

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3944/DEL/2023  
(Assessment Year: 2013-14)**

Raj Shyama Construction Pvt. Ltd.,  
P – 90B, Sanjay Nagar,  
Ghaziabad – 201 002 (Uttar Pradesh).

vs.

DCIT,  
Central Circle,  
Ghaziabad.

**(PAN : AACCR4982R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Wadhwa, Advocate  
Shri Shivam Garg, CA  
REVENUE BY : Shri Pitambar Das, CIT DR

Date of Hearing : 27.11.2024  
Date of Order : 12.02.2025

**ORDER**

**PER S.RIFAUR RAHMAN,AM:**

1. This appeal has been filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)-4, Kanpur dated 08.06.2021 for the Assessment Year 2013-14.
2. Brief facts of the case are that the assessee company is a private limited company engaged in the business of contractual work of road construction. For the impugned year, the assessee filed its original return on 12.09.2013 declaring an income of Rs. 4,24,43,610/- which was

selected for scrutiny and consequently an assessment u/s 143(3) of the Income-tax Act, 1961 (for short 'the Act') was framed on 31.12.2015 wherein the books of account of the assessee were rejected and amount of Rs.67,73,795/- being the difference between the net profit calculated by the Assessing Officer and profit declared by the assessee was added to the income declared by the assessee determining the total income at Rs.4,92,17,410/-.

3. Later, a search was conducted on the assessee group on 11.08.2016 under section 132, and an assessment under section 153A was framed for AY 2013-14 on 28.12.2018 in the case of the assessee. In this assessment, the Assessing Officer made an addition of Rs.93,83,826/- on account of purchases made from M/s Raja Construction, solely based on the fact that the said firm had shown sales of Rs.93,83,826/- in its return for the relevant year, which were allegedly made to the assessee. When Kapil Tyagi, the director of the assessee company, was questioned about the firm being shown as a sundry creditor in AY 2014-15 in the books of the assessee, he allegedly accepted in his statement recorded under section 132(4) that the said firm was a bogus concern and was used to inflate the purchases of the assessee during AY 2014-15.
4. On appeal before the Ld. CIT(A), the CIT(A) vide order dated 08.06.2021 confirmed the addition to the extent of Rs.26,10,031/- being

the difference of total purchases of Rs. 93,83,826/- added by the AO and the addition of Rs.67,73,795/- made in the hands of the assessee at the time of original scrutiny assessment.

5. Aggrieved assessee is in appeal before us raising following grounds of appeal :-

*"1. That the order dated 28.12.2018 passed by the Ld. Assessing Officer ("Ld. AO") under section 153A read with section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and order dated 08.06.2021 passed by the Ld. CIT(A) under section 250(6) of the Act are bad in law and on facts.*

*2. That the order passed under section 153A of the Act in absence of valid approval as mandated under section 153D of the Act is invalid as the approval granted by the Ld. Additional Commissioner of Income Tax, Central Range, Meerut is mechanical and without application of mind.*

*3. That the Ld. AO has erred in assessing the total income of the assessee at Rs.5,86,01,230/- as against the returned income of Rs.4,24,43,610/- by making addition of Rs. 93,83,826/- on account of inflated purchases and the Ld. Commissioner of Income Tax (Appeals)-4, Kanpur ("Ld. CITCA),) has erred in sustaining the addition to the extent of Rs. 26,10,031/- made by him.*

*4. That the Ld. AO as well as the Ld. CITCA) has erred in making/sustaining the addition without appreciating the fact that the impugned assessment year is completed assessment and no incriminating material was found during the course of search and therefore no addition can be made and the law on this issue has been settled by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (4541TR 212).*

*5. That the Ld. AO has erred relying on the statement of Sh. Kapil Tyagi recorded under section 132(4) of the Act without confronting the same to the assessee during the course of assessment proceedings and without allowing the opportunity of cross examine him to the assessee.*

*6. That the Ld. AO as well as Ld. CIT(A) has erred in making/sustaining the addition in respect of inflated purchases solely on' the basis of statement of Sh. Kapil Tyagi without bringing on record any corroborative material/evidence or even any evidence which remotely suggest that the purchases were bogus.*

*7. That the Ld. AO as well as Ld. CITCA) has erred in law and on facts in making addition/disallowance of purchases placing reliance on books of the assessee contrary to the fact that the books were himself rejected by the Ld. AO on the ground that the books of the assessee do not show true results*

which was accepted by the Ld. CITCA) and income was estimated by applying an estimated GP ratio.

8. That the addition made by the Ld. AO and sustained by the Ld. CITCA) is without considering the submissions made and conclusive and contemporary evidences furnished by the assessee in the form of books of accounts and bills and vouchers, proof of payment through banking channel etc.

9. That the Ld. AO as well as Ld. CITCA) has erred in making the addition on basis of presumption and assumption without bringing on record any evidence that the purchases of Rs. 93,83,826/- made by the assessee were to reduce its profit and are inflated purchases.

10. That the impugned order passed by the Ld. AO is not in accordance with the principle of natural justice.

11. That the penalty proceedings initiated under Section 271(1)(c) of the Act are invalid.

12. That the grounds of appeal are independent and without prejudice to each other.”

6. At the time of hearing, ld. AR of the assessee brought to our notice sequence of events before us, the same is reproduced below :-

| <u>Date</u> | <u>Particulars</u>  | <u>Remarks</u>             |
|-------------|---|----------------------------|
| 12.09.2013  | Assessee filed its original return u/s 139 declaring total income of Rs. 4,24,43,610/-  |                            |
| 31.12.2015  | Assessment u/s 143(3) was framed determining the total income of the assessee at Rs. 4,92,17,410/- (addition of Rs. 67,73,795/- was made) | <b>P.No. 23-35 of PB</b>   |
| 11.08.2016  | Search u/s 132 was conducted upon the Assessee group  |                            |
| 11.08.2016  | Statement of Mr. Kapil Tyagi, director of the assessee company was recorded u/s 132(4)  | <b>P.No. 129-139 of PB</b> |
| 05.12.2016  | Order u/s 127 was passed by PCIT- Ghaziabad centralizing the case of the assessee   |                            |
| 20.07.2018  | Notice u/s 153A was issued for the impugned year  |                            |
| 06.08.2018  | Assessee filed its return in response to notice u/s 153A declaring an income of Rs. 4,92,17,400/- [as was assessed u/s 143(3)]            |                            |
| 16.08.2018  | Notice u/s 143(2) was issued to the assessee  |                            |
| 04.09.2018  | Notice u/s 142(1) alongwith the questionnaire was issued to the assessee  | <b>P.No. 114-128 of PB</b> |

|            |  |   |
|------------|--|---|
| 29.11.2018 | <i>Order sheet entry show causing the assessee as to why purchases of Rs. 93,83,826/- from M/s. Raja Construction be not added to the income of the assessee</i> |   |
| 10.12.2018 | <i>Assessee company filed its explanation w.r.t to purchases made from M/s. Raja Construction</i>  | <b><i>P.No. 110 of PB</i></b>             |
| 28.12.2018 | <i>Approval u/s 153D accorded by Add. CIT, Meerut to the assessment order u/s 153A</i>   | <b><i>P.No. 110 of PB</i></b>             |
| 28.12.2018 | <i>Assessment order u/s 153A was passed making an addition of Rs. 93,83,826/- on account of purchases made from M/s. Raja Construction</i>                       |   |
| 08.06.2021 | <i>CIT(A) confined the addition of Rs. 93,83,826/- to Rs. 26,10,031/-</i>  | <b><i>Para No. 7.4 at P.No. 23 of</i></b> |

7. Further the ld. AR for the assessee submitted the facts during the hearing and also filed his written submissions, the same is reproduced as under :-

1. *That the assessment order dated 28.12.2018 passed u/s 153A, as partly affirmed by the Ld. CIT(A) vide order dated 08.06.2021 is illegal, bad in law and void-ab-initio for the following reasons:*
    - a) *That the impugned year was a completed year on the date of search and no addition could be made in the hands of assessee sans any incriminating material found during the search;*
    - b) *The reliance made by the Ld. AO, as affirmed by the Ld. CIT(A), upon the statement of Mr. Kapil Tyagi for making impugned addition is erroneous and bad in law as it is an uncorroborated and unverified statement;*
    - c) *That the statement of Mr. Kapil Tyagi as relied upon by the Ld. AO as well as by the Ld. CIT(A) pertains to AY 2014-15 and not to the impugned year i.e AY 2013- 14;*
    - d) *That the approval accorded by the Addl. CIT(A) u/s 153D of the Act is a mechanical approval without application of mind.*
- A. *No addition could be made in a completed year/unabated year sans any incriminating material found during the search upon the assessee*
2. *That the impugned year i.e. AY 2013-14 became completed/unabated year on the date of search upon the assessee on 11.08.2016, as an assessment u/s 143(3) had already been framed for the impugned year on 31.12.2015. Therefore, as per the settled position of law in the light of judgment of Hon'ble SC in the case of **Pr. CIT v. Abhisar Buildwell (P.) Ltd. 454ITR 212 (SC)**, an addition in impugned year in search assessment u/s 153A could only be made on the basis of incriminating material unearthed during the search upon the assessee.*

3. *However, in the present case the impugned and sole addition of Rs.93,83,826/-, which was later on confined to Rs. 26,10,031/- by the Ld. CIT(A), was made not on the basis of any incriminating material unearthed during the search upon the assessee but on the basis of ITR of the firm i.e. M/s. Raja Construction, from which the assessee company alleged to make purchases of Rs. 93,83,826/- during the impugned year, {refer Para 4.2 at P.No. 5 of impugned assessment year dated 28.12.2018}*
4. *Interestingly, the impugned addition of Rs. 93,83,826/- was made on the basis of material which does not even belong to or pertain to the assessee, not to speak of any material incriminating or otherwise found during the search on the assessee company. The Ld. AO as well as the Ld. CIT(A) have completely failed to bring on record any incriminating material found during the search upon the assessee which could have formed the basis of the addition in the hands of assessee.*
5. *Therefore, the action of the Ld. AO in framing the assessment u/s 153A for the impugned year which had become unabated on the date of search de hors any incriminating material found during the search upon the assessee is liable to be quashed. Reliance in this regard can be placed upon the following judgments:*
- a) *Pr. CIT v. Abhishar Buildwell (P.) Ltd. 454 ITR 212 (SC)*  
 b) *Principal CIT vs. Meeta Gutgutia (2017) 395 ITR 526.*  
 c) *CIT (Central), Kabul Chawla 380 ITR 573 (Delhi)*
- B. *Reliance placed upon the statement recorded u/ 132(4) of Mr. Kapil Tyagi, director of the assessee company, by the Ld. AO and Ld. CITY A) is illegal and erroneous*
6. *The sole premises upon which the case of the department is based is that when Mr. Kapil Tyagi, who had been an active director of the assessee company during impugned year, was asked about the M/s. Raja Construction appearing as sundry creditor in the books of assessee for AY 2014-15, he in his statement recorded u/s 132(4) allegedly accepted that M/s. Raja Construction has no existence and the assessee company had inflated its purchases through the said firm in AY 2014-15.*

*True Typed and Translated copy of the portion of statement so relied upon by the Ld. AO & CIT(A) is reproduced as under:*

*"Q11. Please tell what is your relation with Shri Akash Tyagi and M/s Raja Construction?"*

*Answer: I don't know Shri Akash Tyagi or M/s Raja Construction and I don't have any relation with them.*

*Q12. In company's books of accounts for A.Y 2014-15, M/s Raja Construction whose proprietor is Shri. Akash Tyagi has been shown as sundry creditor of the company by your A.R. You are an active director in your company and you are telling that you don't know Shri.*

*Akash Tyagi and M/s Raja Construction and you don't have any relation with them. This proves that you are giving false statement because how is not possible that M/s Raja Construction whose proprietor is Shri Akash Tyagi is the sundry creditor of your company M/s. Raja Shyama Construction Pvt. Ltd. in AY 2014-15, and you and your company don't have any relation with them. Also the registration and address of above-mentioned M/s Raja Construction is only Flat No. 507, 5<sup>th</sup> floor Gulmohar Residency, near Kalyanpur Crossing, Kanpur, UP?*

*Answer: As per my knowledge, M/s Raja Construction which is registered at our address i.e. Flat No. 507, 5<sup>th</sup> floor Gulmohar Residency, near Kalyanpur Crossing, Kanpur, UP has no existence. The firm has been shown as sundry creditor to book unaccounted expenses of M/s. Raja Shyama Construction Pvt. Ltd. by way of purchase through such firm in AY 2014-15."*

7. *In this regard, it is submitted that the reliance upon the above-mentioned statement by the Ld. AO as well as CIT(A) to substantiate their action of making impugned addition on account of sale declared in the ITR of M/s. Raja Construction is itself erroneous and misplaced as it is settled position of law that in case of a completed/unabated year, no addition could be made solely relying upon the statement recorded u/s 132(4) unless it is corroborated by some material. A statement recorded under section 132(4) of the Act without any corroborative material cannot be considered as incriminating material. Reliance in this regard can be placed upon:
 
  - a) *CIT vs. Kabul Chawla (2016) 380ITR 573 (Del),*
  - b) *CIT vs. Harjeev Aggarwal (2016) 133 DTR (Del) 122*
  - c) *PCIT v. Kavita Agarwal 457ITR 112 Del**
8. *It is further pertinent to note that during the course of assessment proceedings when the Ld. AO show caused the assessee to explain the purchases made from M/s. Raja Construction on the basis of statement of Mr. Kapil Tyagi recorded u/s 132(4), it vide its reply dated 10.12.2018 i.e. at the very first opportunity informed the AO that the said statement was recorded under stressful conditions, coercion and by applying tactics so as to agree to what investigation officer wanted to get admitted. It was further pointed out that Mr. Kapil Tyagi is only one of the directors of the assessee company, therefore his statement cannot be relied upon in the absence of cross-verification from other directors. However, the Ld. AO as well as Ld. CIT(A) did not pay any heed to such contention of the assessee. (refer to P.No. III of PB).*
9. *It is further pertinent to mention that portion of the statement of Kapil Tyagi relied upon by the Ld. AO as well as by the CIT(A) was recorded on the pretext of misrepresentation of facts by the investigation wing which is evident from the following facts:
 
  - a) *As per question 11, when Kapil Tyagi was asked about the relationship with Aakash Tyagi Prop. M/s. Raja Construction, he completely denied having known to them or his relation with them.**

- b) However, at question 12 the Ld. Officer once again asked the Kapil Tyagi about his relationship with M/s. Raja Construction and mentioned that address and registration of M/s. Raja Construction is **“Flat 507, Gulmohar Residency, Kalyanpur Crossing, Kanpur”** i.e. the site office of the assessee company.
- c) In this regard it is pertinent to note that this fact mentioned by investigation wing that M/s. Raja Construction’s address/registered address is **“Flat 507, Gulmohar Residency, Kalyanpur Crossing, Kanpur”** is incorrect as the actual address of such firm was **“149, Sohanjani Tagan, Muzaffarnagar”**, which fact can be verified from the following:-
- ITR Ack. Of Aakash Tyagi for AY 2013-14 (p.no. 66 of PB)
  - Ledger Account of M/s. Raja Construction in the books of Assessee (p.no.70 of PB)
  - Ledger Account of Assessee in the books of M/s. Raja Construction (p.no.72 of PB)
  - Purchase invoices issued by M/s. Raja Construction to the assessee Company (p.no. 74-94 of PB)
  - Bank Statement of M/s. Raja Construction (p.no. 102 of PB)
  -
- C. That the statement of Mr. Kapil Tyagi as relied upon by the Ld. AO as well as by the Ld.CIT(A) pertains to AY 2014-15 and not to the impugned year i.e AY 2013-14
10. Without prejudice to our argument that statement of Kapil Tyagi cannot be relied upon to make addition in the hands of the assessee as it is not incriminating in absence of any corroborative material, even if said statement is said to be incriminating material, it only pertains to AY 2014-15 and not to the impugned year. This fact is clearly evident from the following:
- a) When Mr. Kapil Tyagi denied of having known or any relationship with M/s. Raja Construction, the Ld. Investigating Officer specifically pointed out to Mr. Kapil Tyagi that it is shown as sundry creditor in the books of assessee for AY 2014-15;
- b) To which Mr. Kapil Tyagi only admitted to have inflated the purchases of the assessee company through said firm in **AY 2014-15**
11. The above-mentioned facts clearly show that if at all the statement of Mr. Kapil Tyagi is considered as incriminating material so as to use against the assessee company, it could be used in AY 2014-15 and not in the impugned year, as it only pertains to AY 2014-15. Therefore, there was no incriminating material or statement which pertains to the impugned year and which could justify the addition in the hands of assessee in impugned year.
12. It is settled position of law that before an addition could be made in an impugned year on the basis of some incriminating material that material must specifically pertain to the year in question. An addition cannot be made in a particular year on the basis of some incriminating material which unequivocally pertains to some other year. In this regard reference can be made to the following decisions:
- a) *PCIT v. Saumya Construction*, (2016) 387 ITR 529 (Guj)- Gujarat High Court [affirmed by Hon’ble SC in *PCIT v. Abhisar Buildwell* [2023] 149

*taxmann.com 399 (SC)]*

- b) Commissioner of Income-tax-1 v. Jayaben Ratilal Sorathia, [2013] 40 taxmann.com 436 (Gujarat)- Gujarat High Court*
- c) Jai Steel (India), Jodhpur v. Assistant Commissioner of Income-tax, [2013] 36 taxmann.com 523 (Rajasthan)- Rajasthan High Court*
- d) Commissioner of Income-tax v. Sinhgad Technical Education Society, [2015] 378 ITR 84 (Bom.)- Bombay High Court [affirmed by Hon'ble sc in [2017] 397 ITR 344 (SC)]*

*D. That the approval accorded by the Addl. CIT(A) u/s 153D of the Act is a mechanical approval without application of mind.*

*13. The assessment order passed by the Ld. AO under section 153A dated 28.12.2018 for impugned year indicates that it was issued after obtaining approval under section 153D from the Addl. CIT, Central Range-Meerut. This approval was granted by the Addl. CIT via letter F.No. Addl. CIT/CR/MRT/Approval/153D/2018-19/2003 dated 28.12.2018. (Copy of letter dated 24.12.2018 written by Ld. AO to Addl. CIT seeking approval is enclosed at P.No. 109 of PB & copy of approval of Addl. CIT dated 28.12.2018 is annexed at P.no. 110 of PB)*

*14. A perusal of the letter dated 24.12.2018 from the Ld. AO (F.No. DCIT/CC/GZB/VVIP & SSG Group/153D/2018-19/608) to Addl. CIT seeking approval and letter dated 28.12.2018 of Addl. CIT (F.No. Addl. CIT/CR/MRT/Approval/153D/2018-19/2003) granting approval under section 153D reveals the following facts:*

*a) That Ld. AO sought approval in 35 cases, including seven of assessee, in case of VVIP & SSG  
As per group of cases on which search was conducted on 03.11.2016;*

*a) As per letter dated 24.12.2018 seeking approval, only draft assessment orders in these 35 cases were sent to the Addl. CIT for approval;*

*b) The Addl. CIT approved all 35 cases, including 7 of assessee company, vide single letter dated 28.12.2018;*

*c) The approval granted by Addl. CIT dated 28.12.2018 is **mechanical approval which was accorded without application of mind** as evident from following facts”*

- The date of search mentioned in the letter seeking approval as well as the approval u/s 153D is 03.11.2016, whereas the search upon assessee group was conducted on 11.08.2016;*

- Search on the assessee group being conducted on 11.08.2016 was different from the search on M/s. VVIP/SSG Group of cases on 03.11.2016 in respect of which the approval was sought and accordingly granted;*

- The approval had been sought on 24.12.2018 in 35 cases involving voluminous records (35 volumes as itself mentioned in Approval dated 24.12.2018) and was accordingly granted on 28.12.2018. 25.12.2018 being the Gazetted holiday, only two days i.e. 26.12.2018 & 27.12.2018 were left to the Addl. CIT to go through the voluminous records containing in 35*

volumes or more before according approval. It is not humanly possible to go through 35 volumes of material pertaining to different searches in two days:

- When as per letter dated 24.12.2018 seeking approval, only draft assessment orders were sent to Addl. CIT, the authenticity of fact mentioned in Approval dated 28.12.2018 that it was granted after perusal of assessment records itself becomes doubtful.

15. Therefore, an approval of such kind whereby 35 cases pertaining to **different searches, different assesses and different years** were approved within two days has been held to be a mechanical approval in **Pr. CIT v. Anui Bansal 120241165 taxmann.com 2 (Delhi)-SLP dismissed in [2024] 466 ITR 254 (SC) and ACIT V Seraiuddin & Co.f20231150 taxmann.com 146 (Orissa)-SLP dismissed in [2024] 163 taxmann.com 118 (SC).**
16. Also, a single consolidated approval whereby orders pertaining to all 7 years in the case of assessee has been held to be mechanical and bad in law in and **PCIT v. Shiv Kumar Nayyar, [2024] 163 taxmann.com 9 (Delhi) and Pr. CIT v. Savna Gupta f20231 147 taxmann.com 288 (All.).** In these cases the Hon'ble Jurisdictional High Court and Hon'ble Allahabad High Court have categorically held that the approval must be qua "each assessee" and qua "each assessment year".
17. However, in present case the approval so granted is neither qua "each assessee" nor qua "each assessment year". Therefore, such approval is bad in law being mechanical in nature rendering all proceedings consequent to it null and void.
  - E. That the assessee sufficiently discharged its burden to show that purchases made from M/s. Raja Construction were genuine purchases and accordingly shifted the burden on the Department, which it utterly failed to discharge
18. That when the assessee was show caused regarding the purchases made through M/s. Raja Construction alleging it to be bogus purchases, the assessee sufficiently discharged its burden by showing the genuineness of purchases by submitting the following documents:
  - a) ITR for AY 2013-14 of Aakash Tyagi, proprietor of M/s. Raja Construction alongwith its balance sheet, trading results, sale summary, **(p. no. 66-69 of PB)**
  - b) Ledger Account of M/s. Raja Construction in the books of Assessee **(p.no. 70- 71 of PB)**
  - c) Ledger Account of Assessee in the books of M/s. Raja Construction **(p.no. 72- 73 of PB)**
  - d) Purchase invoices issued by M/s. Raja Construction to the assessee Company **(p.no. 74-94 of PB)**
  - e) Bank Statements of the Assessee Company- evidencing the payment made to M/s. Raja Construction through banking channels **(p.no. 96-101 of PB)**
  - f) Bank Statement of M/s. Raja Construction-evidencing the receipt of payment from the Assessee Company **(p.no. 102- of PB)**

19. *Point a) & Point f) clearly establishes the fact that M/s. Raja Construction is a genuine concern which existed in reality and not a bogus concern as alleged by the Ld. AO. Similarly, point b) to point e) establish the genuineness of purchases made from the M/s. Raja Construction and payment made to it through banking channels.*

20. *Therefore, the assessee company has sufficiently discharged its burden of proving the genuine existence of M/s. Raja Construction and the genuineness of the purchases made from it. It was now the responsibility of the department to show that the explanation and the relevant documentary evidence provided by the assessee company were false, either by conducting an independent inquiry or by presenting something that would have rendered the explanation false and unreliable. However, the department failed to do so and ultimately did not discharge its burden to discredit the genuineness of the explanation given by the assessee company.*

21. *The case of the department is solely based upon the statement of Mr. Kapil Tyagi recorded u/s 132(4) wherein he alleged to admit that the M/s. Raja Construction was a bogus concern. However, in our above-mentioned submissions, it has been clearly made out as to why such statement could not be relied upon. In addition to those arguments, it is also submitted that the documentary evidences (**mentioned at para 18**) furnished by the assessee company to prove the genuine existence of M/s. Raja Construction clearly discredited the reliability of such statement.*

22. *Apart from this, the department alleged that it had issued a summons under Section 131 to Mr. Aakash Tyagi, proprietor of M/s. Raja Construction, for verification/examination, but it remained uncomplied with. As a result, the department concluded that M/s. Raja Construction had no existence. In this regard, it is submitted that the mere issuance of a summons under Section 131 to the creditor is insufficient to discharge the burden placed upon the department, especially when no defect has been pointed out by the department in the explanation and documentary evidence submitted by the assessee, which establish the genuineness of the concern.*

23. *Moreover, non-compliance of summons under section 131 by the suppliers cannot be the concern of the assessee. It is not the case of the revenue that assessee was asked to produce the supplier. As the supplier is separately assessed to tax the issue of the low balance is required to be addressed by it and it cannot be a reason for dis-allowance of the purchases from that party, as many times purchases are also made from bank borrowers. Further, the learned Commissioner (Appeals) confirmed the finding of the learned assessing officer without giving any reason but merely reiterating the findings of the assessing officer. Reliance in these regard can be placed upon the following judgments:*

- a) *C.I.T Orissa v. Orissa Corporation Pvt. Ltd., [1986] 159 ITR 78 (SC)*
- b) *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 619 (Bom.)*
- c) *DCIT Vs. Rohini Builders 256 ITR 360 (Guj).*
- d) *Phool Singh Vs. ACIT, ITA 22901/Del/2014, order dated 11.04.2017*

*In the light of the above-submissions, it is humbly prayed that assessment u/s 153A dated 28.12.2018 for AY 2013-14 may kindly be quashed.”*

8. On the other hand, ld. DR of the Revenue submitted that assessee has raised ground on no incriminating material, however he submitted that it is not proper to claim that no incriminating material found during the search. He submitted that Assessing Officer has assumed the jurisdiction based on the incriminating material. Further he submitted that the key persons had confirmed that the transaction is bogus. Subsequent retraction will not affect the proceedings. On merits, he submitted that the assessee has not raised any ground during assessment proceedings nor raised any ground before the ld. CIT (A). He submitted that ld. CIT (A) has not given proper findings and relied on new facts that he gave a finding that no independent enquiry was made by the Assessing Officer. He brought to our notice page 28 of the appellate order and subsequently brought to our notice para 8.8 wherein ld. CIT (A) has observed that the onus is on the assessee to prove the genuineness of the claim and ld. CIT(A) observed that in the claim of purchases, some purchases are bogus, therefore, the same cannot be allowed. The above observation given by the ld. CIT (A) to adjudicate the ground i(g). With the above observation, ld. DR submitted that still ld. CIT (A) has deleted the addition. Further he brought to our notice page 14 of the paper book

wherein retraction statement was submitted. In this regard, he submitted that retraction has nothing or reasons were not explained properly for retracting the statement. He submitted that it is not proper retraction, the assessee knows Kapil Tyagi and cross opportunity is not necessary in this case and relied on the findings of the Id. CIT (A).

9. Considered the rival submissions and material placed on record. We observed that the assessee had filed original return of income u/s 139 of the Act declaring total income of Rs.4,24,43,610/-. Assessment u/s 143(3) was completed by making an addition of Rs.67,73,795/- and determined the total income of the assessee at Rs.4,92,17,410/-. Subsequently, search u/s 132 of the Act was conducted upon the assessee's group based on the statement of Kapil Tyagi, Director of the company was recorded u/s 132 (4) of the Act. In his statement which is placed at page 129 of the paper book wherein he has denied having any connection with Raja Construction. However, we observed that the query raised by the Assessing Officer relates to AY 2014-15. Therefore, the finding in search was not relevant to the present assessment year. Further we observed that the addition made by the Assessing Officer in original assessment u/s 143(3) was relating to the same transaction. Further we observed that the year under consideration is unabated and there is no material on record which shows that income escaped in the current

assessment year. The findings during search relating to AY 2014-15, therefore, there is no incriminating material relevant for the current assessment year. Therefore, it is settled position of law that no addition can be made u/s 153A without there being any incriminating material relating to unabated assessment year. Therefore, we are inclined to delete the additions made in the assessment order.

10. Further we observed that assessee has raised other grounds of appeal on approval accorded u/s 153D is not proper and relating to purchases made from Raja Construction are genuine, are not adjudicated at this stage.
11. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open court on this 12<sup>th</sup> day of February, 2025.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 12.02.2025  
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-4, Kanpur.
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**