(c)(i), of Section 147 of the Act, as was then available on the statute, the same was applicable in a case where an assessment had been made but income chargeable to tax was underassessed. Apart from that, we find that the A.O while recording the “reasons to believe”, had at the threshold stated that scrutiny assessment in the case of the assessee was framed u/s. 143(3) r.w.s. 144 of the Act, dated 31.03.2016, wherein his income was assessed at Rs.33,00,380/- as against the returned income of Rs.7,38,440/-. We find that the aforesaid facts were stated in the “reasons to believe” dated 05.02.2018 that had been approved by the Jt. CIT vide his approval dated 06.02.2018.

20. Although we are not in oblivion of the fact that at Sr. No.8 & 9 of the “proposal form” (supra) the Jt. CIT had wrongly mentioned that the

assessment in the case of the assessee is proposed to be made for the first time, and also had failed to provide the details of the original assessment that was earlier framed u/s. 143(3) of the Act, dated 31.03.2016, but the same would not be fatal to the assumption of jurisdiction for initiation of proceedings u/s. 147 of the Act in case of the assessee before us. We are of a firm conviction that as both the A.O and the Jt. CIT, Range-1, Raipur, had taken cognizance of the fact that it was a case of a reassessment within the meaning of "Explanation-2(c)(i)" of Section 147 of the Act, and also the complete details of the income assessed vide order u/ss. 143(3)/144 of the Act, dated 31.03.2016 were provided in the "reasons to believe", dated 05.02.2018, therefore, the aforesaid contention of the Ld. AR being devoid and bereft of any merit is rejected.

21. Per contra, Dr. Priyanka Patel, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

22. We have thoughtfully considered the aforesaid issue in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. As is discernible from the record, the CIT(Appeals) had though principally concurred with the view taken by the A.O that the assessee had not made genuine purchases from the aforementioned paper/shell concerns and, thus, had inflated his purchases based on the bogus bills of the said concerns vis-à-vis actual purchase consideration, for which, the

same would have been procured by him at a discounted value from the open/grey market, but at the same time, held a conviction that disallowance of 25% of the value of such purchases was exorbitant. Accordingly, the CIT(Appeals) was of the view that as the gross profit rate in the business of rice millers/traders varied from 3% to 10%, which in turn, was dependent on multiple factors, viz. (i) price of paddy paid by the government; (ii) level of crop production; and (iii) quantity of procurement committed by the State Government, therefore, the profit which the assessee would have made by procuring the goods at a discounted value from the open/grey market could safely be worked out by applying the GP rate of 10% on the value of the bogus purchases. Thereafter, the CIT(Appeals) taking cognizance of the fact that the assessee in his audited "books of account" had already disclosed GP rate of 1.53% on the value of the subject bogus purchases, thus, restricted the addition to 8.47% [10% (-) 1.53%] of the value of the bogus purchases. Accordingly, the CIT(Appeals) had sustained the addition of Rs.1,22,08,002/- (out of the addition of Rs.3,70,33,063/-) that was made by the A.O. For the sake of clarity, the observations of the CIT(Appeals) on the aforesaid issue are culled out as under:

"3.1.5 During the appeal proceeding the appellant company to submitted the reply as under:-

"The assessee is running a 'trading concern' in a proprietary concern M/s.Kesharwani Rice Mill, Raipur, which deals in trading

in paddy, rice & broken rice, thus, it is engaged in 'trading activities' of paddy, rice & broken rice. The total sales for the F.Y. 2012-13 comes to Rs.20.39 crores as per audited trading & P & L account. No 'manufacturing activity' has been done by the assessee during the F.Y. 2012-13, in other words, there is no question of any kind of suppression of 'yield' of any item traded in.

Working of manufacturing and trading portion during the year is as under:-

Total turnover (i.e. sales) Rs.20,39,52,845		
Manufacturing portion (Rs.Nil (0%))	Trading portion (Rs.20,39,52,845 (100%))	
	Paddy sales at Rs.1175.35L + rice sales at Rs.703L + Broken Rice sales at Rs.161.17L	
	Trading portion treated as genuine by the Ld. AO Rs.610.84L (29.95%)	Trading portion treated as bogus by the Ld. AO Rs.1428.69L (70.05%)
Thus, out of the "whole books" the Ld. AO has accepted 29.95% as genuine and 70.05% as bogus.		

"That the Ld. AO has dully accepted the 'book results' of 30% portion of its trading activities in terms of quantity and value, and thus, he has suspected/doubted only 70% of the total sales of Rs. 20,39,52,845 on the count of paddy, broken rice and rice purchases which is purely related to its trading activities and thus , he only doubted the purchases made from the alleged six vendors, while he had again duly accepted the corresponding sales including quantity involved therein, shown in the same books of account, in between, he has not found any kind of suppression of yield in Broken rice and Rice because the assessee had not involved any kind of manufacturing activities during the year under consideration and thus, the main allegation of the Ld. AO that the assessee had made bogus purchases does not stand in its own legs, because of the reason that the assessee had not involved in manufacturing activities during the year under consideration (i.e., FY 2012-13),and thus, the main allegation of

the Ld. AO that the assessee had made 'bogus purchases', does not stand in its own legs, because of the reason that the assessee had not involved in manufacturing activities and there is no question of any kind of suppression of yield of any item, and the Ld. AO has doubted only some part (70%) of its 'trading activities' of the assessee and simultaneously, he had duly accepted the 'corresponding sales' alongwith its quantity, so without making purchases, sales cannot be done, so, more so, this is a case of 'genuine purchases from outsiders' and certainly not a case of 'bogus purchases' as misapprehended/alleged by the Ld. AO. And in this case, when 'genuine purchases' as made during 'trading activities', for which 'corresponding sales alongwith its quantity' had already been accepted by the Ld. AO, the alleged arbitrary disallowance of purchases at 25% is totally unjustified, invalid and not permissible as per law.

That, the Ld. AO has disallowed the purchases at 25% out of the purchases claimed at Rs.1441.32 lakhs from 6 parties, only relying in the case of Sanjay oil Cake Industries (2009) 316 ITR 274 (Guj HC) in Par No. 7 Pg No. 19 and stated in Para No. 8 Pag No.20 as under:

"8. As mentioned in Point 11-13 of the above referred order, the AO has rightly made disallowance of 25% of the bogus purchases which clearly applies to the present case also. Accordingly, the submission of the assessee is not accepted and 25% of such purchase expenses of the assessee are not allowed on account of being bogus purchases. The facts mentioned above reveals the said amounts of bogus purchase which leads to rejection of books of account for the limited purpose as per sec.145(3). For the reasons detailed above, the purchases recorded in the books of account of the assessee amounting to Rs.14,41,32,250 are held to be bogus and 25% of such purchase amount works out at Rs.3,60,33,063 is hereby added to the total income of the assessee."

3.1.6 It further submitted that the assessee's case does not fall in the category of Sanjay Oil Cake Industries (2009) (Guj HC) being on distinguishable facts which is enumerated in Para No.1.20, Pg No.15 of this submission in the sense that, the case of Sanjay Oil Cake Industries was a 'manufacturing concern' and in that case the revenue has proved by clinching evidence on record that yield has been suppressed and to cover up such suppressed yield, bogus purchases of raw material has been introduced from bogus parties and purchase price of raw material has also been inflated according to their own will, since, the parties were not traceable; they opened the bank accounts of such bogus parties and in which cheques were credited and

amounts were withdrawn by bearer cheques through their own staffs and in this way, they created bogus parties as conduit for showing bogus purchases of raw materials/semi-finished goods.

3.1.7 The assessee is running a trading concern in a proprietary concern M/s.Kesharwani Rice Mill, Raipur, which deals in trading in paddy, rice & broken rice, thus, it is engaged in trading activities of paddy, rice & broken rice. The total sales for the F.Y. 2012-13 come to Rs.20,39,52,845/-(i.e. manufacturing portion of Rs.0/- and trading portion of Rs.20,39,52,845/-) as per audited trading and Profit & Loss account. No manufacturing activity has been done by the assessee during the F.Y. 2012-13.

-while, in this case, no manufacturing activities has been done by the assessee and the Ld. AO has only objected some part of its 'trading activities' and 'trading results' as enumerated above in Pt No.1.1, and thus, the assessee is mainly engaged in 'trading activities' being 'a trader' and there is no inflation in the price of goods has been made by the assessee, and the assessee being as 'a trader', when the 'corresponding sales, had been duly accepted by the Ld. AO, and there is no error/defect found by the Ld. AO in the quantitative details of the materials (i.e. Paddy, Broken rice & Rice) traded in, and thus, the alleged purchases cannot be treated as bogus. Our case is similar to the case of Tejua Rohit kumar Kapadia (2018) 94 taxmann.com 324 (Guj HC), in which it was held as under:-

"3. It can thus, be seen that the appellate authority as well as the Tribunal came to conclusion that the purchases already made by the assessee from M/s.Raj Impex were duly supported by bills and payments were made by Account Payee cheque. Raj Impacts also confirmed the transactions . There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that 'the assessee the trader' had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no que of law arises. 4. TA is dismissed."

The above judgment of **Guj HC has ben affirmed by the Hon'ble SC in Tejua Rohitkumar Kapadia (2018) 94 taxmann.com 325 (SC)**. That the Ld. AO has not doubted the entire quantity of opening stock, closing stock and the quantity traded during the year under consideration i.e. AY 13-14, in other words, where sales made out of such purchases were not disputed or questioned and the resultant profit on such sales had been accepted in toto by the Ld.AO, disallowing such purchases as bogus purchases is unjustifiable, invalid. Alternatively, not the

entire amount, but the profit margin embedded in such amount may be subjected to tax. Further, the Ld.AO did not find any 'inflation' in purchase price for coming to the conclusion that the purchases are bogus, the addition made at Rs.3,60,33,063 may kindly be deleted."

3.1.8 From the reply of assessee contention is coming out that the case of assessee is not a manufacturing concern but a trading concern, hence it is distinguishable from 'Sanjay Oil Cake Industries' case. If the case of assessee is not manufacturing, disallowance of 25% should not be applicable in his case, only certain NP/GP may be applied in case, after rejection of books of account.

I have gone through the detailed investigation in this rice miller's case assessment order of assessee and the reply of assessee during the appeal proceeding. I thoroughly examined the reply of assessee with the facts of the case. Now, it is clear that the present case is a case of trading concern and there is not any manufacturing activity hence the case is little bit distinguishable from Sanjay Oil Cake Industries, relied by the Ld. AO.

Secondly, there is no doubt regarding bogus purchases of Rs.14,41,32,250/- had been made by the assessee.

Thirdly, a detailed investigation has been done to prove these purchases as bogus and even cross examination was also done b'. rice millers during the investigation.

As the Ld. AO has rejected books of account for limited purpose, but he had not questioned the sales. This is a well settled proposition that the sales cannot be made without purchases. So, if the purchases have not been made from the six parties mentioned in assessment order then the assesses should have made these purchases from somewhere else.

In such cases of bogus purchases, actual purchases were made from other parties and mainly in cash. These purchases are always done at lower rates. Taxes and other expenses are also saved.

Now, the assessee should have disclosed the actual parties and actual amount of purchase. These purchases might have been purchased from gray market and in cash. There is a strong possibility of a lower rate purchases as other taxes and expenses will be saved in such gray purchases. Hence, actual GP will be much higher then declared in the books of account.

There are some judicial pronouncements, on the similar facts.

The **Delhi Tribunal in the case of NKG** has held that since purchase debited by the assessee has already been considered in audited accounts in arriving at the income, therefore if purchase is considered bogus and a profit ratio is decided then only the difference of GP so decided and the GP shown by the assessee should be added as the profit element on account of bogus purchase. The decision of the ITAT is as under –

The Assessment order clearly indicates that before passing assessment order dt.31.03.2018, the Ld. AO concluded a thorough inquiry on the aspects including the purchases made by the assessee from Sharma group aggregating Rs.63.90 crores and having considered the contentions of the assessee, Ld. AO reached a conclusion that the material purchased from the Sharma was bogus, and since the assessee itself offered rate of GP in business at approximately . 8% however, to recover any further leakage of revenue, 0.25% was to be added to the rate offered by the assessee. Basing on this premise, **Ld. AO recalculated the GP at 9% of the sales turnover by rejecting the books of account of the assessee u/s.145.** According to AO the difference between 9% of the turnover, the aggregate amount of the GP already declared by the assessee and the additions made during the earlier assessment u/s.153A had to be added.

Decision on similar line has been given by **ITAT Mumbai in case of Ratnagiri Stainless Pvt. Ltd. Vs ITO ITA No. 4463/Mum/2016** Dated 04.04.2017. Facts are as under-

"The AO, on the basis of information received from Dy. Director of IT (Inv.) that assessee had received bogus purchase invoice from 28 entry providers, reopened assessment. No evidence was produced by assessee to show that purchases were genuine by actual delivery of goods on said parties. Notice u/s 133(6) were returned unserved. One of the parties appeared before the AO and confirmed that the transaction were bogus. Assessee having purchased the goods from grey market for earning higher profits, GP rate 12.5% applied by AO and confirmed by CIT(A) was justified. However the assessee will get credit of GP ratio declared on these bogus purchase in the return of income filed with the Revenue."

In the line of business of rice millers and traders in the state, the GP varies from 3% to 10% depending on various factors such as price of paddy paid by the government, level of crop production and quantity of procurement committed by the statement government. Adopting a GP of 10%, since the GP shown by the assessee is 1.53%, an addition of 8.47% on the suspicious purchases is hereby sustained, attributing to the extra profit

earned by showing purchases. Therefore on a purchase of Rs. 14,41,32,250/- an amount of Rs.1,22,08,002/- is hereby sustained and balance addition is deleted.”

23. We have thoughtfully considered the aforesaid view taken by the CIT(Appeals). Ostensibly, on a perusal of the “reasons to believe” recorded by the A.O for the subject year i.e. A.Y.2013-14, it transpires that the post survey investigation of the bank accounts of the 6 bogus/hawala parties revealed that the assessee had during the subject year made purchases aggregating to Rs.14.41 crore (approx.) from them parties, as under:

S. No.	Name of the party	Total purchase	Peak purchase amount (Rs.)	Date of peak purchase
1.	M/s. Bajrang Food Product, Raipur	7,97,24,750/-	10,00,000/-	14.01.2013
2.	M/s. Shrikhand Agrotech, Raipur	2,37,55,000/-	5,35,000/-	28.11.2012
3.	M/s. Eaden Rice Mill, Raipur	2,69,10,000/-	4,65,000/-	01.09.2012
4.	M/s. Sakshi Gopal Corporation, Raipur	22,12,500/-	3,68,750/-	10.12.2012
5.	M/s. Shiv Shankar Chawal Udyog, Raipur	37,70,000/-	4,71,250/-	11.12.2012
6.	M/s. Hardha Agency	77,60,000/-	5,35,000/-	27.11.2012
	Total	14,41,32,250/-		

Admittedly, it is a matter of fact borne from record that the assessee in his statement recorded in the course of survey proceedings u/s. 133A of the

Act, dated 15.03.2016 had accepted that he in lieu of commission income was providing bogus purchase bills to rice millers/traders i.e. the beneficiaries, and had explained at length the *modus-operandi* that was adopted by him to facilitate the said nefarious activity. Rather, the assessee in reply to Question No.25 of his statement recorded during the course of survey proceedings conducted u/s. 133A of the Act, dated 15.03.2016 had admitted that he was involved in the business of providing bogus bills since the year in question i.e. F.Y.2012-13 (i.e. the year under consideration). Also, the assessee in reply to Question No.58 of his said statement had stated that he was in receipt of commission of Rs.5/- per Qntl (in cash) for providing bogus bills which, however, was not disclosed by him in his return of income. Further, the assessee in reply to Question No.3 of his statement recorded on 30.03.2016, had stated that there was no actual supply of goods but only bogus bills were provided to the beneficiaries. Apart from that, the assessee in reply to Question No 5 & 7 of his statement recorded on 30.03.2016 (supra), had also explained as to how the mandi-anugya receipts were obtained and provided to the beneficiaries concerns to whom bogus bills were issued. Although the assessee who is proprietor of M/s. Keshwarni Rice Mills, i.e. a concern engaged in the business of trading in rice/by products, had admitted that he was deriving commission income @ Rs.5/- per quintal from providing bogus purchase bills, but independent of and in addition of his said

stream of income he was deriving income from the business of trading in rice/by products.

24. The fact that the assessee had made actual purchases of goods is supported by the fact that to route the purchases made by him from the open/grey market, he had procured bogus bills from the aforementioned six bogus parties to whom payments of Rs.14.41 crore (supra) were made by him during the subject year (as observed by the A.O in the “reasons to believe”, Page 6, Para 4 of APB). Apart from that, we find that the assessee had in reply to the Question No.20 of his statement recorded in the course of survey proceedings u/s. 133A of the Act, dated 15.03.2016, stated that goods were being received by him at his business premises situated at Abha-sibni, Page-28 of APB. For the sake of clarity, Question No.20 a/w. the reply of the assessee is culled out as under:-

IV] प्रश्न क्रमांक 20 के उत्तर में कहा कि माल हमारे द्वारा आभा-शिवनी में मिल पोरिसर में ही मंगाया जाता है। हमें येहा Gate pass register, stock register नहीं रखे जाते।

25. Admittedly, it is a matter fact borne from record that the assessee had in his statement recorded in the course of the survey proceedings i.e. on 15.03.2016 (supra) and 30.03.2016 (supra) not only accepted the fact that he was providing bogus accommodation entries to the rice millers/traders, but had rather even explained the modus-oparandi that was adopted by him for deriving commission income from the said nefarious activity.

26. Be that as it may, the issue involved in the present appeal hinges around the quantification of the profit element which the assessee would have made by procuring the goods not from the aforementioned six bogus concerns from whom purchase bills were obtained, but at a discounted value from the open/grey market. We find that the CIT(Appeals), for quantifying the profit which the assessee would have made by procuring the goods at a discounted value from the open/grey market, as against the value booked in his books of accounts based on the bogus purchase bills of the aforesaid bogus/hawala parties, had after by taking cognizance of the fact that in the business of rice millers/traders the GP rate varied between 3% to 10% adopted GP rate of 10% had after allowing credit of the GP rate of 1.53% that was already disclosed by the assessee in his audited books of accounts, thus, made a balance addition of 8.47% of the value of the bogus purchases. As such, the CIT(Appeals) had sustained the addition of Rs.1,22,08,002/- (out of the addition of Rs.3,70,33,063/- made by the A.O).

27. We have thoughtfully considered the view taken by the CIT(Appeals) and find no infirmity in the same. As the CIT(Appeals) had fairly quantified the profit element which the assessee would have made by procuring the subject goods not from the aforementioned six bogus concerns, but from the open/grey market, by adopting the GP rate prevailing in the business of rice miller/traders, therefore, we find no infirmity in the view taken by

him, and, thus, sustain the addition to the extent that was upheld by him. Thus, the **Grounds of appeal No. 3 & 4** raised by the assessee and the corresponding **Grounds of appeal No.1, 2 & 3** raised by the revenue are dismissed in terms of our aforesaid observations.

28. Apropos the addition towards unaccounted investment of Rs.10 lacs that was made by the A.O, we are of the view that as observed by the CIT(Appeals), and rightly so, the assessee would have made certain unexplained investment in his business of providing bogus billing. Ostensibly, the A.O had taken the amount of “peak purchase” appearing in the account of one of the aforesaid bogus concerns as a bogus outstanding liability and made an addition of the same in the hands of the assessee. Thereafter, the CIT(Appeals) had approved the view taken by the A.O, observing as under:

“3.2 Ground No. 4:- On the facts & circumstances of the case and in law, the Ld. AO has erred in making addition of Rs.10,00,000 as unaccounted investment on these bogus purchases considered by the Ld. AO, which is without bringing any clinching material evidence on record and in absence of this, the addition of Rs. 10,00,000 is liable to be deleted.

3.2.1 During the assessment proceeding the assessee was indulged in obtaining bogus bills. Therefore, the expenditure outstanding at the end of the year relating to those parties is undisputedly bogus. Therefore, this needs to be added to the total income. Accordingly, the peak amount of Rs.10,00,000/- is added back to the total income of the assessee.

3.2.2 During the appeal proceeding the appellant company to submitted the reply as under:-

"It is submitted that the Ld. AO has made this addition on mere presumption, conjectures and surmises and on a baseless belief that the assessee had made unexplained investment in alleged bogus purchases of paddy broken rice and rice from the alleged parties/vendors while the fact is the assessee has earned Rs. 7,16,475 as commission income which has been added by the Ld AO in the A. Y. 2013-14 (i.e. in original scrutiny assessment dated 31.03.2016), which has not disputed by the assessee and since, it is not disputed by the assessee in first appellate proceedings before your Honor, it means, the alleged income earned during the A.Y. 2013-14 at Rs.7,16,475 be available to the assessee for the alleged unexplained investment i.e. Rs.10 lakhs considered by the Ld. AO in the A.Y. 2013-14. The Ld. AO has not brought any material/evidence on record to substantiate his baseless proposition in this respect, thus the addition of Rs. 10,00,000/- on account of unexplained investment in purchase shown, in absence of any evidence/material brought on record by the Ld. AO, may kindly be deleted, Reliance is placed on:

It is submitted in Vishnu Prasad Maharwal (2014) (Jai-Trib) dated 31.03.2014 held as under:-

"3.6 We find force in the contention of the Ld. AR that this year was the second year of the assessee in contract business. However, in current year the contract receipts of the assessee have increased by more than 6 times from last year. The NP rate declared by the assessee in A.Y. 2008-09 was 6.01% which increased to 7.02% in A.Y. 2009-10. Therefore, in view of Bhawan VA Path Nirman (Bohra) & Co (Raj), the past history of the assessee is best guiding factor. Further, the result shown by the assessee is better than M/s.Rishabh construction (P) Ltd. Further the trading result is better because the entire cash and other found as the result of the search were surrendered as business income for A.Y. 2010-11. Further, if trading addition for A.Y. 2009-10 is sustained then the same is entitled for telescoping benefit in A.Y. 2010-11 against the cash and other assets found as the result of search in view of Anantharam Veerasinghaiah & Co (1980) (SC) and Tyaryamal Bal Chand (1987) (Raj) and such telescoping benefit has not been given by the AO and Ld. CIT (A)."

3.2.3 Consider the above discussion, the AO has added possible investment in effecting the unaccounted purchases added by him, from a seller the assessee has made several purchases. Ld. AO has picked up the largest amount out of purchases from each seller. Such largest amounts from all sellers have been added and total has been treated as unaccounted investment. On the facts of the case, the assessee making bogus purchase of Rs. 14,41,32,250/-.The case of purchases made out of unknown

sources. The transactions reflected in the bank accounts of assessee are having the same pattern. The assessee giving check/online transfer to six parties and these six parties withdraw the same amount from their bank accounts in form of cash. This cash is handed over to the assessee by the entry operator. Then this cash is used for purchases from gray market in cash at lower rate. Then the sales is done and payment received in bank accounts. Here one round is completed. Then, the another payment in form of bank transfer is made for bogus purchases and entire year it goes on like in this way. In this process there is a first initiative money to run all these affairs and it is always unaccounted money i.e. seed money of all these bogus purchases. In this case this seed money is also present. The Ld. AO is validly assessed it as Rs.10,00,000/- by drawing the peak of purchases is hereby confirmed. The appeals of ground is dismissed.”

We have thoughtfully considered the aforesaid issue and finding no infirmity in the view taken by the CIT(Appeals) who had rightly sustained the addition of unexplained investment of Rs.10 lacs (supra) made by the A.O, sustain the same. Thus, the **Ground of appeal No.5** raised by the assessee is dismissed in terms of our aforesaid observations.

29. In the result, both the appeals filed by the assessee in ITA No.122/RPR/2024 and the appeal filed by the revenue in ITA No.135/RPR/2024 for A.Y.2013-14 are dismissed in terms of our aforesaid observations.

ITA No.123/RPR/2024 (Assessee's appeal)

ITA No.136/RPR/2024 (Revenue's appeal)

A.Y.2014-15

30. We shall now take up the captioned cross-appeals filed by the assessee and the revenue for A.Y.2014-15, wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

“1. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,36,78,421 on count of adhoc estimation of GP of 10% on alleged bogus purchases of Rs.15,99,81,541 without giving any basis for such arbitrary estimation; while the assessee is a trader in goods i.e., paddy, rice and broken rice; corresponding sales has been accepted; there cannot be a case of "bogus purchase" in case of a "trader in goods" wherein corresponding sales quantity of goods is not disputed by the revenue; addition of Rs.1,36,78,421 is unjustified; is liable to be deleted.

2. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,36,78,421 on count of adhoc estimation of GP of 10% on alleged bogus purchases of Rs.15,99,81,541 without giving any basis for such arbitrary estimation; revenue has rejected books of account; applied sec.145(3); estimation of GP made @10% but assessment not made u/s.144; in such a situation, assessment made u/s.143(3) would be invalid; addition is liable to be deleted & assessment is liable to be quashed.

3. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.27,93,750 on the count of arbitrary estimation of unexplained investment in bogus purchases; addition made merely on presumption & surmises without bringing any material/ evidence on record; addition is unjustified and is liable to be deleted.

4. "The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."

On the other hand, the revenue has assailed the impugned order on the following grounds of appeal before us:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,63,16,964/- out of total addition of Rs. 3,99,95,285/-, ignoring his own finding in his order that "there is no doubt

regarding bogus purchases of Rs. 15,99,81,541/- had been made by the assessee" whereby he has upheld the basic finding of AO in entirety?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,63,16,964/- out of total addition of Rs. 3,99,95,285/-, ignoring the ratio of several judgements including the following in which 100% disallowance on account of bogus purchases has been upheld:

a) Para 6 of N.K. Industries Ltd. [2016] 72 taxmann.com 289 (Gujarat), in which SLP of the assessee has been dismissed vide [2017] 84 taxmann.com 195 (SC)?

b) Decision of ITAT Mumbai in the case of Soman Sun City in I.T.A. No. 2960/Mum/2016?

3. Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,63,16,964/- out of total addition of Rs.3,99,95,285/-, by assuming that the assessee had made alternative actual purchases when the assessee has not proved the same with any verifiable documents?"

31. Succinctly stated, the assessee had filed his return of income for A.Y.2014-15 on 29.11.2014, declaring an income of Rs.11,85,790/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

32. During the course of assessment proceedings, the A.O observed that the assessee had during the subject year claimed to have made purchases aggregating to Rs.23,26,56,741/- from 9 tainted parties, as under:

Sr. No.	Name of the Bogus firm	Amount of purchase	Peak purchase amount	Date of peak purchase
1.	M/s. Agrawal Agro, Dunda,	Rs.3,83,06,950/-	Rs.5,58,750/-	11/11/2013

	Raipur			
2.	M/s. Shrikhand Agrotech, Raipur	Rs.1,14,89,000/-	Rs.5,43,750/-	03/09/2013
3.	M/s. Hardaha Agency, Abhanpur, Raipur	Rs.1,60,81,691/-	Rs.4,48,750/-	02/05/2013
4.	M/s. Sakshi Gopal Corporation, Raipur	Rs.1,18,35,000/-	Rs.3,81,250/-	13/02/2014
5.	M/s. Bajrang Food Products	Rs.7,96,24,600/-	Rs.5,35,000/-	30/08/2013
6.	M/s. Eden Rice Mill	Rs.3,32,27,500/-	Rs.5,10,000/-	19/07/2013
7.	M/s. Shri Shyamji Rice Agrotech	Rs.2,98,04,500/-	Rs.5,71,250	26/09/2013
8.	M/s. Shree Annapurna Foods	Rs.45,63,750/-	Rs.3,33,750/-	28/12/2013
9.	M/s. Shri Laxmi Agrotech	Rs.7,23,750/-	Rs.3,75,000/-	28/02/2014
	Total	Rs.23,26,56,741/-	Rs.42,57,500/-	

33. The A.O observed that in the course of the aforesaid survey operation conducted u/s. 133A of the Act at the business premises of Shri Kamlesh Kumar Keshwarwani i.e. the assessee, it was admitted by him that he had acted as an intermediary for arranging the bogus sale and purchase bills between the parties without actual delivery of goods. Accordingly, the A.O vide notice issued u/s. 142(1) of the Act, dated 29.11.2016 directed the assessee to produce his books of accounts in order to substantiate the authenticity of the purchases made by him during the subject year which were stated to have made from 32 parties

(Page 4 & 5 of the assessment order). In response, the assessee submitted a written reply wherein, it was stated by him that, viz. (i) that he had received commission of Rs.5/- per Qntl. from other firms (i.e. M/s. Agrawal Agro, M/s. Shri Shyamji Rice Agrotech and M/s. Shri Annapurna Foods in F.Y.2015-16) as per his statement recorded during the survey conducted on 15.03.2016, but in F.Y.2013-14 (i.e. the subject year), he had only received commission of Rs.3 to 3.5 per Qntl.; (ii) that he had made purchases from M/s. Eden Rice Mill (closing balance Rs.26,72,073/-), M/s. Hardaha Agency (closing balance Rs.15,11,691/-); and M/s. Sakshi Gopal Corporation (closing balance Rs.26,84,944/-), and to substantiate his claim had placed on record confirmations of the said parties for both F.Y.2013-14 and F.Y.2014-15.

34. The A.O observed that the assessee in his statement recorded u/s. 131 of the Act on 21.12.2016, wherein on being confronted with the bogus purchases of Rs.23,26,56,741/- (supra) that was claimed to have been made from the aforementioned 9 parties in his firm M/s. Keshwarwani Rice Mills (supra) wherein bills were issued without actual delivery of goods, the assessee could not give any satisfactory explanation, except for, stating that he had actually purchased goods from the aforesaid parties. However, the A.O observed that the assessee a/w. brokers in their respective statements recorded on oath u/s. 131 of the Act on 15.03.2016, had admitted that only purchase bills were procured and no actual

purchase of goods were made from the aforementioned parties. Further, the A.O observed that the assessee in his statement recorded u/s. 131 of the Act, dated 21.12.2016 had admitted of having earned commission of Rs.40,41,225/- from the transactions made during the year under consideration in the firms, viz. (i) M/s. Agrawal Agro; (ii) M/s. Annapurna Foods; and (iii) M/s. Shyamji Rice Agrotech. It was observed by the A.O that the assessee had admitted that the aforementioned firms which though were actually owned by him were being run in the name of third parties. Also, the A.O observed that the assessee could not explain the peak investment that was made by him for carrying out the aforementioned bogus purchase transactions in the cases other than the aforementioned three firms which were declared as his own firms. Considering the aforesaid facts, the A.O held the amount of Rs.40,41,225/- (supra) as the income of the assessee u/s. 68 of the Act.

35. The A.O further called upon the assessee to substantiate the authenticity of the purchases which were claimed to have made from the aforementioned parties by placing on record documentary evidences viz. gate entry pass, proof of transportation, delivery challans of goods, entry in purchase and stock register, confirmations from the respective parties etc. Also, the A.O had offered the assessee to cross-examine the brokers and the persons whose statements were recorded by the department. However, the assessee could not substantiate the authenticity of the aforesaid

purchases by placing on record the documentary evidence that was called for by the A.O. Accordingly, the A.O held a view that the assessee had failed to substantiate the authenticity of his claim of having made genuine purchases. Thus, the A.O held that the impugned purchases claimed by the assessee, except for, the purchases made from three firms, viz. (i) M/s. Agrawal Agro; (ii) M/s. Annapurna Foods; and (iii) M/s. Shyamji Rice Agrotech which were stated to be the assessee's own concerns as bogus. Thereafter, the A.O rejected the assessee's books of accounts u/s. 145(3) of the Act and held the balance amount of purchases pertaining to the remaining six parties of Rs.15,99,81,541/- as bogus and thus, disallowed 25% of the value of the same with a consequential addition of Rs.39,99,538/- (sic).

36. Apart from that, the A.O being of the view that the assessee would have made unaccounted investment by rolling his unaccounted money in his business activities, thus, made an addition of peak purchase amount pertaining to the aforesaid bogus firms (except for three concerns) of Rs.27,93,750/- u/s. 68 of the Act. Accordingly, the A.O based on his aforesaid observations vide his order passed u/s.143(3) of the Act, dated 23.12.2016 after, inter alia, making the aforesaid additions determined the income of the assessee at Rs.1,20,20,303/-.

37. Before proceeding any further, we may herein observe that a perusal of the assessment order passed by the A.O u/s.143(3) of the Act, dated 23.12.2016 revealed that he had while quantifying the disallowance @25% of the impugned purchases of Rs.15,99,81,541/- which works out at Rs.3,99,95,385/-, had wrongly computed the same at Rs.39,99,538/-, which, thereafter, was wrongly taken by him for computing the assessed income of the assessee. Be that as it may, the assessee based on correct amount of addition of Rs.3,99,59,385/- (supra) had assailed the same before the CIT(Appeals) who had thereafter restricted the said addition to Rs.1,36,78,421/-.

38. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the same. Apropos the addition of Rs.3,99,95,385/- (supra) that was made by the A.O by disallowing 25% of the alleged bogus purchases of Rs.15,99,81,541/- that the assessee had claimed to have made from 6 parties (out of 9 parties), the CIT(Appeals), holding a conviction that GP rate of 10% (as was prevailing in the trade line of rice business) could fairly taken care of the aforesaid issue, thus, after referring to the GP rate of 1.45% that was already disclosed by the assessee during the subject year, scaled down the addition to an amount of Rs.1,36,78,421/- (8.55% of Rs.15,99,81,541/-). For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“I have gone through the detailed investigation in this rice miller's case assessment order of assessee and the reply of assessee during the appeal proceeding. I thoroughly examined the reply of assessee with the facts of the case. Now, it is clear that the present case is a case of trading concern and there is not any manufacturing activity hence the case is little bit distinguishable from Vijay Proteins Ltd, relied by the Ld. AO

Secondly, there is no doubt regarding bogus purchases of Rs.15,99,81,541/- had been made by the assessee.

Thirdly, a detailed investigation has been done to prove these purchases as bogus and even cross examination was also done by rice millers during the investigation.

As the Ld. AO has rejected books of account for limited purpose, but he had not questioned the sales. This is a well settled proposition that the sales cannot be made without purchases. So, if the purchases have not been made from the six parties mentioned in assessment order then the assessee should have made these purchases from somewhere else.

In such cases of bogus purchases, actual purchases were made from other parties and mainly in cash. These purchases are always done at lower rates. Taxes and other expenses are also saved.

Now, the assessee should have disclosed the actual parties and actual amount of purchase. These purchases might have been purchased from gray market and in cash. There is a strong possibility of a lower rate purchases as other taxes and expenses will be saved in such gray purchases. Hence, actual GP will be much higher than declared in the books of account.

There are some judicial pronouncements, on the similar facts. The Delhi Tribunal in the case of NKG has held that since purchase debited by the assessee has already been considered in audited accounts in arriving at the income, therefore if purchase is considered bogus and a profit ratio is decided then only the difference of GP so decided and the GP shown by the assessee should be added as the profit element on account of bogus purchase. The decision of the ITAT is as under —

The Assessment order clearly indicates that before passing assessment order dt. 31.03.2016, Ld. AO conducted a thorough inquiry on the aspects including the purchases made by the assessee from Sharma group aggregating Rs. 63.90 crores and having considered the contentions of the assessee, Ld. AO reached a conclusion that the material

purchased from the Sharma was bogus, and since the assessee itself offered rate of GP in business at approximately 8% however, to recover any further leakage of revenue, 0.25% was to be added to the rate offered by the assessee. Basing on this premise, Ld. AO recalculated the GP at 9% of the sales turnover by rejecting the books of account of the assessee u/s 145. According to AO the difference between 9% of the turnover, the aggregate amount of the GP already declared by the assessee and the additions made during the earlier assessment u/s 153A had to be added.

Decision on similar line has been given by ITAT Mumbai in case of Ratnagiri Stainless Pvt. Ltd. Vs ITO ITA No. 4463/Mum/2016 Dated 04.04.2017 Facts are as under-

"The AO, on the basis of information received from Dy. Director of IT (Inv,) that assessee had received bogus purchase invoice from 28 entry providers, reopened assessment. No evidence was produced by assessee to show that purchases were genuine by actual delivery of goods on said parties. Notice u/s 133(6) were returned unserved. One of the parties appeared before the AO and confirmed that the transaction were bogus. Assessee having purchased the goods from grey market for earning higher profits, GP rate 12.5% applied by AO and confirmed by CIT(A) was justified. However the assessee will get credit of GP ratio declared on these bogus. purchase in the return of income filed with the Revenue."

In the line of business of rice millers and traders in the state, the GP varies from 3% to 10% depending on various factors such as price of paddy paid by the government, level of crop production and quantity of procurement committed by the statement government. Adopting a GP of 10%, since the GP shown by the assessee is 1.45%, an addition of 8.55% on the suspicious purchases is hereby sustained, attributing to the extra profit earned by showing purchases. Therefore on a purchase of Rs.15,99,81,541/- an amount of Rs. 1,36,78,421/- is hereby sustained and balance addition is deleted."

39. Apropos the addition of Rs.27,93,750/- that was made by the A.O towards unexplained investment which the assessee would have made for carrying out aforesaid unaccounted transaction i.e. peak purchase amount

of the bogus parties, the CIT(Appeals) finding no infirmity in the view taken by the A.O, upheld the same, observing as under:

3.2 Ground No. 4:- On the facts & circumstances of the case and in law, the Ld. AO has erred in making addition of Rs. 27,93,750 as unaccounted investment on these bogus purchases considered by the Ld. AO, which is without bringing any clinching material evidence on record and in absence of this, the addition of Rs.27,93,750 is liable to be deleted.

3.2.1 During the assessment proceeding the assessee making bogus purchase of Rs.15,99,81,541/- the assessee must have invested his unaccounted income which is being rolled into its business activities, hence the element of unaccounted investment has to be determined which is taken as the peak purchase amount from these bogus firms (except three as above) and stands at Rs.27,93,750/-. The same is added to the total income of the assessee us/ 68 of the I.T. Act, 1961.

3.2.2 During the appeal proceeding the appellant company to submitted the reply as under:-

"It is submitted that the Ld. AO has made this addition on mere presumption, conjectures and surmises and on a baseless belief that the assessee had made unexplained investment in alleged bogus purchases of paddy broken rice and rice from the alleged parties/vendors while the fact is the assessee has earned Rs.40,41,225 as commission income on undisclosed bank account of the alleged 3 firms which has been added by the Ld. AO on the basis of statement recorded on 21.12.2016 which forms part of the assessment order dt. 23.12.2016 .It is not disputed by the assessee in first appellate proceedings before your Honor, it means the alleged income earned of Rs. 40,41,225/- during the A.Y. 2014-15 be available to the assessee for the alleged investment considered by the Ld. AO in the A.Y. 2014-15, thereafter, in the A.Y. 2013-14 also the addition of Rs. 7,16,475/- has been made by the Ld. AO on the count of commission income earned, which also not disputed by the assessee and thus, it will also be available for the alleged investment considered by the Ld. AO in the A.Y. 2014-15. The Ld. AO has not brought any material/evidence on record to substantiate his baseless proposition in this respect, thus, the addition of Rs. 27,93,750/- on account of unexplained investment in purchases shown, in absence of any evidence/material

brought on record by the Ld. AO, may kindly be deleted, Reliance is placed on: It is submitted in Vishnu Prasad Maharwal (2014) (Jai-Trib) dated 31.03.2014 held as under:-

"3.6 we find force in the contention of the Ld. AR that this year was the second year of the assessee in contract business. However, in current year the contract receipts of the assessee have increased by more than 6 times from last year. The NP rate declared by the assessee in A.Y. 2008-09 was 6.01% which increased to 7.02% in A.Y. 2009-10. Therefore in view of Bhawan VA Path Nirman (Bohra) & Co (Raj), the past history of the assessee is best guiding factor. Further, the result shown by the assessee is better than M/s. Rishabh construction(P) Ltd. Further the trading result is better because the entire cash and other found as the result of the search were surrendered as business income for A.Y. 2010-11. Further, if trading addition for A.Y. 2009-10 is sustained then the same is entitled for telescoping benefit in A.Y. 2010-11 against the cash and other assets found as the result of search in view of Anantharam Veerasinghaiah & Co (1980) (SC) and Tyaryamal Bal Chand (1987) (Raj) and such telescoping benefit has not been given by the AO and Ld. CIT (A)." 3.3.3 Consider the above discussion, the AO has added possible investment in effecting the unaccounted purchases added by him, from a seller the assessee has made several purchases. Ld. AO has picked up the largest amount out of purchases from each seller. Such largest amounts from all sellers have been added and total has been treated as unaccounted investment. On the facts of the case, the assessee making bogus purchase of Rs.15,99,81,541/-.The case of purchases made out of unknown sources. The transactions reflected in the bank accounts of assessee are having the same pattern. The assessee giving check/online transfer to six parties and these six parties withdraw the same amount from their bank accounts in form of cash. This cash is handed over to the assessee by the entry operator. Then this case is used for purchases from gray market in cash at lower rate. Then the sales is done and payment received in bank accounts. Here one round is completed. Then the another payment in form of bank transfer is made for bogus purchases and entire year it goes on like in this way. In this process there is a first initiative money to run all these affairs and it is always unaccounted money i.e. seed money of all these bogus purchases. In this case this seed money is also present. The Ld. AO is validly assessed it as Rs.27,93,750/- by drawing the peak of purchases is hereby confirmed. The appeals of ground is dismissed.

4. In the result, appeal is partly allowed.”

40. Both the assessee and the revenue being aggrieved with the order of the CIT(Appeals) have carried the matter in appeal before us.

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

42. As the facts and issues involved in the present cross-appeals remains the same as were there before us in the cross-appeals for the immediately preceding year i.e. ITA No. 122/RPR/2024 & ITA No.135/RPR/2024 for A.Y.2013-14, therefore, the view therein taken shall mutatis-mutandis apply for the purpose of disposing of the present cross-appeals i.e. ITA No.123/RPR/2024 & ITA No.136/RPR/2024 for A.Y.2014-15.

43. At the same time, for the sake of clarity, we briefly cull out our observations qua the facts involved in the present cross-appeals, as under:

(A) the A.O observed that the assessee had during the subject year made bogus purchases from 6 parties (out of 9 parties) aggregating to Rs.15,99,81,541/- (aggregate of purchases made by the assessee from 6

parties). Accordingly, the A.O after rejecting the books of account u/s.145(3) of the Act quantified the profit which the assessee would have made by purchasing the subject goods not from the aforementioned bogus parties, but from the open grey/market and worked out the addition @25% of the value of the bogus purchases of Rs.14,41,32,250/- i.e. at Rs.3,99,95,285/- (wrongly taken by the A.O in the assessment order as Rs.39,99,538/-).

(B) On appeal, the CIT(Appeals) principally concurred with the A.O that the assessee would have made profit by procuring the subject goods not from the aforementioned 6 bogus/hawala parties but at a discounted value from the unknown parties operating in the open/grey market. At the same time, the CIT(Appeals) was of the view that the profit which the assessee would have made by procuring the subject goods from the open/grey market could safely be quantified by adopting GP rate of 10% (as was prevailing in the business of rice milling/trading). Accordingly, the CIT(Appeals) after considering the GP rate of 1.45% that was disclosed by the assessee during the subject year scaled down the addition to 8.55% [10 % (-) 1.45%] of Rs.15,99,81,541/-(supra) i.e. at an amount of Rs.1,36,78,421/-.

44. We have thoughtfully considered the view taken by the CIT(Appeals) and in terms of our observations recorded by us while disposing of the cross-appeals for the immediately preceding assessment year i.e.

A.Y.2013-14 in ITA No. 122/RPR/2024 & ITA No.135/RPR/2024, finding no infirmity in the view taken him, thus, uphold the same. Thus, the **Grounds of appeal Nos. 1 & 2** raised by the assessee are dismissed and **Grounds of appeal Nos. 1 to 3** raised by the revenue are dismissed in terms of our aforesaid observations.

45. Apropos the addition made by the A.O of Rs.27,93,750/- towards the value of the peak purchases, we are of the view that as the facts involved qua the aforesaid issue remain the same as were there before us for the immediately preceding assessment year i.e. A.Y.2013-14 in ITA No. 122/RPR/2024 & ITA No.135/RPR/2024, therefore, our observations therein recorded while adjudicating the said issue shall *mutatis-mutandis* apply for this year also. Thus, the **Ground of appeal No.3** raised by the assessee is dismissed in terms of our aforesaid observations.

46. In the result, the appeal filed by the assessee in ITA No.123/RPR/2024 and the appeal filed by the revenue in ITA No.136/RPR/2024 for A.Y.2014-15 are dismissed in terms of our aforesaid observations.

ITA No.124/RPR/2024 (Assessee's appeal)

ITA No.138/RPR/2024 (Revenue's appeal)

A.Y.2015-16

47. We shall now take up the captioned cross-appeals filed by the assessee and the revenue for A.Y.2015-16, wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

“1. On the facts and circumstances of the case and in law, approval u/s.151(2) by Jt.CIT is invalid; in the reasons recorded, there is no escaped income; in the "Proposal Form" for seeking approval u/s.151, escaped income at 'nil' (Sl.No.6); without pointing out mistake committed by AO in the "Proposal Form" put up before him; non application of mind by Jt.CIT while granting such mechanical approval on his part; in absence of a valid approval as mandated by law u/s.151, reopening u/s148/147 would be invalid and would be liable to be quashed; relied on Kalpana Shantilal Haria (2017) (Bom HC); Sea Glimpse Investments (P) Ltd (2021) (Bom HC);

2. On the facts and circumstances of the case and in law, approval u/s.151(2) by Jt.CIT is invalid as Jt.CIT has granted approval by mentioning "Yes, satisfied"; there is completely non application of mind by Jt.CIT while granting such mechanical & routine approval on his part; in absence of a valid approval as mandated by law u/s 151, reopening u/s 148/147 would be invalid and would be liable to be quashed; relied on Synfonia Tradelinks (P) Ltd (2021) (Del HC); S Goyanka Lime & Chemicals Ltd (2015) (SC); Chhugamal Rajpal (1971) (SC); Arjun Singh (2000) (MP).

3. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,32,65,272 on count of adhoc estimation of GP of 10% on alleged bogus purchases of Rs. 15,44,26,911 without giving any basis for such arbitrary estimation; while the assessee is a trader in goods i.e., paddy, rice and broken rice; corresponding sales has been accepted; there cannot be a case of "bogus purchase" in case of a "trader in goods" wherein corresponding sales quantity of goods is not disputed by the revenue; addition of Rs. 1,32,65,272 is unjustified; is liable to be deleted.

4. On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,32,65,272 on count of adhoc estimation of GP of 10% on alleged bogus purchases of Rs. 15,44,26,911 without giving any basis for such arbitrary estimation; revenue has rejected books of account; applied sec145(3); estimation of GP made @10% but assessment not made u/s144; in such a situation, assessment made u/s143(3)

would be invalid; addition is liable to be deleted & assessment is liable to be quashed.

5. On the facts & circumstances of the case and in law, ld CIT(A) has erred in sustaining addition of Rs.4,80,650 (i.e., Rs.26,80,650 addition made by AO (-) Rs.22,00,000 accepted by assessee) on the count of arbitrary estimation of unexplained investment in the alleged bogus purchases; remaining addition of Rs.4,80,650, merely on presumption & surmises without bringing any material/ evidence on record; addition is unjustified and is liable to be deleted.

6. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

On the other hand, the revenue has assailed the impugned order on the following grounds of appeal before us:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,53,41,456/- out of total addition of Rs.3,86,06,728/-, ignoring his own finding in his order that "there is no doubt regarding bogus purchases of Rs.15,44,26,911/- had been made by the assessee" whereby he has upheld the basic finding of AO in entirety?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,53,41,456/- out of total addition of Rs.3,86,06,728/-, ignoring the ratio of several judgements including the following in which 100% disallowance on account of bogus purchases has been upheld:

a) Para 6 of N.K. Industries Ltd. [2016] 72 taxmann.com 289 (Gujarat), in which SLP of the assessee has been dismissed vide [2017] 84 taxmann.com 195 (SC)?

b) Decision of ITAT Mumbai in the case of Soman Sun City in I.T.A. No. 2960/Mum/2016?

3. Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,53,41,456/- out of total addition of Rs.3,86,06,728/- by assuming that the assessee had made

alternative actual purchases when the assessee has not proved the same with any verifiable documents?”

48. Succinctly stated, the assessee had filed his return of income for A.Y.2015-16 on 29.09.2015, declaring an income of Rs.12,75,640/-. Subsequently, the A.O based on information that had surfaced while framing the assessment for the immediately preceding assessment year i.e. A.Y.2014-15 that the assessee had made bogus purchases from 9 tainted parties, initiated proceedings u/s.147 of the Act. Notice u/s. 148 of the Act, dated 30.03.2017 was issued to the assessee. In response, the assessee filed his return of income on 17.11.2017, declaring an income of 12,75,640/-.

49. During the course of the assessment proceedings, the A.O observed that the assessee had claimed to have made purchases aggregating to Rs.15,44,26,911/- from ten tainted parties, as under:

Sr. No.	Name of the Bogus firm	Amount of purchase	Peak purchase amount	Date of peak purchase
1.	M/s. Agrawal Agro, Dunda, Raipur	Rs.3,51,50,375/-	Rs.5,17,500/-	11/06/2014
2.	M/s. Shrikhand Agrotech, Raipur	Rs.1,86,22,050/-	Rs.5,42,500/-	27/07/2014
3.	M/s. Hardaha Agency, Abhanpur, Raipur	Rs.72,34,000/-	Rs.5,82,500/-	29/07/2014
4.	M/s. Sakshi Gopal Corporation, Raipur	Rs.1,20,16,800/-	Rs.5,48,750/-	06/08/2014
5.	M/s. Pushkar Paddy	Rs.1,49,00,050/-	Rs.5,58,900/-	07/07/2014

6.	M/s. Eden Rice Mill	Rs.89,28,000/-	Rs.4,48,000/-	02/03/2015
7.	M/s. Shri Shyamji Rice Agrotech	Rs.77,01,500/-	Rs.4,87,500/-	03/08/2014
8.	M/s. Shree Annapurna Foods	Rs.1,20,47,350/-	Rs.6,21,000/-	25/07/2024
9.	M/s. Shri Hanuman Food Products	Rs.2,60,41,490/-	Rs.5,17,500/-	01/07/2014
10.	M/s. Saraswati Paddy process	Rs.1,17,84,846/-	Rs.5,34,600/-	03/02/2015
	Total	Rs.15,44,26,911/-	Rs.53,58,750/-	

50. The A.O observed that the assessee in his statement recorded u/s. 131 of the Act on 09.11.2017 admitted that he had during the subject year earned commission of Rs.46,38,958/- from the transactions made in the six firms, viz. M/s. Agrawal Agro, M/s. Annapurna Foods, M/s. Shri Shyamji Rice Agrotech, M/s. Saraswati Paddy Process, M/s. Hanuman Food Products and M/s. Shrinath Paddy process. It was observed by the A.O that the assessee had vide his reply dated 09.11.2017 admitted that out of the total transactions of Rs.49.34 crore with M/s. Vinayak Trading Company, he had earned commission income of Rs.16, 44,830/-. Accordingly, the A.O based on the admission of the assessee made an addition of total commission of Rs.62,83,788/-.

51. The A.O called upon the assessee to substantiate the authenticity of the purchases which he had claimed to have made from the

aforementioned parties by placing on record documentary evidences, viz. gate entry pass, proof of transportation, delivery challans of goods, entry in purchase and stock register, confirmation from the respective party etc. Also, the A.O had offered the assessee to cross-examine the brokers and the persons whose statement were recorded by the department. However, as the assessee could not substantiate the authenticity of the aforesaid purchases by placing on record any documentary evidence that were called for by the A.O. Therefore, the A.O was of the view that the assessee had failed to substantiate the authenticity of his claim of having made genuine purchases from the aforementioned parties. Thus, the A.O held the impugned purchases made, except for, the purchases made from six firms viz. (i) M/s. Agrawal Agro; (ii) M/s. Annapurna Foods; (iii) M/s. Shri Shyamji Rice Agrotec; (iv) M/s. Saraswati Paddy Process; (v) M/s. Hanuman Food Products; and (v) M/s. Shrinath Paddy process which were stated to be the assessee's own concerns, as bogus. Thereafter, the A.O after rejecting the assessee's books of accounts u/s. 145(3) of the Act held the balance amount of purchases pertaining to the remaining four parties amounting to Rs.15,44,26,911/- as bogus, and disallowed 25% of the value of the same resulting to an addition of Rs.3,86,06,728/-.

52. Apart from that, the A.O being of the view that the assessee would have made unaccounted investment by rolling his unaccounted money in his business activities, thus, made an addition of peak purchase amount

pertaining to the aforesaid bogus firms (except for six concerns) of Rs.26,80,650/- u/s. 68 of the Act. Accordingly, the A.O based on his aforesaid observations vide his order passed u/s.143(3) of the Act, dated 30.11.2017 after, inter alia, making the aforesaid additions determined the income of the assessee at Rs.4,88,46,806/-.

53. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the same. Apropos the addition of Rs.15,44,26,911/- (supra) that was made by the A.O by disallowing 25% of the alleged bogus purchases of Rs.3,86,06,728/- that the assessee had claimed to have made from 6 parties (out of 10 parties), the CIT(Appeals) holding a view that the GP rate of 10% (as was prevailing in the trade line of rice milling) would fairly take care of the aforesaid issue, thus, after referring to the GP rate of 1.41% that was already disclosed by the assessee during the subject year, scaled down the addition to an amount of Rs.1,32,65,272/- (8.59% of Rs.15,44,26,911/-). For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“I have gone through the detailed investigation in this rice miller's case assessment order of assessee and the reply of assessee during the appeal proceeding. I thoroughly examined the reply of assessee with the facts of the case. Now, it is clear that the present case is a case of trading concern and there is not any manufacturing activity hence the case is little bit distinguishable from Vijay Proteins Ltd, relied by the Ld. AO

Secondly, there is no doubt regarding bogus purchases of Rs.15,44,26,911/- had been made by the assessee.

Thirdly, a detailed investigation has been done to prove these purchases as bogus and even cross examination was also done by rice millers during the investigation.

As the Ld. AO has rejected books of account for limited purpose, but he had not questioned the sales. This is a well settled proposition that the sales cannot be made without purchases. So, if the purchases have not been made from the ten parties mentioned in assessment order then the assessee should have made these purchases from somewhere else.

In such cases of bogus purchases, actual purchases were made from other parties and mainly in cash. These purchases are always done at lower rates. Taxes and other expenses are also saved.

Now, the assessee should have disclosed the actual parties and actual amount of purchase. These purchases might have been purchased from gray market and in cash. There is a strong possibility of a lower rate purchases as other taxes and expenses will be saved in such gray purchases. Hence, actual GP will be much higher than declared in the books of account.

There are some judicial pronouncements, on the similar facts.

The Delhi Tribunal in the case of NKG has held that since purchase debited by the assessee has already been considered in audited accounts in arriving at the income, therefore if purchase is considered bogus and a profit ratio is decided then only the difference of GP so decided and the GP shown by the assessee should be added as the profit element on account of bogus purchase. The decision of the ITAT is as under —

The Assessment order clearly indicates that before passing assessment order dt. 31.03.2016, Ld. AO conducted a thorough inquiry on the aspects including the purchases made by the assessee from Sharma group aggregating Rs.63.90 crores and having considered the contentions of the assessee, Ld. AO reached a conclusion that the material purchased from the Sharma was bogus, and since the assessee itself offered rate of GP in business at approximately 8% however, to recover any further leakage of revenue, 0.25% was to be added to the rate offered by the assessee. Basing on this premise, Ld. AO recalculated the GP at 9% of the sales turnover by rejecting the books of account of the assessee u/s.145. According to AO the difference between 9% of the turnover, the aggregate amount of the GP already declared by the assessee and the additions made during the earlier assessment u/s.153A had to be added.

Decision on similar line has been given by ITAT Mumbai in case of Ratnagiri Stainless Pvt. Ltd. Vs ITO ITA No. 4463/Mum/2016 Dated 04.04.2017. Facts are as under-

"The AO, on the basis of information received from Dy Director of IT (Inv.) that assessee had received bogus purchase invoice from 28 entry providers, reopened assessment. No evidence was produced by assessee to show that purchases were genuine by actual delivery of goods on said parties. Notice u/s 133(6) were returned unserved. One of the parties appeared before the AO and confirmed that the transaction were bogus. Assessee having purchased the goods from grey market for earning higher profits, GP rate 12.5% applied by AO and confirmed by CIT(A) was justified. However the assessee will get credit of GP ratio declared on these bogus purchase in the return of income filed with the Revenue."

In the line of business of rice millers and traders in the state, the GP varies from 3% to 10% depending on various factors such as price of paddy paid by the government, level of crop production and quantity of procurement committed by the statement government. Adopting a GP of 10%, since the GP shown by the assessee is 1.41%, an addition of 8.59% on the suspicious purchases is hereby sustained, attributing to the extra profit earned by showing purchases. Therefore on a purchase of Rs. 15,44,26,911/- an amount of Rs.1,32,65,272/- is hereby sustained and balance addition is deleted."

54. Apropos the addition of Rs.26,80,650/- that was made by the A.O towards unexplained investment made by the assessee for carrying out unaccounted transactions of making bogus purchases, we find that the assessee in the course of proceedings before the CIT(Appeals), submitted that the addition of Rs.22 lacs was already admitted by him. Accordingly, the A.O had made a balance addition of Rs.4,80,650/- [Rs.26,80,650/- (-) Rs.22,00,000/-]. The CIT(Appeals) after taking cognizance of the fact that the A.O had made addition towards unaccounted investment of Rs.26,80,650/-, found no infirmity in the view taken by him, and

sustained the said addition. For the sake of clarity, the observations of the

CIT(Appeals) are culled out as under:

“3.2 Ground No.3:- On the facts & circumstances of the case and in law, the Ld. AO has erred in making addition of Rs.4,80,650 (i.e. Rs.22,00,000 accepted by the assessee as unaccounted investment out of total addition made by the Ld. AO at Rs.26,80,650) as unaccounted investment on these bogus purchases considered by the Ld. AO, which is without bringing any clinching material evidence on record and in absence of the addition of Rs.4,80,650 is liable to be deleted.

3.2.1 During the assessment proceeding the assessee making bogus purchase of Rs.15,44,26,911/- the assessee must have invested his unaccounted income which is being rolled into its business activities. hence the element of unaccounted investment has to be determined which is taken as the peak purchase amount from these bogus firms (except six as above) and stands at Rs.26,80,650/-. The same is added to the total income of the assessee us/ 68 of the I.T.Act, 1961.

3.2.2 During the appeal proceeding the appellant company to submitted the reply as under:-

"It is submitted that the Ld. AO has made this addition on mere presumption, conjectures and surmises and on a baseless belief that the assessee had made unexplained investment in alleged bogus purchases of paddy broken rice and rice from the alleged parties/vendors while the fact is the assessee has earned Rs.62,83,788 as commission income on undisclosed bank account of the alleged 6 firms which has been added by the Ld. AO on the basis of statement recorded on 09.11.2017 which forms part of the assessment order dt. 30.11.2017. It is not disputed by the assessee in first appellate proceedings before your Honor, it means the alleged income earned of Rs.62,88,788/- during the A.Y. 2015-16 be available to the assessee for the alleged investment considered by the Ld. AO in the A.Y. 2015-16, thereafter, in the A.Y. 2014-15 also the addition of Rs.40,41,255/- has been made by the Ld. AO on the count of commission income earned from alleged 3 firms and which was accepted/ not disputed by the assessee and similarly, in the A.Y. 2013-14 also the addition of Rs.7,16,475 has been made by the Ld.AO on the count of commission income earned, which also not disputed by the assessee and thus, it will also be available for the alleged investment considered by the Ld. AO in the A.Y. 2015-16. The Ld. AO has

not brought any material/evidence on record to substantiate his baseless proposition in this respect, thus, the addition of Rs.4,80,650/- on account of unexplained investment in purchases shown, in absence of any evidence/ material brought on record by the Ld. AO, may kindly be deleted, Reliance is placed on:

It is submitted in Vishnu Prasad Maharwal (2014) (Jai-Trib) dated 31.03.2014 held as under:-

"3.6 we find force in the contention of the Ld. AR that this year was the second year of the assessee in contract business. However, in current year the contract receipts of the assessee have increased by more than 6 times from last year. The NP rate declared by the assessee in A.Y. 2008-09 was 6.01% which increased to 7.02% in A.Y. 2009-10. Therefore, in view of Bhawan VA Path Nirman (Bohra) & Co (Raj), the past history of the assessee is best guiding factor. Further, the result shown by the assessee is better than M/s. Rishabh construction(P) Ltd, Further the trading result is better because the entire cash and other found as the result of the search were surrendered as business income for A.Y. 2010-11. Further, if trading addition for A.Y. 2009-10 is sustained then the same is entitled for telescoping benefit in A.Y. 2010-11 against the cash and other assets found as the result of search in view of Anantharam Veerasinghaiah & Co (1980) (SC) and Tyaryamal Bal Chand (1987) (Raj) and such telescoping benefit has not been given by the AO and Ld. CIT (A)."

3.2.3 Consider the above discussion, the AO has added possible investment in effecting the unaccounted purchases added by him, from a seller the assessee has made several purchases. Ld. AO has picked up the largest amount out of purchases from each seller. Such largest amounts from all sellers have been added and total has been treated as unaccounted investment. On the facts of the case, the assessee making bogus purchase of Rs.15,44,26,911/-.The case of purchases made out of unknown sources. The transactions reflected in the bank accounts of assessee are having the same pattern. The assessee giving check/online transfer to six parties and these six parties withdraw the same amount from their bank accounts in form of cash. This cash is handed over to the assessee by the entry operator. Then this cash is used for purchases from gray market in cash at lower rate. Then, the sales is done and payment received in bank accounts. Here one round is completed. Then the another payment in form of bank transfer is made for bogus purchases and entire year it goes on like in this way. In this the process there is a first initiative

money to run all these affairs and it is ng always unaccounted money i.e. seed money of all these bogus purchases. In this case this seed money is also present. The Ld. AO is validly assessed it as Rs.26,80,650/- by drawing the peak of purchases is hereby confirmed. The appeals of ground is dismissed.

4. In the result, appeal are partly allowed.”

55. Both the assessee and the revenue being aggrieved with the order of the CIT(Appeals) have carried the matter in appeal before us.

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

57. As the facts and issues involved in the present cross-appeals remains the same as were there before us in the cross-appeals for the immediately preceding year i.e. ITA No.122/RPR/2024 & ITA No.135/RPR/2024 for A.Y.2013-14, therefore, the view therein taken shall *mutatis-mutandis* apply for the purpose of disposing off the present cross-appeals i.e. ITA No.124/RPR/2024 & ITA No.138/RPR/2024 for A.Y.2015-16.

58. At the same time, for the sake of clarity, we briefly cull out our observations qua the facts involved in the present cross-appeals, as under:

(A) the A.O observed that the assessee had during the subject year made bogus purchases from 10 parties aggregating to Rs.15,44,26,911/- (supra). Accordingly, the A.O after rejecting the assessee's books of account u/s.145(3) of the Act quantified the profit which the assessee would have made by purchasing the goods not from the aforementioned bogus parties, but from the open grey/market and worked out an addition @ 25% of the value of bogus purchases at Rs.3,86,06,728/-.

(B) On appeal, the CIT(Appeals) principally concurred with the A.O that the assessee would have made profit by procuring the goods not from the aforementioned 10 bogus/hawala parties but at a discounted value from the unknown parties operating in the open/grey market. At the same time, the CIT(Appeals) was of the view that the profit which the assessee would have made by procuring the subject goods from the open/grey market could safely be quantified by adopting GP rate of 10% (as was prevailing in the business of rice milling/trading). Accordingly, the CIT(Appeals) after considering the GP rate of 1.41% that was disclosed by the assessee as per his audited accounts during the subject year, scaled down the addition to 8.59% [10% (-) 1.41%] of Rs.15,44,26,911/- (supra) i.e. at an amount of Rs.1,32,65,272/-

59. We have thoughtfully considered the view taken by the CIT(Appeals) and in terms of our observations recorded while disposing off the cross-

appeals for the immediately preceding assessment year i.e. A.Y.2013-14 in ITA No.122/RPR/2024 & ITA No.135/RPR/2024, find no infirmity in the view taken by him and, thus, uphold the same. Thus, the **Grounds of appeal Nos. 3 & 4** raised by the assessee are dismissed and **Grounds of appeal Nos. 1 to 3** raised by the revenue are dismissed in terms of our aforesaid observations.

60. Apropos the addition made by the A.O of Rs.26,80,650/- towards the value of peak purchase, we are of the view that as the facts involved qua the aforesaid issue remain the same as were there before us for the immediately preceding assessment year i.e. A.Y.2013-14 in ITA No. 122/RPR/2024 & ITA No.135/RPR/2024, therefore, our observations therein recorded while adjudicating the said issue shall mutatis-mutandis apply for this year also. Thus, the **Ground of appeal No.5** raised by the assessee is dismissed in terms of our aforesaid observations. The

61. In the result, appeal filed by the assessee in ITA No.124/RPR/2024 and appeal filed by the revenue in ITA No.138/RPR/2024 for A.Y.2015-16 are dismissed in terms of our aforesaid observations.

62. Resultantly, the appeals filed by the assessee and the revenue are dismissed in terms of our aforesaid observations.

Order pronounced in open court on 10th day of February, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 10th February, 2025.

***SB, Sr.PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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