IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA Nos. 642 to 645/Bang/2024
Assessment Years : 2017-18 to 2020-21

M/s. Bharat Beedi Works Private Limited, Golden Jubilee Building, Bharath Bagh, Kadri Road, Mangaluru – 575 002. **PAN: AAACB9001B**	**Vs.**	The Assistant Commissioner of Income Tax, Circle – 2(1), Mangaluru.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Chythanya .K, Sr. Advocate
Revenue by	:	Shri E. Shridhar, CIT-DR

Date of Hearing	:	22-01-2025
Date of Pronouncement	:	21-04-2025

ORDER

PER BENCH

These are the appeals filed by the assessee challenging the orders of the Ld.CIT(A) -2, Panaji dated 30/01/2024 in respect of the A.Ys. 2017-18, 2018-19, 2019-20 and 2020-21. The grounds raised by the assessee for each of the assessment years are extracted hereunder for the sack of convenience.

Assessment Year 2017-18:

*"**1.** The impugned orders of the lower authorities are not justified in law and on the facts and circumstances of the case.*

***2.** The impugned assessment proceedings and the impugned assessment order under Section 143(3) dated 29.11.2021 are bad and non-est since the notice under Section 143(2) dated 13.08.2018 was issued without affixing any signature either manually or digitally.*

***3.** Without prejudice to the above, impugned assessment proceedings and the impugned assessment order under Section 143(3) dated 29.11.2021 are bad and non-est being based on the notice under Section 143(2) dated 13.08.2018 which is vague, without of application of mind and contrary to section 143(2) and applicable board circulars and instructions.*

***4.** As regards disallowance under Section 14A u/s Rule 8D(2)(ii):*

4.1. The Lower Authorities have failed to appreciate that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts of the appellant and without rejecting its books of account.

4.2. The Lower Authorities were not justified in making disallowance of Rs.78,49,684/- under section 14A r/w Rule 8D(2)(ii) when the Appellant had voluntarily disallowed the expenses of Rs.7,81,121/- which was directly attributable and Rs.4,00,000/- which was indirectly attributable to portfolio management services.

4.3. The Lower Authorities were not justified in making any disallowance under Section 14A r/w Rule 8D(2)(ii) without appreciating that disallowance under Section 14A cannot be made in the absence of any proximate cause i.e. relationship of expenditure with exempt income.

4.4. The Learned AO was not justified in invoking Section 14A r/w Rule 8D(2)(ii) without first recording the exact expenditure incurred to earn exempt income to justify the impugned disallowance.

4.5. The Learned AO was not justified in making any disallowance under Section 14A r/w Rule 8D(2)(ii) on the wrong notion that the disallowance is presumptive in nature even when the expenditure is not actually incurred.

4.6. Without prejudice, the Lower Authorities were not justified in acting inconsistently in as much as while they chose to disturb the voluntary disallowance of Rs.11,81,121/- under Section 14A in the return, they blindly taxed the non-existent income reflected in the revised returns filed for the AYs 2019-20 and 2020-21 and the belated return filed for AY 2019-20.

4.7. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(ii), only the average value of those investments, income from which are not includible shall be taken into consideration.

4.8. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(ii), only the average value of those investments can be considered wherein all streams of income related to such investments are exempted.

4.9. The Lower Authorities have failed to appreciate that the disallowance of expenditure incurred to earn exempted income has to be a smaller part of exempt income and should be a reasonable proportion to exempted income earned by assessee in that year.

4.10. Without prejudice, the Lower Authorities were not justified in disallowing Rs.78,49,684/- under Section 14A when the exempted income of the Appellant during the impugned AY 2017-18 itself was Rs.58,07,422/-.

4.11. The Lower Authorities have failed to appreciate that no disallowance under Section 14A can be made towards the interest expenditure where the Appellant's interest-free funds exceed its interest-free investments.

For the above Grounds and for such other Grounds which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed."

Assessment Year 2018-19:

"1. The impugned orders of the lower authorities are not justified in law and on the facts and circumstances of the case.

2. As regards the impugned proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 being invalid and without jurisdiction:

2.1. The impugned proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notices under Section 153A dated 04.11.2020 and under Section 143(2) dated 27.02.2021 were issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 before obtaining the jurisdiction vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.2. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notices under Section 153A dated 04.11.2020 and under Section 143(2) dated 27.02.2021 were issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 while the jurisdiction over the Appellant vests with the Learned Deputy Commissioner of Income Tax Central Circle 2 vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.3. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notice under Section 143(2) dated 27.02.2021 was issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 instead of Additional Commissioner, NaFAC.

2.4. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est being based on the notice under Section 143(2) dated 27.02.2021 which is vague, without of application of mind and contrary to section 143(2) and applicable board circulars and instructions.

3. The impugned searches conducted in the Appellant's premises on 26.02.2020, 22.05.2020 and 02.06.2020 on the basis of a single authorization of

PDIT(Inv), Bangalore dated 20.02.2020 are bad and illegal thus rendering the impugned assessment null and void.

4. The impugned order under Section 153A dated 29.09.2021 is bad and invalid as the Learned AO has obtained a consolidated approval of the JCIT Central Range vide letter F.No.26/Jt.CIT/CR/MNG/2021-22 dated 28.09.2021 contrary to the phrase "in respect of each assessment year" under Section 153D.

5. The search is invalid rendering resultant statements taken and consequent assessment invalid as the Authorised Officers appointed the witnesses who are not the inhabitants of the locality contrary to Rule 112(6) of the IT Rules and the search and seizure manual published by the department.

6. The Lower Authorities erred in making disallowance of Rs.37,40,326/- under section 14A r/w Rule 8D(2)(iii) for the impugned AY 2018-19 without appreciating that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material found during the course of search.

7. As regards assessment proceedings being bad as there is no valid return in response to notice under Section 153A:

7.1. The Lower Authorities have failed to appreciate the impugned belated return filed by the Appellant on 09.02.2021 in response notice under Section 153A is invalid as the same was not filed within the time of 15 days [i.e. 18.11.2021] specified in the notice under 153A dated 03.11.2020 .

7.2. The Learned AO has no jurisdiction to accept the belated return filed on 09.02.2021 in response to notice under Section 153A as provisions of Section 153A do provide any authority to the Learned AO to condone any delay.

7.3. The notice under Section 143(2) issued in pursuance to an invalid return under section 153A is bad and non-est and without prejudice, issue of notice under section 143(2) is contingent on a valid return but the same does not validate an invalid return.

8. As regards disallowance under Section 14A r/w Rule 8D(2)(iii):

8.1. The Lower Authorities have failed to appreciate that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts of the appellant and without rejecting its books of account.

8.2. The Lower Authorities were not justified in making disallowance of Rs.37,40,326/- under section 14A r/w Rule 8D(2)(iii) when the Appellant had voluntarily disallowed the expenses of Rs.5,16,249/- which was directly attributable and Rs.4,00,000/- which was indirectly attributable to portfolio management services.

8.3. The Lower Authorities were not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) without appreciating that disallowance under Section 14A cannot be made in the absence of any proximate cause i.e. relationship of expenditure with exempt income.

8.4. The Learned AO was not justified in invoking Section 14A r/w Rule 8D(2)(iii) without first recording the exact expenditure incurred to earn exempt income to justify the impugned disallowance.

8.5. The Learned AO was not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) on the wrong notion that the disallowance is presumptive in nature even when the expenditure is not actually incurred.

8.6. Without prejudice, the Lower Authorities were not justified in acting inconsistently in as much as while they chose to disturb the voluntary disallowance of Rs.9,16,249/- under Section 14A in the original and belated returns, they blindly taxed the non-existent income reflected in the revised returns filed for the AYs 2019-20 and 2020-21 and the belated return filed for AY 2019-20.

8.7. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the average value of those investments, income from which are exempt shall alone be taken into consideration.

8.8. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the

average value of those investments wherein all streams of income are exempted, shall alone be taken into consideration.

8.9. The Lower Authorities have failed to appreciate that the disallowance of expenditure incurred to earn exempted income has to be a smaller part of exempt income and should be a reasonable proportion to exempted income earned by the assessee in that year.

8.10. The Lower Authorities have failed to appreciate that no disallowance under Section 14A can be made towards the interest expenditure where the Appellant's interest-free funds exceed its interest-free investments.

For the above Grounds and for such other Grounds which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed."

Assessment Year 2019-20:

"1. The impugned orders of the lower authorities are not justified in law and on the facts and circumstances of the case.

2. As regards the impugned proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 being invalid and without jurisdiction:

2.1. The impugned proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notices under Section 153A dated 04.11.2020 and under Section 143(2) dated 27.02.2021 were issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 before obtaining the jurisdiction vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.2. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notices under Section 153A dated 04.11.2020 and under Section 143(2) dated 27.02.2021 were issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 while the jurisdiction over the Appellant vests with the Learned Deputy Commissioner of Income Tax Central

Circle 2 vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.3. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est as the notice under Section 143(2) dated 27.02.2021 was issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 instead of Additional Commissioner, NaFAC.

2.4. Without prejudice to the above, the proceedings under Section 153A and the impugned order under Section 153A dated 29.09.2021 are bad and non-est being based on the notice under Section 143(2) dated 27.02.2021 which is vague, without of application of mind and contrary to section 143(2) and applicable board circulars and instructions.

3. The impugned searches conducted in the Appellant's premises on 26.02.2020, 22.05.2020 and 02.06.2020 on the basis of a single authorization of PDIT(Inv), Bangalore dated 20.02.2020 are bad and illegal thus rendering the impugned assessment null and void.

4. The impugned order under Section 153A dated 29.09.2021 is bad and invalid as the Learned AO has obtained a consolidated approval of the JCIT Central Range vide letter F.No.26/Jt.CIT/CR/MNG/2021-22 dated 28.09.2021 contrary to the phrase "in respect of each assessment year" under Section 153D.

5. The search is invalid rendering resultant statements taken and consequent assessment invalid as the Authorised Officers appointed the witnesses who are not the inhabitants of the locality contrary to Rule 112(6) of the IT Rules and the search and seizure manual published by the department.

6. The statement under Section 132(4) dated 28.02.2020 taken from Nagendra Pai is invalid and without jurisdiction being fraught with material infirmities, without application of mind, and contrary to section 132(4) and board instructions and consequently the impugned additions of Rs.20,29,07,399/- based on such statements are liable to be set aside.

7. The statements under Section 131 administered by the Deputy Director of Income Tax (Investigation) Unit 1, Mangalore post search were without jurisdiction, contrary to board instructions, without witness, taken under coercion and consequently the impugned additions of Rs.20,29,07,399/- based on such statements are liable to be set aside.

8. The Learned AO erred in making various additions merely based on the statements under Section 132(4) and under Section 131 when the same were retracted in entirety by the Appellant by filing letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and dated 12.07.2021.

9. As regards the revised return filed on 29.10.2020 being invalid and not binding the Appellant:

9.1. The revised return filed on 29.10.2020 is non-est as the same cannot stand on the basis of original return dated 30.09.2019 which abated due to search initiated on 26.02.2020.

9.2. Without prejudice, the Learned AO erred in accepting the revised return on 29.10.2021 as a valid return and relying solely on it without appreciating that the said return cannot be regarded as a return eligible to fall under Section 139(5).

9.3. The Learned AO failed to appreciate that the alleged artificial income of Rs.20,29,07,399/- shown in the "Schedule BP - Computation of income from business or profession" of revised return filed only to avoid exorbitant penalty under Section 270A, without any basis and contrary to evidence on record, books of account, the audited financial statements and tax audit reports in Form 3CA & 3CD.

9.4. Without prejudice, the Learned AO was not justified in making the alleged artificial income of Rs.20,29,07,399/- merely based on the revised return on 29.10.2020, which is liable to be regarded as a defective return under Explanation to Section 139(9).

9.5. The Learned AO erred in making various additions on the basis of the revised return filed on 29.10.2020 when making such addition was objected vide Appellant's letters filed on 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021 in

reply to the notice under Section 142(1) dated 02.07.2021.

9.6. Without prejudice, the Learned AO erred in selectively using the revised return to his convenience by adopting pick and choose.

9.7. The Learned AO ought not to have assessed Rs.20,29,07,399/- merely based on the revised return filed on 29.10.2020, without appreciating that there is no estoppel in law and the Learned AO should assess correct income based on material evidence without taking the advantage of vulnerability of the Appellant.

10. As regards the return filed in response to notice u/s 153A on 09.02.2021 being invalid and not binding the Appellant:

10.1. The Lower Authorities have failed to appreciate the impugned belated return filed by the Appellant on 09.02.2021 in response notice under Section 153A is invalid as the same was not filed within the time of 15 days [i.e. 19.11.2021] specified in the notice under 153A dated 04.11.2020 .

10.2. The Learned AO has no jurisdiction to accept the belated return filed on 09.02.2021 in response to notice under Section 153A as provisions of Section 153A do provide any authority to the Learned AO to condone any delay.

10.3. The notice under Section 143(2) issued in pursuance to an invalid return under section 153A is bad and non-est and without prejudice, issue of notice under section 143(2) is contingent on a valid return but the same does not validate an invalid return.

10.4. The Learned AO erred in making various additions on the basis of the belated return filed on 09.02.2021 when making such addition was objected vide Appellant's letter dated 12.07.2021 in reply to the notice under Section 142(1) dated 02.07.2021.

10.5. Without prejudice, the Learned AO erred in selectively using the belated return to his convenience by adopting pick and choose.

10.6. The Learned AO ought not to have assessed Rs.20,29,07,399/- merely based on the belated return filed on 09.02.2021, without appreciating that there is no

estoppel in law and the Learned AO should assess correct income based on material evidence without taking the advantage of vulnerability of the Appellant.

10.7. Without prejudice, the Learned AO was not justified in making the alleged artificial income of Rs.20,29,07,399/- merely based on the revised return on 09.02.2021, which is liable to be regarded as a defective return under Explanation to Section 139(9).

11. The Learned CIT(A) was not justified in failing to adjudicate various grounds raised by the Appellant, by wrongly holding that the income incorrectly offered in the revised return was "fait accompli and cannot be reopened for appeal purpose" and his actions are contrary to provisions of section 251 and settled principle that the duty of the Appellate Authority is to remove the defects or irregularities that occur in the course of the assessment proceeding.

12. As regards addition of Rs.1,32,15,180/- on account purchase of tendu leaves;

12.1. The impugned addition of Rs.1,32,15,180/- towards account purchase of tendu leaves is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

12.2. The Learned AO erred in treating Rs.5,50,150 as cash paid over and above three bills to M/s Patel & Co., and extrapolating it to entire quantity of tendu leaf purchased from all vendors during the impugned year and making an addition of Rs.1,32,15,180/- even after noticing that the said amount was adjusted by M/s Patel & Co, in their subsequent invoice and after conceding that there is neither any cash payment nor any payment outside the books.

12.3. The Learned AO having found that the claim of the Appellant was tenable at para 5.6 and having not controverted to the Appellant's statement that "all the vouchers have been properly documented post search and there is no discrepancy on this issue anymore" at para 5.7

of the impugned order dated 29.09.2021, was not justified in making the impugned addition of Rs.1,55,45,376/- on account purchase of tendu leaves.

12.4. The Learned AO erred in making the aforesaid addition without rejecting the books of accounts maintained by the Appellant.

12.5. The Learned AO erred in making the impugned addition that cannot be made merely based on the loose sheet found during the search, without any corroborative evidence merely based on suspicion, presumptions, surmises and conjectures.

12.6. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

12.7. Without prejudice, Learned AO erred in making the impugned addition for AY 2019-20 by way of extrapolation of the loose sheets found during the search which did not pertain to the impugned financial year 2018-19 and nothing pertaining to the impugned FY 2018-19 was found during the search.

13. As regards the valuation of stock:

13.1. The impugned addition of Rs.18,70,77,528/- towards account purchase of tendu leaves is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

13.2. The Learned AO erred in making the impugned addition of Rs.18,70,77,528/- by failing to appreciate that valuation of stock on net basis consistently is revenue neutral as compared to gross basis and is sufficient compliance with section 145A.

13.3. The Learned AO erred in making the aforesaid addition without rejecting the books of accounts maintained by the Appellant.

13.4. The Learned AO having conceded that "the duties/tax component in purchases is not included in valuation of Inventories resulting in lower gross profit if not followed consistently" has failed to appreciate that the Appellant has consistently valued the stock on net basis and the question of lowering the gross profit does not arise.

13.5. The Learned AO erred in failing to follow the doctrine of consistency which is evident from the fact that no addition was made in the AYs 2017-18 and 2018-19 even though the provisions of Section 145A and ICDS II were equally applicable for the said impugned years.

13.6. Without prejudice to the above, the Learned AO erred in making the impugned addition by presuming that reflection of Rs.20,29,07,399/- under "Any other item or items of addition under section 28 to 44DA" of the revised return dated 29.10.2020 and the belated return dated 09.02.2021 was towards undervaluation of stock whereas the appellant reflected the same value of stocks as supported by its books, audited financials and tax audit report, in all its returns.

13.7. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

13.8. Without prejudice, the Learned AO erred in making addition of Rs.18,70,77,583/- to the closing stock by applying section 145A read with ICDS II making corresponding adjustment to the opening stock.

14. As regards ad-hoc disallowance of labelling wages of Rs.26,14,691/:-

14.1. The impugned ad-hoc disallowance of Rs.26,14,691/- towards labelling wages is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

14.2. The Learned AO was not justified in making aforesaid ad-hoc disallowance of Rs.26,14,691/- arbitrarily and on an estimate basis, by extrapolating Rs.25 for every lakh beedies sold by the Appellant during the impugned year, without rejecting the books of accounts maintained by the Appellant.

14.3. The Learned AO was not justified in perversely stating that "Mr. Nagendra Pai, Executive Director of the company was provided with the relevant finding and the deposition of Mr Srinivas Acharya on the issue of Rs.1,97,021/- due to variation in record entered in cash book and wages ledger maintained for the PF and non PF workers", without application of mind when Mr. Srinivas Acharya has not given any such statement either on 26.02.2020 under Section 132(4) or on 25.06.2020 under Section 131.

14.4. The Learned AO was not justified in making the ad-hoc addition of Rs.26,14,691, without any evidence and on an erroneous presumption that there was inflation of Rs.25 for every lakh beedies sold by the Appellant in the impugned FY 2018-19 merely based on a statement of under Section 133A of one third party labelling contractor.

14.5. The Learned AO was not justified in making the addition of Rs.26,14,691/- on an erroneous presumption that the Appellant was inflating the labelling wages without appreciating the fact that the alleged inflations, if any, were made by third-party labelling contractors.

14.6. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

14.7. The Learned AO erred in making the impugned addition that was based on a statement of one, Mr. Ashok Shenoy, manager of M/s. Shenoy & Co u/s 133A which has no evidentiary value, as the officer taking such statement u/s 133A was not authorised to administer an oath and record a sworn statement.

14.8. Without prejudice, the Learned AO was not justified in making the impugned addition merely on the mistaken statements of Sri. Nagendra Pai, without any cogent evidence and without providing an opportunity to

cross-examine Mr. Ashok Shenoy, manager of M/s. Shenoy & Co. or other managers.

14.9. Without prejudice, Learned AO erred in making the impugned addition for AY 2019-20 on the basis of a statement under 133A of a third party which did not pertain to the impugned financial year 2018-19 and nothing pertaining to the impugned FY 2018-19 was found during the search.

14.10. Without prejudice, the Learned AO could have made addition of income only to the extent of alleged inflation of Rs.1,97,021/- made by Mr. Ashok Shenoy, manager of M/s. Shenoy & Co.

15. As regards disallowance under Section 14A r/w Rule 8D(2)(iii):

15.1. The Lower Authorities have failed to appreciate that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts of the appellant and without rejecting its books of account.

15.2. The Lower Authorities were not justified in making disallowance of Rs.43,02,821/- under section 14A r/w Rule 8D(2)(iii) when the Appellant had voluntarily disallowed the expenses of Rs.6,59,082/- which was directly attributable and the expense of Rs.4,00,000/- which was indirectly attributable to portfolio management services.

15.3. The Lower Authorities were not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) without appreciating that disallowance under Section 14A cannot be made in the absence of any proximate cause i.e. relationship of expenditure with exempt income.

15.4. The Learned AO was not justified in invoking Section 14A r/w Rule 8D(2)(iii) without first recording the exact expenditure incurred to earn exempt income to justify the impugned disallowance.

15.5. The Learned AO was not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) on the wrong notion that the disallowance is presumptive in nature even when the expenditure is not actually incurred.

15.6. Without prejudice, the Lower Authorities were not justified in acting inconsistently in as much as while they chose to disturb the voluntary disallowance of Rs.10,59,082/- under Section 14A in the revised and belated returns, they blindly taxed the non-existent income reflected in the very same returns.

15.7. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the average value of those investments, income from which are exempt shall alone be taken into consideration.

15.8. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the average value of those investments wherein all streams of income are exempted, shall alone be taken into consideration.

15.9. The Lower Authorities have failed to appreciate that the disallowance of expenditure incurred to earn exempted income has to be a smaller part of exempt income and should be a reasonable proportion to exempted income earned by the assessee in that year.

15.10. The Lower Authorities have failed to appreciate that no disallowance under Section 14A can be made towards the interest expenditure where the Appellant's interest-free funds exceed its interest-free investments.

For the above Grounds and for such other Grounds which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed."

Assessment Year 2020-21:

"1. The impugned orders of the lower authorities are not justified in law and on the facts and circumstances of the case.

2. As regards the assessment proceedings and the impugned assessment order dated 29.09.2021 being invalid and without jurisdiction:

2.1. The assessment proceeding and the impugned assessment order dated 29.09.2021 are bad and non-est as the notice under Section 143(2) dated 27.02.2021 was issued by the Learned Assistant Commissioner of Income

Tax Central Circle 2 before obtaining the jurisdiction vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.2. Without prejudice to the above, the assessment proceeding and the impugned assessment order dated 29.09.2021 are bad and non-est as the notice under Section 143(2) dated 27.02.2021 was issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 while the jurisdiction over the Appellant vests with the Learned Deputy Commissioner of Income Tax Central Circle 2 vide order of centralization of the Principal CIT, Mangalore dated 28.07.2021.

2.3. Without prejudice to the above, the assessment proceeding and the impugned assessment order dated 29.09.2021 are bad and non-est as the notice under Section 143(2) dated 27.02.2021 was issued by the Learned Assistant Commissioner of Income Tax Central Circle 2 instead of Additional Commissioner, NaFAC.

2.4. Without prejudice to the above, the assessment proceeding and the impugned assessment order dated 29.09.2021 are bad and non-est being based on the notice under Section 143(2) dated 27.02.2021 which is vague, without of application of mind and contrary to section 143(2) and applicable board circulars and instructions.

3. As regards the impugned assessment order and the demand notice dated 29.09.2021 are passed in violation of the Board's Circular No. 19/2019 dated 14.08.2019:

3.1. The impugned assessment order and the demand notice dated 29.09.2021 are bad and non-est as the same were not generated electronically on the ITBA Platform and communicated electronically in contravention of the aforesaid circular.

3.2. Without prejudice to the above, the impugned assessment order and the demand notice dated 29.09.2021 are bad and non-est as the same bear manually typed DIN in contravention of the aforesaid circular which requires auto generation and auto printing of DIN on the electronically generated document.

3.3. Without prejudice to the above, the impugned assessment order and the demand notice dated 29.09.2021 are bad and non-est as the same DIN viz

ITBA/AST/M/143(3)/2021-22/1035997134(1) was allotted to both documents thus rendering DIN non est which in turn rendered the above documents also non est.

4. The impugned searches conducted in the Appellant's premises on 26.02.2020, 22.05.2020 and 02.06.2020 on the basis of a single authorization of PDIT(Inv), Bangalore dated 20.02.2020 are bad and illegal thus rendering the impugned assessment null and void.

5. The impugned assessment order under Section 143(3) dated 29.09.2021 is bad and non-est as the same was subject to illegal intervention of the JCIT Central Range vide his approval letter F.No.26/Jt.CIT/CR/MNG/2021-22 dated 28.09.2021 which interfered with the independence of the Learned AO.

6. The search is invalid rendering resultant statements taken and consequent assessment invalid as the Authorised Officers appointed the witnesses who are not the inhabitants of the locality contrary to Rule 112(6) of the IT Rules and the search and seizure manual published by the department.

7. The statement under Section 132(4) dated 28.02.2020 taken from Nagendra Pai is invalid and without jurisdiction being fraught with material infirmities, without application of mind, and contrary to section 132(4) and board instructions and consequently the impugned additions of Rs.20,59,84,960/- based on such statements are liable to be set aside.

8. The statements under Section 132(4) dated 26.02.2020 taken from Mr. Subraya M Pai, Mr. Anand Pai and K Shrinivasa Acharya are invalid being without witnesses and contrary to section 132(4) and board instructions and consequently the impugned additions based on such statements are liable to be set aside.

9. The statements under Section 131 administered by the Deputy Director of Income Tax (Investigation) Unit 1, Mangalore post search were without jurisdiction, contrary to board instructions, without witness, taken under coercion and consequently the impugned additions of Rs.20,59,84,960/- based on

such statements are liable to be set aside.

10. The Learned AO erred in making various additions merely based on the statements under Section 132(4) and under Section 131 when the same were retracted in entirety by the Appellant by filing the original return under Section 139(1) dated 31.12.2020 without giving effect to the aforesaid statements and by filing letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and dated 12.07.2021 particularly when the originally returned income is based on audited financial statements and tax audit reports.

11. As regards the revised return filed on 09.02.2021 being invalid and not binding the Appellant:

11.1. The Learned AO erred in accepting the revised return on 09.02.2021 as a valid return and relying solely on it without appreciating that the said return cannot be regarded as a return eligible to fall under Section 139(5).

11.2. The Learned AO failed to appreciate that the alleged artificial income of Rs.20,59,84,960/- shown in the "Schedule BP - Computation of income from business or profession" of revised return filed only to avoid exorbitant penalty under Section 270A, without any basis and contrary to evidence on record, books of account, the audited financial statements and tax audit reports in Form 3CA & 3CD.

11.3. Without prejudice, the Learned AO was not justified in making addition of Rs.20,59,84,960/- merely based on the revised return on 09.02.2021, which is liable to be regarded as a defective return under Explanation to Section 139(9).

11.4. The Learned AO erred in making various additions on the basis of the revised return filed on 09.02.2021 when making such addition was objected vide Appellant's letter dated 12.07.2021 in reply to the notice under Section 142(1) dated 02.07.2021.

11.5. Without prejudice, the Learned AO erred in selectively using the revised return to his convenience by adopting pick and choose.

11.6. The Learned AO ought not to have assessed

Rs.20,59,84,960/- merely based on the revised return filed on 09.02.2021, without appreciating that there is no estoppel in law and the Learned AO should assess correct income based on material evidence without taking the advantage of vulnerability of the Appellant.

12. The Learned CIT(A) was not justified in failing to adjudicate various grounds raised by the Appellant, by wrongly holding that the income incorrectly offered in the revised return was "fait accompli and cannot be reopened for appeal purpose" and his actions are contrary to provisions of section 251 and settled principle that the duty of the Appellate Authority is to remove the defects or irregularities that occur in the course of the assessment proceeding.

13. As regards addition of Rs. 1,55,45,376/- on account purchase of tendu leaves;

13.1. The impugned addition of Rs. Rs. 1,55,45,376/- towards account purchase of tendu leaves is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

13.2. The Learned AO erred in treating Rs.5,50,150 as cash paid over and above three bills to M/s Patel & Co., and extrapolating it to entire quantity of tendu leaf purchased from all vendors during the impugned year and making an addition of Rs.1,55,45,376/- even after noticing that the said amount was adjusted by M/s Patel & Co, in their subsequent invoice and after conceding that there is neither any cash payment nor any payment outside the books.

13.3. The Learned AO having found that the claim of the Appellant was tenable at para 5.6 and having not controverted to the Appellant's statement that "all the vouchers have been properly documented post search and there is no discrepancy on this issue anymore" at para 5.7 of the impugned order dated 29.09.2021, was not justified in making the impugned addition of Rs.1,55,45,376/- on account purchase of tendu leaves.

13.4. The Learned AO erred in making the aforesaid addition without rejecting the books of accounts maintained by the Appellant.

13.5. The Learned AO erred in making the impugned addition that cannot be made merely based on the loose sheet found during the search, without any corroborative evidence merely based on suspicion, presumptions, surmises and conjectures.

13.6. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

13.7. Without prejudice, Learned AO erred in making the impugned addition for AY 2020-21 by way of extrapolation of the loose sheets found during the search which did not pertain to the impugned financial year 2019-20 and nothing pertaining to the impugned FY 2019-20 was found during the search.

14. As regards the valuation of stock;

14.1. The impugned addition of Rs.68,53,999/- towards account purchase of tendu leaves is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

14.2. The Learned AO erred in making the impugned addition of Rs.68,53,999/- by failing to appreciate that valuation of stock on net basis consistently is revenue neutral as compared to gross basis and is sufficient compliance with section 145A.

14.3. The Learned AO erred in making the aforesaid addition without rejecting the books of accounts maintained by the Appellant.

14.4. The Learned AO having conceded that "the duties/tax component in purchases is not included in valuation of Inventories resulting in lower gross profit if not

followed consistently" has failed to appreciate that the Appellant has consistently valued the stock on net basis and the question of lowering the gross profit does not arise.

14.5. The Learned AO erred in failing to follow the doctrine of consistency which is evident from the fact that no addition was made in the AYs 2017-18 and 2018-19 even though the provisions of Section 145A and ICDS II were equally applicable for the said impugned years.

14.6. Without prejudice to the above, the Learned AO erred in making the impugned addition by presuming that reflection of Rs. 20,59,84,960/- under "Any other item or items of addition under section 28 to 44DA" of the revised return dated 09.02.2021 was towards undervaluation of stock whereas the appellant reflected the same value of stocks as supported by its books, audited financials and tax audit report, in all its returns.

14.7. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

15. As regards ad-hoc and arbitrary disallowance of expenses of Rs.17,92,25,000/-:

15.1. The impugned ad-hoc and arbitrary disallowance of expenses of Rs.17,92,25,000/- is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

15.2. The impugned disallowance of Rs.17,92,25,000/- is bad being vague, without proper reasons, purely ad-hoc and being based on one isolated finding in one branch i.e. Karkala in respect of Rs.1,80,000/-, particularly when the said figure appears to be a balancing figure in the offer of Rs.60 Crores as extracted from the appellant under coercion during search proceedings vide statement of Mr. Nagendra Pai dated 18.08.2020 u/s 131.

15.3. The Learned AO erred in making aforesaid disallowance of Rs.17,92,25,000/- without rejecting the books of accounts maintained by the Appellant.

15.4. The Learned AO erred in making the above disallowance for alleged reasons of "improper documentation or non-production during the search" or "improperly vouched or the relevant vouchers were not made available for perusal and verification" when such accusations were neither made by the search team and nor were made by himself in his notice under Section 142(1) dated 02.07.2021 whereas on the contrary, the impugned disallowance was proposed to be made on account of "Cash expenditure in violation of provisions of section 40A(3)" in the said notice.

15.5. The Learned AO erred in perversely converting the offer of Rs.17,92,25,000/- under section 40A(3) extracted from the Appellant during search proceedings under coercion into a case of "improper documentation or non-production during the search" or "improperly vouched or the relevant vouchers were not made available for perusal and verification"

15.6. The Learned AO failed to appreciate that the proposed addition was towards "Cash expenditure in violation of provisions of section 40A(3)" in the notice under Section 142(1) dated 02.07.2021 which established that the entire expenditure of Rs.17,92,25,000/- otherwise qualified for deduction under Section 28 or 37(1).

15.7. The impugned addition is bad being based on the Learned AO's perverse and wrong narrative in para 7.4 and 7.5 of what transpired during search proceedings.

15.8. The Learned AO was not justified in making such ad-hoc disallowance on perverse allegation of "improper documentation or non-production during the search" or "improperly vouched or the relevant vouchers were not made available for perusal and verification" without seeking any such documents in the impugned notice under Section 142(1) dated 02.07.2021.

15.9. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide

letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

15.10. The Learned AO having not controverted to the Appellant's statement that "all the vouchers have been properly documented post search and there is no discrepancy on this issue anymore" at para 7.7 of the impugned order dated 29.09.2021, was not justified in making any addition on account of alleged improper documentation.

15.11. Without prejudice, the impugned addition is bad as Learned AO perversely stated that the executive director in his statement u/s 132(4) admitted the voluntary disclosure of Rs.20 Crores to cover up all the discrepancies detected during the search when no such admission was made by the executive director in his statement u/s 132(4) dated 28.02.2020.

15.12. Without prejudice to the above, the Learned AO erred in relying upon the statement u/s 132(4) dated 26.02.2020 of Mr. Srinivas Acharya, Manager of Karkala Branch when the same was administered by ADIT(Inv.) Mysuru without any witness.

15.13. Without prejudice to the above, even if the impugned disallowance was taken to be under Section 40A(3), the same is unsustainable as such disallowance can be made only in respect of clearly identified transactions and not on the basis of surmise, conjuncture and ad hoc estimate, particularly when the tax auditors have not pointed out any violation of said section.

15.14. Without prejudice to the above, the Learned AO failed to appreciate that the impugned payment made for the purchase of the timber/wood is covered under Rule 6DD(e)(i).

15.15. Without prejudice to the above, the Learned AO failed to appreciate that circumstances envisaged under Rule 6DD are only illustrative and not exhaustive and the case of Appellant does not warrant invocation of section 40A(3) as the impugned payments are genuine and are made out of business exigency.

15.16. Without prejudice to the Learned AO erred in making disallowance under section 40A(3) on the basis of unsigned post-dated vouchers.

15.17. Without prejudice to the Learned AO to appreciate that even in case of any transaction disallowed under Section 40A(3), disallowance has to be restricted only to the payment in excess of Rs.10,000/-.

16. As regards income declared by the directors of Rs.20,00,000:

16.1. The impugned addition of Rs.20,00,000/- declared by the directors is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

16.2. The Learned AO erred in making the impugned addition of Rs.20,00,000/- when no income accrued in the hands of the Appellant.

16.3. The Learned AO making the impugned addition of Rs.20,00,000/- merely based on suspicion, presumptions, surmises and conjectures as neither the directors nor even the Learned AO have clarity about the transaction, let alone accrual of any income to the Appellant.

16.4. The Learned AO erred in making aforesaid addition of Rs.20,00,000/- without rejecting the books of accounts maintained by the Appellant.

16.5. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

16.6. Without prejudice to the above, the Learned AO erred in relying upon the statements u/s 132(4) dated 26.02.2020 of Mr. Anand Pai and Subraya M Pai when the same were administered by DDIT(Inv) Unit 3(2) and ACIT Central Circle 2 respectively without any witness.

16.7. The Learned AO erred in making the impugned addition of Rs.20,00,000/- without appreciating that the statements of the Directors recorded in their residences could not have been taken under Section 132(4).

16.8. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

16.9. The Learned AO erred in making the impugned addition of Rs.20,00,000/-, on an ad-hoc basis without ascertaining the nature of the transaction, merely based on the WhatsApp chats which are inadmissible in the court and has no evidentiary value.

16.10. The Learned AO erred in making the impugned addition of Rs.20,00,000/- without appreciating that the Appellant is engaged in the manufacture of beedies and could not have earned any commission during the impugned year by engaging in real estate activity and the alleged WhatsApp message does not indicate any such transactions.

17. As regards ad-hoc disallowance of labelling wages of Rs.23,60,587:

17.1. The impugned ad-hoc disallowance of Rs.23,60,587/- towards labelling wages is not justified in the absence of any real income, without any incriminating evidence, not based on audited financial statements and tax audit report but being based exclusively on statements extracted under coercion and made contrary to F. No. 286/2/2003/I.T. (Inv.) dated 11.03.2003 and F.No.286/98/2013-IT (Inv.II) dated 18.12.2014.

17.2. The Learned AO was not justified in making aforesaid ad-hoc disallowance of Rs.23,60,587/- arbitrarily and on an estimate basis, by extrapolating Rs.25 for every lakh beedies sold by the Appellant during the impugned year, without rejecting the books of accounts maintained by the Appellant.

17.3. The Learned AO was not justified in perversely stating that "Mr. Nagendra Pai, Executive Director of the company was provided with the relevant finding and the deposition of Mr Srinivas Acharya on the issue of Rs.1,97,021/- due to variation in record entered in cash book and wages ledger maintained for the PF and non PF workers", without application of mind when Mr. Srinivas Acharya has not given any such statement either on

26.02.2020 under Section 132(4) or on 25.06.2020 under Section 131.

17.4. The Learned AO was not justified in making the ad-hoc addition of Rs.23,60,587/-, without any evidence and on an erroneous presumption that there was inflation of Rs.25 for every lakh beedies sold by the Appellant in the impugned FY 2019-20 merely based on a statement of under Section 133A of one third party labelling contractor.

17.5. The Learned AO was not justified in making the addition of Rs.23,60,587/- on an erroneous presumption that the Appellant was inflating the labelling wages without appreciating the fact that the alleged inflations, if any, were made by third-party labelling contractors.

17.6. The Learned AO erred in making the impugned addition merely on the basis of statements extracted from the Appellant during search proceedings under coercion, when the same were retracted by the Appellant vide letters dated 06.01.2021 (the copy of same was also filed before Learned Ad.CIT) and 12.07.2021.

17.7. The Learned AO erred in making the impugned addition that was based on a statement of one, Mr. Ashok Shenoy, manager of M/s. Shenoy & Co u/s 133A which has no evidentiary value, as the officer taking such statement u/s 133A was not authorised to administer an oath and record a sworn statement.

17.8. Without prejudice, the Learned AO was not justified in making the impugned addition merely on the mistaken statements of Sri. Nagendra Pai, without any cogent evidence and without providing an opportunity to cross-examine Mr. Ashok Shenoy, manager of M/s. Shenoy & Co. or other managers.

17.9. Without prejudice, the Learned AO could have made addition of income only to the extent of alleged inflation of Rs.1,97,021/- made by Mr. Ashok Shenoy, manager of M/s. Shenoy & Co.

18. As regards disallowance under Section 14A r/w Rule 8D(2)(iii):

18.1. The Lower Authorities have failed to appreciate that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts

of the appellant and without rejecting its books of account.

18.2. The Lower Authorities were not justified in making disallowance of Rs.65,99,480/- under section 14A r/w Rule 8D(2)(iii) when the Appellant had voluntarily disallowed the expense of Rs.4,79,802/- which was directly attributable to portfolio management services.

18.3. The Lower Authorities were not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) without appreciating that disallowance under Section 14A cannot be made in the absence of any proximate cause i.e. relationship of expenditure with exempt income.

18.4. The Learned AO was not justified in invoking Section 14A r/w Rule 8D(2)(iii) without first recording the exact expenditure incurred to earn exempt income to justify the impugned disallowance.

18.5. The Learned AO was not justified in making any disallowance under Section 14A r/w Rule 8D(2)(iii) on the wrong notion that the disallowance is presumptive in nature even when the expenditure is not actually incurred.

18.6. Without prejudice, the Lower Authorities were not justified in acting inconsistently in as much as while they chose to disturb the voluntary disallowance of Rs.4,79,802/- under Section 14A in the revised return, they blindly taxed the non-existent income reflected in the very same revised return.

18.7. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the average value of those investments, income from which are exempt shall alone be taken into consideration.

18.8. Without prejudice, the Lower Authorities have failed to appreciate that as per Rule 8D(2)(iii), only the average value of those investments wherein all streams of income are exempted, shall alone be taken into consideration.

18.9. The Lower Authorities have failed to appreciate that the disallowance of expenditure incurred to earn exempted income has to be a smaller part of exempt income and should be a reasonable proportion to exempted income earned by the assessee in that year.

18.10. The Lower Authorities have failed to appreciate that no disallowance under Section 14A can be made towards the interest expenditure where the Appellant's interest-free funds exceed its interest-free investments.

For the above Grounds and for such other Grounds which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed."

2. The brief facts of the case are that the assessee is a private limited company and engaged in the business of manufacturing and trading of hand rolled beedi. The assessee also derives income from hiring of heavy vehicles. The beedi rolling activity is outsourced to contract labourers. The assessee filed their return of income in respect of the disputed assessment years. There was a search and seizure action u/s. 132 of the Act on 26/02/2020. Thereafter, the case was centralized on 28/07/2020. After the search was made, the assessee filed a revised return u/s. 139(5) of the Act and the same was processed u/s. 143(1) of the Act. On comparing the original return with the revised return, there was an increase in the income declared in the revised return based on the various discrepancies noticed during the search proceedings. Thereafter notices u/s. 153A was issued on 04/11/2020 requesting the assessee to file a return of income. The assessee also for the A.Ys. 2019-20 and 2020-21 filed the very same income declared in the revised return. The AO thereafter issued notice u/s. 143(2) of the Act and based on the alleged incriminating material evidences detected during the course of search, the assessments has been made on the assessee by estimating huge incomes.

3. In respect of the A.Y. 2017-18, the AO had made the assessment u/s. 143(3) in which the AO had made an addition u/s. 14A of the Act. Apart from the said addition, there was no income added to the returned income.

4. Similarly, in respect of the A.Y. 2018-19, the AO had made an addition u/s. 14A of the Act since the assessee had received exempt income,

by not accepting the expenses shown by the assessee to earn the said exempted income.

5. Insofar as the assessment year 2019-20 is concerned, the AO made the additions under the following heads.

a) Disallowing the quantum of purchases of tendu leaves for want of documentation – Rs. 1,32,15,180/-
b) The addition made under the head undervaluation of stock u/s. 145A of the Act – Rs. 18,70,77,582/-
c) Labelling expenses – Rs. 26,14,691/-
d) Disallowance u/s. 14A – Rs. 53,61,903/-

6. Insofar as the assessment year 2020-21 is concerned, the AO made the additions under the following heads.

a) Disallowing the quantum of purchases of tendu leaves for want of documentation – Rs. 1,55,45,376/-
b) The addition made under the head undervaluation of stock u/s. 145A of the Act – Rs. 68,53,999/-
c) Addition for the contravention of section 40A(3) and insufficiency of vouchers – Rs. 17,92,25,000/-
d) Addition made based on the declaration given by the Director – Rs. 20 Lakhs
e) Labelling Expenses – Rs. 23,60,587/-
f) Addition based on the seizure of cash – Rs. 63 Lakhs
g) Disallowance u/s. 14A – Rs. 70,79,282/-

7. The AO made the additions based on the results of the search and also based on some discrepancy noticed at the time of search and also based on the survey conducted at the premises of the labour contractors. The AO also relied on the statements given by the Executive Director and his voluntary acceptance to add the income in order to cover the defects pointed out by the authorities at the time of search. Insofar as the Sec.14A disallowance, the AO had not accepted the claim made by the assessee for

the reason that the assessee had invested the surplus funds in the securities and earned exempt income when the assessee had borrowed funds from the banks and therefore the assessee had not utilised the surplus funds for investing in the business and invested the said amount in the securities and earned exempt income and therefore disallowed the expenditure and estimated the disallowance u/s. 14A r.w.Rule 8D.

8. Since the search was conducted on 26/02/2020 i.e. in the A.Y. 2020-21, the preceding six years were also taken up for assessment and notices u/s. 143(2) and notices u/s. 153A were issued to the assessee. In order to made the assessments based on the search conducted during the assessment year 2020-21, the assessing officer forwarded the draft assessment orders for approval u/s 153D of the Act to the Joint Commissioner of Income Tax, Central Range, Mangaluru on 27/09/2021. It is seen from the approval granted by the Joint Commissioner, he has granted approval for the A.Ys. commencing from 2014-15 to 2020-21 on 28/09/2021. Based on the said approval granted by the Joint Commissioner, the assessments in respect of the disputed years were completed either u/s. 143(3) or u/s. 153A of the Act.

9. The assessee challenged the assessment orders before the Ld.CIT(A)-2, Panaji and disputed the additions made pursuant to the search action conducted on 26/02/2020. Before the Ld.CIT(A), the assessee had disputed the addition made based on the statement given u/s. 132(4) when there is no incriminating materials available. The assessee further submitted that the authorities had made the additions based on the loose sheets without any corroborative evidence and therefore the said additions are also not warranted. Insofar as the addition on account of valuation of closing stock u/s. 145A of the Act, the assessee pointed out that if the method of adding the duties and taxes on the value of the closing stock is adopted, then similarly, the opening stock should also be valued in the same manner and therefore there is no reason for making the said addition on the valuation of the closing stock alone. Similarly, in respect of the labelling expenses

inflated, that too based on the statement given u/s. 132(4) and without having any incriminating evidence, it was submitted that addition could not be made on the assessee since the assessee had not inflated the labelling expenses.

10. The assessee also disputed the other additions and also relied on the judgment of the Hon'ble Supreme Court as well as the various High Courts in support of their contention that the additions are not required to be made. The Ld.CIT(A) had granted the partial relief in respect of the disallowance made u/s. 14A and directed the AO to grant deduction from the disallowance made u/s. 14A, the voluntary disallowance made by the appellant.

11. Insofar as the addition made based on the seizure of cash, the Ld.CIT(A) had deleted the said addition for A.Y. 2020-21 on the ground that the unaccounted sale of gunny bags were duly recorded and accounted for in the books and therefore no addition could be made u/s. 69A of the Act.

12. The Ld.CIT(A) had confirmed the other additions on the ground that the appellant had honoured the voluntary admissions made during the search and filed returns and paid taxes accordingly. Therefore the Ld.CIT(A) had considered the other grounds as infructuous. As against the said orders, the assessee is on appeal before this Tribunal.

13. The assessee also filed applications seeking the leave of this Tribunal to admit the additional legal grounds in respect of the A.Ys. 2018-19, 2019-20 and 2020-21 which are extracted as below:

Assessment Year 2018-19

> *"1. With reference to the above appeal, we request the Honourable Members to kindly permit us to take the following additional ground for the AY 2018-19:*
>
> ***Ground 3A: The impugned assessment order under Section 153A dated 29.09.2021 is bad and invalid***

as the same is barred by limitation under Section 153B(1).
2. It is submitted that the aforesaid ground was inadvertently not raised in the appeal memorandum. The aforesaid ground, being legal ground, may be decided on the basis of facts which are already on record. The omission to raise the aforesaid ground is not mala fide and willful.

3. Therefore, it is sincerely prayed before the Honourable Members that the leave to take up the aforesaid ground may kindly be granted for AY 2018-19.

4. The Affidavit in this regard is enclosed."

Assessment Year 2019-20

"1. With reference to the above appeal, we request the Honourable Members to kindly permit us to take the following additional ground for the AY 2019-20:
Ground 3A: The impugned assessment order under Section 153A dated 29.09.2021 is bad and invalid as the same is barred by limitation under Section 153B(1).

2. It is submitted that the aforesaid ground was inadvertently not raised in the appeal memorandum. The aforesaid ground, being legal ground, may be decided on the basis of facts which are already on record. The omission to raise the aforesaid ground is not mala fide and willful.

3. Therefore, it is sincerely prayed before the Honourable Members that the leave to take up the aforesaid ground may kindly be granted for AY 2019-20.

4. The Affidavit in this regard is enclosed."

Assessment Year 2020-21

"1. With reference to the above appeal, we request the Honourable Members to kindly permit us to take the following additional grounds for the AY 2020-21:
Ground 5A: The impugned assessment order under Section 143(3) dated 29.09.2021 is bad and invalid as the same is barred by limitation under Section 153B(1).

Gound 5B: The impugned assessment order under Section 143(3) dated 29.09.2021 is bad and non-est

as the Learned AO has obtained a single approval of the JCIT Central Range vide letter F.No.26/Jt.CIT/CR/MNG/2021-22 dated 28.09.2021 contrary to the phrase "in respect of each assessment year" under Section 153D.

2. It is submitted that the aforesaid grounds were inadvertently not raised in the appeal memorandum. The aforesaid grounds being legal grounds, may be decided on the basis of facts which are already on record. The omission to raise the aforesaid grounds is not mala fide and willful.

3. Therefore, it is sincerely prayed before the Honourable Members that the leave to take up the aforesaid grounds may kindly be granted for the AY 2020-21.

4. The Affidavit in this regard is enclosed."

14. The assessee filed the above additional legal grounds in addition to the legal grounds raised in the memorandum of appeal in form 36. We allowed the assessee to raise the additional grounds since they are all legal grounds, that can be raised at any stage by following the judgment of the Hon'ble Supreme Court reported in 229 ITR 383 in the case of National Thermal Power Co. Ltd. vs. CIT.

15. At the time of hearing, initially the Ld.Sr. Counsel made his submissions about the various legal grounds raised by the assessee in the main grounds of appeal as well as in the additional grounds filed before us. The Ld.Sr. Counsel attacked the assessment orders based on the single approval granted by the Joint Commissioner and also relied on the various judgments in support of his contention that the single approval for all the A.Ys. is bad in law and therefore the consequential orders passed pursuant to the said approval is also bad in law. The Ld.Sr. Counsel further submitted that the revised return filed u/s. 139(5) of the Act is not a correct revised return and he relied on the several judgments to his contention and prayed that the income declared under the revised return could not be taken as the correct income. The Ld.Sr. Counsel further submitted that the additions made based on the statements recorded and based on the loose

sheets also are not sustainable when there is no corroborative evidence available with the department. The Ld.Sr. Counsel also took us through the approval given by the Joint Commissioner u/s. 153D of the Act and pointed out that the Ld.JCIT had not applied his mind properly before granting approval u/s. 153D of the Act. The Ld.Sr. Counsel also brought to our notice the various discrepancies in the approval letter dated 28/09/2021 and therefore submitted that the approval granted by the Joint Commissioner is bad in law and consequently assessment orders made based on the said approval has to be set aside. The assessee also filed 3 volumes of paper book enclosing the various notices issued by the authorities and the statements recorded u/s. 132(4), copy of panchanama and also the copies of the loose sheets, two bills of M/s. Patel & Co. and postdated invoices which are all seized at the time of search as incriminating materials. The assessee also filed separate paper books for A.Ys. 2017-18, 2018-19 and 2019-20 in which the written submissions were also enclosed. The assessee also filed Convenience Compilation I to IV in which the various rulings were enclosed in support of their legal as well as other grounds raised by the assessee.

16. The assessee also filed a summary of arguments made by the Ld.Sr. Counsel to the objections filed by the Ld.DR and prayed to allow the appeal filed by the assessee.

17. The Ld.DR relied on the orders of the lower authorities and he relied on the written submissions filed by him in which the Ld.DR had differentiated the judgments relied on by the Ld.Sr. Counsel and prayed to dismiss the appeals filed by the assessee.

18. We have heard the arguments of both sides and perused the materials available on record.

19. As seen from the proceedings of the AO, the assessments were made based on the search operation conducted on 26/02/2020 and also based on

the statement given by the Directors and also based on the alleged recovery of incriminating documents. We have also perused the written submissions made by the Ld.DR which reads as follows:

"The following case laws quoted by the counsel of the assessee during the hearing does not apply to the facts of the present case as distinguished as below:

Sl. No.	***Citation***	***Name of the Parties***	***Reasons for distinguishing the case of the Assessee***
1	*[1996] 86 Taxman 122 (Sc)*	*Kumar Jagdish Chandra Sinha V. Commissioner of Income-Tax*	*The contention of the Assessee is that the revised return filed on 29/10/2020 was non-est as the same. As the original return dated 30/09/2019 which abated due to search initiated on 26/02/2020.* *The assessee did not file returns within the period prescribed by section 139(1) and no notice under section 139(2) was served upon him. However, he filed returns under section 139(4). After a period of about four years, he filed revised returns. The Assessing Officer did not complete the assessments before the expiry of four years from the end of the assessment years.* *Thus, the facts of the case are clearly distinguishable as the Assesse has filed the return on due date on 30/09/2019. And due to search initiated on 26/02/2020 the proceedings got abated. The fact reminds that the revised return filed u/s. 139(5) of the Act. On 29/10/2020. Was processed u/s. 143(1) of the*

			act.
2	*[2017] 87 Taxmann.Com 244 (Karnataka)*	*Sharavathy Conductors (P.) Ltd. V. Chief Commissioner of Income-Tax, Bengaluru-2**	*Assesse cited case deals with condonation of delay in filing a revised return of income for the Assessment Year 1997-98 under Section 119(2)(b) of the Income" Tax Act, 1961.* *The petitioner, Sharavathy Conductors (P.) Ltd., had filed a revised return claiming deduction under Section 80HHC, which was not claimed in the original return. However, the Chief Commissioner of Income-Tax rejected the petitioner's application for condonation of delay, stating that the claim was debatable and not a genuine hardship.* *The court upheld the decision of the Chief Commissioner, stating that the condonation of delay is a discretionary matter and the authority's decision cannot be interfered with unless it is arbitrary or unreasonable.*

3	*[2023] 155 Taxmann.Com 606 (Delhi)*	*Principal Commissioner of Income-Tax-7 V. Optimal Media Solutions Ltd.*	*The case law citied by the Assesse, The Head Note which reads below Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Quantum of disallowance) - Assessment year 2009-10 - Assessing Officer made addition amounting to Rs. 23.27 lakhs under section 14A, read with rule 8D-Commissioner (Appeals) restricted disallowance to Rs. 13.46 lakhs which was sustained by Tribunal - On appeal to High Court it was found that Assessing Officer had wrongly taken into account investments other than investments made to earn exempt income – Commissioner (Appeals) had correctly applied formula prescribed under rule 8D(2)(iii) - Whether thus, no substantial question of law arose for consideration - Held, yes. As such the matter considered by The High Court of Delhi that's not impugned upon facts of the case of the Assesse.*

4	*2000] 109 Taxman 225 (Sc)*	*Commissioner of Income-Tax V. Mahendra Mills/Arun Textile `C'/Humphreys / Glassgow Consultants*	*Assesse cited case relates to u/s. 132 of the Income Tax Act 1961. Whereas the citied case law pertains to the Sec. 32 r. w. 34 of the Income Tax Act 1961. Allowability of the claim of the depreciation has never been the subject matter in case of the Assess either of the below authorities. i.e. Assessing officer and C.I.T.(Appeals).*
5	*[2015] 57 Taxmann.Com 439*	*K. Nagesh V. Assistant Commissioner of Income-Tax, Bangalore*	*The assesse cited case law deals with the issue of refund of excess tax paid by the assessee. The assessee, K. Nagesh, had filed a revised return of income declaring additional income and paid tax accordingly. However, the revised return was later held to be invalid by the authorities.* *The key question before the court was whether the assessee was entitled to a refund of the excess tax paid on the revised return. The court ultimately held that the assessee was not entitled to a refund, as the tax paid on the revised return was not "legally recoverable" '.* *In the present case of assessee the invalid return filing is deliberate and intentional and present case is search case which is completely different from the assessee cited case law.*

6	*[2023] 149 Taxmann.Com 373*	*Principal Commissioner of Income-Tax V. Subodh Agarwal*	*The assessee cited case deals Where draft assessment orders for 38 cases which included assessee's case as well were placed before Approving Authority which were approved on same day and further final assessment orders were also passed on same day itself, it was humanly impossible to peruse records of all 38 cases in one day to apply independent mind to appraise material before Approving Authority and, therefore, Tribunal rightly concluded that it was mechanical exercise of power which vitiated entire proceedings.* ***However, in the present case it is to be mentioned; that the copy of approval dated 28/09/2021 as not been brought on record and placed for evaluation.*** *In this regard on similar facts in the case of M/s. M.S.P.L. vs. ACIT in ITA No.. 372 to 374 /BNG/2011 dated 14/08/2024 for the Assessment years 2006/07 to 2008/09. This Hon'ble tribunal as held as under in Para 11 "It is also worthy to note that this plea was never raised before the CIT(A). However, being a legal plea, it can always be raised before the Tribunal at any time of the appellate proceedings, provided no fresh facts are to be looked into Further we find force*

			*in the contention of the learned DR in his written submissions that without seeing the copy of approval under section 153D, it is not justifiable to comment whether the same was mechanical or after due application of mind. Therefore, in the interest of justice, we remit this matter back to the file of CIT(A) with a direction that the Ld CIT(A) will * call for the assessment record and observe as to the wordings of the approval (bearing number 51(2) /Addl/CIT/CR/09-10/20 dated 31.12.2009) used by authority, whether it was a consolidated approval for all years or separate etc. If this document is there, then the CIT(A) would decide the issue in accordance with law as declared by Hon'ble Orrisa High Court, Delhi High Court and Allahabad High Court. In case there is no such letter 51(2) /Addl/CIT/CR/09-10/20 dated 31.12.2009 then also the CIT(A) will also ponder on the issue as per the law. Since we have set aside the matter for reconsideration on the legal issue raised in additional ground application as ground number-2, we are not deciding the other issues raised in additional ground application as well as grounds relating to the merits of the case."*

7	*[2024] 163 Taxmann.Com 9 (Delhi)*	*Principal Commissioner of Income-Tax V. Shiv Kumar Nayyar*	*The assessee cited case deals Where draft assessment orders for 43 cases which included assessee's case as well were placed before Approving Authority which were approved on same day and further final assessment orders were also passed on same day itself, it was humanly impossible to peruse records of all 38 cases in one day to apply independent mind to appraise material before Approving Authority and, therefore, Tribunal rightly concluded that it was mechanical exercise of power which vitiated entire proceedings. However, in the present case it is to be mentioned that the copy of approval dated 28/09/2021 as not been brought on record and placed for evaluation.* *In this regard on similar facts in the case of M/s. M.S.P.L. vs. ACIT in ITA No. 372 to 374 /BNG/2011 dated 14/08/2024 for the Assessment years 2006/07 to 2008/09. This Hon'ble tribunal as held as under in Para 11 "It is also worthy to note that this plea was never raised before the CIT(A). However, being a legal plea, it can always*

			be raised before the Tribunal at any time of the appellate proceedings, provided no fresh facts are to be looked into Further we find force in the contention of the learned DR in his written submissions that without seeing the copy of approval under section 153D, it is not justifiable to comment whether the same was mechanical or after due application of mind. Therefore, in the interest of justice, we remit this matter back to the file of CIT(A) with a direction that the LdCIT(A) will call for the assessment record and observe as to the wordings of the approval (bearing number 51(2) /Addl/ CIT/CR/09-10/20 dated 31.12.2009) used by authority, whether it was a consolidated approval for all years or separate etc. If this document is there, then the CIT(A) would decide the issue in accordance with law as declared by Hon'ble Orrisa High Court, Delhi - High Court and Allahabad High Court. In case there is no such letter 51(2) /Addl/CIT/CR/09-10/20 dated 31.12.2009 then also the CIT(A) will also ponder on the issue as per the law. Since we have set aside the matter for reconsideration on the legal issue raised in additional ground application as ground number-2, we are not deciding the other issues raised in additional ground application as well as grounds relating to the merits of the case."

8	*[2024] 161 Taxmann.Com 485 (Delhi)*	*Saksham Commodities Ltd. V. Income Tax officer*	*Assessee cited case law relates to reopening or assessing all over again all ten assessment years that could possibly form part of block of ten years which obviously is not the facts of the case of the asssessee.*
9	*[1977] 110 ITR 602 (Mad.)*	*Commissioner of Income-Tax V. J.K.A. Subramania Chettiar*	*The Assesse cited case law pertains to the penalties related to income concealment under the Income-tax Act. It establishes a clear precedent that* ***intentional concealment of income is*** *punishable regardless of* ***subsequent disclosures or revised returns.*** *The court extensively analysed previous precedents to solidify its stance on the interpretation and applicability of sections 139(5) and 271(1)(c) of the Act. The assesse himself admitted and revised the returns along with some additions after the search which has made assesse to pay the tax amount* ***mere filing of a revised return does not absolve the assessee from the consequences of intentional concealment.*** *As such the facts of the case of the assessee not impacted by the above decision of the Hon'ble High court.*

20. We have also gone through the summary of arguments submitted by the Ld.Sr. Counsel in respect of the disputed assessment years which reads as follows:

Assessment Year 2017-18:

1. *It is submitted that the Assessee's Appeal in ITA No. 642/BANG/2024 for the AY. 2016-17 was heard by the Hon'ble Bench on 22.01.2025. We had instructed Senior Counsel Mr. K.K. Chythanya to argue this matter. During the hearing, following two grounds were argued.*

   a) *The impugned assessment proceedings and the impugned assessment order under Section 143(3) dated 29.11.2021 are bad and non-est since the notice under Section 143(2) dated 13.08.2018 was issued without affixing any signature either manually or digitally. (Ground 2)*

   b) *The Lower Authorities have failed to appreciate that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts of the appellant and without rejecting its books of account. (Ground 4.1)*

2. *After hearing the aforesaid 2 grounds, the Hon'ble Bench directed the Learned Department Representative (DR) file his objection on the aforesaid grounds by 30.01.2025. The Learned DR accordingly has filed his objections on 30.01.2025.*

3. *In the said objections filed by the Learned DR on 30.01.2024, the Learned DR has not brought any new materials contrary to the submissions made by the Appellant. The Learned DR has not relied on any new cases. He has only attempted to distinguish one case i.e. PCIT V. Optimal Media Solutions Ltd. [2023] 155 Taxmann.Com 606 (Delhi) which dealt with the merits of the case.*

4. *Considering the said objections filed by the Learned DR, as directed by the Hon'ble Bench to file a summary of arguments of Senior Counsel Mr. K.K. Chythanya on the aforesaid grounds by 07.02.2025, the following submission is made;*

5. ***As regards unsigned notice under Section 143(2) dated 13.08.2018:***

5.1. Refer 143(2) notice dated 13.08.2018 issued by ACIT CIRCLE 2(1), Mangalore. The same is invalid as the same was not signed either manually or digitally. ***{PB Annexure 1 – Pg.121 -122}***

5.2. The Learned DR has not furnished a signed copy of the notice under Section 143(2) in his objection dated 30.01.2025.

5.3. In the absence of a digital/manual signature on the said notice under Section 143(2), the said notice is bad and invalid.

5.4. The requirement of affixing a signature either manually or digitally is still mandatory under Section 282A of the Act. Reliance is placed on the following decisions:

Cases	***Reference***
Reuters Asia Pacific Ltd. v. DCIT [2023] 157 taxmann.com 705 (Mumbai - Trib.) (para 10 to 18)	*CLI 3 – Pg. 1774 -1776*
M/S TOYOTA TAUSHO INDIA PRIVATE LIMITED v. DCIT WP NO. 19053 OF 2021 (T-IT) (KAR HC) (para 7 & 8)	*CLI 3 – Pg. 1778 – 1779*
*Yeshoda Electricals v. Dy. CIT [ITA No. 1175/B/2016, dated 03.02.2021] (Bang. – Trib.) (para 38 -39_*	*CLI 3 – Pg.1800 – 1803*
Vikas Gupta v. UOI [2022] 448 ITR 1 (Allahabad) (para 22 to 25)	*CLI 3 – Pg.1814 - 1816*

5.5. The assessment is bad without a valid notice under Section 143(2). Reliance is placed on:

Cases	***Reference***
Himalaya Drug Company [TS-992-HC-2021(KAR)], (para 15 – 20) *[Revenue's SLP dismissed in TS-834-SC-2024]*	*CLI 1 – Pg.18 -24* *CLI 4 – Pg.1886*
CIT v. Kurban Hussain Ibrahimji Mithiborwala, (1972) 4 SCC 394 (page 2)	*CLI 1 – Pg.29*
ACIT vs. Hotel Blue Moon, [2010] 321 ITR 362 (SC) (para 13 & 15)	*CLI 1 – Pg.33*

6. ***As regards absence of recording non-satisfaction for invoking satisfaction:***

6.1. It is submitted that the Learned AO cannot invoke Section 14A in the absence of recording non-satisfaction with regard to the claim of the assessee and without examining the accounts of the appellant and without rejecting its books of account. Section 14A(2) emphasises "if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee".

6.2. In the instant case, it is submitted that the claim made by the Appellant was not accepted by the AO without even verifying the Appellant's books of account. AO could not have arrived at the requisite satisfaction for invoking Section 14A without verifying the Appellant's books of accounts.

*6.3. Learned AO was not justified in invoking Section 14A r/w Rule 8D(2)(iii) without first recording the exact expenditure incurred to earn exempt income to justify the impugned disallowance. This is contrary to Appellant's own case in ITA 177/2019, the Hon'ble Jurisdictional High Court (para 15) {**CLI 3 – Pg.1534 & 1535**}.*

6.4. AO has failed to appreciate that satisfaction contemplated in section 14A(2) is an objective one and not a subjective one based on some vague assumptions

Cases	***Reference***
Maxopp Investment Ltd. vs. CIT, [2018] 402 ITR 640 SC (para 41)	*CLI 3 – Pg.1601*
CIT v. Brigade Enterprises [2020] 429 ITR 615 (Karnataka) (para 9)	*CLI 3 - Pg.1606*

*6.5. A reference may be made to para 4.7 of the assessment order {**App Annexure 3: Pg.51**}. The Learned AO states that "The methodology provided under rule 8D clearly allow working of such expenditure on proportionate basis, even if it is not actually incurred. **It is not that the same has to be actually incurred and the expenditure is presumptive in nature, as could be seen from the method prescribed under rule 8D".** This again is contrary to Appellant's own case in ITA 177/2019, the Hon'ble Jurisdictional High Court (para 15) wherein it was held that AO should record exact expenditure incurred to earn exempt income. Hence the Learned AO*

has made disallowance under Section 14A on a wrong notion that the disallowance is presumptive in nature even when the expenditure is not actually incurred.

6.6. It is submitted that the Learned DR has not brought anything contrary to the above submissions in his objections dated 30.01.2025. Therefore, the disallowance made by the Learned AO under Section 14A without recording the satisfaction is bad and invalid.

7. ***Based on the above submissions, it is humbly prayed that the impugned order for AY 2017-18 may be quashed.***

Assessment Years 2018-19 to 2020-21:

1. *It is submitted that the Assessee's Appeal in ITA Nos. 645, 644 and 643/BANG/2024 for the AYs. 2020-21, 2019-20 and 2018-19 respectively were heard by the Hon'ble Bench on 22.01.2025. We had instructed Senior Counsel Mr. K.K. Chythanya to argue this matter. During the hearing, the following three grounds were argued:*

   c) *The impugned assessment order under Section 143(3) dated 29.09.2021 is bad and non-est as the Learned AO has obtained a single approval of the JCIT Central Range vide letter F.No.26/Jt.CIT/CR/MNG/2021-22 dated 28.09.2021 contrary to the phrase "in respect of each assessment year" under Section 153D.* ***(Addnl. Ground 5B for AY 2020-21 and similar ground in Ground 4 for AY 2019-20 and 2018-19)***

   d) *The Learned AO erred in accepting the revised return on 09.02.2021 as a valid return and relying solely on it without appreciating that the said return cannot be regarded as a return eligible to fall under Section 139(5).* ***(Ground 11.1 for AY 2020-21 and similar ground in Ground 9.2 for AY 2019-20)***

   e) *The Learned AO has no jurisdiction to accept the belated return filed on 09.02.2021 in response to notice under Section 153A as provisions of Section 153A do provide any authority to the Learned AO to condone any delay.* ***(Ground 10.1 for AY 2019-20 and similar ground in Ground 7.2 for AY 2018-19)***

2. *After hearing the aforesaid 3 grounds, the Hon'ble Bench directed the Learned Department Representative (DR) file his objection on the*

aforesaid grounds by 30.01.2025. The Learned DR accordingly has filed his objections on 30.01.2025.

3. *Considering the said objections filed by the Learned DR, as directed by the Hon'ble Bench to file a summary of arguments of Senior Counsel Mr. K.K. Chythanya on the aforesaid grounds by 07.02.2025, the following submission is made;*

4. ***As regards 153D dated 28.09.2021 approval being bad and invalid:***

4.1. A reference may be made to Section 153D. The use of negative language like "no order of assessment or reassessment shall be passed" and "except" emphasize that the provisions of Section 153D have to be strictly construed. Further, Section 153D uses the word "shall" that clearly indicates the provision to be mandatory.

4.2. Section 153D emphasis the phrase "in respect of each assessment year". In this regard, a reference may be made to Section 153A(1)(a). It states, "the return of income ***in respect of each assessment year falling within six assessment years and for the relevant assessment year****". The First Proviso to Section 153A(1)(a) already provides that the Assessing Officer shall assess or reassess the total income* ***in respect of each assessment year*** *falling within such six assessment years and for the relevant assessment year or years. Therefore, use of the phrase "in respect of each assessment year" all over again in section 153D which specifically deals with the prior approval only indicates that separate approval has to be obtained for each assessment year. If not so understood, the aforesaid phrase becomes nugatory.*

4.3. In contrast to the above, Section 148B uses the phrase "in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval" It may be noted that though several assessment years may be involved, the Parliament has not used the word 'each assessment year' as used in Section 153D.

4.4. Hence, the Learned AO cannot pass the assessment orders for the AYs 2017-18, 2018-19, 2019-20 & 2020-21 without the separate approvals of the JCIT in respect of each assessment year.

4.5. However, in the instant case, a single approval u/s 153D dated 28.09.2021 is given for AYs 2014-15 to 2020-21. ***[PB Annexure 12 – Page 842]***

4.6. It is submitted that AYs 2014-15 to 2019-20 fall in the 1st limb of 153D, while AY 2020-21 falls in the 2nd limb of 153D.

4.7. Hence the single approval u/s 153D dated 28.09.2021 and the assessment orders passed for the AYs 2020-21, 2019-20 and 2018-19 are bad and invalid. Reliance is placed on the following decisions:

Cases	***Reference***
PCIT v. Subodh Agarwal [2023] 149 taxmann.com 373 (Allahabad) (para 15 to 20)	***CLI 1 – Pg. 542-543***
Shiv Kumar Nayyar [TS-343-HC-2024(DEL)] (para 11-19)	***CLI 1 – Pg. 545-547***
Saksham Commodities Pvt. Ltd. v. ITO 464 ITR 1 Delhi (para 58)	***CLI 1 – Pg.583***
Bangalore Golf Club v. ACCT - WP NO. 16500 OF 2024 (T-RES) (KAR HC) (para 4-7)	***CLI 1 – Pg. 537 – 538***
Veremax Technologie Services Limited Vs ACCT (Kar HC) WP No.15810 of 2024 (T-RES) (para 3 – 6)	***CLI 4 – Pg. 1894-1896***
Titan Co. Ltd. v. Commr. of GST, (2024) 124 GSTR 449 (Mad) (para 15-16)	***CLI 4 - Pg. 1900***
Haries Muhammed v. AC SGST 2024-TIOL-1952-HC-KERALA-GST (para 5)	***CLI 4 - Pg.1980***
M/s. Mfar Holdings Pvt. Ltd., v. ACIT ITA No. 1931/Bang/2017 dated 25-10-2023 (para 7)	***CLI 1 – Pg. 599-600***
Aaryan Motels 88 Taxmann.com 7 Agra (para 12 & 13)	***CLI 2 – Pg. 611***
Barnala Steel Industries 74 ITR TRI SN 83 Delhi (para 12 & 13)	***CLI 2 – Pg. 619***
NR TMT (India) Pvt. Ltd. [TS-32-ITAT-2025(RAI)]	

4.8. Apart from the above, the aforesaid approval dated 28.09.2021 ***[PB Annexure 12 – Page 842]*** *is made by the Learned JCIT mechanically, erroneously and without verification of the assessment records. The same is evident from the following:*

*a) As per the approval u/s 153D dated 28.09.2021**,** the Learned JCIT has received the drafts of the assessment orders for AYs 2014-15 to*

2020-21 on 27.09.2021. Hence the Learned JCIT has approved these 7 assessment orders on 28.09.2021 within one day. It is submitted that as per the Learned JCIT's letter dated 12.12.2024 (furnished before the Hon'ble Bench), the Learned JCIT has approved 27 assessment orders on 28.09.2021. Hence the approval is mechanical and invalid. Reliance is placed on Chhugamal Rajpal vs. S.P. Chaliha [1971] 79 ITR 603 (SC) (para 5) ***{CLI 2 – Pg. 664-665}***

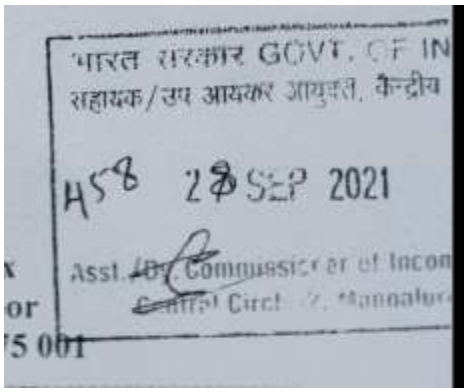
b) *Further, the aforesaid approval dated 28.09.2021 is not an approval at all. In the 2nd para of the approval, the Learned JCIT states :*

I have gone through the above draft assessment orders and materials on record. After perusal of the same, the draft assessment orders referred above are approved u/s 153D of the Income Tax Act, 1961. You are directed to check the returned income, assessed income, tax calculations, order sheet notings, initiation of penalty if any, once again before passing the final orders.

c) *The aforesaid directions "**You are directed to check the returned income, assessed income, tax calculations, older sheet notings. initiation of penalty if any,** once again before passing the final order" shows that the Learned JCIT has not verified the said documents while approving. The same also indicates that the return and assessment records were not submitted by the Learned AO to Learned JCIT.*

d) *Further, the aforesaid direction "to check the returned income, assessed income, tax calculations, older sheet notings. initiation of penalty if any, once again before passing the final order" to Learned AO after approving under Section 153D renders the approval non-est and invalid. It is submitted that once the draft of the assessment order is submitted to the Learned JCIT, Learned AO becomes functus officio. Reliance is placed on Panchamahal Steel Ltd. v. ITO [1997] 225 ITR 458 (SC) and NR TMT (India) Pvt. Ltd. [TS-32-ITAT-2025(RAI)].*

e) *The said approval dated 28.09.2021 bears two seals. One at the bottom belongs to DCIT; another at the right-hand top corner belongs to ACIT/DCIT. It is submitted that neither of the seals belong to the Learned JCIT. The extracts of the seals are as under:*



f)The Appellant had not filed any return for the AY 2020-21 in reply to the notice under Section 153A. The said AY 2020-21 being the search year, no notice under Section 153A was issued by the Learned AO. However, in the table at 1st para of the approval dated 28.09.2021, the Learned JCIT erred in assuming that the return under Section 153A was filed for the AY 2020-21. This also supports our contention that the assessments records were not verified by the Learned JCIT.

*g) The correct returned income for the AY 2017-18 is Rs.67,82,12,350/- {**Refer Assessment Order for the AY 2017-18 in Form 36 for AY 2017-18; Pg.53**}. However, in the table at 1st para of the approval dated 28.09.2021, the Learned JCIT erroneously states that the returned income of the AY 2017-18 was Rs.68,68,43,155/-. This also supports our contention that the assessments records were not verified by the Learned JCIT.*

*h) The Learned JCIT gave an approval under Section 153D despite the Learned AO's erroneous statement that the case of the assessee was centralized with the DCIT Central Circle-2, vide Order of the Pr. CIT, Mangalore in F.No./C-13/Pr.CIT/MNG/2020-21 **dated 28.07.2021** in all the assessment orders for AYs 2017-18 to 2020-21. As per the department's own records, the centralization was ordered on 28.07.2020.*

4.9. It is submitted that the Learned DR has not brought anything contrary to the above submissions in his objections dated 30.01.2025.

4.10. Further, it is submitted that the said approval dated 28.09.2021 is a manual approval without DIN. The same is contrary to Circular No. 19/ 2019 dated 14.08.2019. Hence the said approval is invalid. Reliance is placed on Finesse International Design (P.) Ltd. v. DCIT

[2023] 157 taxmann.com 271 (Delhi - Trib.) (para 20) ***{CLI 2 – Pg. 629}.***

4.11. Hence the approval under Section 153D dated 28.09.2021 is bad and invalid. Consequently, the assessment orders for the AYs 2018-19, 2019-20 and 2020-21 are bad and invalid without valid approval under Section 153D.

5. ***As regards revised return filed being invalid and contrary to Section 139(5)***

5.1. The Assessee filed the original return of income for the AY 2020-21 under Section 139(1) on 31.12.2020 ***{PB Annexure 22 – Pg.931}*** *on the basis of the Audited financial statements; audited books of account and Tax Audit Report in form 3CA and 3CD.*

5.2. In the said original return filed for the AY 2020-21, the Assessee has declared the correct income of Rs.106,64,35,620/-. The Assessee by declaring the correct income of Rs.106,64,35,620/- in the original return in substance retracted the Statements u/s 132(4) & 131(1A). Reliance is placed on CBDT letter F.No. 286/2/2003-IT(Inv.11) dt. 10-03-2003 ***{CLI 2 – Pg. 709}****. After filing the original return of income on 31.12.2020, the Appellant also filed the 1st retraction letter on 06.01.2021* ***{PB Annexure 25 – Pg. 971}.***

5.3. Subsequently, the Appellant filed a return on 09.02.2021 by including the artificial additional income of Rs.20,59,84,962 for the AY 2020-21. ***{PB Annexure 27 – Pg.1063}***

5.4. As demonstrated during the hearing, vide the said return dated 09.02.2021, the income of the Appellant was artificially enhanced to Rs.127,24,20,580/- as against the correct income Rs.106,64,35,620/- declared in original return. A comparison of "Schedule BP - Computation of income from business or profession" in original return ***{PB Annexure 22 – Pg.931}*** *and in the return filed 09.02.2021* ***{PB Annexure 27 – Pg. 1088}*** *makes this clear.*

5.5. After filing the return on 09.02.2021, the Appellant has filed the 2nd retraction letter dated 12.07.2021 before the Learned AO ***{CLI 4 – Pg.1819}****. In the said letter the Appellant also referred the 1st retraction letter dated 06.01.2021. A copy of the 2nd retraction letter dated 12.07.2021 was also furnished to Learned Ad. CIT. However, the Learned AO, without referring to the retraction letters,*

conveniently made the addition of Rs.20,59,84,962/- merely relying on the return dated 09.02.2021.

*5.6. In the Form 35, the Appellant has raised the Ground 2 "assessing officer is not fair to accept the returned income declared in coercion" {**App. Annexure 2 Pg.71 & 72**}.*

*5.7. A letter dated 13.12.2023 was filed before the Learned CIT(A) requesting to disregard the return dated 09.02.2024 {**PB Annexure 28 – Pg.1098-1103**}.*

*5.8. The Learned CIT(A) passed order without adjudicating grounds holding the income incorrectly offered in the return 09.02.2021 was "fait accompli and cannot be reopened for appeal purpose" {**App. Annexure 1- Pg. 58**}.*

*5.9. It is submitted that the return filed on 09.02.2021 is an invalid return and cannot be regarded as a revised return under Section 139(5) as there was no discovery of an omission or a wrong statement in the original return filed on 31.12.2020. It is submitted a revised return under section 139(5) can be filed only if there is discovery of an omission or a wrong statement in the original return. The reliance is placed on PCIT v. Wipro Ltd. [2022] 446 ITR 1 (SC) {**CLI 2 – Pg. 808**}.*

*5.10. A reference may be made to the Statement u/s 132(4) of Mr. Nagendra Pai, Executive Director dated 28.2.2020. In the said statement, an ad hoc income of Rs.60 Crores was offered AYs 2019-20 & 2020-21 {**PB Annexure 14 – Pg. 849**}. A reference may be made to Statement u/s 131(1A) of Mr. Nagendra Pai, Executive Director dated 18.8.2020. In the said statement, the above Rs. 60 Crores was broken down into various additions for AYs 2019-20 & 2020-21 {**PB Annexure 17 : Pg.883 and 884**}.*

*5.11. Despite the knowledge of the above statements, the Appellant subsequently filed the original return of income on 31.12.2020 for AY 2020-21 without offering the above income to tax {**PB Annexure 22 – Pg.931**}. The Appellant consciously did not include the above amounts in the original return filed on 31.12.2020. Therefore the return filed on 09.02.2021 cannot be treated as a revised return as there was no discovery of any omission or any wrong statement in the original return. Hence the return filed on 09.02.2021 is not a return filed under Section 139(5) and the same is an invalid return:*

Cases	***Reference***
CIT v. J.K.A. Subramania Chettiar, 1977 SCC OnLine Mad 260 : (1977) 110 ITR 602 (page 5 & 7)	***CLI 2 – Pg. 814 & 817***
CIT v. Andhra Cotton Mills Ltd., (1996) 219 ITR 404 : 1994 SCC OnLine AP 386	***CLI 2 – Pg. 822***
[approved in Mahendra Mills/Arun Textile 'C'/Humphreys/ Glassgow Consultants [2000] 243 ITR 56 (SC) in paras 28 & 29 of the said decision]	***CLI 2 – Pg. 832-833***
F.C. Agarwal v. CIT [1976] 102 ITR 408 (Gauhati)	***CLI 2 – Pg. 844***
G.C. Agarwal v. CIT [1990] 186 ITR 571 (SC)	***CLI 2 – Pg. 849***
Sharavathy Conductors (P.) Ltd. v. CCIT [2017] 87 taxmann.com 244 (Karnataka) (para 7)	***CLI 2 – Pg. 854***
Jawahar Lal Jain (HUF) v. CIT [2015] 370 ITR 712 (Punjab & Haryana) (para 7)	***CLI 2 – Pg. 858 - 859***
Deepnarayan Nagu & Co. v. CIT [1986] 157 ITR 37 (Madhya Pradesh) (para 5 – 7)	***CLI 2 – Pg. 860-861***
CIT v. A. Sreenivasa Pai [2000] 242 ITR 29 (Kerala) (para 12)	***CLI 2 – Pg. 866***
Sunanda Ram Deka v. CIT [1994] 210 ITR 988 (Gauhati)	***CLI 2 – Pg. 868 - 869***
Golden Insulation and Engg. Ltd. v. CIT, (2008) 305 ITR 427 : 2007 SCC OnLine Del 1268 (para 10 & 14)	***CLI 2 – Pg. 871***

5.12. The invalidity of return filed on 09.02.2021 may also be demonstrated by drawing two hypotheses:

a) ***Hypothesis 1*** *: If it is accepted that Rs.20,59,84,960/- is not the real income, merely because the same is included in the return dated 09.02.2021, the same cannot be taxable at all as the revenue has no authority to tax any non-income. It is inconceivable for a non-income to accrue to the Appellant. In such case, non-inclusion of the same in the original return dated 31.12.2020 is perfectly in order. This would mean that there is no omission or wrong statement in the original return.*

b) ***Hypothesis 2****: It is assumed without conceding that the Appellant had in fact earned an income of Rs.20,59,84,960/-, Appellant's statements dated 29.02.2020 [u/s 132(4)] and 18.08.2020 [u/s 131(1A)] would be in line with the aforesaid*

hypothesis. Despite this being the position, the Appellant consciously did not include the same in the original return dated 31.12.2020. Therefore, it is not a case of inadvertently omitting to include the said income. This cannot fall within the phrase "discovers any omission or any wrong statement therein" under Section 139(5).

5.13. *Therefore, it is submitted that the return filed on 09.02.2021 is invalid and could not have been acted upon by the department. Thus, return filed on 09.02.2021 is invalid u/s 139(5) and the addition of Rs.20,59,84,962 included in the said return is invalid. Therefore, only the original return filed 31.12.2020 under Section 139(1) survives and can be accepted. Reliance is placed on the following decisions:*

- *K. Nagesh v. ACIT [2015] 376 ITR 473 (Karnataka) (para 19 to 24)* ***{CLI 2 – Pg. 892 – 894}***
- *CIT v. Shelly Products [2003] 261 ITR 367(SC) (para 30)* ***{CLI 2 – Pg. 905}***

5.14. *It is submitted that the Learned DR has not brought anything contrary to the above submissions in his objections dated 30.01.2025.*

6. ***On belated returns filed in response to notice under Section 153A for the AY 2018-19 and 2019-20 being bad and invalid:***

6.1. *The belated returns filed by the Appellant on 09.02.2021 for the AYs 2018-19 and 2019-2020 in response to the notices issued u/s 153A are invalid. The date of the notices and the date of returns filed are as under:*

AY	***Date of Notice***	***Due date for filing return (15 days from the date of notice)***	***Date of filing return***	***Delay in days***
2018-19	*03.11.2020*	*18.11.2021*	*09.02.2021*	*83 days*
2019-20	*04.11.2020*	*19.11.2020*	*09.02.2021*	*82 days*

6.2. The Learned AO has no jurisdiction to accept the belated returns filed on 09.02.2021 in response to notices under Section 153A as provisions of Section 153A do not provide any authority to the Learned AO to condone any delay. Reliance is placed on the following decisions:

Cases	***Reference***
CIT Vs Shri V R Sreekumar 2014-TIOL-930-HC-KERALA-IT (para 7 – 12)	***CLI 3 – Pg. 1688 - 1689***
Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 459 ITR 730 (Kerala) (para 3 & 11)	***CLI 3 – Pg. 1691 & 1694***
P. Sathyanarayanan v. ACIT [2012] 20 taxmann.com 56 (Chennai) (para 16)	***CLI 3 – Pg. 1701 & 1702***

6.3. It is submitted that the Learned DR has not brought anything contrary to the above submissions in his objections dated 30.01.2025.

7. In the said objections filed by the Learned DR on 30.01.2024, the Learned DR has not brought any new materials contrary to the submissions made by the Appellant. The Learned DR has not relied on any case of his own. The Learned DR has merely made an attempt to distinguish 10 of the many cases relied by the Appellant. Our rebuttals to his "Reasons for distinguishing the case of the Assessee" are as follows;

Cases	***Rebuttals***
Kumar Jagdish Chandra Sinha V. CIT [1996] 86 Taxman 122 (Sc)	*At para 11 of the decision, it was held that "Once this is so the revised returns filed by the assessee for both the said assessment years* ***were not valid in law and could not have been treated and acted upon*** *as revised returns contemplated by sub-section (5) of section 139 - which means that section 153(1)(c) was not attracted in this case."* ***{CLI 2 – Pg. 875 – 876}***
Sharavathy Conductors (P.) Ltd. V. CCIT [2017] 87 Taxmann.Com 244 (Karnataka)	*At para 7 of the decision, it was held that "it cannot be said to be a bonafide omission in the original return to make a claim of the deduction clearly admissible to the assessee. The issue being a debatable one, the revised return for that purpose could not have been filed by the assessee and Respondent No.1 cannot be faulted in*

	rejecting such condonation of delay application." ***{CLI 2 – Pg. 854}***
PCIT V. Optimal Media Solutions Ltd. [2023] 155 Taxmann.Com 606 (Delhi)	*In the said decision, at para 22, it is stated that "The AO, in our view, has wrongly taken into account the investments other than the investments made to earn exempt income. [See Cargo Motors (P.) Ltd. v. Deputy Commissioner of Income-tax [2022] 145 taxmann.com 641/[2023] 291 Taxman 208/453 ITR 554 (Delhi)]."* ***{CLI 3 – Pg. 1615}***
CIT V. Mahendra Mills/Arun Textile 'C'/Humphreys/ Glassgow Consultants [2000] 109 Taxman 225 (Sc)	*In CIT v. Andhra Cotton Mills Ltd., (1996) 219 ITR 404 (AP) at para 3, it was held that 'In the circumstances, it cannot be said that there was any wrong statement in the original return which could enable the assessee to file a revised return under section 139(5). Since that revised return itself was not a valid return for being processed by the ITO, the claim of the assessee that the particulars of depreciation are not given and, therefore, the deduction should not be allowed is untenable"* ***{CLI 2 – Pg. 822}*** *The same was approved in Mahendra Mills/Arun Textile 'C'/Humphreys/ Glassgow Consultants [2000] 243 ITR 56 (SC) in paras 28 & 29 of the said decision.* ***{CLI 2 – Pg. 832-833}***
K. Nagesh V. ACIT [2015] 57 Taxmann.Com 439	*In para 19 of the decision, it is clearly held that "in the case on hand, we are considering the taxes paid on the basis of an invalid return, as held by the authorities. If the tax and interest amount offered by the assessee is based on an invalid return,* ***and, if that return itself is non est in the eye of law, then there is no basis for the authorities to withhold the said tax collected and the only course open to the authorities is to refund the said amount considering the original return as the return furnished and the amount whatever is paid in excess under the original return has to be refunded subsequent to the annulment of assessment by the authorities."*** *{****CLI 2 – Pg. 892 – 894****}*
PCIT V. Subodh Agarwal [2023] 149 Taxmann.Com 373*	*The Learned DR admits that* ***"it was humanly impossible to peruse records of all 38 cases in one day to apply independent mind to appraise material before Approving Authority and, therefore, Tribunal rightly concluded that it was***

And *PCIT V. Shiv Kumar Nayyar [2024] 163 Taxmann.Com 9 (Delhi)*	***mechanical exercise of power which vitiated entire proceedings"*** *Learned DR has wrongly stated that approval was not brought on record. The copy of approval dated 28.09.2021 was enclosed in Annexure 12 of the Appellant's Paper book for the AY 2020-21* ***[PB Annexure 12 – Page 842]*** *As per the Learned JCIT's letter dated 12.12.2024, the Learned JCIT has approved 27 assessment orders on 28.09.2021. The copy of the same was furnished before the Hon'ble Bench. Hence, the approval in the instant case is also mechanical.*
Saksham Commodities Ltd. V. ITO [2024] 161 Taxmann.Com 485 (Delhi)	*At para 58 of the said decision, it is held that "a reading of the First Proviso to Section 153A and which speaks of the power of the AO to assess or reassess the total income in respect of* ***"each assessment year".*** *The aforesaid phraseology stands replicated in Section 153B(1)(a) which again alludes to* ***"each assessment year"*** *falling within the six AYs or the "relevant assessment year****". The aforesaid language is then reiterated in Section 153D and which prescribes that no order of assessment or reassessment shall be passed by an AO in respect of "each assessment year" referred to in Section 153A or 153B , except with the prior approval of the Joint Commissioner." {CLI 1 – Pg.583}***
CIT V. J.K.A. Subramania Chettiar [1977] 110 ITR 602 (Mad.)	*In the said decision, it was held that In our opinion, section 139(5) will apply only to a limited category of cases, namely, where in the original return there was any omission or any wrong statement. The very word "omission" connotes an unintentional act. Equally, the words "wrong statement" will not take in "a statement known to be false to the person who made the statement." However, the word "discovers" occurring in section 139(5) will make it clear that at the time of discovery only, a person who has furnished a return finds out that an inadvertent omission or an unintended wrong statement had crept in the return filed by him****. If***

	a person who furnished the return was aware of the falsity of the statement and the incorrectness of the particulars of income even at the time when he filed the original return, there was no question of that person subsequently discovering the existence of the omission or creeping in of the wrong statement in the return already filed by him. Therefore, we are of the opinion that section 139(5) will apply only to cases of "omission or wrong statements" and not to cases of "concealment or false statements". This conclusion of ours derives support from the language used in section 139(5). {CLI 2 – Pg. 814 &817}

8. ***Based on the above submissions, it is humbly prayed that the impugned orders for AYs 2018-19, 2019-20 and 2020-21 may be quashed and the revised returns for AY 2019-20 and 2020-21 may held invalid.***

21. The main argument advanced by the Ld.Sr. Counsel is that the assessment orders passed pursuant to the illegal approval granted u/s. 153D are bad in law and to that effect, the Ld.Sr. Counsel filed the written submissions. In support of the said contention, the Ld.Sr. Counsel also relied on the judgment of the Hon'ble Allahabad High Court in case of Pr. CIT vs. Subodh Agarwal reported in (2023) 149 taxmann.com 373 and the judgment of Hon'ble Delhi High Court in case of PCIT v. Shiv Kumar Nayyar reported in (2024) 163 taxmann.com 9 (Delhi).

22. Before going into the judgments, for the sake of clarity, we will extract section 153D of the Act.

> *"Prior approval necessary for assessment in cases of search or requisition.*
> *153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:*

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

23. We have also perused the approval granted by the JCIT u/s. 153D of the Act. The said approval is also extracted hereunder for the sake of convenience.

भारत सरकार GOVT.
458 28 SEP 2021
Asst. Commissioner of Income Tax
Central Circle 2, Mangalore

Government of India Income Tax Department
Office of the Joint Commissioner of Income Tax
Central Range, Albuquerque House, Ground Floor
Opp: Forum Fiza Mall, Pandeshwar, Mangaluru- 575 001

F.No.26/Jt.CIT/CR/MNG/2021-22 Date: 28.09.2021

To

The Dy. Commissioner of Income Tax
Central Circle-2, Mangaluru.

Sub: Approval of draft assessment order u/s 153D in the case of M/s Bharath Beedi Works Pvt. Ltd. (PAN:AAACB9001B) – reg.

Ref: Your letter in F.No. Asst. Order/DCIT/CC-2/MNG/2020-21 dated 27.09.2021.

*****

Please refer to the above.

After going through various documents, materials on record and periodical discussion had earlier about completion of assessments, you have submitted draft assessment orders to be passed in the case of M/s Bharath Beedi Works Pvt. Ltd. (PAN:AAACB9001B) for approval wherein the total income is assessed as under:

Assessment Year	Section under which the order is to be passed	Returned Income u/s153A (In Rs.)	Additions (in Rs.)	Assessed Income (in Rs.)
2014-15	143(3) rws 153A	461355285	0	461355285
2015-16	143(3) rws 153A	351161549	3225155	354386705
2016-17	143(3) rws 153A	521982686	0	521982686
2017-18	143(3) rws 153A	686843155	0	686843155
2018-19	143(3) rws 153A	784659990	4656575	789316656
2019-20	143(3) rws 153A	1193427450	5361903	1198789353
2020-21	143(3)	1272420580	13382222	1285802802

I have gone through the above draft assessment orders and materials on record. After perusal of the same, the draft assessment orders referred above are approved u/s 153D of the Income Tax Act, 1961. You are directed to check the returned income, assessed income, tax calculations, order sheet notings, initiation of penalty if any, once again before passing the final orders.

You are directed to submit the copy of the final assessment orders along with demand notices and penalty notices if any, after serving the order on the assessee. Further, you are directed to pass on the information, if any, related any other case to the Officers concerned within thirty days from the date of assessment order.

(S. MANIKANDAN)
Joint Commissioner of Income Tax
Central Range, Mangaluru

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24. As seen from the approval letter, it is dated 28/09/2021 in which the Joint Commissioner had approved the draft orders sent by the AO on 27/09/2021. In the said approval letter, the Joint Commissioner had approved the 7 A.Ys. commencing from 2014-15 to 2020-21. The draft assessment orders were furnished on 27/09/2021 which was approved by the JCIT on 28/09/2021 i.e.,on the very next day. In the said approval, the JCIT had perused the draft assessment orders in respect of the 7 A.Ys. and gave his approval on the next date i.e. on 28/09/2021.

25. In the said approval, JCIT had granted a composite approval and no separate approvals were granted in respect of each A.Ys. In the said approval order, the Ld.JCIT had stated in para 2 coln. 3 that the return was filed u/s. 153A for the A/Y 2020-21 whereas no such notice was received u/s. 153A since the A.Y. being the search year. Moreover, the assessment was made u/s. 143(3) of the Act since the assessment was not completed during the relevant period.

26. Similarly, in the same approval order in para 2 coln. 3, the Ld.JCIT had mentioned the returned income u/s. 153A in respect of the A/Y 2017-18 as Rs. 68,68,43,155/- whereas the return was filed u/s. 139 and the assessee had returned an income of Rs. 67,82,12,350/-. The above said facts would supports the case of the assessee that the Ld.JCIT had not properly verified the records before granting approval u/s. 153D of the Act.

27. Further, in the approval order dated 28/09/2021, the Ld.JCIT after granting approval, in paragraph no. 3 had directed the AO to check the returned income, assessed income, tax calculations, order sheet noting, initiation of penalty if any, once again before passing the final orders. When the Ld.JCIT had satisfied himself and approved the draft assessment orders, there is no necessity in directing the AO again to verify the details before passing the final orders. It shows that the Ld.JCIT had not properly verified the records and machanically granted the approval u/s. 153D of the Act.

28. We have also perused the judgment of the Hon'ble Allahabad High Court cited supra in which the Hon'ble High Court had held as follows:

> *"15. It was observed that this is an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of the said Section. Keeping in view of this basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of Section 153D, which is "each assessment year". The reading of the provisions in Section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under Section 153D of the Income Tax Act. In its erudite judgement with the discussion on the legislative intent of Section 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India vs. CIT and Others (2008) 300 JTR 403 (SC) where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of Section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.*
> *The above discussion made in the judgement of Tribunal dated 3.08.2021 in the case of Navin Jain Vs. Dy. C.I.T. (Supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under Section 153D of the Act would vitiate the entire proceedings in the instant case.*
>
> *17. For the reasoning given in the case of Navin Jain (Supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of Section 153D of the Income Tax Act.*
> *18. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a*

mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of Section 153A which provides for assessment in case of search under Section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in Clause (b) of sub-section (1) of Section 153A. The proviso to Section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

19. The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A."

29. In the above said judgment, the Hon'ble Allahabad high Court has held that the approval should not be a composite one but the same should be separate for each assessment years and if there is no such separate

approvals, the consequential assessment orders passed u/s. 153A and 143(3) would become an illegal orders and without authority of law.

30. Now we will also consider the judgment of Hon'ble Delhi High Court cited supra wherein the Hon'ble High Court had held that the single approval granted for the A.Ys. 2011-12 to 2017-18 is bad in law. From the reading of the above said judgments, we are of the view that the Ld.JCIT should have passed separate approvals for each of the assessment years. Similarly, the various mistakes as pointed out earlier, also supports the view that the Ld.JCIT had not properly considered the material on record before granting the approval u/s. 153D.

31. Further, as seen from the said approval order, the AO had forwarded the draft assessment orders on 27/09/2021 whereas the Ld.JCIT had granted approval on the next day itself and therefore the Ld JCIT would not have time to apply his mind properly for granting the approval and therefore the approval would be a mechanical one.

32. We have also perused the letter dated 12/02/2024 issued by the Additional Commissioner of Income Tax, Central Range, Mangaluru in which the details of the number of approvals granted u/s. 153D on 28/09/2021 by the Ld JCIT was furnished. The Ld.Addl.CIT had stated as follows:

> *"As per records available in this office, 5 approvals u/s. 153D of the IT Act, 1961 were given on 28.9.2021. These approvals pertains to 4 assessees, out of which in 2 assessee's case, the AY involved are AY 2014-15 to AY 2020-21, in one case AY 2013-14 to 2015-16 & 2018-19 and in the fourth case AY involved are 2016-17 & 2017-18."*

33. As seen from the said letter dated 12/12/2024, the Ld.JCIT had granted 5 approvals in respect of 4 assessees. The approvals granted in respect of the two assessee's are related to the A.Ys. 2014-15 to 2020-21 in which 7 A.Ys. are involved. Insofar as the one assessee is concerned, the approval is granted for four A.Ys., commencing from 2013-14 to 2018-19.

The approval in respect of another assessee is for the two A.Ys. i.e. 2016-17 and 2017-18. Therefore totally the Ld.JCIT had granted approvals for 20 A.Ys. on a single day. This also supports the arguments made by the Ld.Sr. Counsel that the Ld.JCIT would not have properly verified the records and grant the approval u/s. 153D of the Act. It is also humanly impossible to review the materials submitted by the AO on a single day and grant the approval u/s 153 D of the Act.

34. We have also perused the judgment of the Hon'ble Orissa High Court in the case of ACIT vs. M/s. Serajuddin & Co. reported in 454 ITR 312 wherein the Hon'ble Orissa High Court had elaborately discussed the issuance of approval by the superior authority u/s. 153D. We are extracting the relevant paragraphs in order to appreciate the facts.

> *"10. At the outset, it requires to be noticed that many of the decisions referred to both on the side of the Revenue as well as the Assessee do not directly refer to Section 153D of the Act which was inserted with effect from 1st June, 2007. There is no doubt about the applicability of the said provision since the proceedings under Section 153A of the Act was initiated in the present case after that date.*
>
> *11. Among the changes brought about by the Finance Act 2007 was the insertion of Section 153D of the Act. The CBDT circular dated 12th March 2008 refers to the various changes and inter alia also to the change brought about by the insertion of a new Section 153D of the Act. Paragraph 50 of the said circular is relevant and reads as under:*
>
> > *"50. Assessment of search cases--Orders of assessment and reassessment to be approved by the Joint Commissioner.*
> >
> > *50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment.*
> >
> > *50.2 A new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the*

Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

50.3 Applicability- These amendments will take effect from the 1st day of June, 2007."

12. It must be noted at this stage that even prior to the introduction of Section 153D in the Act, there was a requirement under Section 158BG of the Act, which was substituted by a Finance Act 14 of 1997 with retrospective effect from 1st January 1997, of the AO having to obtain a previous approval of the JCIT/Additional CIT by submitting a draft assessment order following a search and seizure operation.

13. The CBDT issued the Manual of Office Procedure in February 2003 in exercise of the powers under Section 109 of the Act. Para 9 of Chapter 3 of Volume-II (Technical) of the Manual reads as under:

"9. Approval for assessment: An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval.

The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself."

14. The requirement of prior approval under Section 153D of the Act is comparable with a similar requirement under Section 158BG of the Act. The only difference being that the latter provision occurs in Chapter-XIV-B relating to "special procedure for assessment of search cases" whereas Section 153D is part of Chapter-XIV.

15. A plain reading of Section 153D itself makes it abundantly clear that the legislative intent was to be obtaining of "prior approval" by the AO when he is below the rank of a Joint Commissioner, before he passes an assessment order or reassessment order under Section 153A(1)(b) or 153B(2)(b) of the Act.

16. That such an approval of a superior officer cannot be a mechanical exercise has been emphasized in several decisions. Illustratively, in the context of Section 142 (2-A) which empowers an AO to direct a special audit. The obtaining of the prior approval was held to be mandatory. The Supreme Court in Rajesh Kumar v. Dy. CIT (2007) 2 SCC 181 observed as under:

"58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/ or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given."

17. It is therefore not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where

the approval is granted mechanically, it would vitiate the assessment order itself. In Sahara India (Firm) Lucknow v. Commissioner of Income Tax (supra), the Supreme Court explained as under:

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

18. The contention of the Revenue in those cases that the non- compliance of the said requirement does not entail civil consequences was negatived. Reiterating the view expressed in Rajesh Kumar (supra), the Supreme Court in Sahara India (Firm) Lucknow v. Commissioner of Income Tax (supra) held as under:

> *"29. In Rajesh Kumar (2007) 2 SCC 181 it has been held that in view of Section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income Tax Authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of Section 196 of I.P.C. and every Income Tax Authority is a court for the purpose of Section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case (supra), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of Section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a*

judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: Maneka Gandhi v. Union of India (1978) 1 SCC 248 and S.L. Kapoor v. Jagmohan (1980) 4 SCC 379).

30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under Section 142 (2A) does entail civil consequences, the rule audi alteram partem is required to be observed."

19. To the same effect, are the decisions of the Delhi High Court in Yum! Restaurants Asia Pte. Ltd. v. Deputy Director of Income Tax (supra) which dealt with the requirement under Section 151 (2) of the Act for initiating proceedings under Section 147 read with 148 of the Act. It was observed as under:

"11. The purpose of Section 151 of the Act is to introduce a supervisory check over the work of the AO, particularly, in the context of reopening of assessment. The law expects the AO to exercise the power under Section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the AO, then the law expects the superior officer to be able to correct that error. This explains why Section 151 (1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the AO where the return originally filed was assessed under Section 143 (3) of the Act. Further, where the reopening of an assessment is sought to be made after the expiry of four years from the end of the relevant AY, a further check by the further superior officer is contemplated."

20. The non-compliance of the requirement was held to have vitiated the notice for reopening of the assessment. Likewise, in Syfonia Tradelinks Private Limited v. Income Tax Officer (supra) the Delhi High Court disapproved of the rubber stamping by the superior officer of the reasons furnished by the AO for issuance of the sanction.

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22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of Section 158BG of the Act, it would equally apply to Section 153D of the Act. There are three or four requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

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25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of Section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves."

35. As seen from the above judgment of the Hon'ble Orissa High Court, the approval should be granted by the superior authority after going through

the records as well as the draft assessment orders. But in the present case, the Ld.JCIT had mechanically granted the approval since the AO had submitted the request on 27/09/2021 whereas the approval was granted on 28/09/2021, i.e. on the next date itself. Further, the AO had not sought for the approval well in advance, in order to give an opportunity to the Joint Commissioner to go through the records and grant his approval for the draft assessment orders. We have also gone through the letter dated 12/12/2024 in which the department had accepted that the JCIT had granted approvals u/s. 153D on 28/09/2021 for the four assessees comprising of 20 assessment years. These facts would strengthen the case of the assessee that the Ld.JCIT had no effective opportunity to go through the records and grant approval on a single day. In view of the above said facts, we are convinced that the judgment of the Hon'ble Orissa High Court would apply to the facts and circumstances of the case and therefore we are of the view that the approval granted by the Ld.JCIT u/s. 153D is mechanical one and therefore the consequential assessment orders made based on the said approval is void-ab-initio. Further, the Ld.JCIT had given a direction to the AO to check the returned income, assessed income, tax calculations, order sheet notings, initiation of penalty if any, once again before passing the final assessment orders. It shows that the Ld.JCIT had not fully satisfied himself about the draft assessment orders otherwise there is no necessity for him to give such directions. If he is fully satisfied, there is no requirement for verifying the details by the AO before passing the final orders.

36. Since we are satisfied that the legal ground argued by the Ld.Sr. Counsel that the approval granted u/s 153D by the Ld.JCIT on 28/09/2021 is bad in law, we are not adjudicating the other legal as well as the other grounds raised by the assessee.

37. If the approval granted u/s. 153D becomes an illegal one and bad in law, the consequential proceedings done by the assessing officer is also not a valid one and therefore the assessments made pursuant to the said approval order dated 28/09/2021 are also not sustainable.

38. In the result, the appeals filed by the assessee for all the four A.Ys. are allowed by setting aside the assessment orders passed u/s. 143(3) and 153A of the Act since the approval granted by the Ld.JCIT is not a valid approval but only a mechanical one.

39. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 21st April, 2025.

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 21st April, 2025.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore