

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No. 579/CHD/2023

निर्धारणवर्ष / Assessment Year : 2017-18

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आयकर अपीलसं./ITA Nos. 582 to 584/CHD/2023

निर्धारणवर्ष / Assessment Years : 2014-15 to 2016-17

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आयकर अपीलसं./ITA No. 591/CHD/2023

निर्धारणवर्ष / Assessment Year : 2018-19

Maxport India Pvt. Ltd. C/o Parikshit Aggarwal, Chartered Accountant, H. No. 3035, Sector 27D, Chandigarh- 160019.	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: AAICM9120E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपीलसं./ITA Nos. 482 & 483/CHD/2023

निर्धारणवर्ष / Assessment Years : 2017-18 & 2018-19

Vaishali Aggarwal C/o Parikshit Aggarwal, Chartered Accountant, H No. 3035, Sector 27D, Chandigarh- 160022.	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: AAQPA4025M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपीलसं./ITA No. 846/CHD/2023

निर्धारणवर्ष / Assessment Year : 2018-19
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आयकरअपीलसं./ITA Nos. 855 to 857/CHD/2023
निर्धारणवर्ष / Assessment Years : 2014-15 to 2016-17
&
आयकरअपीलसं./ITA Nos. 842 to 845/CHD/2023
निर्धारणवर्ष / Assessment Years : 2010-11,2012-13,2013-14 & 2017-18

Scott Edil Advance Research Laboratories & Education Limited Plot No. 28/6, Area, Phase-2, Chandigarh-160002.	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: AANCS1120M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA Nos. 843, 844 & 845/CHD/2023
निर्धारणवर्ष / Assessment Years : 2012-13, 2013-14 & 2017-18

Scott Edil Advance Research Laboratories & Education Limited Plot No. 28/6, Area, Phase-2, Chandigarh-160002.	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: AANCS1120M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकरअपीलसं./ITA No. 829, 830, 831, 832, 833 & 834/CHD/2023
निर्धारणवर्ष / Assessment Years :2013-14 to 2018-19

Scott Edil Pharmacia Ltd. 54,55 Phase-III, Industrial Area, Chandigarh-	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायीलेखासं./PAN NO: AAHCS1643K		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
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आयकरअपीलसं./ITA Nos. 726 to 732/CHD/2023
निर्धारणवर्ष / Assessment Years : 2012-13 to 2018-19

Shri Balram Krishan Plot No. 47-48, Phase-2, Industrial Area, Chandigarh- 160002	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: ABCPK9427G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपील सं./ITA No. 93 & 94/CHD/2024
निर्धारण वर्ष / Assessment Year : 2017-18 & 2018-19

The DCIT, Central Circle-1, Chandigarh	Vs	Scott Edil Advance Research Laboratories & Education Limited
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकरअपीलसं./ITA No. 480/CHD/2023
निर्धारणवर्ष / Assessment Year : 2018-19
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आयकरअपीलसं./ITA No. 489/CHD/2023
निर्धारणवर्ष / Assessment Year : 2017-18

Sanjeev Aggarwal, C/o Parikshit Aggarwal, Chartered Accountant, H. No. 3035, Sector 27D, Chandigarh-160002.	बनाम	Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.
स्थायीलेखासं./PAN NO: ABCPK9428K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA Nos.505 & 506/CHD/2023

निर्धारणवर्ष / Assessment Years :2017-18 & 2018-19

Deputy Commissioner of Income-tax, Centre Circle-1, Chandigarh.	बनाम	Sanjeev Aggarwal,
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Parikshit Aggarwal, CA & Ms. Shruti Khandelwal, Advocate
 राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR & Shri K. Mehboob Ali Khan, CIT DR

सुनवाई की तारीख/Date of Hearing : 5th December, 2024
 उदघोषणा की तारीख/Date of Pronouncement : 03.03.2025

VIRTUAL HEARING

आदेश/Order

Per Bench:

All these captioned appeals have been directed against the separate orders of the Ld. CIT(A) and pertained to the assessments carried out under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) pursuant to the search action carried out under Section 132 of the Act in Scott Edil Group of cases on 15.11.2017. Since the facts involved in all these captioned appeals are identical and there are common issues, hence the same were heard together and the same are being disposed of by this common order.

2. The grounds/issues raised in all the appeals are summarized as under :

ITA No. 489/Chandi/2023 (Sanjeev Aggarwal, AY 2017-18) (Assessee's Appeal)

1. Ground No. 1 – General in nature.
2. Ground no. 2 – Deemed dividend on account of credits exceeding remuneration / payments received from SEPL.
3. Ground no. 3 - Deemed dividend on account of credits exceeding remuneration / payments received from SEARLE.
4. Ground no. 4 – approval u/s 153D
5. Ground no. 5 – transfer order u/s 127 dated. 30.03.2018 was without sanction of law, hence bad in law.
6. Ground no. 6 – General in nature.

ITA No. 505/Chandi/2023 Sanjeev Aggarwal, AY 2017-18 (Appeal by Department)

1. Ground No. 1 – Deemed dividend u/s 2(22)(e) on account of credit credits exceeding remuneration / payments.
2. Ground no. 2 – General in nature.

ITA No. 480/Chandi/2023 Sanjeev Aggarwal, AY 2018-19 (Assessee's Appeal)

1. Ground No. 1 – General in nature.
2. Ground no. 2 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground no. 3 – Deemed dividend on account of credits exceeding remuneration / payments received from SEPL.
4. Ground no. 4 – Payment made by SEPL for construction of H.NO 323, Sector-9, Chandigarh
5. Ground no. 5 – Payment made by SEPL for construction of H.NO 3100, Sector-21, Chandigarh.
6. Ground no. 6 – Addition u/s 69C r.w.s. 115BBE on account of difference in valuation of H.NO 3100, Sector-21, Chandigarh.
7. Ground no. 7: Approval u/s 153D.
8. Ground No. 8- General in nature.

9. Ground No. 9- General in nature.

ITA No. 506/Chandi/2023 (Sanjeev Aggarwal, AY 2018-19) (Appeal by Department)

1. Ground No. 1 – Deemed dividend on account of credits exceeding remuneration / payments received from SEPL.
2. Ground No. 2: General in nature.

ITA No. 482/Chandi/2023 (Vaishali Aggarwal, AY 2017-18) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Deemed dividend u/s 2(22)(e) on account of credit credits exceeding remuneration / payments.
3. Ground No. 3 - Approval u/s 153D.
4. Ground No. 4 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
5. Ground No. 5 – General in nature.

ITA No. 483/Chandi/2023 (Vaishali Aggarwal, AY 2018-19) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 - Deemed dividend u/s 2(22)(e) on account of credit credits exceeding remuneration / payments.
4. Ground No. 4 - Payment made by SEPL for construction of H.NO 323, Sector-9, Chandigarh.
5. Ground No. 5 – Payment made by SEPL for construction of H.NO 3100, Sector-21, Chandigarh.
6. Ground no. 6 – Addition u/s 69C r.w.s. 115BBE on account of difference in valuation of H.NO 3100, Sector-21, Chandigarh.
7. Ground No. 7 – Unexplained investment in jewellery.
8. Ground No. 8 - Approval u/s 153D.
9. Ground No. 9 – Reasonable opportunity of being heard not provided.

ITA No. 591/Chandi/2023 (Maxport India Pvt Ltd, AY 2018-19) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Deemed dividend on account of credits exceeding remuneration/payments received from SEPL
5. Ground No. 5 - Approval u/s 153D.
6. Ground No. 6 – General in nature.

ITA No. 579/Chandi/2023 (Maxport India Pvt Ltd, AY 2017-18)(Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dated 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Commission on sales and purchase transactions carries out allegedly outside books.
5. Ground No. 5 - Approval u/s 153D.
6. Ground No. 6 – General in nature.

ITA No. 584/Chandi/2023 (Maxport India Pvt Ltd, AY 2016-17) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Commission on sales and purchase transactions carries out allegedly outside books.
5. Ground No. 5 - Approval u/s 153D.

6. Ground No. 6 – General in nature.

ITA No. 583/Chandi/2023 (Maxport India Pvt Ltd, AY 2015-16) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Commission on sales and purchase transactions carries out allegedly outside books.
5. Ground No. 5 - Approval u/s 153D.
6. Ground No. 6 – General in nature.

ITA No. 582/Chandi/2023 (Maxport India Pvt Ltd, AY 2014-15) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Commission on sales and purchase transactions carries out allegedly outside books.
5. Ground No. 5 - Approval u/s 153D.
6. Ground No. 6 – General in nature.

ITA No. 732/Chandi/2023 (Balram Krishan Aggarwal, AY 2018-19) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.

4. Ground No. 4 – Commission on sales and purchase transactions carries out allegedly outside books.
5. Ground No. 5 - Payment of Rs. 18,15,549/-by SEPL for construction of house and holding the same as deemed dividend.
6. Ground No. 6 – Payment of Rs. 7,77,384/- by SEPL for construction of house and holding the same as deemed dividend.
7. Ground No. 7 – Difference in valuation as per DVO report and books of accounts.
8. Ground No. 8- Shortage of stock found during search.
9. Ground no. 9 – approval u/s 153D
10. Ground no. 10. – reasonable opportunity of being heard not given.
11. Ground no. 11 – general in nature.

ITA No. 732/Chandi/2023 (Balram Krishan Aggarwal, AY 2017-18) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dated 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Payment by SEPL for construction of house and holding the same as deemed dividend.
5. Ground No. 5 Purchases treated as bogus purchase.
6. Ground No. 6 – Approval u/s 153D.
7. Ground No. 7 – Reasonable opportunity of being heard not given.
8. Ground No. 8- General in nature.

ITA No. 730/Chandi/2023 (Balram Krishan Aggarwal, AY 2016-17) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.

3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Transaction with Maxport held as bogus transactions.
5. Ground No. 5 – Approval u/s 153D.
6. Ground No. 6 - Reasonable opportunity of being heard not given.
7. Ground No. 7- General in nature.

ITA No. 729/Chandi/2023 (Balram Krishan Aggarwal, AY 2015-16) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Transaction with Maxport held as bogus transactions.
5. Ground No. 5 – Approval u/s 153D.
6. Ground No. 6 - Reasonable opportunity of being heard not given.
7. Ground No. 7- General in nature.

ITA No. 728/Chandi/2023 (Balram Krishan Aggarwal, AY 2014-15) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Direction to Ld. AO u/s 150 to take appropriate action u/s 148.
5. Ground No. 5 – Approval u/s 153D.
6. Ground No. 6 - Reasonable opportunity of being heard not given.
7. Ground No. 7- General in nature.

ITA No. 727/Chandi/2023 (Balram Krishan Aggarwal, AY 2013-14) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Direction to Ld. AO u/s 150 to take appropriate action u/s 148.
5. Ground No. 5 – Approval u/s 153D.
6. Ground No. 6 - Reasonable opportunity of being heard not given.
7. Ground No. 7- General in nature.

ITA No. 726/Chandi/2023 (Balram Krishan Aggarwal, AY 2012-13) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
3. Ground No. 3 – Order deserves to be quashed in absence of incriminating material.
4. Ground No. 4 – Direction to Ld. AO u/s 150 to take appropriate action u/s 148.
5. Ground No. 5 – Approval u/s 153D.
6. Ground No. 6 - Reasonable opportunity of being heard not given.
7. Ground No. 7- General in nature.

ITA No. 834/Chandi/2023 (Scott Edil Pharmacia Ltd, AY 2018-19) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 – Addition on ground of shortage of stock during search, hence GP rate applies on undisclosed sales.

5. Ground No. 5 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
6. Ground No. 6 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
7. Ground No. 7 - Reasonable opportunity of being heard not given.
8. Ground No. 8- General in nature.

ITA No. 833/Chandi/2023 (Scott Edil Pharmacia Ltd, AY 2017-18) (Assessee's appeal)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 – Addition made u/s 69C due to non-response by parties confirming the purchases made.
5. Ground No. 5 – Sales from Maxport treated bogus.
6. Ground No. 6 – Provision for doubtful debts disallowed- Dealt separately
7. Ground No. 7 – Enhancement u/s 251(1)- Dealt separately.
8. Ground No. 8 and 9 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
9. Ground No. 10 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
10. Ground No. 11 - Reasonable opportunity of being heard not given.
11. Ground No. 12 – General in nature.

ITA No. 832/Chandi/2023 (Scott Edil Pharmacia Ltd, AY 2016-17) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.

4. Ground No. 4 – Addition made u/s 69C due to non-response by parties confirming the purchases made.
5. Ground No. 5 – Enhancement u/s 251(1).
6. Ground No. 6 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
7. Ground No. 7 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
8. Ground No. 8 - Reasonable opportunity of being heard not given.
9. Ground No. 9 – General in nature.

ITA No. 831/Chandi/2023 (Scoot Edil Pharmacia Ltd, AY 2015-16) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 – Addition made u/s 69C due to non-response by parties confirming the purchases made.
5. Ground No. 5 – Disallowance of 80IC on sales made to Maxport.
6. Ground No. 6 - Profit treated as trading in nature instead of from manufacturing activity.
7. Ground No. 7 and 8– Disallowance of 80IC claimed ion ITR.
8. Ground No. 9 – Enhancement u/s 251(1)- Dealt separately in ITA No. 833/Chandi/2023, SEPL for AY 2017-18.
9. Ground No. 10 and 11 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
10. Ground No. 12- Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
11. Ground No. 13- Reasonable opportunity of being heard not given.
12. Ground No. 14 – General in nature.

ITA No. 830/Chandi/2023 (Scoot Edil Pharmacia Ltd, AY 2014-15) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 – Addition made u/s 69C due to non-response by parties confirming the purchases made.
5. Ground No. 5 – Disallowance of 80IC on sales made to Maxport.
6. Ground No. 6 and 7 - Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
7. Ground No. 8– Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
8. Ground No. 9- Reasonable opportunity of being heard not given.
9. Ground No. 10 – General in nature.

ITA No. 829/Chandi/2023 (Scoot Edil Pharmacia Ltd, AY 2013-14) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 – Addition u/s 68 on account of amount received from Jai Ambe Pharmaceutical (JAAPL) holding the company as a shell company.
5. Ground No. 5 – Disallowance of 80IC on sales made to JAAPL
6. Ground No. 6 - Addition made u/s 69C due to non-response by parties confirming the purchases made.
7. Ground No. 7 - Enhancement u/s 251(1)- Dealt separately in ITA No. 833/Chandi/2023, SEPL for AY 2017-18.
8. Ground No. 8– Direction to Ld. AO u/s 150 to take appropriate action u/s 148. Dealt separately in ITA No. 823/Chandi/2023, SEPL for AY 2013-14.

9. Ground No. 9 and 10- Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
10. Ground No. 11 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
11. Ground No. 12 - Reasonable opportunity of being heard not given.
12. Ground No. 13 – General in nature

ITA No. 842/Chandi/2023 (Scot Edil Advanced Research Laboratories and Education Ltd, AY 2010-11) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Reopened u/s 153A using extended period of limitation. Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
4. Ground No. 4 - Direction to Ld. AO u/s 150 to take appropriate action u/s 148.
5. Ground No. 5 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
6. Ground No. 6- Reasonable opportunity of being heard not given.
7. Ground No. 7 – General in nature

ITA No. 843/Chandi/2023 (Scott Edil Advanced Research Laboratories and Education Ltd, (AY 2012-13) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Addition u/s 68.
6. Ground No. 6 – Addition u/s 68 on account of receipts from employees of B.M. Pharmaceuticals.
7. Ground No. 7 and 8 - Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.

8. Ground No. 9 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
9. Ground No. 10- Reasonable opportunity of being heard not given.
10. Ground No. 11 – General in nature

ITA No. 844/Chandi/2023 (Scott Edil Advanced Research Laboratories and Education Ltd, AY 2013-14) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Disallowance of 80IC on sales made to JAAPL.
6. Ground No. 6 and 7 - Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
7. Ground No. 8 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
8. Ground No. 9- Reasonable opportunity of being heard not given.
9. Ground No. 10 – General in nature.

ITA No. 855/Chandi/2023 (Scott Edil Advanced Research Laboratories and Education Ltd, AY 2014-15) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Addition made u/s 69C due to non-response by parties confirming the purchases made.
6. Ground No. 6 - Addition u/s 68 on account of amount received from Jai Ambe Pharmaceutical (JAAPL) holding the company as a shell company.
7. Ground No. 7 – Purchase transactions carried out allegedly outside books.

8. Ground No. 8 and 9 -Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
9. Ground No. 10 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
10. Ground No. 11- Reasonable opportunity of being heard not given.
11. Ground No. 12 – General in nature.

ITA No. 856/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2015-16) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Addition made u/s 69C due to non-response by parties confirming the purchases made.
6. Ground No. 6 - Disallowance of 80IC on sales made to Maxport.
7. Ground No. 7 and 8 – Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment
8. Ground No. 9 – Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
9. Ground No. 10- Reasonable opportunity of being heard not given.
10. Ground No. 12 – General in nature.

ITA No. 857/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2016-17) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Addition made u/s 69C due to non-response by parties confirming the purchases made.

6. Ground No. 6 - Disallowance of 80IC on sales made to Maxport.
7. Ground No. 7 – Enhancement u/s 251(1)- Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment
8. Ground No. 8 – Direction to Ld. AO u/s 150 to take appropriate action u/s 148.
9. Ground No. 9 and 10 - Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
10. Ground No. 11 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
11. Ground No. 12- Reasonable opportunity of being heard not given.
12. Ground No. 13 – General in nature

ITA No. 845/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2017-18) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Addition made u/s 69C due to non-response by parties confirming the purchases made.
6. Ground No. 6 - Disallowance of 80IC on sales made to Maxport.
7. Ground No. 7 and 8- Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
8. Ground No. 9 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.
9. Ground No. 10- Reasonable opportunity of being heard not given.
10. Ground No. 11 – General in nature

ITA No. 93/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2017-18) (Appeal by Department)

1. Ground No. 1, 2, 3, 4 and 5 – Relief by CIT(A) on revised valuation report submitted by DVO.

2. Ground No. 6 – General in nature.

ITA No. 846/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2018-19) (Appeal by Assessee)

1. Ground No. 1 – General in nature.
2. Ground No. 2 – Order deserves to be quashed in absence of incriminating material.
3. Ground No. 3 – Approval u/s 153D.
4. Ground No. 4 - Difference in valuation as per DVO report and books of accounts.
5. Ground No. 5- Shortage of stock found during search.
6. Ground No. 6 and 7 - Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.
7. Ground No. 8 - Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law
8. Ground No. 9- Reasonable opportunity of being heard not given.
9. Ground No. 10 – General in nature.

ITA No. 94/Chandi/2023 (Scoot Edil Advanced Research Laboratories and Education Ltd, AY 2018-19) (Appeal by Department)

1. Ground No. 1, 2, 3, 4 and 5 – Relief by CIT(A) on revised valuation report submitted by DVO.
2. Ground No. 6 – General in nature.

3. A perusal of the above grounds of appeal would reveal that the following common issues are involved in these appeals:

Issue 1: No incriminating Material found during the course of search action.

Issue 2: Deemed dividend on account of credits exceeding remuneration / payments received from M/s SEPL.

Issue 3: Difference in valuation of factory building in Village Dasora, Majra Hiltop, Near Venus Remedies, JharmBaddi as per DVO's report and as books of the appellant.

Issue 4: Enhancement u/s 251(1) regarding alleged understatement of investment in property at 28/6, Industrial Area, Phase-2, Chandigarh.

Issue 5 : Directions by CIT(A) to AO to initiate 147/148 proceedings taking shelter of s. 150(1)(2) for AY 2010-11 and 2012-13.

Issue 6: Shortage of stock found during search held as undisclosed sale.

Issue 7: Commission/profit earned at estimated rate of 1% of total alleged sales and purchases, allegedly conducted outside books.

Issue 8: Addition made by Ld. AO of Rs. 58,09,346/- by disallowing deduction u/s 80IC on account of GP on net sales of transaction made by SERLE to M/s Maxport India Pvt. Ltd.

Issue 9 : Credits received from JAAPL and Disallowance u/s 80IC - GP earned on sale made to JAPPL on account of alleged bogus nature of sales to JAPPL,

Issue 10 : Addition made u/s 2(22)(e) of the Act on account of payment by SEPL for construction of House No. 3100, Sector 21, Chandigarh and House no. 323, Sector 9, Chandigarh;

Issue 11: Addition made of Rs. 4,60,077 / - each in the hands of individuals/ owners of the house No.3100 u/s 69C r.w.s 115BBE of the Act on account of difference in valuation as per DVO's report as compared to the books of accounts.

Issue 12: Disallowance of doubtful debts claimed during the year.

Issue 13 : Addition u/s 69C - purchases from parties treated as bogus.

Issue 14: Extended period of Limitation.

Issue 15: Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law.

Issue 16: Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment.

Issue 17: Disallowance of 80IC on subsidy claimed in ITR.

Issue 18 : Jewellery found at House no 2273, Sector 21C, Chandigarh & Locker no 64, Bank of India, Sector 35, Chandigarh during the search.

Issue 19: Approval u/s 153D.

4. Since common and identical issues are involved in most of the captioned appeals, hence we deem it appropriate to adjudicate the matter issue wise for the sake of brevity and clarity.

Issue 1: No incriminating Material found during the course of search action, hence no addition can be made in the cases in which assessment on the date of search stood completed and not abated.

This issue has been raised in the following appeals:

S. No.	Name of the assessee	AY	Appeal by	Appeal No.
1	Maxport India Pvt. Ltd.	2014-15	Assessee	582/Chandi/2023
2	Maxport India Pvt. Ltd.	2015-16	Assessee	583/Chandi/2023
3	Maxport India Pvt. Ltd.	2016-17	Assessee	584/Chandi/2023
4	Scott Edil Advance Research Laboratories and Education Limited	2012-13	Assessee	843/Chandi/2023
5.	5. Advance Research Laboratories and Education Limited	2013-14	Assessee	844/Chandi/2023
6	Scott Edil Advance Research Laboratories and Education Limited	2014-15	Assessee	855/Chandi/2023
7	Scott Edil Advance Research Laboratories and Education Limited	2015-16	Assessee	856/Chandi/2023
8	Scott Edil Advance Research Laboratories and Education Limited	2016-17	Assessee	857/Chandi/2023
9	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023
10	Scott Edil Pharmacia Limited	2014-15	Assessee	830/Chandi/2023
11	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023
12	Scott Edil Pharmacia Limited	2016-17	Assessee	832/Chandi/2023
13	Balram Krishan Aggarwal	2015-17	Assessee	729/Chandi/2023
14	Balram Krishan Aggarwal	2016-17	Assessee	730/Chandi/20203

Assessee's appeal in ITA No. 829/Chandi/2023 is taken as the lead case for the purpose of narration of facts. The assessee in this appeal has taken the following ground on this issue:

Ground No. 2: That on facts, circumstances and legal position of the case, the impugned assessment order passed by Ld AO acquiring jurisdiction u/s 153A even when the ld. AO had wrongly assumed jurisdiction u/s 153A and more-so when no incriminating material was found from assessee's own search operation u/s 132 for the year in question.

6. The brief facts relating to the issue under consideration are that a search action u/s 132 of the Act was carried out at the business premises of assessee on 15.11.2017. However, no incriminating material was unearthed during the course of search action. The assessment was carried out u/s 153A of the Act making the impugned additions. The assessee in this appeal has contested the action of the Ld. CIT(A) in confirming the addition made by the Assessing Officer in the course of assessment carried out u/s. 153A of the Act despite there being no incriminating material found during the course of search action and the assessments for all the assessment years stood completed/non-abated on the date of search action.

7. Admittedly, in these appeals, the assessments for all the years stood completed and not abated on the date of search action. The limitation period for issuing notice u/s 143(2) stood already expired on the date search. No incriminating material was found during the course of search action. The Ld. CIT(A), however, held that there was statement recorded of one of the directors namely, Mrs. Puja Pandita of the group company M/s. Maxport India Pvt. Ltd., wherein she has stated that she was not the director of the company and could not explain the sale purchase transactions carried out by the assessee company with M/s. Jai Ambey Pharmaceuticals Pvt. Ltd. The Ld. CIT(A) has also referred statement of employees/directors of the third party recorded during a separate search action in the case of Jai Ambey pharmaceuticals Pvt. Ltd. wherein also they stated that they could not provide information related to the transaction of maxport India Ltd. with their company. The Ld. CIT(A) held that the aforesaid

statements were incriminating in nature, therefore, the Assessing Officer had jurisdiction to scrutinize the entire transaction/activities of the assessee and make impugned additions.

8. We have heard rival contentions and gone through the records. So far as the reliance of the Ld. CIT(A) on the statement of Mrs. Puja Pandita, Director of the M/s. Maxport India Pvt. Ltd. is concerned, the relevant extract of her statement is reproduced as under:

“Question No.5:- Please give the details of the companies/firms wherein you are a director/partner etc.?”

Answer: I am not a director/partner in any of the company at present or past also. Also in past/present I was not a shareholder in any company. It is also stated that I am not a partner in any of the concerned and I am not involve in any of the business. I am just a employee working in the company M/s Scott Edil Pharmacia Ltd. I did not participate in any of the meetings or conferences in any of the company.”

9. A perusal of the above statement of Mrs. Pooja Pandita would show that she has simply denied of having any knowledge about the affairs of the company. She has stated that she was just an employee of the company. The department has strongly relied upon the said part of the statement of Mrs. Puja Pandita, director of the group company. The Ld. DR, however, could not point out as to how the said statement of Mrs. Puja Pandita, would constitute incriminating material for making the impugned additions. There is no admission in whatsoever manner by said Mrs. Puja Pandita that the assessee was indulged in any bogus sale transaction as alleged by the department. Moreover, the said statement also stood retracted by Mrs. Puja Pandita. Moreover, the said statement cannot be used in case of group entities of the assessee company as each entity is a separate income tax

assessee. It has also been held that any statement recorded u/s. 132(4) of the act during the course of search action without any corroborating material unearthed during the course of search action would not, in itself, constitute incriminating material. Moreover, a perusal of the alleged statement of Mrs. Puja Pandita, director of one of the group entities even shows that the said Mrs. Puja Pandita has not confessed about any undisclosed income of the assessee. The issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Pr. CIT Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC), wherein the Hon'ble Supreme Court has held that in the case of non-abated/completed assessments, no addition can be made by the Assessing Officer in an assessment carried out u/s.153A of the Act in the absence of any incriminating material found during the search action.

10. The Hon'ble A.P. High Court in the case of "Naresh Kumar Agarwal" (2015) 53 taxmann.com 306 (Andhra Pradesh) has observed that where, in the absence of any incriminating material etc. found from the premises of the assessee during the course of search, statement of assessee recorded under section 132(4) would not have any evidentiary value. Similar view has been adopted by the Jaipur bench of the Tribunal in the case of "Shree Chand Soni vs. DCIT" (2006) 101 TTJ 1028 (Jodhpur).

The Hon'ble Delhi High Court in the case of "CIT vs. Harjeev Agarwal" in ITA No.8/2004 vide order dated 10.03.16 has observed that a statement made under section 132(4) of the Act on a stand-alone basis, without reference to any other material discovered during search and seizure operation, would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation.

11. In the case of "Commissioner of Income Tax vs. Sunil Agarwal" (2015) 64 taxman.com 107 (Delhi-HC), the assessee therein, during the course of search, made a categorical admission under section 132(4) that the cash amount seized belonged to him and it represented undisclosed income not recorded in the books of accounts. The assessee did not immediately retract from the above admission but only during the

assessment proceedings at a belated stage. In his retraction, the assessee stated that the surrender was made under a mistaken belief and without looking into books of account and without understanding law and that he had been compelled and perturbed by events of search and that the pressure of search was built so much that he had to make the surrender without having actual possession of the assets or unexplained investments or expenses incurred and that there was no such income as undisclosed. The Hon'ble Delhi High Court, after considering the fact and circumstances of the case, while dismissing the appeal of the revenue, observed that though the fact that the assessee may have retracted his statement belatedly, yet, it did not relieve the AO from examining the explanation offered by the assessee with reference to the books of account produced before him. It has been held that a retracted statement even under section 132(4) of the Act would require some corroborative material for the Assessing Officer to proceed to make additions on the basis of such statement.

12. In the case of "Basant Bansal vs. ACIT" reported in (2015)63 taxmann.com 199 (Jaipur Trib.), having somewhat similar facts, the assessee therein, during the search and seizure action u/s 132 of the Act, offered a summary discloser of income as undisclosed and the department accepted the summary surrender of income and thereafter advance tax for the said surrendered of income was also deposited, but thereafter it was contended by the assessee that the surrender was made under threat or coercion and that no incriminating material was found during the search action. The stand of the department was that the admission was voluntary and was not under a mistaken belief of fact or law and that the assistance had enough time to go through the facts of their case, law applicable in their case and take advice from their counsels and advisors before filing the letter of surrender of undisclosed/unaccounted income and that the admission by them was final and binding on them; The co-ordinate Jaipur Bench of the Tribunal, after overall appreciation of the fact and evidences before it, observed that the assessee's surrender was not based on any incriminating material and that the discloser being not voluntary and extracted by the department in creating a coercive situation cannot be relied solely to be basis of addition as undisclosed income. The co-ordinate bench of the Tribunal while relying upon various case laws of the higher authorities observed that it is well

settled legal position that merely on the basis of a statement which is not supported by the department with cogent corroborative material cannot be a valid basis for sustaining such ad-hoc addition. The co-ordinate bench of the Tribunal (supra) while holding so, apart from relying upon various decisions of the higher courts has also relied upon the decision of the Tribunal in the case of “Dy CIT vs. Pramukh Builders” (2008) 112 ITD 179 (Ahd.) wherein it has been held that even in the absence of proof of coercion or pressure, the statement by itself cannot be taken as conclusive. Therefore, merely in the absence of proof of pressure, threat, coercion or inducement the statement cannot be held as conclusive and additions cannot be made by solely relying on a statement or a letter. The facts of the appeals under consideration are on better footing. As observed, even in the statement of Poo0ja Pandita, there is no admission or confession of any unexplained income. The said statement therefore is of no help to the revenue to make the impugned additions.

13. Even the CBDT Letter No.286/2/2003-IT(Inv) dated Oct 3, 2003 in this respect read as under:

“To

The Chief Commissioners of Income Tax, (Cadre Contra)

&

All Directors General of Income Tax Inv.

Sir,

Subject: Confession of additional Income during the course of search & seizure and survey operation – regarding

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders

Yours faithfully,”

14. A perusal of the above circular also shows that it is in the notice of the statutory controlling body of the Income Tax Authorities that the revenue officials are used to take confessional statements from the person searched under force, pressure or threat and that is why they have made it mandatory that additions solely on the basis on such statements should not be made and that corroborative evidences should be collected or obtained before making such additions. The circular of the CBDT is binding on the revenue officials. In the facts and circumstances of this case, when seen in the light of above case laws and CBDT circular, additions in this case cannot be said to be justifiably made.

15. Moreover, Ms. Pandita, was not found in possession or control of any books of account or other document or any assets as mentioned under the provisions of section 132(4) of the Act, hence, as per the relevant provisions of the Act, the search party even was not to supposed to record her statement, hence, even otherwise also, no reliance can be placed on her statement. At this stage, it would be relevant to reproduce the relevant provisions of section 132 of the Act, as were in force, for the assessment years under consideration:

“ Search and seizure.

132. (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters

relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.”

16. It may be pointed out here that section 132 of the Act is a comprehensive provision. The exercise of power under the search and seizure provision, having serious consequences on the searched person, requires caution and strict compliance. As per the provisions of section 132(4), the authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any such statement recorded of him may be used in evidence in any proceeding under the Act. Hence, as per the provisions of section 132(4), for subjecting a person to examination, such person must be found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. Admittedly, Mrs. Pooja Pandita was neither found in possession or control of any books of accounts nor of any of the assets/ items as mentioned U/s 132(4). Therefore, the search party was neither supposed to record her statement, nor any reliance can be placed on any such statement is beyond the authority given under section 132(4) of the Act.

17. In the case of “CIT v. Sri Ramdas Motor Transport Ltd.” Reported in (1999) 238 ITR 177 (AP), Hon’ble Andhra Pradesh High Court, while deliberating upon the provisions of Section 132(4) of the Act has held in cases where no unaccounted documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked. The relevant part of the said order is reproduced below:

“A plain reading of sub-section (4) shows that the authorised officer during the course of raid is empowered to examine any person if he is found to be in possession or control of any undisclosed books of account, documents, money or other valuable articles or things, elicit information from such person with regard to such account books or money which are in his possession and can record a statement to that effect. Under this provision, such statements can be used in evidence in any subsequent proceeding initiated against such person under the Act. Thus, the question of examining any person by the authorised officer arises only when he found such person to be in possession of any undisclosed money or books of account. But, in this case, it is admitted by the Revenue that on the dates of search, the Department was not able to find any unaccounted money, unaccounted bullion nor any other valuable articles or things, nor

any unaccounted documents nor any such incriminating material either from the premises of the company or from the residential houses of the managing director and other directors. In such a case, when the managing director or any other persons were found to be not in possession of any incriminating material, the question of examining them by the authorised officer during the course of search and recording any statement from them by invoking the powers under section 132(4) of the Act, does not arise. Therefore, the statement of the managing director of the assessee, recorded patently under section 132(4) of the Act, does not have any evidentiary value.”

8.5.1. *Hon’ble Delhi High Court in the case of “ CIT vs Harjeev Aggarwal” reported in 241 Taxman 199(Delhi) has held in para 21 of the judgement as follows:*

“ 21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken.”

8.5.2. *This position has been reiterated by Hon’ble Delhi High Court in the case of “Pr. CIT Vs. Best Infrastructure(India) Pvt. Ltd.”, 397 ITR 182 (Delhi.), by observing in para 38 of the said order that statements recorded under Section 132(4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by the hon’ble High Court in Harjeev Aggarwal (Supra).”*

18. So far as the statement recorded of the employees/directors of third party (Jai Ambey Pharmaceuticals Pvt. Ltd.) in a separate search action is concerned, even in the said statements, there is nothing stated therein that the assessee has indulged in any bogus transaction. . The said statements are not incriminating in nature. Even no reliance can be legally placed on such statements of employees of a third-party during course of separate search action in case of a third party. As per the provisions of section 153C of the Act, in case of any incriminating material is found during the course of a search action which is relating to a person other than the searched person, then the procedure as laid down u/s 153C of the Act is to be followed for making assessment/reassessment of such other person. The provisions of section 153C, for the sake of ready reference, are reproduced as under:

“Assessment of income of any other person.

153C. (1) *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

- (a) *any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) *any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person ”

19. A perusal of the above provisions would reveal that section 153C starts with a non-obstante clause which covers the provisions of section 139, 147, 148, 149, 151 and 153 of the Income Tax Act. The purpose of the said non-obstante clause is that in case of a conflict between the provisions of section 153C and the other sections as mentioned above, the special provisions of section 153C will prevail over the other general provisions of the Act. Even otherwise, it is settled law that when a special law/provision is enacted, that will prevail over the general provisions of the law/statute. As per the special provisions u/s 153C of the Act, in case of any incriminating material is found during the course of a search action which is relating to a person other than the searched person, then the procedure as laid down u/s 153C of the Act is to be followed for making assessment/reassessment of such other person. In that case, if the Assessing Officer of the searched person is satisfied that the assets/material found during the search action relates to other person, then the Assessing officer of the searched person is supposed

to handover/send that material to the Assessing Officer having jurisdiction over such other person and further that the jurisdictional Assessing Officer of the said other person will have to record a satisfaction that such material has a bearing on the determination of income of such other person and the six assessment years preceding the date of receipt of such material/books of account gets reopened and the Assessing Officer of such other person is required to make assessment in accordance with the provisions of section 153C of the Act. It is not open to the Assessing Officer of such other person to use that material in a subsequent assessment carried out u/s 153A of the Act in case of such other person unless the proceedings u/s 153C are pending against such other person on the date of search. Reliance in this respect can be placed on the decisions of the coordinate Delhi Bench of the Tribunal in the case of “DCIT vs Shivali Mahajan ITA No.5585/Del/2015 dated 19.03.2019; Trilok Chand Choudhry vs ACIT (ITA NO.5870/Del/2017) dated 20.08.2019; and of the Hon’ble Delhi High Court in the case of PCIT (Central) vs. Anand Kumar Jain ITA 23/2021 vide order dated 12.02.2021.

20. Even there is no reference either in the assessment order or in the impugned order of the CIT(A) of any incriminating unearthed relating to the assessee in the said separate search action carried out in the case of a third party. Even the alleged statements did not constitute incriminating material against the assessee. In view of the above discussion, the assessment orders passed u/s 153A in the 14 appeals as listed in the chart above are not sustainable, hence the same are hereby quashed.

In the result, all the 14 appeals as mentioned in the chart above stand allowed.

Issue 2: Deemed Dividend u/s 2(22)(e) of the Act:

21. The issue of deemed dividend has been raised by the assessee as well as by the department in the following appeals:

Sl. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1.	Sanjeev Kumar Aggarwal	2018-19	Assessee	480/Chandi/2023	3

2.	Sanjeev Kumar Aggarwal	2017-18	Assessee	489/Chandi/2023	2
3.	Sanjeev Kumar Aggarwal	2017-18	Department	505/Chandi/2023	1
4.	Sanjeev Kumar Aggarwal	2018-19	Department	506/Chandi/2023	1
5.	Vaishali Aggarwal	2017-18	Assessee	482/Chandi/2023	2
6.	Vaishali Aggarwal	2018-19	Assessee	483/Chandi/2023	3
7.	Balram Krishan Aggarwal	2017-18	Assessee	731/Chandi/2023	4
8.	Balram Krishan Aggarwal	2018-19	Assessee	732/Chandi/2023	4
9.	Balram Krishan Aggarwal	2012-13	Assessee	726/Chandi/2023	4
10.	Balram Krishan Aggarwal	2013-14	Assessee	727/Chandi/2023	4
11.	Balram Krishan Aggarwal	2014-15	Assessee	728/Chandi/2023	4

22. At the request of the parties, the lead case, for the purpose of narration of facts is taken up in the case of Sanjeev Kumar Aggarwal for AY 2018-19 bearing ITA No. 480/Chandi/2023. The assessee has raised the issue of deemed dividend vide Ground No. 3 in the said appeal, which for the sake of ready reference is reproduced as under:

“ Ground No.3: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the addition of Rs. 24,63,212/- made by ld. AO u/s 2(22)(e) received from SEPL ”

23. The brief facts relating to the issue are that during the assessment proceedings, the Assessing Officer (AO) observed that the assessee is substantial shareholder (48.48%) in M/s Scott Edil Pharmacia Limited (hereinafter referred to as "SEPL"). He further observed that there were significant credit entries in assessee's bank accounts from the company SEPL. The assessee received Rs. 3,57,23,689/- from SEPL during the FY 2017-18, in addition to declared remuneration of Rs. 72,00,000/- (salary) and Rs. 10,02,000/- (rent) from SEPL. The credits exceeded the amounts paid as salary and rent, raising suspicion that the funds were diverted for personal use. The Ld. AO show-caused the assessee as to why the said credits be not treated as income of the assessee under the deeming provisions of section 2(22)(e) of the Act.

24. In response to the queries of the Id. AO, assessee made submissions that the aforesaid loan/transactions would not fall within the scope of deemed dividend as defined u/s 2(22) of the Act. The contentions raised by the assessee are summarized as under:

(i) That the transactions were part of a running account of the assessee with SEPL in day to day course of business with regular payments and receipts and that these were not loans or advances as contemplated u/s 2(22)(e) .

(ii) It was further and the companies had also raised loans from banks of much higher value against personal guarantees and properties of assessee. Thus this was quid pro quo arrangement for mutual benefits carried out in the regular course of business.

25. The AO, however, rejected these contentions of assessee by holding that assessee's case did not fall under any of the exception of sec. 2(22)(e) as the assessee held substantial shares in SEPL (over 10%). He observed that all the ingredients of the provisions of section 2(22) (e) were present in the transactions made by the assessee with SPEL and that the deeming fiction of the said section was duly attracted in the case of the assessee. He therefore, treated the entire credits received by the assessee from SPEL as deemed dividend u/s 2(22) (e) of the Act and added the same into the income of the assessee. Being aggrieved by the said order of the AO, the assessee preferred appeal before the CIT(A).

26. In appeal before the CIT(A), the assessee reiterated the submissions as were made before the Assessing Officer. The Assessee further contended that the Id. Assessing Officer had considered only the credit entries but totally ignored the substantial payments made by assessee to SEPL. The submissions of the assessee have been reproduced by the Id. CIT(A) from page 102 to page 132 of the impugned order .

27. The Ld. CIT(A), after considering the submissions of the assessee, however, observed that there was nothing on record to substantiate that such transactions between the assessee and M/s SEPL were in the nature of business transactions. He further observed that there was nothing on record to substantiate that M/s SEPL was under obligation to extend such loans to the assessee against furnishing of personal guarantee. He observed that that such transaction have not been carried out during the ordinary

course of business operations for business expediency between the assessee and M/s SEPL . He concluded that in this case all the conditions of Section 2(22)(e) were satisfied and that the case of the assessee was not covered by any of the exceptions provided u/s 2(22) (e) of the Act. He, however, observed that there was merit in the contention of the AR of the assessee that that the AO should have considered only the amount received by the assessee from the SEPL. He observed that when the assessee had made payment to SEPL on earlier occasion, then subsequent receipts from SEPL were repayments / refund of the amount by the SEPL to the assessee. He observed that in such circumstances, it would be appropriate to compute dividend on the basis of peak credit for each of the assessment year, He therefore, restricted the additions to the extent of peak credits for each of the assessment year. The relevant extract of the CIT(A)'s order is reproduced as under :

“10.3 On going through the facts of the case and material on record for AY 2017-18 and 2018-19 (which are not completed assessments as on date of search), it is noted that the appellant has entered into various transactions (receipts as well as payments) with M/s SEPL/SEARLE. On going through the ledger account of the appellant in the books of M/s SEPL/SEARLE for AY 2017-18 and 2018-19, it is noted that besides receipts of salary and rental income, various other amounts have been transferred to him on various dates by M/s SEPL/SEARLE. Similarly payments have been made by him on various dates to M/s SEPL/SEARLE. The ledger account for difference assessment years is like a running ledger account. There is nothing on record to substantiate that such transactions between the appellant and M/s SEPL/SEARLE were in the nature of business transactions. The onus was upon the appellant to substantiate that such transaction carried out by the appellant with M/s SEPL/SEARLE were in the nature of commercial transactions. The appellant has failed to discharge onus in this respect. Accordingly the ratio of decision of Hon'ble ITAT Delhi in the case of Futurez Next Services Ltd (supra) is not applicable to the facts of the present case. Moreover even if the argument of the appellant that he has given his asset as personal guarantee to the financial institutions in favour of M/s SEPL in excess of loans received by her from M/s SEPL is considered, there is nothing on record to substantiate that when the appellant was in urgent need of funds whether he has requested M/s SEPL either to get the property or to purchase the same so that he could access the funds as per his requirements. There is nothing on record to substantiate that M/s SEPL was under obligation to extend such loans to the appellant against

furnishing of personal guarantee. Therefore on such facts ratio of Hon'ble Calcutta High Court in the case of Pardeep Kumar Malhotra vs CIT (supra) is not applicable to facts of the present case. The very nature of the ledger account of the appellant in the books of M/s SEPL/SEARLE demonstrates that such transactions have not been carried out in specific urgent circumstances. M/s SEPL/SEARLE has given the above loans to the appellant as a routine/ regular feature. Such transactions are in the nature of current account. Such transaction have not been carried out during the ordinary course of business operations for business expediency between the appellant and M/s SEPL. From the nature of transactions carried out by the appellant with M/s SEPL/SEARLE, it is evident that such transaction are in the nature of extending loans to each other on various dates. Therefore it is held that the AO was justified in bringing such transactions under the ambit of section 2(22)(e) of the Act as all the remaining conditions (beneficial share holding being more than 10%, M/s SEPL/SEARLE being companies in which the public is not substantially interested and availability of accumulated profits) are fulfilled. The case of the appellant is not covered by any of exceptions provided u/s 2(22)(e) of the Act.”

However there is merit in the argument of the LD. AR that the AO Should not have considered only the amount received from M/s SEPL/SEARLE while computing deemed dividend When the appellant had made payments to M/s SEPL/SEARLE on earlier occasions, then subsequent receipts from M/s SEPL/SEARLE by the appellant was on account of receipt back of amount already given to M/s SEPL/SEARLE by the appellant. In such circumstances it would be logical to compute deemed dividend on the basis of peak credit for each assessment year. For this purpose reliance is here by placed upon the decision of Hon'ble ITAT Delhi in the case of ITO vs, Sandeep Sabarwal ITA No. 2336/Del /2011 /dated 01.10.2015.”

28. The assessee, thus, has come in appeal before us on this issue agitating the confirmation of the additions made by the AO; whereas, the Revenue has come in appeal agitating against the action of the CIT(A) in restricting the addition on account of deemed dividend u/s 2(22) (e) of the Act to the extent of peak credits for each of the year.

29. We have heard the rival contentions and gone through the record. The Ld. AR of the assessee has contended that that the ledger account of assessee in books of SEPL was a current and running ledger account, wherein payments were being exchanged in very frequently and contain both type of entries i.e. giving and taking of the amount on

frequent basis . He in this respect has relied upon the pages 87-98 of the paper book, which is the copy of the ledger account, relevant excerpt from which is reproduced as under:

Date		Particulars	Vch Type	Vch No.	Debit	Credit
Brought Forward						
7-11-2017	Dr	State Bank of India-3169				
	Dr	House No 323 Sec 9D Chd	Receipt			
8-11-2017	Dr	State Bank of India-3169	Journal	75	8,03,23,547.00	3,78,89,553.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	127		6,00,000.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	77		1,00,000.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	128		23,00,000.00
9-11-2017	Dr	State Bank of India-3169	Journal	129		1,11,186.00
	Dr	House No 323 Sec 9D Chd	Receipt	130		27,068.00
	Dr	House No 323 Sec 9D Chd	Journal	78		7,50,000.00
	Dr	House No 323 Sec 9D Chd	Journal	131		13,98,000.00
	Dr	House No 323 Sec 9D Chd	Journal	132		1,28,000.00
	Dr	House No 323 Sec 9D Chd	Journal	133		1,23,298.00
	Dr	House No 323 Sec 9D Chd	Journal	134		1,81,130.00
10-11-2017	Dr	State Bank of India-3169	Journal	135		18,192.00
	Dr	State Bank of India-3169	Journal	136		18,890.00
1-12-2017	Cr	Salary From Scott Edil Pharmacia Ltd	Receipt	81		58,880.00
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	82		5,50,000.00
15-12-2017	Dr	State Bank of India-3169	Journal	145	5,50,000.00	
16-12-2017	Dr	State Bank of India-3169	Receipt	147	13,500.00	
	Dr	State Bank of India-3169	Receipt	100		4,00,000.00
26-12-2017	Dr	House No 323 Sec 9D Chd	Receipt	104		5,70,000.00
1-1-2018	Cr	Salary From Scott Edil Pharmacia Ltd	Journal	105		4,00,000.00
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	170		11,70,822.00
12-1-2018	Cr	State Bank of India-3169	Journal	174	5,50,000.00	
	Dr	State Bank of India-3169	Payment	176	13,500.00	
29-1-2018	Dr	State Bank of India-3169	Receipt	109	4,50,000.00	
1-2-2018	Cr	Salary From Scott Edil Pharmacia Ltd	Receipt	120		4,00,000.00
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	126		3,90,000.00
15-2-2018	Dr	State Bank of India-3169	Journal	192	5,50,000.00	
	Dr	State Bank of India-3169	Receipt	194	13,500.00	
1-3-2018	Cr	Salary From Scott Edil Pharmacia Ltd	Journal	131		3,00,000.00
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	207	5,50,000.00	
14-3-2018	Dr	State Bank of India-3169	Receipt	210	13,500.00	
21-3-2018	Cr	State Bank of India-3169	Payment	149		2,00,000.00
				140	4,00,000.00	
	Dr	Closing Balance			8,34,27,547.00	5,06,85,009.00
						3,27,42,538.00
					<u>8,34,27,547.00</u>	<u>8,34,27,547.00</u>

Date		Particulars	Vch Type	Vch No.	Debit	Credit
Brought Forward					5,10,79,547.00	2,45,59,812.00
1-8-2017	Cr	Salary From Scott Edil Pharmacia Ltd	Journal			
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	63	4,50,000.00	
2-8-2017	Dr	House No 323 Sec 9D Chd	Journal	64	13,500.00	
11-8-2017	Dr	State Bank of India-3169	Receipt	65		45,686.00
14-8-2017	Cr	State Bank of India-3169	Payment	36		11,00,000.00
15-8-2017	Dr	House No 323 Sec 9D Chd	Journal	29	15,00,000.00	
	Dr	House No 323 Sec 9D Chd	Journal	67		25,446.00
16-8-2017	Cr	State Bank of India-3169	Payment	68		25,446.00
18-8-2017	Dr	House No 323 Sec 9D Chd	Journal	32	25,50,000.00	
20-8-2017	Dr	House No 323 Sec 9D Chd	Journal	72		41,400.00
	Dr	House No 323 Sec 9D Chd	Journal	73		39,001.00
	Dr	House No 323 Sec 9D Chd	Journal	74		2,100.00
	Dr	House No 323 Sec 9D Chd	Journal	75		9,378.00
	Dr	House No 323 Sec 9D Chd	Journal	76		30,786.00
30-8-2017	Dr	State Bank of India-3169	Receipt	45		30,00,000.00
1-9-2017	Dr	State Bank of India-3169	Receipt	48		11,00,000.00
	Cr	Salary From Scott Edil Pharmacia Ltd	Journal	80	5,00,000.00	
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	82	13,500.00	
4-9-2017	Dr	State Bank of India-3169	Receipt	49		5,00,000.00
5-9-2017	Dr	State Bank of India-3169	Receipt	51		6,50,000.00
	Dr	House No 323 Sec 9D Chd	Journal	83		65,520.00
6-9-2017	Dr	State Bank of India-3169	Receipt	52		1,00,000.00
8-9-2017	Dr	House No 323 Sec 9D Chd	Journal	87		17,223.00
18-9-2017	Dr	State Bank of India-3169	Receipt	53		6,00,000.00
27-9-2017	Cr	HDFC Bank-4396	Payment	51	75,00,000.00	
28-9-2017	Cr	HDFC Bank-4396	Payment	52	35,00,000.00	
29-9-2017	Cr	HDFC Bank-4396	Payment	53	34,90,000.00	
30-9-2017	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	94		73,541.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	95		3,50,000.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	97		16,250.00
	Dr	House No 323 Sec 9D Chd	Journal	98		11,00,000.00
	Dr	House No 323 Sec 9D Chd	Journal	99		2,70,000.00
	Dr	House No 323 Sec 9D Chd	Journal	100	5,50,000.00	
1-10-2017	Cr	Salary From Scott Edil Pharmacia Ltd	Journal	102	13,500.00	
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	65		6,50,000.00
12-10-2017	Dr	State Bank of India-3169	Receipt	56	19,00,000.00	
13-10-2017	Cr	HDFC Bank-4396	Payment	57	30,00,000.00	
	Cr	HDFC Bank-4396	Payment	106		16,250.00
17-10-2017	Dr	House No 323 Sec 9D Chd	Journal	71		17,00,000.00
23-10-2017	Dr	State Bank of India-3169	Receipt	107		39,900.00
24-10-2017	Dr	House No 323 Sec 9D Chd	Journal	72		18,00,000.00
26-10-2017	Dr	State Bank of India-3169	Receipt	65	22,00,000.00	
	Cr	HDFC Bank-4396	Payment	66	15,00,000.00	
27-10-2017	Cr	State Bank of India-3169	Payment	110		6,609.00
28-10-2017	Dr	House No 323 Sec 9D Chd	Journal	111		4,510.00
	Dr	House No 323 Sec 9D Chd	Journal	115		13,023.00
31-10-2017	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	116		1,003.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	117		974.00
	Dr	House No 3100, Sec 21 Chd (25% Share)	Journal	119		81,515.00
	Dr	House No 323 Sec 9D Chd	Journal	120		16,250.00
	Dr	House No 323 Sec 9D Chd	Journal	122	5,50,000.00	
1-11-2017	Cr	Salary From Scott Edil Pharmacia Ltd	Journal	124	13,500.00	
	Cr	Rent From SEPL- Flat 303 Zirakpur	Journal	125		37,930.00
4-11-2017	Dr	House No 323 Sec 9D Chd	Journal			
					8,03,23,547.00	3,78,89,553.00
Carried Over						

continued ...

Sanjeev Aggarwal					
Scott Edil Pharmacia Limited (Current Transactions)					
Ledger Account					
1-Apr-2017 to 31-Mar-2018					
					Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2017	Cr Opening Balance			88,25,547.00	
1-4-2017	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	3		1,00,000.00
	Cr Salary From Scott Edil Pharmacia Ltd	Journal	4	6,00,000.00	
	Cr Rent From SEPL- Flat 303 Zirakpur	Journal	7	13,500.00	
6-4-2017	Dr State Bank of India-3169	Receipt	2		5,00,000.00
10-4-2017	Dr State Bank of India-3169	Receipt	3		2,40,689.00
1-5-2017	Cr Salary From Scott Edil Pharmacia Ltd	Journal	15	6,00,000.00	
	Cr Rent From SEPL- Flat 303 Zirakpur	Journal	17	13,500.00	
9-5-2017	Dr State Bank of India-3169	Receipt	8		6,00,000.00
17-5-2017	Dr State Bank of India-3169	Receipt	13		60,000.00
1-6-2017	Cr Salary From Scott Edil Pharmacia Ltd	Journal	24	5,00,000.00	
	Cr Rent From SEPL- Flat 303 Zirakpur	Journal	26	13,500.00	
15-6-2017	Dr State Bank of India-3169	Receipt	16		6,00,000.00
22-6-2017	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	28		5,81,510.00
	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	29		30,773.00
1-7-2017	Cr Salary From Scott Edil Pharmacia Ltd	Journal	34	5,00,000.00	
	Cr Rent From SEPL- Flat 303 Zirakpur	Journal	36	13,500.00	
2-7-2017	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	37		25,000.00
4-7-2017	Dr State Bank of India-3169	Receipt	37		23,00,000.00
5-7-2017	Dr State Bank of India-3169	Receipt	22		20,75,000.00
12-7-2017	Dr State Bank of India-3169	Receipt	23		1,45,000.00
13-7-2017	Cr State Bank of India-3169	Payment	24	4,00,00,000.00	
	Dr HDFC Bank-4396	Receipt	19		2,50,000.00
14-7-2017	Dr State Bank of India-3169	Receipt	26		1,49,67,000.00
17-7-2017	Dr State Bank of India-3169	Receipt	27		5,00,000.00
	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	28		44,673.00
	Dr House No 323 Sec 9D Chd	Journal	39		83,672.00
	Dr House No 323 Sec 9D Chd	Journal	40		49,413.00
	Dr House No 323 Sec 9D Chd	Journal	41		1,36,442.00
	Dr House No 323 Sec 9D Chd	Journal	42		5,80,000.00
18-7-2017	Dr State Bank of India-3169	Receipt	30		25,446.00
26-7-2017	Dr House No 323 Sec 9D Chd	Journal	43		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	44		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	45		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	46		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	47		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	48		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	49		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	50		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	51		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	52		35,027.00
	Dr House No 323 Sec 9D Chd	Journal	53		46,781.00
29-7-2017	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	54		1,14,688.00
	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	55		26,904.00
	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	56		25,446.00
	Dr House No 3100, Sec 21 Chd (25% Share)	Journal	57		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	58		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	59		25,446.00
	Dr House No 323 Sec 9D Chd	Journal	60		1,36,442.00
31-7-2017	Dr House No 323 Sec 9D Chd	Journal	62		1,36,442.00
	Carried Over			5,10,79,547.00	2,45,59,810.00

30. The Ld. AR of the assessee placing reliance upon the above excerpts of the ledger account has demonstrated that it was evident from the above ledger account of assessee in books of SEPL that the above account was a running current account, wherein, payments were being exchanged in the form of current & inter banking transactions very frequently and contain both type of entries i.e. receipts and payments. The Ld. Counsel has contended that this nature of current account transactions could not be said to be “loan” or “advance” as contemplated u/s 2(22)(e). The Ld. AR of the assessee has further contended that these were not gratuitous advances, but a reflection of ongoing business

transactions, thus falling outside the scope of deemed dividends as per the statutory provision. Reliance has been placed on following case laws :

i). DCIT vs Futurz Next Services Ltd. (Del Trib) (ITA No. 3556/Del/2016) dated 04.01.2022

ii). Bombay Oil Industries Ltd. Vs. DCIT (2009) 28 SOT 383 (Bom)

iii). "Exotica Housing & Infrastructure Company Pvt. Ltd. vs. ITO., 82 ITR 0046, (Delhi ITAT),

31. The Ld. Counsel for the assessee has further contended that the assessee provided personal guarantees to SEPL in order to secure credit facilities from banks which included a fund-based limit of Rs. 42.85 crore and a non-fund-based limit of Rs. 15 crores. Copy of record of sanction letters of loans raised by SEPL have been placed at page 96-106 of the Paper Book, the relevant part of the same is reproduced below:

99

This agreement forms part of stamp papers
(Non-Judicial) worth Rs. ...100.1-.....

Executed by Sanjeev Aggarwal, Vaishali Aggarwal + Balram

On 29.12.16 Place: Chandigarh
Date: 29.12.16

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DEED OF GUARANTEE

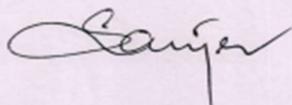
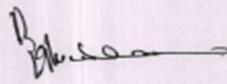
THIS DEED OF GUARANTEE made the 29th day of Dec 2016 by

1. Shri Sanjeev Aggarwal
2. Sh. Balram Krishan Aggarwal and
3. Smt. Vaishali Aggarwal

all residents of H.No.2273, Sector 21-C, Chandigarh

(hereinafter referred to as "the Guarantors" which expression shall unless repugnant to the context or meaning thereof be deemed to include their respective heirs, executors, administrators and legal representatives) in favour of **State Bank of India, SME Branch, Industrial Estate, Phase-I, Chandigarh** being the Lead Bank of "SBI Consortium" as defined in the Working Capital Consortium Agreement dated the 29 day of Dec 2016 (hereinafter referred to as "Lead Bank" which expression shall unless repugnant to the context or meaning thereof be deemed to include State Bank of India and other Consortium member Banks constituting the "SBI Consortium" from time to time or each of them or any one or more of them and their respective successors and assigns).

WHEREAS in terms of Working Capital Consortium Agreement dated the 29 day of Dec 2016 and Joint Deed of Hypothecation dated the 29 day of Dec 2016 executed by **M/S Scott-Edil Pharmacia Limited**, a company within the meaning of the Companies Act, 1956, and having its Registered Office at **Plot No 54-55, Industrial Area, Phase-2, Chandigarh** (hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) with the Lead Bank of the Other Part on the 29 day of Dec 2016 as modified and / or extended by Supplemental Agreement/s dated the **NIL** executed between the Borrower and the Lead Bank (hereinafter the said Working Capital Consortium Agreement, Joint Deed of Hypothecation and Supplemental Agreement/s Collectively referred to as "the said Agreement of Loan") the Lead Bank has agreed to grant / granted to the Borrower all or some or any of the credit facilities either in Indian or Foreign currencies by way of overdrafts, cash credit, Term Loans, pre-shipment and post shipment credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities negotiations and discounting of demand and / or usance bills and cheques inland as well as foreign and such other facilities as may be agreed upon from time to time between the Bank and the Borrower (hereinafter called the "abovementioned credit facilities") for sums not exceeding in the aggregate the sum of **Rs 89,12,00,000 (Rupees Eighty Nine Crore twelve lacs only)** (hereinafter for the sake of brevity referred to as "the Principal sum") on the terms and conditions specified and contained therein) as detailed below:



 Vaishali

32. The Id. Counsel of the assessee has further demonstrated that the value of properties and personal guarantees given by the assessee were more than the entire value of the loans. The guarantee given by the assessee to the SEPL was worth Rs. 89.12 crores, whereas, the amount in question received from the SEPL by the assessee during the year

was less than Rs. 4 crores. The Ld. Counsel for the assessee, thus, has contended that when the bank loan raised by the company on the basis of personal guarantee and mortgage of personal properties of assessee was far in excess of amount given to the assessee by the company, the said amount received by the assessee from SEPL cannot be said to amount to deemed dividend u/s 2(22)(e). The Ld. AR has contended that it has been held time and again that money transferred to give effect to commercial transactions should be kept outside the ambit of s.2(22)(e). He in this respect has placed reliance upon the following case laws:

- a. Pradip Kumar Malhotra V. CIT [2001] 338 ITR 538 (Cal HC).*
- b. DCIT vs. Lakra Brothers, 2007, 106 TTJ 0250, Chandigarh ITAT.*
- c. Bagmane Constructions (P) Ltd. vs. CIT & Anr., 277 CTR 338, Karnataka ITAT.*
- d. CIT vs. Ambassador Travels (P) Ltd., 318 ITR 376, Delhi HC*
- e. Smt. Jamuna Vernekar Vs. DCIT (2021) 432 ITR 146 (Kar HC),*

33. The Ld. Counsel for the assessee, thus, has contended that it has been held in the above referred to decisions that if the transactions between a shareholder and the company create mutual benefits and obligations, then the provision of treating any sum received by the shareholder out of accumulated profits as deemed dividend would not apply.

34. The Ld. Counsel, however, in his alternate contentions, has submitted that while calculating the addition for deemed dividend, the ld. AO included all amounts received and ignored the payments that assessee had made to the company earlier. The amount received by assessee was not a new loan or deposit, but simply a return of the funds previously given to the company. He, therefore, has submitted that that even if, the said transaction are taken in the ambit of s. 2(22)(e), addition at maximum can be made of peak credit of these transactions. He, in this respect, has relied upon the following judicial precedents:

- i). CIT vs. Madhur Housing Development & Co., 93 Iaxmann.com 502, Supreme Court.*
- ii). DCIT vs. Entrack Organic Haus Pvt. Ltd., ITA No. 182 of 2016, Rajasthan ITAT.*

35. It was further contended alternatively, that a credit entry once added as income in the hands of the assessee u/s 2(22)(e) should not be considered again while calculating peak for subsequent periods otherwise the same would lead to double addition of the same entry in the hands of the assessee.

36. The Id. DR, however, has placed reliance on the orders of the lower authorities and submitted that all the conditions enumerated in Section 2(22)(e) of the Act have been fulfilled i.e. (a) The company is closely held, (b) The shareholder holds a substantial interest in the company, (c) The payment is made out of accumulated profits, and (d) The company is not engaged in the business of money lending. She, therefore, has submitted that both the lower authorities were justified in treating the amount received by the assessee as deemed dividend in the hands of the assessee. She has further contended that the Ld. CIT(A) was not justified in directing the AO to add only the peak credits of the year instead of the entire advances received by the assessee from the SEPL.

37. We have heard the rival contentions and gone through the record. There is no denial of fact that the transactions between the assessee group company SEPL were like that of a current and running account. It is noticed that from time to time the assessee and SEPL had given and taken loan from each other as per the business needs. The transactions were continuous and running as per business needs and expediency. The case laws relied upon by the Ld. Counsel for the assessee in this respect, are squarely applicable to the facts and circumstances of the case in hand. In the case of “ Exotica Housing & Infrastructure Company Pvt. Ltd. vs. ITO., 82 ITR 0046, Delhi ITAT” on identical issue, it has been held as under : –

Dividend—Reception of loans and advances—Deemed dividend—Assessee company is engaged in business of commission agent and property development—A.O. completed assessment under section 143(3) after making impugned addition under section 2(22)(e) on account of deemed dividend as Assessee company has received loans and advances for a value of Rs.23,70,33,000/- from E, which was squared off during

year—Assessee held 98% shares of E—CIT(A), dismissed appeal of assessee— Held, transactions carried out through current account for business purposes would not fall within definition of "Deemed Dividend"—Initially assessee company has taken amount from subsidiary company which was repaid and thereafter, it is assessee company which has given amount to subsidiary company on most of occasions and later on subsidiary company has returned amount to assessee—Therefore, provisions of Section 2(22)(e) would not be attracted in case of assessee company because on most of occasions assessee company has advanced amount to subsidiary company and ultimately balance is squared-up at end of year—Assessee company has also filed copy of ledger account of subsidiary company for preceding A.Y. 2012-2013 which revealed that there was a substantial opening balance and subsidiary company has paid amount to assessee company and later on amounts have been returned by assessee company to subsidiary company—It is assessee company who have given amount mostly to subsidiary company which have been returned to subsidiary company by assessee company—Therefore, on such facts when Revenue did not dispute transactions in current account between assessee company and subsidiary company in earlier as well as in subsequent year and assessee company on most of occasions have made payment to subsidiary company, which have been returned by assessee company for business purposes, there was no reason to apply provisions of Section 2(22)(e)—When current account is maintained between parties, provisions of Section 2(22)(e) would not apply—Thus, issue is covered by aforesaid decisions of Tribunal in favour of assessee as well as various decisions considered by jurisdictional Delhi High Court—Assessee's appeal allowed."

38. Even the Ld. Counsel for the assessee has demonstrated that the assessee had mortgaged substantial personal properties and provided personal guarantees to enable SEPL to obtain credit facilities from banks which included a fund-based limit of Rs. 12.85 crore and a non-fund-based limit of Rs. 15 crore. The transactions between assessee and SEPL were mutually beneficial. The Ld. Counsel in this respect has referred to

sanction letters of loans raised by SEPL which are placed from page 96-106 of Additional Paper Book. It is proved on the file that the advances were not gratuitous. The Ld. Counsel has further demonstrated from the ledger of the assessee in the books of SEPL that there were both type of transactions i.e. the assessee had not only taken the advances but has also given the advances. Both the assessee and SEPL would give and take advances as per their business needs. These were not gratuitous loans, rather it was a case of *quid pro quo*, where, both the parties mutually benefitted from each other. The issue is squarely covered by the various decisions of the Tribunal as well as that of the Hon'ble High Courts of the country as referred to above in the submissions of the assessee. The Coordinate Kolkata Bench of the Tribunal in the case of "***Shree Krishna Gyanodya Flour Mills Pvt. Ltd. vs. PCIT***" in ITA No.1008/Kol/2016 dated 14.02.2018, wherein, the Tribunal further relying upon the decision of the Mumbai Bench of the Tribunal in the case of "***Bombay Oil Industries Ltd. vs. DCIT***" reported in [2009] 28 SOT 383 (Bom) and also on the decision of the Calcutta High Court in the case of "***Pradip Kumar Malhotra vs. CIT***" 338 ITR 538(Cal), has held that where the loan transactions are in the normal course of business and out of business expediency and are representing current account transaction, in such type of transactions, the provisions of section 2(22)(e) would not be attracted. The relevant part of the order of the Coordinate Bench of the Tribunal in the case of "Shree Krishna Gyanodya Flour Mills Pvt. Ltd. vs. PCIT" (supra) is reproduced as under:

"The purpose of Section 2(22)(e) of the Act is to tax the benefit extended by private limited company to its shareholders holding shares not less than 10% as beneficial owner of shares (not being shares entitled to a fixed rate of dividend income). There is no dispute with regard to shareholding of the assessee. Now coming to the amount of advance taken by assessee, we note that assessee has not only taken loan / advance from SVPL, but also it has sometime given advance to SVPL. Thus, there was change in the balance shown by assessee. Thus, it cannot be termed as advance taken by assessee as it was fluctuating during the year. In holding so, we find support and guidance from the order of co-ordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd. vs. DCIT reported in [2009] 28 SOT 383 (Bom), wherein it was held as under:-

"From the above it is clear there is distinction between deposits viz-a-vis loans/advances. Section 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its

sweep certain payments made by a company as per the situations enumerated in the section. Such a deeming fiction would not be given a wider meaning than that it purports to do. The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking Section 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the inter-corporate deposits viz-a-vz loans/advances, according to us the authorities below were not right in treating the same as deemed dividend u/ 2(22)(e) of the Act” [emphasis supplied]

Similarly, we also support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of Pradip Kumar Malhotra v. CIT 338 ITR 538 (Cal) wherein the Hon'ble High Court held as under:-

“The phrase “by way of advance or loan” appearing in sub-clause (e) of section 2(22) of the Income-tax Act, 1961, must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of share (not being share entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power; but if such loan or advance is given to such shareholder as a consequence of any further consideration which is beneficial to the company received from such a share-holder, in such case, such advance or loan cannot be said to be deemed dividend within the meaning of the Act. thus, gratuitous loan or advance given by a company to those clauses of shareholders would come within the purview of section 2(22) but not cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.” [emphasis supplied]

From the foregoing discussion, there remains no doubt that the transactions between assessee and SVPL is representing current account transactions. Therefore, the provision of Section 2(22)(e) of the Act cannot be attracted to such transactions. Keeping in view the above discussions, and also bearing in mind the entire facts of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly.”

39. Even, as demonstrated by the Ld. Counsel for the assessee, the issue of deemed dividend was raised in earlier regular assessment in assessee's own case for AY 2011-12. In the assessment order for that year, passed prior to the search action, the Ld. AO had made addition in respect of the deemed dividend. However, in appeal, the Id. CIT(A) deleted the addition by following the above reasoning of mortgage of properties and

giving of personal guarantees by the assessee for loans raised by the company by following the above decision of Hon'ble Calcutta High Court in “**Pradip Kumar Malhotra vs CIT**” (supra). Copy of the said order of CIT(A) dtd. 15.12.2015 is placed at page of the paper Book. The appeal of the revenue against the said order of the Ld. CIT(A) was dismissed by the this Tribunal in ITA No. 169/Chd/2016 dated 23.05.2016, hence the issue has attained finality. The issue is thus, even otherwise squarely covered in favour of the assessee in his own case for the earlier assessment year. Considering the above facts and settled legal position, we hold that the additions made/confirmed by the lower authorities on this issue are not sustainable. Accordingly, the impugned additions on this issue are ordered to be deleted.

40. Since the facts and issue involved are identical in all the appeal given in the chart above, hence, in view of the discussion made above, the addition on account of deemed dividend u/s 2(22)(e) in all the 11 appeals as mentioned in the chart above is ordered to be deleted. These grounds taken by the assessee stand allowed, whereas the grounds taken by the Revenue on the issue of deemed dividend stand dismissed.

Issue 3: Difference in valuation of building/Immovable Property situated at Village Dasora, Majra Hiltop, Near Venus Remedies, Jharmajri, Baddi:

41. Following is the list of cases involving this issue :

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.	AO Order	CIT Order
1	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	4	Page 2-7 Para 7.4-7.5	Page 105-111 Para 12.7
2	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Assessee	846/Chandi/2023	4	Page 2-7 Para 7.4-7.5	Page 85-91 Para 10.6
3	Sanjeev Kumar Aggarwal	2018-19	Assessee	480/Chandi/2023	6	Page 14-15 Para 11.2	Page 206-208 Para 13.5
4	Vaishali Aggarwal	2018-19	Assessee	482/Chandi/2023	6	Page 14-15 Para 11.2 & 11.3	Page 180-182 Para 13.4

5	Balram Krishan	2018-19	Assessee	732/Chandi/2023	7	Page 11-12 Para 11.2 & 11.3	Page 195-197 Para 7.4
6	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Department	94/Chandi / 2024	1-5	-	-
7	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Department	93/Chandi / 2024	1-5	-	-

42. The lead case taken up is Scott Edil Advance Research Laboratories and Education Limited(herein after referred to as “SEARL” for AY 2017-18, having ITA No. 845/Chandi/2023. The assessee, in this respect, has taken following ground:

Ground No. 4: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 28,41,258/- u/s 69C r.w.s. 115BBE of the Act on account of difference in valuation of factory building situated at Village Dasora, Majra Hiltop, Near Venus Remedies, Jharmajri, Baddi as per DVO's report and as per books of the appellant even when the valuation exercise carried out by DVO is absolutely incorrect.

43. The brief facts relating to this issue are that the assessee was carrying on manufacturing operations of pharmaceutical products. One of the manufacturing facilities was at Village Dasora, Majra Hill Top, Near Venus, Remedies, Jharmajri, Baddi. The construction on the said property was carried out primarily during FYs 2009-10 to 2011-12, though, some activity was done almost every year thereafter also. A search action u/s 132 was carried out by the investigation wing on 15.11.2017 at the premises of the assessee. The Ld. DDIT referred the matter of valuation of construction of above referred property to the DVO u/s 132(9D). The DVO, thereafter framed his report and forwarded it to the Ld. DDIT. The DDIT further forwarded the copy of the report of the DVO to the Assessing Officer. The DVO vide his valuation report valued the property at Rs. 58.67 crores as against Rs. 44. 51 crores declared by the assessee in its books. The differential amount of the year in question was computed in the same ratio in which the construction expenses were recorded by assessee in different years in its books and based on that, difference for the year was computed at Rs. 1.98 cr. The AO issued notices to the

assessee show-causing it as to why the difference of the valuation may not be added to the income of the assessee, to which the assessee responded disputing the DVO's valuation and submitted an independent valuation report from M/s Sharma & Associates, a registered valuer, empanelled with the Income Tax Department, valuing the property at Rs. 46.07 crores. The assessee also provided an analysis highlighting computational errors in the DVO's valuation methodology. The ld. AO, however, rejected the contentions raised by the assessee holding that DVO was an independent authority and that there was no reason to consider valuation report of registered valuer over DVO's report. The AO, based on the DVO's report, made addition of the differential amount under Section 69C read with Section 115BBE of the Act. Assessing Officer made identical addition in every year being the difference reported by the Ld. DVO. Being aggrieved by the said order of the AO on this issue, the assessee preferred appeal before the Ld. CIT(A).

44. In appeal before the Ld. CIT(A), the assessee contended that the valuation report of the DVO was based on assumptions and estimations, ignoring actual records of expenses incurred; That the assessee had maintained complete books of accounts, duly audited, and no defect was pointed out by the ld. AO before making reference to DVO. Further that the DVO erroneously applied CPWD rates instead of local PWD rates, which were more appropriate. It was also contended that the assessee had self-supervised the construction, leading to substantial savings that were not considered in the DVO's valuation. It was also contended that the DVO's report was merely an estimate and should not be the sole basis for making additions. A legal issue was also raised to the effect that the Ld. AO did not make his own reference to DVO u/s 142(2A) and she only relied upon DVO's report as was obtained by Ld. DDIT in a reference made u/s 132(9D). It was contended that since no incriminating material was found during search action on the basis of which it could be suspected that assessee invested unaccounted funds in construction and in absence of incriminating material having been found, the reference to DVO in itself was bad in law.

45. The Ld. CIT(A), after considering the above submissions of the assessee directed the AO to get the valuation of the same property from the DVO again since the earlier DVO report had been obtained in violation of principles of natural justice. The DVO gave the report valuing it at Rs. 58,67,88,300/- as against Rs. 44,51,28,408/- recorded in the books of the assessee. The Ld. CIT(A) applied the said report of the DVO. The Ld. CIT(A) though, observed that there was merit in the argument of the Ld. AR of the assessee regarding the application of State PWD rates, but noted that the assessee had failed to provide evidence to show that the DVO's valuation was higher than the State PWD based valuation. He, however, further observed that on the basis of documents furnished, it was evident that no contractor was engaged and therefore, benefit on account of self-supervision/Self-procurement was to be allowed. He, however, held that the said income/addition was not eligible for deduction u/s 80IC as it was not derived from eligible business. The Ld. CIT(A), thus gave part relief to the assessee. Accordingly, the remaining addition of Rs. 28,41,258/- made by the AO was upheld. The relevant part of the order of the Ld. CIT(A) on this issue is reproduced as under:

“On going through the facts of the case, and submission of the Ld. AR on the above issue, it is found that there is merit in the argument that PWD rates should have been adopted for the purpose of valuation by the DVO. However, the appellant has not provided any material to show that the revised valuation made by the DVO was higher than the valuation on the basis of PWD rates. Therefore no merit is found in such submission of the appellant. Such income is not eligible for deduction u/s 80IC of the Act as the same has not been derived from the eligible business. Further the DVO has allowed rebate on account of self supervision/ self procurement of the material after going through relevant record. The appellant has furnished copy of construction account wherein various expenditure for labour, material, steel, electrical items etc have been clearly demarcated. From the same it is evident that no contractor was engaged by the appellant for the purpose of construction of the said building. The AO has not brought on record any material to show that construction was not done through self supervision/ self procurement of the material. The DVO only after being satisfied on this account and as per the relevant guidelines has allowed rebate for this purpose. The AO has accepted the genuineness and particulars of cost of construction as declared in the books of account for different assessment years. Such objections of the AO in the remand

report have been found without any substance. It is relevant to mention here that the DVO was engaged by the Department itself.

10.6 On the basis of above facts, discussion and report of the DVO it is evident that cost of construction has been under stated by the appellant. Reliance is hereby placed upon the decision of Hon'ble Madras High Court in the case of Shri Krishna Mahal vs ACIT ZSOITR 0333/ 169 CTR0228 (2001). Keeping in view above facts and discussion it is evident that the appellant has failed to explain source and nature of investments made to the extent of difference in cost of construction of factory building as determined by the DVO and as declared by the appellant in its books of account satisfactorily. Accordingly the addition made by the AO for AY 2018-19 is partly confirmed for Rs. 56,21,339/- u/s 69B r.w.s. 115BBE of the Act and corresponding ground of appeal is partly allowed.”

46. Being aggrieved by the above order of the CIT(A) on this issue, the assessee has come in appeal before us agitating against the confirmation of the addition made by the CIT(A), whereas the Revenue has come in appeal assailing the action of the CIT(A) to the extent the addition on this issue stood deleted by him.

47. Before us, the Ld. Counsel for the assessee has submitted that the DVO had calculated the aggregate difference in construction cost and then bifurcated the same year wise in the same ratio in which construction value was declared by the assessee. No basis for such adoption of ratio was mentioned in the report of DVO. That the DVO had presumed that the assessee was under-recording the construction cost in the same proportion in which he was recording the construction at every point of time throughout the period of construction spanning more than 10 years. That these estimates were pure guess works without having any evidence in hand. It was further submitted by the Ld. counsel that the valuation report filed by the Ld. DVO was full of errors. He has made a wrong computation of area as well as the rate. That the assessee has declared the expenses on construction of relevant property in its books of accounts and that no discrepancy, defect or incriminating material regarding the same was found during the course of search action. That even the said books have neither been doubted nor rejected by AO or the Ld. CIT(A). The Ld. Counsel for the assessee contended that the construction on the said property was carried out primarily during FYs 2009-10 to 2011-12, though some activity

was done almost every year. That the expenses incurred on the subject property were duly recorded in the books. That the expenditure incurred on the construction in the books of accounts was at Rs. 44. 51 cr. However, as per the valuation report from the independent registered valuer namely M/s Sharma & Associates, was at Rs. 46.07cr, which was only 3.5% more than the value recorded in books. He, therefore has submitted that under the circumstances, no addition was warranted in this case due to such a small difference. The Ld. counsel for the assessee further contended that while making valuation of the property, DVO made certain mistakes which included calculation on CPWD rates rather than State PWD rates, which were lesser than the CPWD rates. It has been contended that though the Ld. CIT(A) agreed with the view that State PWD rates should be used but, the Ld. CIT(A) did not give any relief on this count despite the fact that the assessee had submitted a report wherein valuation was computed with State PWD rates and also provided analysis of difference between the CPWD rates and State PWD rates. He submitted that the analysis of rates would show that the State PWD rates were more than 20% lesser than the CPWD rates. The Ld. counsel submitted that State PWD rates would be applicable for property valuation as the property is situated in a jurisdiction where such rates are applicable. The Ld. Counsel of the assessee has relied upon following Judicial pronouncements on this issue: :

- a) **Smt. Kamini Sharma, Solan vs. ITO, ITA Nos. 1365 to 1369 of 2010 (Chandigarh ITAT),**
- b) **C.S. Daniel vs. DCIT, 220 TAXMAN 336 (Kerala HC),**
- c) **CIT vs. K. Jayakumar, 216 TAXMAN 166 (Madras HC), and**
- d) **CIT vs. D. Subramanian, 296 ITR 348 (Chennai HC)**

48. Further, the Ld. Counsel for the assessee also contended that the difference in report of DVO and as per books was less than 10% and therefore, the addition u/s 69B was not sustainable as per the judicial precedents laid down by Hon'ble J&K HC in **Honest Group Of Hotels (P) Ltd. Vs. Cit, 123 Taxman 0464.**

49. The Ld. Counsel for the assessee has further contended that reference made by the DDIT u/s 132(9D) was without rejecting the books of the accounts which was bad in law

and that the subsequent DVO report was also legally not sustainable as per the judicial precedent laid down by the Hon'ble Apex Court in the case of *Sargam Cinema vs. CIT*, **328 ITR 513**.

50. The Id. Counsel for the assessee further contended that the Id. AO did not have any incriminating evidence to prove that the assessee incurred out-of-book construction expenses. Therefore, the addition made solely on the basis of the DVO report without any evidence was incorrect.

51. The Id. Counsel for the assessee has further, alternately, contended that undisputedly, the assessee's only source of income was profit from manufacturing operation which was eligible for deduction u/s 80IC. That when there was no other source of income of the assessee, even if there was any undisclosed investment in construction of property, the same would have come from the same profit from manufacturing operations. Therefore, the deduction u/s 80IC should have been allowed on that component of income invested in alleged construction.

52. The Ld. CIT (DR) , on the other hand, has contended that the Id. AO was justified in making the impugned addition on the basis of valuation report of the DVO on account of difference calculated proportionately, based on the expenses incurred by the assessee over different years. She has placed reliance on the orders of Id. AO and Id. CIT(A) and stated the assessee's reliance on an alternate valuation report by M/s Sharma and Associates, was not tenable as the DVO was an independent authority, and the valuation was conducted on a reference made by the Investigation Wing u/s 132(9D), ensuring credibility and impartiality. She has further contended that assessee's claim that the estimates made by DVO were without any evidence was not correct. That the DVO used available data and professional expertise to determine the construction cost. The Id. DR rebutting the contentions of the Ld. AR of the assessee regarding books being not rejected and even no defect pointed out by any of the authorities in the same, has submitted that that the books of accounts alone cannot conclusively determine the correctness of declared expenses, especially when external valuation highlights significant discrepancies. She therefore, has contended that the Id. CIT(A)'s decision to uphold the

DVO's valuation, with limited adjustments for self-supervision and procurement, was fair and reasonable.

53. The Id. DR has also submitted that assessee's claim for deduction u/s 80IC was untenable as the addition pertains to unexplained construction costs, which were not derived from manufacturing activities eligible for the deduction. She has further contended that the Ld. CIT(A) has rightly applied the CPWD rates for valuation of the property and that there was no discrepancy in the same. She, therefore, has relied upon the findings of the lower authorities.

54. We have heard the rival contentions and gone through the record. In this case, admittedly, no incriminating material, whatsoever, was found during the course of search action. It has been held time and again that the report obtained of the DVO after the search action, would not fall in the definition of incriminating material. The Ld. Counsel for the assessee has relied upon various case laws to stress the point that even in the absence of any corroborating evidence, the addition solely on the basis of the report of the DVO cannot be made even in the normal course or even in case of abated assessment years on the date of search. He has further submitted that the report of the DVO was a mere estimation of investment and would not constitute as conclusive evidence of investment. The Id. Counsel has further relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. Civil Appeal No.6580 of 2021 dated 24.04.2023 reported in [2023] 149 taxmann.com 399 (SC) wherein the Hon'ble Supreme Court has held that in respect of completed/unabated assessments, no addition can be made by the AO in an assessment carried out u/s 153A of the Income Tax Act in the absence of any incriminating material found during the search action. He has further relied upon various case laws to contend that the report of the DVO cannot be construed as an incriminating material found during the course of search action and further that addition cannot be made on account of unexplained investment in a property solely on the basis of DVO report without any other corroborating evidence or incriminating evidence found in support of such addition. The Hon'ble Supreme Court in *Sargam*

Cinema v. CIT (328 ITR 513) has held that a DVO's report cannot be relied upon unless the books of accounts are found to be incorrect. The Income Tax Act does not mandate blind reliance on a DVO's report unless corroborated by substantive proof of undisclosed investment. Valuation reports are opinion-based and susceptible to variations due to differing methodologies, assumptions, and regional price fluctuations. The reliance in this respect can be placed on the following decisions:

“(i) [Assistant Commissioner of Income Tax, Central Circle-1(3), Kolkata v. Narula Educational Trust [2021] 126 taxmann.com 158 (Kolkata - Trib.)

(ii) Champaklal S. Kasat v. Deputy Commissioner of Income-tax, Cent. Cir. 1(3), Ahmedabad [2017] 82 taxmann.com 243 (Ahmedabad - Trib.)

(iii) Kay Jay Projects Pvt. Ltd. Versus Dcit, Central Circle, Noida 2023 (8) Tmi 431: Assessment u/s 153A - Addition towards the cost of construction of the building - Reference made to ld. DVO u/s 142A - HELD THAT:- Admittedly, no incriminating material has been found during the course of search qua this addition towards cost of construction. This fact is evident from the perusal of the orders of the lower authorities. [Refer para 13]

Sole basis of the addition is only the valuation report furnished by the DVO which has been obtained by the ld. AO during the course of search assessment proceedings. Then, the said report cannot constitute incriminating material found during the course of search. Hence, we have no hesitation to hold that no addition could be made by placing reliance on the said valuation report while framing the assessment u/s 153A of the Act in the hands of the assessee. This issue is now well settled by the recent decision of Sargam Cinema vs. (2009 (10) TMI 569 – SC ORDER] and in the case of CIT Vs. Nirmal Kumar Aggarwal (2018 (10) TMI 2002- SC ORDER] as referred to supra in the contentions of the ld. AR.

(iv) The Dcit, Central Circle-1 Ludhiana Versus M/S Rajan Enterprises And Vice-Versa 2022 (5) Tmi 1376

Addition on account of difference in cost of construction as per the books of account and as per the report of the DVO - As it is an undisputed fact on record that no incriminating material or evidence was found during the course of search which could indicate that the assessee had made investment towards cost of construction outside the regular books of account. We also note that the Ld. CIT(A) had deleted the addition in this year by following the order of the Ld. CIT(A) for the immediately preceding assessment year.

Since no material was found in the search and seizure operations which could justify the Assessing Officer's action in referring the matter to the DVO for his opinion on valuation of the said properties, then the valuation arrived at by the DVO would be of no consequence. Accordingly, in view of the above cited judicial precedents as well as the factual finding recorded by the Ld. CIT(A) in assessment year 2016-17, which, in our opinion, is both sound as well as logical, we have no hesitation in upholding the same.

Accordingly, the ground raised by the Department on this issue also stands dismissed.[Para 8.3]

(v) Commissioner Of Income Tax Versus Abhinav Kumar Mittal 2013 (1) Tmi 629 – (Delhi High Court: (2013) 351 Itr 20

Additions u/s 69 - search conducted u/s 132 - notice u/s 153C - valuation of properties referred to District Valuation Officer (DVO) - ITAT deleted the addition - Held that:- No reason to differ from the view taken by the Tribunal as no material was found in the search and seizure operations, which would justify the AO's action in referring the matter to the DVO for his opinion on valuation of the said properties. If that be the case, then the valuation arrived at by the DVO would be of no consequence. In any event, the Tribunal has also, on facts, held that the DVO's valuation was based on incomparable sales, which is not permissible in law - in favour of assessee. [Para 5]

(vi) Smt. Jatinder Kaur, Smt. Harbhajan Kaur Versus The Dcit Cc-1, Ludhiana 2021 (10) Tmi 1150 - Itat Chandigarh

Assessment u/s 153A - Undisclosed investment in the residential buildup house - difference in values as declared by the assessee and as opined by the DVO, - Whether no incriminating evidence was found during the course of search relating to the part additions as confirmed by the Worthy CIT(A)? - Tribunal in the second appeal reversed the findings of the Ld. CIT(A) and deleted the addition holding that since no material was found during the search to justify the reference to the DVO, the action was not in accordance with law - HELD THAT:- As in the present case, the authorities below have not pointed out any corroborative evidence to show that the assessee had made investment in question more than the amount declared by the her during assessment proceedings. Hence respectfully following the judgment of Abhinav Kumar Mittal [2013 (1) TMI 629 - DELHI HIGH COURT] we allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT(A).[Para 6& 7]

(vii) 2021 (7) TMI 671 - ASSISTANT COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-1 (3), KOLKATA VERSUS M/S. JIS FOUNDATION AND (VICE-VERSA)

Assessment u/s 153A - Unexplained investment u/s. 69 - valuation report of the District Valuation Officer (DVO) - Estimation of value of assets by Valuation Officer - HELD THAT:- As relying on M/S. NARULA EDUCATIONAL TRUST AND M/S. NARULA

EDUCATIONAL TRUST VERSUS DEPUTY COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-1 (3), KOLKATA [2021 (2) TMI 459 - TAT KOLKATA] From the perusal of panchnama and the assessment orders, it can be safely inferred that the reference made by DDIT (Inv.) for valuation of the properties was without any incriminating materials found during search [oral or documentary which could have suggested that the assessee has shown less investment in its books for building construction] Therefore, no addition was permissible in the assessment order u/s 153A of the Act in the case of un-abated assessments unless it is based on relevant

incriminating material found during the course of search qua the assessee and qua the AY. - Decided in favour of assessee. [Para 15]

(viii) 2013 (5) TMI 637 - ITAT DELHI ASSTT. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-11, NEW DELHI VERSUS MS. ASHA KATARIA

Addition made upon the valuation done by the DVO - value of the property in this case as reflected in the registered sale deed was Rs. 33,00,000/-. Reference u/s. 142A was made to the DVO who determined the value of the property at Rs.63,74,700/- as against Rs. 33,00,000/- shown by the assessee. Hence, there was difference of Rs. 30,74,700/-. This was added to the income of the assessee. CIT(A) deleted the addition as there was no evidence of adverse material regarding payment of under hand consideration - Held that:- As no other incriminating material was found during the course of search CIT(A) is correct in this regard. Addition in this case has been made pursuant to search on the basis of Valuation Report of the DVO. It has been settled that in case of search in the absence of any incriminating material found during search, no addition can be made on the basis of Report of the DVO. See K.P. Varghese vs. ITO, Ernakulam&Anr. [1981 (9) TMI 1-SUPREME Court], C.I.T. vs. Abhinav Kumar Mittal [2013 (1) TMI 629 - DELHI HIGH COURT], C.I.T. Vs. Mahesh Kumar [2010 (8) TMI 64 - DELHI HIGH COURT]. Thus in the absence of any evidence that the assessee has invested more than value declared in the registered sale deed of property purchased, the addition in this regard on the basis of Valuation Report by the DVO is not sustainable. [Para 50]

(ix) 2015 (3) TMI 156 - DELHI HIGH COURT COMMISSIONER OF INCOME TAX VERSUS NISHI MEHRA, ARUN MEHRA, SUSHIL MEHRA, SUBHASH MEHRA, SURBHI MEHRA, MANJU MEHRA

Scope, power and jurisdiction of AO in block assessment proceedings and the term "undisclosed income - AO concluded a comparison between declared value and the value determined by the DVO disclosed serious discrepancy and added the difference and brought them to tax in the block assessment orders – ITAT concluded that the AO could not have brought to tax the amounts that he ultimately did merely based upon the DVO's report in the absence of any material pointing to under valuation - Held that:- As decided on CIT Versus. Naveen Gera (2010 (8) TMI 194 - Delhi High Court] it is settled law that in the absence of any incriminating evidence that anything has been paid over and above than the stated amount, the primary burden of proof is on the Revenue to show that there has been an understatement or concealment of income. It is only when such burden has been discharged, would it be permissible to rely upon the valuation given by the DVO.

As apparent from the factual narrative, the materials collected in the search operations impelled the AO to complete the block assessment in this case. Conspicuously, however, there was no material in the course of the search or collected during the proceedings post search, pointing to under valuation of the assessee's properties which were ultimately held to have been the subject of under valuation. Again, significantly the assessee had at relevant time when the actual purchases were effected disclosed the transactional value of those assets; the AO has then unreservedly accepted them. Wealth Tax authorities too had accepted the valuation. - Decided in favour of assessee.

(x) (2008] 166 Taxman 75 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax, Delhi-VII, New Delhi v. Ashok Khetrpal*

Section 158B of the Income-tax Act, 1961 - Block assessment in search cases Undisclosed income - Assessment year 1999-2000- Whether where no incriminating material whatsoever was found during search that might show that assessee had made more investment in properties than their declared value, addition could not be made by treating investment as undisclosed on basis of any DVO's report - Held, yes

(xi) Commissioner of Income-tax, Central Circle v. Vasudev Construction*2014] 44 taxmann.com 30 (Karnataka)

Section 158BB of the income-tax Act, 1961 - Block assessment in search cases - Undisclosed income, computation of (DVO report) - Block period 1-4-1989 to 28-1-2000 - Assessee-firm was engaged in business of construction of building and development of properties - During search, certain documents like bills of materials purchased, labour charges paid, cheques relating to assessee-firm were found and seized - Notice was issued under section 158BD calling upon assessee to file return of undisclosed income for block period 1-4-1989 to 28-1-2000 - Thereafter, valuation of cost of construction of buildings constructed by assessee-firm was referred to DVO, for valuation under section 133(6) - Assessing Officer added difference in valuation of cost of construction adopted by assessee-firm and DVO as undisclosed income - Whether since no material was found during search to indicate that assessee had not recorded expenses incurred on construction in books of account, in absence of any seized materials and solely on basis of DVO's report addition of undisclosed income under section 158BB could not be made - Held, yes [Para 10] [In favour of assessee]

11.1 It has further been held by Hon'ble Delhi High Court and Hon'ble Gujarat High Court that report of the DVO is not binding and no addition can be made in the basis of the standalone valuation report."

55. As noted above, it has been held time and again by various courts of law that the DVO's report on standalone basis without any corroborating material cannot be construed as incriminating material and hence the additions solely on the basis of the DVO's report are not sustainable. The Ahmedabad Bench of the Tribunal in the case of **ACIT vs. Shri Jayantilal T. Jariwala in IT(SS) A No.65/Ahd/2009** vide order dated 28.10.2015 has taken note of the following decisions of the Hon'ble High Courts in this respect:

" i) Hon'ble Gujarat High Court in the case of CIT Vs. Jayendra N. Shah, (2014) 52 taxmann.com 54 (Gujarat).

ii) The Hon'ble High Court in the case of CIV Vs. Vasudev Construction (2014) 44 taxmann.com 30 (Kar.)

iii) CIT Vs. Berry Plastics P. Ltd., (2013) 35 taxmann.com 296 (Guj)

- iv) *CIT Vs. Sadhna Gupta (IT Appeal No.434 of 2012) (Delhi HC)*;
- v) *CIT Vs. Lahsa Construction P. Ltd., (2014) 42 taxmann.com 549 (Delhi)*;
- vi) *GookluckAutomobils P. Ltd. Vs. ACIT (2012) 26 taxmann.com 254 (Guj)*”

56. The Coordinate Ahmedabad Bench of the Tribunal in the case of ACIT vs. Shri Jayantilal T. Jariwala (supra) taking note of the aforesaid decision of various High Courts, under similar circumstances, has decided the issue in favour of the assessee, observing as under:

“8. We have duly considered rival contentions and gone through the record carefully. Before we embark upon an inquiry on the facts of the present case, we would like to take note of the finding recorded by the Delhi High Court in the case of CIT Vs. Sadhna Gupta (supra) on the issue whether merely on the basis of the DVO’s report, an addition can be made or not. The following finding is worth to note:

“4. The only point to be considered is whether the valuation rendered by the DVO is to be taken into account or not. It has been argued by the learned counsel for the revenue that the assessing officer was justified in referring the matter to the DVO for an opinion with regard to the fair market value of the property and once that opinion has been rendered, the same has to be taken into account and if that were to be so, the addition of Rs. 2,81,83,000/- would be fully justified. Consequently, it was submitted by the learned counsel for the revenue that the Tribunal had erred in deleting the addition. On the other hand the learned counsel for the respondent referred to a Division Bench decision of this Court in the case of CIT v. Puneet Sabharwal [2011] 338 ITR 485. In that decision a specific question had been raised as to whether the Income Tax Appellate Tribunal was right in holding that notwithstanding the report of the DVO the revenue had to prove that the assessee had received extra consideration over and above the declared value of the same. That question was answered by this Court in favour of the assessee and against the revenue. The Division Bench in the case of Puneet Sabharwal (supra) had also placed reliance on the decision of Supreme Court in K. P. Varghese (supra) as also on another decision of a Division Bench of this Court in CIT v. Smt. Suraj Devi [2010] 328 ITR 604 wherein this Court held that the primary burden of proof with regard to concealment of income was on the revenue and it was only when the said burden was discharged that reliance could be placed on the valuation report of the DVO. There are several other decisions of this Court in the same vein. One such case being the case of CIT v. VinodSinghal (IT Appeal No.482/2010 decided on 05.05.2010) where, again, reliance was placed on the very same decision of the Supreme Court in K.P. Varghese (supra) and also on a decision of this Court in CIT v. Smt. Shakuntala Devi [2009] 316 ITR 46. It was observed that there must be a finding that the assessee had received an amount over and above the consideration stated in the sale deed and for this the primary burden was cast on the revenue. It is only when this burden is discharged by the revenue that it would be permissible to rely upon the value as given in the valuation report of the DVO.

5. *The law seems to be well settled that unless and until there is some other evidence to indicate that extra consideration had flowed in the transaction of purchase of property, the report of the DVO cannot form the basis of any addition on the part of the revenue. In the present case there is no evidence other than the report of the DVO and, therefore, the same cannot be relied upon for making an addition. In these circumstances, the question which has been framed is decided in favour of the assessee and against the revenue. The appeal is dismissed.*”

9. Similarly, it is pertinent to note the observations of the Hon'ble Gujarat High Court in the case of *CIT Vs. Jayendra N. Shah (supra)*. The observations in para-8 and 9 are worth to note. They read as under:

“8. We have no reason to interfere with the concurrent reasonings of the two authorities below. Firstly, taking the issue of cost of construction, it clearly emerges from the record that between the DVO's estimation of cost of construction without furniture and fixture and that of the assessee's valuer, there is a minor difference of Rs. 1.22 lakhs. When we are considering the total figure in the vicinity of Rs. 1.36 crores, this difference is insignificant. Even if, therefore, the Assessing Officer had accepted the DVO's report in its entirety, the total addition under the head could not have exceeded Rs. 1.22 lakhs. He instead made an addition of Rs. 27.69 lakhs, for which we see no basis whatsoever. Learned counsel, Shri K. M. Parikh, strenuously urged that the construction was carried out in three separate previous years relevant to different assessment years. The Assessing Officer had, therefore, divided the undisclosed investment in the cost of construction in these three years. Even if this be so, we fail to see how the total of these three years of expenditure could exceed Rs. 1.22 lakhs which was the difference between the DVO's valuation and that of the valuation of the assessee's valuer, on the basis of which he filed the return.

9. Coming to the question of addition towards purchase of land, the Commission of Income-Tax (Appeals) as well as the Tribunal both have examined the issue on the basis of the material available on record. It is noted that the assessee had made no disclosure towards the purchase of land in his statement during the search proceedings. The addition was made merely on the basis of the DVO's report without there being any other material. Moreover, the DVO had also substantially relied on jantri rates and had made other reference's for arriving at the valuation.”

10. Both the issues are based primarily on factual aspects. No question of law, therefore, these appeals are dismissed.”

10. Similarly, in the case of *CIT Vs. Berry Plastics P. Ltd., (2013) 35 taxmann.com 296 (Guj)*, the Hon'ble Gujarat High Court has made following observations:

“9. We are of the opinion that CIT(Appeals) as well as the Tribunal committed no error in deleting the additions made by the Assessing Officer. It is undisputed that the sole basis for making the addition was the DVO's report. DVO's report may be a useful tool in the hands of the Assessing Officer, Nevertheless it is an estimation and without there being anything more, cannot form basis for

additions under Section 69B of the Act. In absence of any other material on record, addition was correctly deleted. Tax Appeal is, therefore, dismissed.”

11. A perusal of the above judgments would indicate that mere valuation report is not sufficient to conclude that the assessee has made unexplained investment. From perusal of the assessment, nowhere it reveals that inspite of search, Revenue was in a position to lay its hands on any material exhibiting the unexplained investment made by the assessee, over and above one stated in the books of accounts. Further, we find that the ld. First Appellate Authority has deleted the addition by following the order of the ITAT in the case of Smt. Ilaben Bharat Shah in ITA No.839/Ahd/2007 dtd. 17-8-2007 for the Asstt. Year 2004-05. The ld. First Appellate Authority is of the opinion that the addition cannot be made merely on the basis of DVO's report, and there should be some other incriminating material to support the case of the Revenue. The issue is also covered by the various decisions of the Hon'ble High Courts cited supra, and therefore, we do not find any reason to interfere in the order of the CIT(A), which is confirmed and the ground of appeal of the Revenue is dismissed.”

57. Even the the ld. AO has not rejected the books of accounts of the assessee, which were duly audited. It is a settled principle that unless books of accounts are rejected under Section 145(3), the declared cost cannot be ignored in favour of a mere estimate by the DVO. In **“ITO v. Sanjeev Kumar”**(ITA No. 1234/Chd/2020) and **“CIT v. Pratapsingh Amrosingh Rajendra Singh”** (282 ITR 641), it has been held that DVO's report cannot override actual expenditure recorded in books unless books are proven defective.

58. Moreover, the value of investment estimated by the DVO was highly disputed and various discrepancies have been pointed out in the same by the Ld. Counsel for the assessee, hence the same cannot be formed the sole basis for making the impugned additions. Even the DVO has adopted Central Public Works Department (CPWD) rates, whereas, the property in question is situated in the State of Himachal Pradesh and the DVO, otherwise was supposed to take the State Public Works Department (PWD) rates and that the State PWD rates were about 20% lesser than the CPWD rates. The Independent registered valuer M/s Sharma & Associates, has valued the property as per the State PWD rates. He has also given the comparison between CPWD rates and State PWD rates. Therefore, the observations of the Ld. CIT(A) that the assessee has failed to demonstrate the difference between the State PWD rates and CPWD rates is factually incorrect. Even, as pointed out by the Ld. Counsel for the assessee, there was no evidence

that the assessee has ever given any contract of the construction of the property to any builder. That even as per the DVO, the properties in question were improved/renovated during different assessment years. Under the circumstances, the A.O should have given the deduction of 10% to 15% on the value estimated by the DVO on account of self-supervision and self-purchasing of material. The Id. Counsel has submitted that the difference of amount of investment in the said property even as per the DVO's report is less than 10% and is liable to be ignored. The Id. Counsel has further submitted that if the difference of valuation on account of 20% less State PWD rates, 10% to 15% saving on account of self-supervision/self-purchase of material is deducted, then the resultant figure will be minus. . The Hon'ble J&K High Court in **Honest Group of Hotels (123 Taxman 464)** held that minor variations in valuation should not trigger additions under Section 69C in the absence of corroborative evidence. The Revenue failed to establish that the assessee incurred unrecorded expenses. Considering the above facts and settled legal position, we hold that the addition made by the AO and sustained by the CIT(A) based solely on the DVO's valuation is not justified and the same is accordingly ordered to be deleted. The facts and issue involved in the appeals as given in chart above relating to the above issue/ground are identical, hence our findings given above will accordingly apply to all the appeals /ITAs as given above in the chart and the identical additions made in all these appeals are accordingly ordered to be deleted.

59. As regards the ground of the revenue on the component of relief allowed by CIT(A) to the assessee, since the entire addition on this score has been ordered to be deleted by us, this ground of the revenue's appeals does not survive anymore and hence the same is rejected. This issue is accordingly directed in favour of the assessee.

Issue 4: Enhancement u/s 251(1) regarding alleged understatement of investment in property at 28/6, Industrial Area, Phase-2, Chandigarh.

60. Following are the cases involving this issue:-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
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1	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	7
2	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023	9
3	Scott Edil Pharmacia Limited	2016-17	Assessee	832/Chandi/2023	5
4	Scott Edil Advance Research Laboratories and Education Limited	2016-17	Assessee	857/Chandi/2023	7

61. The lead case taken up is **Scott Edil Pharmacia Limited for AY 2017-18**, having ITA No. **833/Chandi/2023**. The assessee in this appeal has taken the following grounds of appeal:

Ground No. 7: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in directing the ld. AO to make further addition of Rs. 15,23,214/- u/s 69B by erroneously making enhancement u/s 251(1) regarding alleged understatement of investment in property at 28/6, Industrial Area, Phase – 2, Chandigarh.

62. The issue raised by the assessee in the above appeals relates to enhancement u/s 251(1) regarding alleged understatement of investment in property at 28/6, Industrial Area, Phase-2, Chandigarh. During assessment proceedings u/s 153A for AY 2012-13 to 2018-19, the ld. AO noted that Sanjeev Aggarwal held a General Power of Attorney (GPA) for a property transferred to Vaishali Aggarwal in 2015. This property was leased to group concerns SEARLE and SEPL. The tenants had incurred expenditure for construction/improvement of the said property. The DDIT referred the valuation of the property to the DVO. The value of the construction cost as per DVO's report was more than that was shown in the books of accounts of tenants SEARLE & SEPL. The AO added the difference of valuation in the hands of individuals/Landlords treating the said difference in valuation as an expenditure incurred from undisclosed sources.

69. The Ld. CIT(A), however, held that the addition on account of difference in DVO's report and books of the company-tenant cannot be made in the hands of Individual-Landlords but can only be made in the hands of tenants since the tenants have

themselves admitted of having made accounted portion of expenditure. He deleted the addition made in the hands of Individual-Landlords but, proposed addition by way of enhancement in the income of company-tenants u/s 69B r.w.s. 115BBE for AY 2013-14, 2015-16 to 2017-18. Further, the cases of AY 2010-11 & 2012-13 were not before Ld. CIT(A) and for these years qua this issue of difference in DVO report and book value of construction, he directed the AO to take remedial measures by taking appropriate action u/s 148

63. The Ld. Counsel for the assessee has taken identical grounds as discussed above viz. that the ld. AO relied solely on the DVO's report without considering their objections, such as errors in area and rates used by the DVO; That the assessee also submitted valuation report from M/s Sharma & Associates showing that construction costs were aligned with what was recorded in their books, with differences less than 10%; That the reference to DVO was bad in law since no incriminating material qua outside books construction was found or even alleged before making reference; That books of accounts have not been rejected; That the DVO applied CPWD rates instead of State PWD rates. That the property was constructed under self-supervision and self-procurement of material was done and no contractor was engaged hence the cost was less. That the Copy of ledger account categorizing expenses into labour, materials, and electrical fittings were placed on record before the lower authorities and no defect or infirmity was found in the same.

64. The Ld. DR has also reiterated her submissions as discussed above regarding the issue of valuation of building/Immovable Property situated at Village Dasora.

65. In view of the factual as well legal discussion made above on the identical issue of valuation of the property at village, Dasora, and in the light of various Judicial pronouncements as discussed above, this issue is accordingly decided in favour of the assessee and against the revenue. The impugned additions are ordered to be deleted. The direction of the Ld. CIT(A) to reopen the assessment on account of difference in valuation the basis of DVO's report for AY. AY 2010-11 & 2012-13 is also set aside and quashed.

Issue No. 5: Directions by CIT(A) to AO to reopen assessment u/s 147/148 for AY 2010-11 and 2012-13

66. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023	8
2	Scott Edil Advance Research Laboratories and Education Limited	2010-11	Assessee	842/Chandi/2023	4
3	Scott Edil Advance Research Laboratories and Education Limited	2010-11	Assessee	842/Chandi/2023	4

67. The issue raised by the assessee in the above appeals relates to the directions given by the ld. CIT(A) to ld. AO to initiate 147/148 taking shelter of s. 150(1)(2) for AY 2010-11 and 2012-13

68. In view of our findings given , above, the direction of the Ld. CIT(A) to reopen the assessment on account of difference in valuation the basis of DVO's report for AY. AY 2010-11 & 2012-13 is also set aside/quashed This issue is accordingly decided in favour of the assessee.

Issue 6: Shortage of stock found during search held as undisclosed sale.

69. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Assessee	846/Chandi/2023	5
2	Scott Edil Pharmacia Ltd.	2018-19	Assessee	846/Chandi/2023	4
3	Balram Krishan Aggarwal	2018-19	Assessee	732/Chandi/2023	8

70. The lead case taken up is Scott Edil Advance Research Laboratories and Education Limited for **AY 2018-19, having ITA No. 846/Chandi/2023**. The assessee in this appeal has taken the following grounds of appeal:

Ground no. 4: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 30,26,235 where he had erroneously held that the alleged shortage of stock found during the search of Rs. 2,75,12,235/- is undisclosed sales of the appellant and on the same, GP rate of 11% is to be applied.”

71. The brief facts relating to the issue under consideration are that during the search action u/s 132 of the Act, the department made inventory of the stock of the assessee. The investigation team arrived at the value of stock at Rs. 13,24,36,300/-. At the same time, the department also computed the stock as per books by applying GP Ratio method. Based on this, they computed the book stock at Rs. 15,99,48,635/-. Therefore, it was observed that there was shortage of stock of Rs. 2,75,12,235. On above shortage of stock, the Ld. AO assumed that the assessee might have sold the said stock outside the books. The AO, therefore, applied past GP Rate of 11% and made addition of Rs. 30,26,235/- as undisclosed profits of the assessee. Being aggrieved by the said addition made by the AO, the assessee raised this issue in appeal before the Ld. CIT(A).

72. In appeal, it was contended by the assessee that the valuation of the stock done by the department was not correct and that it was based on estimation in cost as well quantities. That even the stock taking was completed within 3 days even when the stock of the assessee was at more than one locations and it comprised of raw material, work in progress (WIP), finished goods, packing material etc. and all the stock were technical products. It was, therefore, contended that the addition on account of shortage of stock was based on incorrect valuation and pure estimation, therefore, the impugned addition was not justified.

73. The Id. CIT(A), however, observed that the aforesaid stock valuation was confronted to the directors, Shri Sanjeev Aggarwal and Shri Balram Krishan Aggarwal, who accepted its correctness in their statements recorded u/s 132(4). That the assessee

failed to maintain a proper stock register, as reflected in Clause 35 of Form 3CD. That the assessee had not properly maintained the quantitative and qualitative details of raw materials, finished goods, and work-in-progress. The Ld. CIT(A), therefore, held that the ld. AO rightly determined the book stock by applying the average GP rate of the preceding three years, which was reasonable and accepted method. He held that the claim of the assessee that the physical inventory was incorrectly recorded was an afterthought. He, therefore, upheld the addition, so made by the AO.

74. We have heard the rival contentions and gone through the record. The ld. Counsel of the assessee contended that the assessee is a renowned pharmaceutical manufacturer, and like any other manufacturing company, it always has a substantial component of Work in Progress (WIP) at any given time. The nature of the pharmaceutical industry necessitates continuous production cycles, meaning that raw materials undergo multiple stages of transformation before reaching the finished goods stage. However, during the search, the search team completely ignored WIP during the physical stock-taking process, which resulted in a flawed and incomplete inventory assessment. The Ld. Counsel has further contended that the physical inventory conducted by the department only included raw materials and finished goods while completely disregarded partially processed goods, which are a significant part of the stock in any manufacturing company. He, therefore, has contended that incorrect method of valuation by the search team led to an understatement of physical stock, whereas, there was no shortage of stock of the assessee as compared to the books of accounts of the assessee. The Ld. Counsel has submitted that the assessee had maintained year-wise stock records, which clearly reflected the actual inventory including WIP at the end of each financial year during the block period. He in this respect has referred to pages 142 to 158 of the paper book which is the *copy of year-wise detail of stock as at close of every year in the block period, contents of which are reproduced below for the sake of ready reference:*

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1.

SCOTT EDIL ADVANCE RESEARCH LABORATORIES & EDUCATION LIMITED

Detail of Stock at Year End

FY	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
RM/PM	9,05,05,000	14,90,50,000	25,27,84,000	14,76,90,000	15,78,20,000	18,71,00,000	14,72,50,000
Consumables		9,75,000	32,54,000	26,23,000	20,40,000	21,30,000	22,40,000
WIP	26,75,000	1,87,85,000	3,65,30,000	3,36,25,000	3,61,00,000	4,19,00,000	3,42,70,000
FG	28,65,000	2,85,50,000	5,59,32,000	6,23,21,000	6,78,50,000	8,95,60,000	6,82,90,000
TOTAL	9,60,45,000	19,73,60,000	34,85,00,000	24,62,59,000	26,38,10,000	32,06,90,000	25,20,50,000

SCOTT-EDIL ADVANCE RESEARCH LAB.& EDU.LTD.

FY 2011-12

Sr.	Particulars	Qty.	Rate(Rs)	Amount	Group
1	Ceftriaxone Sodium Sterile	3,417.00	7,520.00	2,56,95,840.00	RM/PM
4	Cefixime Trihydrate	3,063.00	9,400.00	2,87,92,200.00	RM/PM
5	Cefpodoxime Proxetile	1,088.00	12,300.00	1,33,82,400.00	RM/PM
6	Cephalexin	1,990.00	3,871.84	77,04,960.00	RM/PM
7	Amoxy Clav	910.00	12,640.00	1,15,02,400.00	RM/PM
8	Sulbactum Sodium	600.00	5,712.00	34,27,200.00	RM/PM
7	MONOSCOT 1GM	2,86,500.00	10.00	28,65,000.00	FG
5	C-one 1.5 SB	1,35,000.00	14.00	18,90,000.00	WIP
6	C-one 250mg	1,96,250.00	4.00	7,85,000.00	WIP
	TOTAL			9,60,45,000.00	

SCOTT-EDIL ADVANCE RESEARCH LAB.& EDU.LTD.
FY 2012-13

Sr.	Particulars	Qty.	Rate(Rs)	Amount	Group
1	Ceftriaxone Sodium Sterile	5,330.00	6,800.00	3,62,44,000.00	RM/PM
2	Cefotaxime Sodium Sterile	2,549.00	7,000.00	1,78,43,000.00	RM/PM
3	Ceforoxim Axetile	3,351.00	7,865.00	2,63,55,615.00	RM/PM
4	Cefixime Trihydrate	2,430.00	8,750.00	2,12,62,500.00	RM/PM
5	Cefpodoxime Proxetile	2,550.00	12,300.00	3,13,65,000.00	RM/PM
6	Cephalexin	1,905.00	3,500.00	66,67,500.00	RM/PM
7	Paracetamol	19,120.00	275.00	52,58,000.00	RM/PM
8	10ml Clear vials	9,05,100.00	0.83	7,46,707.50	RM/PM
9	10ml WFI	1,74,225.00	1.00	1,74,225.00	RM/PM
10	20mm Gray Butyl Rubber	18,75,300.00	0.38	7,12,614.00	RM/PM
11	20mm Seals green	19,25,600.00	0.18	3,46,608.00	RM/PM
12	20mm Seals blue	4,27,630.00	0.08	34,210.40	RM/PM
13	Steaker Label C-One	14,36,250.00	0.37	5,32,848.75	RM/PM
14	Ptd. Foil Alum	925.00	385.00	3,56,125.00	RM/PM
15	Shipper	4,535.00	1.65	7,482.75	RM/PM
16	DISP. SYNG.	51,543.00	3.20	1,64,937.60	RM/PM
17	Carton	11,12,555.00	0.20	2,22,511.10	RM/PM
18	Label Fotaz	92,312.00	0.20	18,462.40	RM/PM
19	fotaz o dry sup. Bottle	63,750.00	1.25	79,687.50	RM/PM
20	Alu Alu Foil	1,011.00	315.00	3,18,465.00	RM/PM
21	LABEL MONOSCOT	13,58,000.00	0.25	3,39,500.00	RM/PM
22	MONOSCOT 1GM	1,13,740.00	12.25	13,93,315.00	FG
23	C-ONE	1,94,040.00	12.25	23,76,990.00	FG
24	FOTAZ DRY SYRUP	1,43,990.00	9.50	13,67,905.00	FG
25	ZETUM 500TAB	1,925.00	372.00	7,16,100.00	FG
26	ZETUM 250TAB	1,892.00	200.00	3,78,400.00	FG
27	Fervay Tab	1,848.00	323.00	5,96,904.00	FG
28	Fotaz D/s	1,72,800.00	7.60	13,13,280.00	WIP
29	C-one 1.0	5,17,900.00	10.80	55,93,320.00	WIP
30	Vegacef	3,68,900.00	10.80	39,84,120.00	WIP
31	Abixim 200	2,01,830.00	19.84	40,04,307.20	FG
32	C-one 1.5 SB	1,89,100.00	15.36	29,04,576.00	WIP
33	C-one 250mg	1,79,600.00	5.44	9,77,024.00	WIP
34	C-one 500mg	1,27,360.00	7.20	9,16,992.00	FG
35	Rofex - 250 Caps	2,15,240.00	10.01	21,54,504.85	FG
36	Safazone SB	1,79,400.00	13.12	23,53,728.00	WIP
37	Rofex - 125 Caps	1,19,300.00	5.48	6,54,036.00	WIP
38	Safexime D/S	2,18,900.00	6.80	14,88,520.00	FG
39	Safexime Tab	99,300.00	10.12	10,04,916.00	WIP
40	Safotax Inj	2,73,900.00	10.12	27,71,868.35	FG
41	Novamentin-625 Tab.	19,800.00	280.00	55,44,000.00	FG
42	Safepodox 200Tab	1,39,150.00	34.78	48,40,193.60	FG
43	Machinery Part	629.00	390.30	2,45,496.96	Consumables
44	Diesel	5,080.00	68.85	3,49,758.00	Consumables
45	Plastic Bags	925.00	140.00	1,29,500.00	Consumables
46	Bearings/Others	986.00	253.80	2,50,245.04	Consumables
	Total			19,73,60,000.00	

1.

SCOTT EDIL ADVANCE RESEARCH LAB & EDU LTD
FY 2013-14

Sr.	Particulars	Qty.	Rate	Amount	Group
1	Ceftriaxone Sodium Sterile	4,558.00	7,450.00	3,39,57,100.00	RM/PM
2	Cefotaxime Sodium Sterile	11,140.00	7,200.00	8,02,08,000.00	RM/PM
3	Ceforoxim Axetile sodium	1,890.00	8,500.00	1,60,65,000.00	RM/PM
4	Cefixime Trihydrate	2,373.00	9,210.00	2,18,55,330.00	RM/PM
5	Cefpodoxime Proxetile	2,526.00	12,300.00	3,10,69,800.00	RM/PM
6	Cephlexin	12,066.00	3,850.00	4,64,54,100.00	RM/PM
7	Sulbactam	1,042.00	5,665.66	59,03,616.73	RM/PM
8	Amoxycillin Trihydrate	1,500.00	2,390.00	35,85,000.00	RM/PM
9	PVC	1,430.00	126.50	1,80,895.00	RM/PM
10	10ml Clear vials	12,58,415.00	0.83	10,38,192.38	RM/PM
11	20 ml vials	2,56,486.00	1.00	2,56,486.00	RM/PM
12	7.5 ml vials	3,54,821.00	0.38	1,34,831.98	RM/PM
13	10ml WFI	5,12,261.00	1.20	6,14,713.20	RM/PM
14	20mm Gray Butyl Rubber	7,51,542.00	0.08	60,123.36	RM/PM
15	20mm Seals green	5,42,562.00	0.37	2,01,290.50	RM/PM
16	20mm Seals blue	8,56,412.00	0.50	4,28,206.00	RM/PM
17	Sticker Label	25,54,621.00	1.65	42,15,124.65	RM/PM
18	Ptd. Foil	1,050.00	390.00	4,09,500.00	RM/PM
19	Shipper	35,241.00	35.20	12,40,483.20	RM/PM
20	Shipper	1,690.00	65.20	1,10,188.00	RM/PM
21	DISP. SYNG.	28,640.00	3.70	1,05,968.00	RM/PM
22	Carton	30,12,456.00	1.25	37,65,570.00	RM/PM
23	fofaz o dry sup. Bottle	1,58,410.00	1.60	2,53,456.00	RM/PM
24	Alu. Alu. Foil	1,945.00	345.00	6,71,025.00	RM/PM
25	Fotaz D/s	1,92,000.00	9.50	18,24,000.00	FG
26	C-one 1.0	5,75,412.00	13.50	77,68,062.00	FG
27	Vegacef	3,98,750.00	13.50	53,83,125.00	FG
28	Abixim 200	1,85,280.00	24.80	45,94,944.00	FG
29	C-one 1.5 SB	2,99,000.00	19.20	57,40,800.00	FG
30	C-one 250mg	1,99,500.00	6.80	13,56,600.00	FG
31	C-one 500mg	2,07,503.00	9.00	18,67,527.00	FG
32	Rofex - 250 Caps	2,88,320.00	12.48	35,98,233.60	FG
33	Safazone SB	1,99,500.00	16.40	32,71,800.00	FG
34	Rofex - 125 Caps	1,99,300.00	6.85	13,65,205.00	FG
35	Safexime D/S	1,99,000.00	8.50	16,91,500.00	FG
36	Safexime Tab	1,99,220.00	12.65	25,20,133.00	FG
37	Safotax Inj	2,49,000.00	12.65	31,49,850.40	FG
38	Novamentin-625 Tab.	18,000.00	350.00	63,00,000.00	FG
39	Safepodox 200Tab	1,26,500.00	43.48	55,00,220.00	FG
40	Nestocef D/s	17,800.00	9.38	1,66,884.08	WIP
41	N-Cef 250mg inj.	8,700.00	5.95	51,740.92	WIP
42	Ceff-forte 500mg inj.	36,000.00	14.00	5,04,000.00	WIP
43	C One SB Injection	2,99,000.00	16.50	49,33,500.00	WIP
44	Nexporin 125 DT Tab	2,50,000.00	15.25	38,12,500.00	WIP
45	Penmox-250 Caps	2,00,000.00	24.82	49,63,800.00	WIP
46	Cefixime Tab 100mg	2,49,500.00	15.20	37,92,400.00	WIP

47	Novamentin-625 Tab.	9,900.00	300.00	29,70,000.00	WIP
48	Cefotax 1gm Inj.	2,60,000.00	17.60	45,76,000.00	WIP
49	Penmox-D Caps (B/C)	2,60,000.00	26.37	68,56,425.00	WIP
50	Cef O Tab 200mg	1,50,000.00	26.02	39,02,750.00	WIP
51	Machinery Part	1,629.00	389.80	6,34,984.20	Consumables
52	Diesel	8,368.00	65.76	5,50,279.68	Consumables
53	Plastic Bags	3,925.00	140.00	5,49,500.00	Consumables
54	Bearings/Others	5,986.00	253.80	15,19,236.12	Consumables
	Gross Total			34,85,00,000.00	

75. The Id. Counsel of the assessee has further contended that even the assessee's stock was pledged as collateral with banks to avail CC limits and loans, making the banks an interested party in ensuring the accuracy of stock records. Banks conducted regular stock audits through independent external auditors, who physically verified the stock before approving any financial facility. These third-party verifications consistently

confirmed the stock position as per the assessee's books, and at no point did these audits report pointed any discrepancies in stock levels. Copies of stock audit reports of the External Auditors appointed by the bankers to physically verify the stocks have been attached at page 157-177 of Additional Paper Book. The Id. Counsel for the assessee, has further contended even the search time wrongly computed the book stock by applying an average GP margin from previous years. That this approach was inappropriate for a large-scale manufacturing company engaged in pharmaceutical production with a turnover exceeding Rs. 200 crores. He has contended that the GP method is typically used for retail businesses, where stock turnover is quick and product margins are relatively stable. However, in a pharmaceutical manufacturing setup, the cost structure is vastly different, with variations in raw material costs, production expenses, and regulatory requirements affecting profitability each year. That the correct approach would have been to reconcile the book stock with actual stock as recorded in the books of accounts and verified by the independent bank auditors. He, therefore, has contended that the Id. AO as well as the Id., CIT(A) ignored the industry-specific nature of stock valuation and wrongly reconstructed the trading account using an arbitrary GP rate, which resulted in a misleading computation of book stock. The Ld. Counsel has further pointed out the following discrepancies in the stock taking by the Department:

- a. Certain storage locations and godowns were entirely missed, leading to an incomplete stock count.
- b. Quantities were misclassified, as the search team failed to understand product variations and incorrectly recorded certain high-value pharmaceutical products.
- c. Wrong valuation rates were applied, further distorting the stock computation and creating an artificial discrepancy.
- d. The methodology used did not account for packaging materials, chemicals, and semi-processed goods, which form a significant portion of the stock.

76. The Ld. Counsel has further demonstrated that these errors were highlighted in detail vide submission dated 23.01.2018 submitted before the DDIT during post-search investigations, along with supporting documents that clearly demonstrated that the

physical inventory recorded by the search team was unreliable. That however, both the lower authorities have failed appreciate the above factual contentions raised by the assessee. He has further contended that there was no incriminating material, no unrecorded cash transactions, no undisclosed bank accounts, and no buyer confirmations unearthed during the search action which could prove that the assessee was involved in unaccounted sales. That only a sum of Rs. 5.65 lakhs in cash were found across all premises, which was inconsistent with the allegation of the department of massive unaccounted sales. The Ld. Counsel therefore, has contended that the entire exercise done by the department of the valuation of stock was inaccurate and flawed. That the additions were made solely and entirely on assumptions and presumptions, without any iota of incriminating material found in the respect during the course of search action.

77. The Id. Counsel for the assessee has further relied on the decision of the Chandigarh Bench of the Tribunal in the case of “ **Vishal Paper Industries vs. JCIT (2013) 21 ITR 0220 (Chd Trib)** , wherein it was held that enhanced income due to disallowances should be eligible for 80-IC deduction, and contended that the assessee was entitled to 100% deduction u/s 80IC, and any addition to business income should also qualify for this deduction. He has submitted that even the CBDT Circular No. 37/2016 clarifies that disallowances resulting in enhanced profits should still be eligible for deduction under Chapter VI-A.

78. The Id. Counsel has further contended that the department failed to apply the principle of telescoping, which allows for adjusting alleged undisclosed income against unexplained investments or expenditures. That, if the short stock was considered as sales outside the books, then the cash generated from such sales should have been available to explain other alleged unexplained investments. That, instead, the Id. AO made multiple additions, resulting in double taxation which was wrong and against the principles of natural justice. For this proposition the Id. Counsel of the assessee relied on the judgment of **Hon’ble Apex Court** in the case of **CIT vs. S. Nelliappan (1967) 66 ITR 722 (SC)** and **hon’ble Allahabad HC** in the case of **CIT vs. Saraf Trading Co. (2015) 376 ITR**

534, wherein the principle of telescoping for adjusting unexplained income was confirmed and it was also held that income cannot be added twice.

79. The Id. DR, on the other hand has relied upon the findings of the lower authorities as discussed above. Her main contention has been that both the lower authorities have observed that the assessee had not maintained proper stock register reflecting quantitative and qualitative details of raw material, finished goods, and work-in-progress. She, therefore has contended that in the absence of proper books and stock registers, the only viable method for the Id. AO was to recast the trading account by applying the average GP rate of the preceding three years to determine the stock as per books. She, therefore, has contended that the AO has rightly made the impugned additions on account of shortage of stocks considering that the assessee was indulged in undisclosed sales.

80. We have considered the rival contentions and gone through the record. In this case, it is apparent from the pleadings made by both Ld. Representatives of the parties, that there were flaws in taking the valuation of the stock. The major flaw pointed out by the assessee, which remained unrebutted by the department was that the search party failed to take into account the work in Progress stock in making the inventory of the stock. The Ld. Counsel, in this respect has explained that the assessee, being a large-scale pharmaceutical manufacturer, invariably had a significant portion of its inventory in the form of WIP at any given time, however, the physical inventory taken by the search team only accounted for raw materials and finished goods. Thus, the valuation of inventory becomes flawed on this score. Even we find force in the contention of the Ld. Counsel that the valuation of stock by applying GP rate of the past years was not an appropriate method for computing book stock in a large-scale pharmaceutical manufacturing unit. Even the search party did not reconcile the book stock with actual stock as recorded in audited books through an expert in the field. The Ld. Counsel, as noted above, has pointed out serious errors in physical stock taking such as exclusion of certain storage locations and godowns, counting errors and misclassification of items, particularly pharmaceutical products of different compositions, dosages, and packaging sizes, incorrect valuation rates applied, failure to account for packaging materials,

chemicals, and semi-processed goods. Even the assessee had submitted a detailed explanation along with supporting documents to the DDIT during post-search investigations, proving that the physical inventory recorded by them was incorrect. However, neither the search party nor both the lower authorities could rebut the same. The Ld. counsel in this respect has placed reliance upon the decision of the hon'ble Gujarat High Court in the case of “ **CIT vs. President Industries (258 ITR 654) (Guj HC)**”, wherein it has been held that estimation-based methods should not replace actual recorded transactions unless books of accounts are rejected u/s 145(3), which was not done in this case. The said decision, in our view, is squarely applicable in this case.

81. Further, the allegation that the assessee did not maintain properly the stock register, has been also proved wrong by the Ld. AR by referring to the year-wise stock records, which included WIP details, and these were also submitted before the lower authorities but, the same have not been dealt with by any of the lower authorities. The Ld. DR has also failed to rebut the above facts. Moreover, the stock was duly vouched by the Banks also, with whom the same was hypothecated. Periodical stock audit reports were submitted by the assessee to the banks and stock was also physically verified by the external auditors appointed by banks at regular intervals and stock audit reports issued by them, but no shortage ever pointed out by them. Even no incriminating material, what so ever, such as any unrecorded invoices, or any cash receipts were found during the search action. Even the Ld. AO has not mentioned with whom the assessee entered into unaccounted transitions. The AO totally failed to bring on record as to who were the alleged buyers to whom the assessee allegedly made unaccounted sales, what to say of any evidence in the shape of corresponding entries in other entities' books to support the theory of unrecorded sale. Even though, the allegation is that the assessee had made large unaccounted sales of crores of rupees, but no unaccounted cash was found during the course of search action. The total cash found during the search proceedings was Rs. 5.65 lakhs only. Even the assessee's profit were eligible for deduction u/s 80IC, hence under the circumstances, there did not seem to be any clear motive for the assessee to engage in unaccounted sales. The entire addition, in our view, has been made on assumptions

and presumptions, without an iota of any corroborative evidence, which is not sustainable, hence accordingly ordered to be deleted.

82. Even, regarding the alternate contention of the Ld. AR that even otherwise, the addition made on the alleged suppressed profits will be eligible for deduction u/s 80IC, it is to be noted that if the allegations are that the assessee had indulged in suppression of profits by making unaccounted sales and there is no allegation of any unaccounted purchases, and the assessee's unit is eligible for 80IC deduction, then obviously such profit determined by the AO will be business profit of the manufacturing unit and the same will be eligible for 80IC deduction as held by the coordinate Chandigarh Bench of the Tribunal also in the case of “ **Vishal Paper Industries vs. JCIT (supra). (2013) 21 ITR 0220 (Chd Trib)**. In this case, the AO on the one hand has alleged that the assessee has booked bogus/excess purchases, on the other hand made addition on account of suppressed sales. This stand of the AO is contradictory to the allegation of bogus purchases. Nonetheless, since we have deleted the addition on this issue, hence this issue is rendered academic in nature.

Issue 7: Estimation of Commission/profit @ rate of 1% of total alleged unaccounted sales and purchases.

83. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.	AO Order	CIT Order
1	Maxport India Pvt. Ltd.	2018-19	Assessee	591/Chandi/2023	4	Page 5-9 Para 8.6	Page 75-85 Para 6.8 & 6.9
2	Maxport India Pvt. Ltd.	2017-18	Assessee	579/Chandi/2023	4	Page 3-10 Para 8.13	Page 75-85 Para 6.8 &
3	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	6	Page 11-16 Para 9.9	Page 78-97 Para 9.17
4	Scott Edil Pharmacia Limited	2018-19	Assessee	834/Chandi/2023	5	Page 7-12 Para 7.8	Page 208-243 Para 8.17

84. The lead case taken up is Maxport India Pvt. Ltd. for AY 2018-19, having ITA No. 591/Chandi/2023. The assessee in this appeal has taken the following ground of appeal:

Ground no. 4: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO amounting to Rs. 5,17,697/- on account of alleged commission/profit earned at estimated rate of 1% on sales and purchase transactions carried out allegedly outside books.

85. The brief facts relating to the issue under consideration are that during the course of search proceedings, certain loose sheets/evidence were found which showed that the assessee was engaged in sales and purchases with its group companies, however, no physical stock was found during the search action. The ld. AO observed that the assessee was a shell entity with no real business operations. During the search proceedings, it was found that the assessee had no physical stock, godown, or office for storage purposes, despite showing significant stock in its books. This indicated that the assessee existed only on paper and was functioning to provide accommodation entries to other entities in the group. The AO also noted that the director of the company, Mrs. Pooja Pandita, when questioned during the search, denied having any knowledge of being a director in the company. She stated in her statement recorded u/s 132(4) of the Act that she was merely an employee in another group entity, and she was not involved in the management or meetings of the assessee company. This lack of knowledge about her own directorship reinforced the finding of the AO that the company was a paper entity with no genuine operations. The assessee contended before the AO that it was an active entity within the group, performing intergroup sales and purchases. However, the AO pointed out that no evidence of physical movement of goods or genuine trading activity was provided. The assessee also contended that even Smt. Pooja Pandita has also retracted from her statement. The AO however observed that assessee company was a shell company and it has not actually carried out any sale or purchase but facilitated group entities by providing the bills for these sales and purchases when such goods never existed. The AO concluded that the company's transactions were not genuine and were sham in nature. Based on these findings,

the AO treated the income of the company as commission income, applying a rate of 6.5% on the alleged purchases and sales with the group companies. Being aggrieved by the said order of the AO, assessee preferred appeal before the Ld. CIT(A) on this issue.

86. The ld. CIT(A) upheld the estimation of income, however, restricted the commission rate @ 1%. He rejected assessee's arguments regarding the lack of any material and the involuntary nature of statements made during search. The ld. CIT(A) also took note of the statement of Ms. Pooja Pandita (Director), though, the same stood retracted later on.

87. Before us, the ld. Counsel for the assessee contended that the assessee company was incorporated in F.Y. 2013-14. It was being used as a trading arm of the Scott Edil group. The intergroup transfer/sale/purchases were routed through the assessee company. Further, sometimes even the imports of material were made by assessee, which were subsequently sold to other companies in the group. The Ld counsel, therefore, has contended that the assessee company is an existent and identified group company which has only been used by the assessee's group as a trading company for routing Intergroup Sale/Purchase and hence it has been wrongly held as a shell or a paper company. The counsel for the assessee has further submitted that the assessee has duly disclosed the profits earned from its trading activities. Further, the ld. counsel for the assessee contended that a detailed party-wise list of sales and purchases was provided to the AO, along with relevant VAT returns, invoices, ledgers, and confirmations from all parties involved, yet, no defect or discrepancy was pointed out by the ld. AO. It was, therefore, contended that estimation of commission/profit was not justified.

88. The ld. Counsel for the assessee has further contended that the ld. CIT(A) in his order, though reduced the rate of commission from 6.5% to 1%, but wrongly contended that the additions for the relevant years were based on incriminating material. The ld. Counsel of the assessee contended that except the said retracted statement of Mrs. Pooja Pandita, not even a single incriminating corroborative evidence against the assessee was

found. Therefore, addition made solely on the basis of the said retracted statement deserves to be deleted.

89. The Id. Counsel for the assessee further contended that assessee has only been used as a trading arm by the Scott Edil group. That the assessee was only used as a conduit/channel to trade the goods of the group companies. The Ld. Counsel has contended that at the most it could, academically, was a case of circular trading without movement of goods where one group entity issued invoice of goods to assessee, who, without taking physical delivery, sells to another group entity and that another group entity sold it to a third-party. Even if there is no movement of goods, it was not a case where the goods never existed. It had been manufactured by one group entity and sold to assessee who sold it onwards to another group entity. Identical was the position when such another group entity sold goods to the assessee company, who in turn sold it to original manufacturer group entity.

90. At this stage, a specific question was put to the Ld. Counsel for the assessee as to why the assessee company was engaged in circular trading of goods if no commission/bogus profit element was involved in these transactions. In reply, the Id. Counsel for the assessee explained that in fact, the entire circular trading transactions were done to increase the turnover of the assessee as well as of the group companies. He explained that the banks for the purpose of giving loan/credit limit etc. consider the higher turnover. He explained that the entire exercise was done to inflate the turnover, however, it was not a case of bogus billing to earn a commission income. He in this respect has submitted that it is not the case of the department that the assessee has shown bogus purchases from any third party or the assessee has shown bogus sales to show bogus profits or that the assessee has given accommodation entry to any party to route any unaccounted income in the guise of business transaction. There is no such allegation on the assessee or on any of the group companies of the assessee. The only allegation is that the assessee has done circular transactions with its group companies, for that no other motive can be attributed on the part of the assessee. The Ld. Counsel, therefore, has submitted that the estimation of commission income by the lower authorities was not justified in this case. The Ld. Counsel in this respect has also relied upon the ratio of

judgement in the case of “ **DCIT vs M/S Himachal Futuristic (ITA No. 5741/Del/2013) (Del Trb.); Jt. CIT (Osd), Circle-3(1)(1) vs M/S. Pradip Overseas Ltd. (ITA No. 790/Ahd/2018) (Ahemdabad Trb.) and M/s. Arman Fashion Pvt. Ltd. vs. ITO (ITA 2400 and 2407/Ahd/2012) (Ahemdabad Trib.)**, wherein it was held that :

“Heard both the sides and perused the material on record. During the course of assessment, the assessee has admitted that it was engaged in circular trading wherein the bills/invoices changed hands without movement of physical goods. The Assessing Officer has treated such purchase of Rs. 2,83,77,87,618/- as not reliable and disallowed 5% of such purchases which worked out to Rs. 14,18,89,380/- and added to the total income of the assessee. During the course of assessment and appellate proceedings the assessee explained the complete modus operandi of circular trading transaction which was carried out to show better turnover. Without reiterating the facts as elaborated in this order, it is undisputed fact that assessee would make payment to the entity from whom it made purchases, who in turn would make consequent payment and the funds would finally reach back to the assessee. In circular trading the payments were made through cheques and profit on circular trading was disclosed by the assessee in its return of income. In the earlier assessment year, the assessee has gone to Settlement Commission and furnished the circular trading/sample bills and chart which was discussed by the ld. CIT(A) in his findings as supra in this order. The complete particulars of circular transaction in the table of transaction given in the finding of ld. CIT(A) demonstrated that assessee had sold goods worth Rs. 3,31,79,415/- in circular trading through first party who in turn sold such goods to the second party at Rs. 3,32,72,933/- and the last party has sold back to the assessee at Rs. 3,32,72,933/- ultimately the difference in the first sale and the last sale was of 0.28% of circular purchases made by the assessee. The ld. CIT(A) has also referred the decision of the ITAT Ahmedabad on the identical issue of circular transaction in the case of M/s. Arman Fashion Pvt. Ltd. vs. ITO vide ITA 2400 and 2407/Ahd/2012. The ld. CIT(A) has also discussed in his finding that this was not a case of estimation of net profit on circular purchases but this was a case where the assessee had incurred

expenses for circular purchases/transaction @ 0.28% and estimated the disallowance @ 0.30% of circular trading purchases. The ld. CIT(A) has also explained in his finding regarding analysis of the transaction made by the assessee that these transactions were carried out in order to show better turnover in financial accounts. The Revenue could not controvert the facts reported by the ld. CIT(A) with any relevant material. Therefore, looking to the above facts and finding, we do not find any infirmity in the decision of ld. CIT(A) in estimating the disallowance @ 0.30% of circular trading purchases of Rs. 2,83,77,87,618. Accordingly, this appeal of the revenue is dismissed.”

91. The ld. Counsel of the assessee further contended that so far as transaction of the assessee with SEPL / SEARLE were concerned, the ld. AO wrongly computed the difference in sales & purchases in every year in respect of transactions with assessee and SEPL / SEARLE . Further as regards the reduction of deduction u/s 80IC by the Ld. AO to the extent of GP Rate on sales made by SEPL / SEARLE to the assessee, this action has resulted in making addition in the hands of the group several times as explained below:

- a.** GP Rate on sale was applied and addition thereof was made in the hands of SEPL / SEARLE. For the same amount, deduction claimed u/s 80IC has been reduced.
- b.** Addition was made assessing the higher Profit Rate in case of Maxport. Another addition was made by reducing the deduction u/s 80IC.
- c.** That similar type of addition was ordered to be deleted by the ITAT in ITA No. 284/Chd/2015 dtd. 28.12.2015 in the case of assessee’s group entity namely Scott Edil Pharmacia Ltd. vs Addl. CIT.

92. The ld. DR, on the other hand has relied upon the findings and observations of the ld. AO as well as of the ld. CIT(A) and submitted that company’s transactions were not genuine and were sham. With regard to the statement of Ms. Pooja Pandita, the Ld. DR submitted that the assessee wrongly relied on the retraction of Mrs. Pooja Pandita’s

statement. However, the AO correctly treated the initial statement as incriminating evidence, as it was made during the course of search proceedings. That the later retraction, even if accompanied by an affidavit, was considered an afterthought and not credible. The Id. DR contended that on submission of detailed party-wise list of sales and purchases, along with VAT returns, invoices, ledgers, and confirmations by the assessee, the Id. AO and CIT(A) have observed that merely providing documentation without supporting evidence of actual trading activity could not substantiate the claim of genuine business. The lack of physical verification of stock and movement of goods invalidated these claims. She, therefore, has contended that the lower authorities have rightly identified that the group attempted to route profits and deductions in a circular manner through the assessee company. That by showing sales and purchases between group entities without actual movement of goods, the group aimed to artificially inflate profits and claim benefits u/s 80IC.

93. We have heard the arguments of both parties and perused the material on record. The issue under consideration pertains to the alleged commission/profit earned at an estimated rate of 6.5% by the Assessing Officer on total alleged sales and purchases conducted on paper only, which stood reduced by the Ld. CIT(A) @ 1%. It is not the case of the department that the assessee is involved in providing accommodation entries. The only case of the department is that the assessee has shown bogus sales and purchases from group entities to artificially inflate the profits and claim benefit u/s. 80IC of the Act. Moreover, it is the own case of the department that the transactions were circular transactions within the group entities. There is no allegation that the goods at the first instance or to say in the case of the initial/first party were bogus nor there is any allegation that sales made by any of the group entities/first party to third parties were bogus. The only case of the department is that the trading within the group companies has not actually happened or the same has happened without actual movement of goods within the group companies. Though the Ld. AR of the assessee at first instance has tried to demonstrate and justify the aforesaid purchase and sales transactions within the group companies and has also contended that the assessee was the trading arm of the group companies and that

the trading was done through assessee company. However, when specifically asked by the Bench about the object and purpose of such circular transactions within the group companies, the Ld. Counsel has fairly admitted that this was done to artificially inflate the turnover so as to convince the banks to grant higher loan/credit limits. This is also in case of the Ld. DR that the assessee has artificially inflated the turnover, however, the contention of the Ld. DR is that the said exercise has been done to claim bogus 80IC deductions. Considering that it is the case of the assessee as well as the department that the circular transactions were done through artificially inflate the turnover, therefore, the estimation of any commission income in this case cannot be held to be justified and the same is ordered to be deleted. However, the assessee will not be entitled to claim 80IC deduction in respect of profits shown on these bogus sales made to group companies. However, this finding of us will be applicable only for the assessment years in which the assessment for the relevant year stood abated and not completed. However, in respect of appeals/cases in which the assessment stood completed and not abated on the date of search, in view of our observations made above while deciding the first issue, since no incriminating material was found during the course of search action, no addition is sustainable in respect of those assessment years where the assessment stood completed and not abated on the date of search action as discussed above. With the above observations, this issue is accordingly decided partly in favour of the assessee and partly in favour of the revenue.

Issue 8: Addition made by Ld. AO of Rs. 58,09,346/- and also denying deduction u/s 80IC on account of alleged GP on net sales & purchase transaction made by SEARLE to M/s Maxport India Pvt. Ltd

94. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	6
2	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	5

95. The lead case taken up is Scott Edil Advance Research Laboratories and Education Limited. for AY 2017-18, having ITA No. 845/Chandi/2023. The assessee in this appeal has taken the following grounds of appeal:

Ground no. 6: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 58,09,346/- by disallowing deduction u/s 80IC on account of GP on net sales made to M/s Maxport India Pvt. Ltd. by erroneously holding that purchases and sales to the said concern are bogus and has arisen on account of non-manufacturing activities.

96. The issue under consideration pertains to addition made by Ld. AO of Rs. 58,09,346/- by estimating the GP on net of sales and purchase transactions made by SEARLE to M/s Maxport India Pvt. Ltd. The ld. Counsel of the assessee has contended that the ld. AO has computed the difference in sales & purchases in every year in respect of transactions with the Maxport and wherever, in any year, the purchases exceeded the sales from Maxport, the said differential amount was added by the Ld. AO as unexplained expenditure, however, wherever the situation was otherwise i.e., sales to the Maxport exceeded the purchases made from the company, GP Rate was applied on the differential amount and the same was added. Further that the GP Rate on above difference between sales & purchases was computed and deduction u/s 80-IC has been reduced from total allowable deduction u/s 80IC to which the assessee was undisputedly eligible.

97. We considered the rival contentions. Since the transactions were intra group/circular transactions. Since these purchase/sales were made within the group companies and in view of our discussion made above, the aforesaid transactions were done to inflate the turnover of the company, therefore, the profits shown in such intra group sales/ purchases would not be eligible for deduction u/s 80IC of the Act. However, we find force in the contention of the Ld. Counsel, that these transactions were both ways i.e. sales by SPEL to Maxport and *vice versa*. The AO is directed to calculate the net profits/ expenditure taking into consideration all such transactions for the year under consideration. If both the captioned assesseees have shown any net profits in relation to such transactions, the same will be added as income from other sources and will not be

eligible for deduction under section 80IC of the Act. Subject to above observations, this issue is decided in favour of the revenue.

Issue 9 : Credits received from JAAPL and Disallowance u/s 80IC - GP earned on sale made to JAPPL on account of alleged bogus nature of sales to JAPPL.

98. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2014-15	Assessee	855/Chandi/2023	6
2	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023	4&5

99. The lead case taken up is Scott Edil Advance Research Laboratories and Education Limited for AY 2014-15, having ITA No. 855/Chandi/2023. The assessee in this appeal has taken the following grounds of appeal:

Ground no. 6: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 4,00,00,000/- u/s 68 regarding amount received from M/s Jai Ambey Pharmaceuticals Pvt Ltd (hereinafter referred to as "JAPPL") by erroneously holding that M/s JAPPL is a shell company even when the amount was received against sale made to that party.

100. This issue/appeals already stood decided in favour of the assessee in view of our findings given above on issue No. 1, while holding that the assessments in the above cases stood completed and not abated, therefore the additions in the absence of any incriminating material are not sustainable in the light of the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra). This issue is accordingly decided in favour of the assessee.

Issue 10 : Addition made u/s 2(22)(e) of the Act on account of payment by SEPL for construction of House No. 3100, Sector 21, Chandigarh and House no. 323, Sector 9, Chandigarh;

&

Issue 11: Addition made of Rs. 4,60,077/- each in the hands of individuals/ owners of the house No.3100 u/s 69C r.w.s 115BBE of the Act on account of difference in valuation as per DVO's report as compared to the books of accounts.

101. Following is the list of cases involving this issue

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Sanjeev Kumar Aggarwal	2018-19	Assessee	480/Chandi/2023	4, 5 & 6
2	Vaishali Aggarwal	2018-19	Assessee	483/Chandi/2023	4 & 5
3	Balram Krishan	2018-19	Assessee	732/Chandi/2023	5 & 6

102. The lead case taken up is **Sanjeev Kumar Aggarwal for AY 2018-19**, having ITA No. **480/Chandi/2023**. The assessee in this appeal has taken the following grounds of appeal:

“Ground No. 4: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the addition of Rs. 15,12,958 made by Ld. AO u/s 2(22)(e) of the Act on account of payment made by SEPL for construction of House No. 323, Sector 9, Chandigarh.

Ground No. 5: That on facts, circumstances and legal position of the case, Ld. AO has erred in making addition of Rs. 7,77,384/- u/s 2(22)(e) of the Act on account of payment made by SEPL for construction of House No. 3100, Sector 21, Chandigarh.

Ground No. 6: That on facts, circumstances and legal position of the case, Ld. AO has erred in making addition of Rs. 4,60,077 /- u/s 69C r.w.s 115BBE of the Act on account of difference in valuation of H.no. 3100, Sector-21, Chandigarh as per DVO's report and as per books of the appellant.”

103. The brief facts relating to the issue are that during the assessment proceedings, the Ld. AO treated the construction expenses incurred by SEPL on two houses owned by its directors/substantial share holders as deemed dividend u/s 2(22)(e) of the Act. The Ld. AO further made addition u/s 69C on account of difference between the assessee's

declared construction cost and the valuation made by the DVO. The details of the additions made are as follows:

House No. 3100, Sector 21, Chandigarh:

Value as per DVO's report:	49.37 lakhs
Value as per Registered Valuer:	40 lakhs
Expenditure booked in the books of accounts of SEPL:	23lakhs
Expenditure booked by individual owners/share holders:	12Lakhs
Individual ownership share in the house:	1/3 rd each.
Addition made by the AO u/s 2(22) (e) : 23 x 1/3:	7.77 lakhs each.
Addition made u/s 69C : 49-35= 14laks : 14 x 1/3:	4 lakh each.

House no. 323, Sector 9, Chandigarh

Ownership: Mr. Sanjeev Kumar Aggarwal (25%), Mrs. Vaishali Aggarwal (35%), Sh. Balram Krishan Aggarwal (30%) & Smt. Pushpa Rani (10%).

Value as per DVO:	119 lakhs
Expenditure in books of SEPL:	60.51 Lakhs
Expenditure in books of Assessee:	60 Lakhs
Total Addition made by AO u/s 2(22)(e):	60 lakhs :
Sanjeev Kumar 60 x 25% :	15.12 Lakhs
Vaishali Aggarwal 60 x 35% :	21 Lakhs
Balram Krishan 60 x 30%:	18 Lakhs

104. The ld. CIT(A) while confirming the addition made by the ld. AO, observed that the assessee failed to provide evidence that the property was used by SEPL as its office. As a result, the Ld. CIT(A) held that SEPL discharged the assessee's liability for the construction, which constituted a benefit to the assessee without consideration, classifying the payments as "income from other sources." Therefore, the additions of Rs. 15,12,958/- and Rs. 7,77,384/- were upheld as income from other sources .

105. Before us, the Ld. Counsel for the assessee contended that the SEPL was the tenant of the assessee and the ld. AO added the construction expenses for the aforesaid two houses incurred by the tenant company as payments to the assessee as deemed dividend. That the tenant had incurred expenses on construction and it was for the benefit of the company. That no direct or indirect benefit accrued to the assessee by this construction. That the property was intended to be used as rent-free accommodation for its director. Further, that the assessee had personally guaranteed loans and mortgaged personal properties to secure credit facilities for SEPL. The assessee's personal contribution far exceeded the payments made by SEPL for the construction. That the ld. AO erred by only considering the payments made by SEPL and ignoring the payments made by the assessee to SEPL. It was also contended that the Valuation as per State PWD rates should have been taken by the DVO instead of CPWD rates. Identical contentions have been raised as were made regarding the discrepancy in the valuation of factory building as discussed in earlier paras of this order. The ld. Counsel of the assessee, therefore has contended that the addition made the ld. AO and upheld by CIT(A) amounting to Rs. Rs. 15,12,958/- on account of payment made by SEPL for construction of House No. 323, Sector 9, Chandigarh and of Rs. 7,77,384/- u/s 2(22)(e) of the Act on account of payment made by SEPL on for construction of House No. 3100, Sector 21, Chandigarh and Rs. 4,60,077/- u/s 69C r.w.s 115BBE of the Act on account of difference in valuation of H.no.3100, Sector-21, Chandigarh should be deleted.

106. The ld. DR, relied on the findings and observations of the ld. AO and ld. CIT(A) and argued that the lower authorities have rightly made the impugned additions.

107. We have heard the rival contentions and gone through the record. The Ld. Counsel for the assessee has not been able to substantiate the claim that the said properties were being used as office premises by the company. No lease agreement, rent receipts, or board resolutions were furnished. Therefore, the conclusion of the lower authorities that SEPL had made gratuitous payments for construction of the aforesaid houses on behalf of the assessee, in our view, is correct and does not warrant any interference by us. The observation of the Ld. CIT(A) that the said benefit is to be added as "Income from other sources" instead of deemed dividend is also justified as the said payments are not in the

nature of loans or advances rather, the said payment has been made gratuitously without any consideration. However, as discussed in earlier paras of this order, the Govt. Valuer was supposed to adopt State PWD rates instead of CPWD rates and further that the CPWD rates are higher about 20% than the PWD rates in Chandigarh. Further the Regd. Valuer engaged by the assessee has estimated the value of the house No. 3100, sector 21, Chandigarh at Rs. 40 Lakhs, hence it is directed that the value of the said house be taken at Rs. 40 Lakhs. The assessee and the SEPL have booked the total expenditure in respect of the said house in their books of account of Rs. 35,57,000. The difference i.e. 40 (-) 35.57 = 4.43 lakhs is considered as investment from undisclosed sources. The said amount be divided in the ratio of 1/3rd each and hence the addition u/s 69C is restricted to the extent of 1.47 Lakhs in the hands of each of the three owners of the said house. Remaining additions on account of gratuitous expenses incurred by the SEPL in respect of both the houses is hereby confirmed as income from other sources.

Issue 12: Disallowance in respect of bad debts claimed during the year.

108. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	6

109. The assessee in this appeal has taken the following grounds of appeal on this issue:

“Ground No. 6: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the addition made by the ld. AO of Rs. 6,45,85,557/- on account of disallowance of provision of bad debts claimed by the appellant in its return even when the same deserves to be allowed as deduction.”

110. The brief facts relating to the issue under consideration are that the assessee claimed bad debts amounting to Rs. 6,45,85,557/- during the year under consideration. The assessee vide reply 23.12.2019 submitted before the Ld. AO that this amount pertained to receivables outstanding for over 3 years, which were previously included in its income. The assessee claimed that these debts had become bad during the relevant

year. But due to a clerical error, these amounts were not written off in the books for that year and were instead written off in subsequent years.

111. During the assessment proceedings, the AO disallowed this claim of bad debt, holding that such provisions were not allowable as deductions under Section 37(1) or Section 36(1)(vii) of the Income Tax Act, 1961, since such debts were not actually written off in the books of accounts in the year under consideration but in subsequent years. The Ld. CIT(A) confirmed the additions so made by the AO.

112. We have heard the rival contentions of the Ld. Representatives of the parties and gone through the record. The ld. Counsel for the assessee contended that the debt was originally created on account of goods sold and said sales were credited to P&L A/c and that it satisfies the first condition for claim of bad debt u/s 36. Further, from the ledger account, it was also shown that these debts were not cleared for more than 3 years. Further, the Ld. AR also demonstrated from documents in the paper book that efforts were made to recover these debts but with no results. The Ld. Counsel, therefore has submitted that there is no rebuttal to the contention that these debts had actually become bad during the year under consideration. The only point raised by the AO was that the same could not be claimed as deduction in a return filed U/s 153A of the Act when, the same were not actually written off in the books of accounts. The Ld. Counsel in this respect has explained that such bad debts having been written off through computation of income was sufficient compliance of requirement of s. 36(2). He has contended that it was a settled principle of law that reflection in accounts of a transaction was not determinative of its allowability for tax purposes and vice-versa as held in *Taparia Tools Ltd. vs. CIT [2015] 372 ITR 605 (SC)*. He has further relied upon the decision of Bombay High Court in the case of “*PCIT vs. JSW Steel Ltd*” [2020] 115 taxmann.com 165 (Bombay) to contend that that a new claim for the first time can be made in the ITR filed u/s 153A post search though, such claim was not made in the ITR filed u/s 139. He has further submitted that the taxability of an item or allowability of an expense under taxation laws cannot be decided as per the treatment or disclosure of the item given in books of accounts, rather, the same is to be decided as per the facts and underlying

taxation principles. He in this respect has further placed reliance upon the following case laws:

i. ***Sutlej Cotton Mills Ltd. Vs. Commissioner Of Income Tax, 116 ITR 1***, wherein it was held that :

“It is settled that the way in which entries are made by the assessee is not determinative of the question whether the assessee earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.”

ii. ***The Peerless General Finance And Investment Company Ltd. Vs. Commissioner Of Income Tax, 416 ITR 0001 (SC)***, wherein it was held that :

“Book keeping entries were not decisive or determinative of true nature of entries— Court had to see true nature of receipts and not go only by entry in books of account—Assessee’s appeal allowed”

113. The ld. DR relied on the order and findings of the ld. AO and ld. CIT(A) and contended that the ld. CIT(A) rightly upheld the AO’s findings.

114. We have considered the rival contentions of Ld. Representatives of both the parties and perused the material on record. So far as legality of making a new claim of deduction in the return filed in response to notice u/s 153A, when, the same was not claimed in the original return of income is concerned, it is to be noted that the assessment for the year under consideration stood abated on the date of search action. In such circumstances, the original return loses its validity and is required to be replaced with a new return unless the assessee categorically declares that his original return be treated as his return filed u/s 153A of the Act. In an assessment carried out u/s 153A in such a case , all the issues get open. The assessee can make a new claim and the AO also gets opportunity to examine each of the claim a fresh and pass assessment order. The issue stands settled by the

decision of the Hon'ble Bombay High Court in *JSW Steel (supra)* . As discussed above, there is also no rebuttal to the contention that the debts in question have actually become bad. The only contention raised by the department is that such debts have not been actually written off in the books of accounts during the year under consideration. The Ld. Counsel in this respect has contended that disclosure of an item in the books is not determinative of its allowability in the Tax proceedings. We are of the view that that the writing off the debts which have become bad, though is not sine qua non, but a relevant factor for claim of deduction in this respect. However, this is also a fact on the file that though such debts were actually written off in subsequent years, but the same could not be claimed in those years as the same were already claimed in the return u/s 153A for the year under consideration. In our view, when the genuineness of the claim is not doubted and the debts have also actually become bad in the year under consideration, then denial deduction on the technical ground of not writing off the same in the books of accounts, due to error or omission , would further complicate the matter as in that event the assessment for the years in which the same was written off in the books would have to be reopened and that would disturb the already finalized assessments and that in our view would not be appropriate at this stage, especially, when the claim of the assessee is otherwise admissible for the year under consideration. We therefore, direct the AO to allow the deduction of the bad debts in the year under consideration. This issue is accordingly decided in favour of the assessee.

Issue 13 : Addition u/s 69C - purchases from parties treated as bogus.

115. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	5
2	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	4
3	Balram Krishan Aggarwal	2017-18	Assessee	731/Chandi/2023	5

116. The common issue raised by the assessee in all the above appeals is relating to purchases from parties which are treated as bogus purchases by the lower authorities. The lead case taken up is Scott Edil Advance Research Laboratories and Education Limited for AY 2017-18, having ITA No. 845/Chandi/2023. The assessee in this appeal has taken the following grounds of appeal

Ground No. 5: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the addition made by the ld. AO of Rs. 4,92,44,300/- made u/s 69C by erroneously holding that the purchases made from some parties are bogus merely due to non-service / non response of enquiry letters u/s 133(6) / 131 by the parties even when the purchases made from these parties were genuine and fully vouched.

117. The brief facts relating to the issue are that that the assessee Company is involved in manufacturing of Pharmaceutical Products. The assessee purchases the raw material and sells the manufactured products in India and is also exporting the same. During assessment proceedings, Ld. AO called for confirmations from entire list of 37 suppliers. Most of those suppliers responded directly to the Ld. AO and confirmed of having made supplies to the assessee and also confirmed their balance. However, 10 suppliers did not file confirmations and based on non filing of confirmation, the Ld. AO concluded that these suppliers were non-existent. The AO treated the entire purchases made from them as bogus. The Ld. CIT(A) confirmed the additions so made by the AO.

118. We have heard the rival contentions and gone through the record. We find force in the contention of the Ld. AR that merely because the 10 suppliers out of 37 suppliers, to whom the notices were issued, did not reply to notices, that in itself was not enough to hold that the purchases made from them were bogus. The Ld. AR has submitted that the AO was not justified in brushing aside the entire evidence and documents filed by the assessee in the shape of invoices, proof of movement of goods, tax compliances made etc. and even without any inquiry or evidence proving the suppliers were bogus. The Ld. AR has demonstrated that the purchases were duly recorded in the books of accounts,

supported by invoices, transport receipts and payment details having been made through banking channels. He has also contended that the quantitative stock records matched the purchases and sales, proving that goods were actually received and utilized in the business. That the purchased material was used in the production process, leading to the manufacture and then sale of finished goods. The unused purchases or partly used were carried over as raw material or work-in-progress in inventory. The Ld. AR explained that the assessee was purchasing goods from more than 300 suppliers in India and was also importing goods from certain countries. Similarly, the sales were made with in India and the goods were also exported to more than 50 countries. All these facts go on to establish that the assessee company was genuinely existing and was carrying on pharma manufacturing at extremely large scale. Its year-wise turnover during the block period was as under:

Previous ended	Turnover (in Rs.)
31.03.2012	14,17,55,228
31.03.2013	59,79,15,747
31.03.2014	95,28,76,485
31.03.2015	1,29,51,79,402
31.03.2016	1,56,42,03,700
31.03.2017	1,97,41,80,000
31.03.2018	2,22,29,50,000

119. The Ld. DR could not rebut the aforesaid contentions raised by the Ld. Counsel for the assessee. In this case the assessee had furnished complete details, including purchase invoices, stock register entries, transport documents and bank payment proofs. All purchases were properly accounted for and matched with sales, thereby establishing their authenticity. The purchases in question were subject to TDS and GST, wherever required, and they were duly deposited with the government. Merely because only a small number of suppliers did not file response to the notices issued u/s 133(6) of the Act, that, in our view, can be the sole basis to hold the purchases made from those parties as bogus. The AO could not point out any defect or infirmity in the reply and details furnished by the parties who affirmed the purchases. The assessee has huge turnover. It imports the material as well as export its products. The suppliers in question have not been listed as

suspicious in any of the investigation report. No verification of the existence of the said suppliers was made by the AO. Even during the course of search, no evidence of making unrecorded purchases and making payment in cash for the same was found. Under the circumstances, the addition made by the AO on the basis of mere suspicion, without any corroborative material are not sustainable and the same are accordingly ordered to be deleted.

Issue 14: Extended period of Limitation

120. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2010-11	Assessee	842/Chandi/2023	2

121. The assessee in this appeal has taken the following grounds of appeal:

Ground No. 2: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO where the impugned assessment was re-opened u/s 153A by illegally using extended period of limitation.

122. This appeal already stood decided in favour of the assessee in view of our findings given above on issue No. 1, while holding that the assessments in the above cases stood completed and not abated, therefore the additions in the absence of any incriminating material are not sustainable in the light of the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra). This issue is accordingly rendered academic in nature and hence not adjudicated at this stage. The assessee will be at liberty to raise this issue at appropriate stage if need be.

Issue 15: Transfer order u/s 127 dtd. 30.03.2018 was without sanction of law, hence bad in law:

123. Following is the list of cases involving this issue :

Sr. No	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Assessee	846/Chandi/2023	3
2	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	3
3	Scott Edil Advance Research Laboratories and Education Limited	2016-17	Assessee	857/Chandi/2023	3
4	Scott Edil Advance Research Laboratories and Education Limited	2015-16	Assessee	856/Chandi/2023	3
5	Scott Edil Advance Research Laboratories and Education Limited	2014-15	Assessee	855/Chandi/2023	3
6	Scott Edil Advance Research Laboratories and Education Limited	2013-14	Assessee	844/Chandi/2023	3
7	Scott Edil Advance Research Laboratories and Education Limited	2012-13	Assessee	543/Chandi/2023	3
8	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023	3
9	Scott Edil Pharmacia Limited	2014-15	Assessee	830/Chandi/2023	3
10	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023	3
11	Scott Edil Pharmacia Limited	2016-17	Assessee	832/Chandi/2023	3
12	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	3
13	Scott Edil Pharmacia Limited	2018-19	Assessee	834/Chandi/2023	3
14	Balram Krishan Aggarwal	2012-13	Assessee	726/Chandi/2023	5
15	Balram Krishan Aggarwal	2013-14	Assessee	727/Chandi/2023	5
16	Balram Krishan Aggarwal	2014-15	Assessee	728/Chandi/2023	5
17	Balram Krishan Aggarwal	2015-16	Assessee	729/Chandi/2023	5
18	Balram Krishan Aggarwal	2016-17	Assessee	730/Chandi/2023	5
19	Balram Krishan Aggarwal	2017-18	Assessee	731/Chandi/2023	6
20	Balram Krishan Aggarwal	2018-19	Assessee	732/Chandi/2023	9
21	Maxport India Pvt Ltd	2014-15	Assessee	582/Chandi/2023	5
22	Maxport India Pvt Ltd	2015-16	Assessee	583/Chandi/2023	5
23	Maxport India Pvt Ltd	2016-17	Assessee	584/Chandi/2023	5
24	Maxport India Pvt Ltd	2017-18	Assessee	579/Chandi/2023	5
25	Maxport India Pvt Ltd	2018-19	Assessee	591/Chandi/2023	5
26	Vaishali Aggarwal	2018-19	Assessee	483/Chandi/2023	8

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
27	Vaishali Aggarwal	2017-18	Assessee	482/Chandi/2023	3
28	Sanjeev Aggarwal	2018-19	Assessee	480/Chandi/2023	7
29	Sanjeev Aggarwal	2017-18	Assessee	489/Chandi/2023	4

124. The lead case taken up is **Scott Edil Advance Research Laboratories and Education Limited for AY 2010-11, 842/Chandi/2023**. The assessee in this appeal has taken the following ground of appeal:

Ground No. 5: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO of passing assessment order on the basis of transfer order u/s 127 dtd 30.03.2018 as such order is without sanction of law and once order u/s 127 is bad, therefore order u/s 153A r.w.s 143(3) passed by Ld. AO is also bad.

125. This issue/ground is not pressed by the Ld. Counsel for the assessee. Hence this issue is accordingly decided against the assessee being not pressed.

Issue 16: Carry forward of MAT credit against the demand raised consequent to impugned addition made in assessment

126. Following is the list of cases involving this issue :

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Assessee	846/Chandi/2023	6 & 7
2	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	7 & 8

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
3	Scott Edil Advance Research Laboratories and Education Limited	2016-17	Assessee	857/Chandi/2023	9 & 10
4	Scott Edil Advance Research Laboratories and Education Limited	2015-16	Assessee	856/Chandi/2023	7 & 8
5	Scott Edil Advance Research Laboratories and Education Limited	2014-15	Assessee	855/Chandi/2023	8 & 9
6	Scott Edil Advance Research Laboratories and Education Limited	2013-14	Assessee	844/Chandi/2023	6 & 7
7	Scott Edil Advance Research Laboratories and Education Limited	2012-13	Assessee	543/Chandi/2023	7 & 8
8	Scott Edil Advance Research Laboratories and Education Limited	2010-11	Assessee	842/Chandi/2023	3
9	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023	9 & 10
10	Scott Edil Pharmacia Limited	2014-15	Assessee	830/Chandi/2023	6 & 7
11	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023	10 & 11
12	Scott Edil Pharmacia Limited	2016-17	Assessee	832/Chandi/2023	6 & 7
13	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	8 & 9
14	Scott Edil Pharmacia Limited	2018-19	Assessee	834/Chandi/2023	5

127. The lead case taken up is **Scott Edil Advance Research Laboratories and Education Limited for AY 2010-11, 842/Chandi/2023**. The assessee in this appeal has taken the following ground of appeal:

Ground No. 5: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in not the ground in right manner regarding wrong computation made by the Ld. AO about carry forward/ set-off of available MAT credit against tax demand raised consequent to impugned addition made in the assessment.

128. This issue is not pressed by the Ld. Counsel for the assessee. The same is therefore, dismissed as not pressed.

Issue 17: Disallowance of 80IC on subsidy claimed in ITR

129. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023	7 & 8

130. The assessee in this appeal has taken the following ground of appeal:

Ground No. 7: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 4,86,458/- by disallowing the deduction u/s 80-IC even when the appellant had itself not claimed deduction on such items in the ITR filed.

Ground No. 8: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO by disallowing the deduction u/s 80-IC on the subsidy income of Rs. 1,25,913/-.

131. This appeal already stood decided in favour of the assessee in view of our findings given above on issue No. 1, while holding that the assessments in the above cases stood completed and not abated, therefore the additions in the absence of any incriminating material are not sustainable in the light of the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra). This issue is accordingly rendered academic in nature and hence not adjudicated at this stage. The assessee will be at liberty to raise this issue at appropriate stage if need be.

Issue 18: Jewellery found at House no 2273, Sector 21C, Chandigarh & Locker no 64, Bank of India, Sector 35, Chandigarh during the search.

132. Following is the list of cases involving this issue :-

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Vaishali Aggarwal	2018-19	Assessee	482/Chandi/2023	7
2	Sanjeev Aggarwal	2018-19	Assessee	489/Chandi/2023	

133. The lead case taken up is **Vaishali Aggarwal for AY 2018-19**, having **ITA No. 482/Chandi/2023**. The assessee in this appeal has taken the following grounds of appeal:

Ground No. 7: That on facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the addition of Rs. 51,44,693/- on account of alleged unexplained investment in jewellery found from bank lockers during the search.

134. The brief facts relating to the above issue are that during the course of search action conducted u/s 132 of the Act, certain jewellery was found at House No. 2273, Sector 21C, Chandigarh, and Locker No. 64, Bank of India, Sector 35, Chandigarh. The details of which are as under:

S. No.	Address/ Location from where Jewellery was found	Value of the Jewellery (in Rs.)
1.	H.No. 2273 Sector-21C Chandigarh	88,75,224
2	Locker No. 64 Bank of India, Sector-35C, Chandigarh	51,44,693
Total		1,40,19,917

135. The assessee explained that the said jewellery was purchased from time to time out of past savings and gifts received from relatives and friends on occasions such as birthday, marriage and birth of children etc. The Id. AO on the basis of guidelines issued in clause (ii) of the CBDT Instruction No. 1916 dated 11.05.1994, treated the jewellery to the extent of the value of Rs.64,19,900/- as explained and reasonably possessed by the assessee and treated the remaining part of the jewellery of the value of Rs. 76,00,017/- as acquired from undisclosed sources of income. The AO made addition of Rs. 24,55,324/- in the hands of Sanjeev Aggarwal and of Rs. 5144693/- in the hands of Vaishali Aggarwal. The Id. CIT(A) confirmed the additions so made by the AO.

136. Before us, the Ld. Counsel for the assessee has submitted that the jewellery found at the premises belonged to the assessee's family members, spanning multiple generations. That the assessee's family has consistently declared an annual income of more than Rs. 1.25 crore, and they have been in a thriving pharmaceutical industry for over 25 years. The group's yearly turnover has continuously exceeded Rs. 150 crores, with an average profit of Rs. 15 crores per year over the relevant block period. That given the family's status and substantial earnings, maintaining jewellery worth Rs. 1,40,19,917/- was reasonable, and no addition should be made on this account. The Ld. Counsel has relied upon details of past income details showing that it had sufficient owned funds wherefrom jewellery had been bought. The Ld. Counsel in this respect had referred to the following chart of past assessed income of the assessee, which was also furnished before the lower authorities:

In the present case, the same can be substantiated and proved through the incomes declared by / assessed on the assessee during the block-period. The same is as under:-

Returned / Assessed Income u/s 143(3)

AYs	Sanjeev Kumar Aggarwal	Vaishali Aggarwal	Balram Krishan Aggarwal
2012-13	34,90,190	21,64,560	54,39,420
2013-14	1,11,46,732	17,78,320	50,35,130
2014-15	20,85,260	13,94,990	44,66,130
2015-16	18,69,900	50,28,310	47,52,020
2016-17	50,28,310	50,29,200	57,05,310
2017-18	49,46,910	48,03,020	6,55,020
2018-19	67,56,200	80,57,430	9,10,740
Average Income	50,46,215	40,36,547	38,51,967

The assessee family themselves declared an income of more than Rs. 1.25Crs per year over the last seven years.

137. The ld. Counsel, therefore has contended that given the size, standing, and financial stature of the group, it was reasonable to maintain personal jewellery as found during the course of search action. He has submitted that

the guidelines given in the CBDT circular could not be yard stick in each and every case, rather the same are applicable for a person/family of average resources. He, therefore, has contended that the assessee should be granted the benefit of considering the family status and the past income of the assessee. The Ld. Counsel in this respect has also relied upon the following case laws:

- a. **Smt. Neena Syal vs. ACIT , 70 ITD 0062, Chandigarh ITAT.**
- b. **Vibhu Aggarwal V.s DCIT, CC-6, New Delhi, 93 taxmann.com 275, Delhi ITAT.**
- c. **Nawaz Singhanian vs. DCIT, 162 DTR 0137, Bombay ITAT.**
- d. **Ashok Chaddha, ITA 274 of 2011, Delhi HC.**

138. The ld. DR, however, has relied upon the findings of the lower authorities.

139. We have heard the rival contentions of the Ld. Representatives of the parties and gone through the record. We agree with the submissions made by the Ld. Counsel for the assessee. The CBDT guidelines are not fixed yardstick for determining the value of jewellery which a person can possess in each and every case These are general guidelines for a person of reasonable income and status. However, given the past average income of the assessee, their rank and status, the aforesaid jewellery can not be said to be on higher side, and hence, can not be treated as acquired from undisclosed sources. The case laws cited by the Ld. Counsel for the assessee are squarely applicable to the facts and circumstances of the present case wherein it has been time and again held that Keeping status of assessee's family in mind as well as customs and practices of community to which family belonged, the value of the jewellery which the family would reasonably and in the ordinary circumstance is to be taken . In view of the above discussion, the addition made under Section 69A is unsustainable and the same is accordingly ordered to be deleted.

Issue 19: Approval u/s 153D

140. Following is the list of cases involving this issue :-

Sr. No	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
1	Scott Edil Advance Research Laboratories and Education Limited	2018-19	Assessee	846/Chandi/2023	3
2	Scott Edil Advance Research Laboratories and Education Limited	2017-18	Assessee	845/Chandi/2023	3
3	Scott Edil Advance Research Laboratories and Education Limited	2016-17	Assessee	857/Chandi/2023	3
4	Scott Edil Advance Research Laboratories and Education Limited	2015-16	Assessee	856/Chandi/2023	3
5	Scott Edil Advance Research Laboratories and Education Limited	2014-15	Assessee	855/Chandi/2023	3
6	Scott Edil Advance Research Laboratories and Education Limited	2013-14	Assessee	844/Chandi/2023	3
7	Scott Edil Advance Research Laboratories and Education Limited	2012-13	Assessee	543/Chandi/2023	3
8	Scott Edil Pharmacia Limited	2013-14	Assessee	829/Chandi/2023	3
9	Scott Edil Pharmacia Limited	2014-15	Assessee	830/Chandi/2023	3
10	Scott Edil Pharmacia Limited	2015-16	Assessee	831/Chandi/2023	3
11	Scott Edil Pharmacia Limited	2016-17	Assessee	832/Chandi/2023	3
12	Scott Edil Pharmacia Limited	2017-18	Assessee	833/Chandi/2023	3
13	Scott Edil Pharmacia Limited	2018-19	Assessee	834/Chandi/2023	3
14	Balram Krishan Aggarwal	2012-13	Assessee	726/Chandi/2023	5
15	Balram Krishan Aggarwal	2013-14	Assessee	727/Chandi/2023	5
16	Balram Krishan Aggarwal	2014-15	Assessee	728/Chandi/2023	5
17	Balram Krishan Aggarwal	2015-16	Assessee	729/Chandi/2023	5
18	Balram Krishan Aggarwal	2016-17	Assessee	730/Chandi/2023	5
19	Balram Krishan Aggarwal	2017-18	Assessee	731/Chandi/2023	6
20	Balram Krishan Aggarwal	2018-19	Assessee	732/Chandi/2023	9
21	Maxport India Pvt Ltd	2014-15	Assessee	582/Chandi/2023	5
22	Maxport India Pvt Ltd	2015-16	Assessee	583/Chandi/2023	5
23	Maxport India Pvt Ltd	2016-17	Assessee	584/Chandi/2023	5
24	Maxport India Pvt Ltd	2017-18	Assessee	579/Chandi/2023	5
25	Maxport India Pvt Ltd	2018-19	Assessee	591/Chandi/2023	5
26	Vaishali Aggarwal	2018-19	Assessee	483/Chandi/2023	3

Sr. No.	Name of the assessee	AY	Appeal by	Appeal No.	Ground No.
27	Vaishali Aggarwal	2017-18	Assessee	482/Chandi/2023	8
28	Sanjeev Aggarwal	2018-19	Assessee	480/Chandi/2023	4
29	Sanjeev Aggarwal	2017-18	Assessee	489/Chandi/2023	7

141. The lead case taken up is **Scott Edil Advance Research Laboratories and Education Limited for AY 2010-11, 842/Chandi/2023**. The assessee in this appeal has taken the following ground of appeal :

Ground No. 3: That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO in acquiring jurisdiction u/s 153A as such order is invalid and unlawful as stated and purported approval u/s 153D dated 30.12.2019 was without due application of mind and merely in ritualistic manner stated approval is accorded which is disputed and challenged here so as to invalidate the entire assessment.

142. The contention of the Ld. Counsel for the assessee in respect of the above issue are that in all this Scott Edil group of cases, Ld. AO forwarded draft assessment order to the Addl. CIT on 29.12.2019 along with assessment records only, but without any seized record folders. The Addl. CIT had sent back the file with his cryptic approval note on 30.12.2019. In the approval note, he has simply written “*the approval u/s 153D of the Act, 1961, is accorded for the AY 2014-15.*”

150. The Ld. Counsel has contended that the said approval has been granted by the Ld. Addl. CIT without application of mind. He in this respect has stressed on the following points of arguments :

- a) *That there is no discussion on the file by the Ld. AO during assessment proceedings with the Addl. CIT. That the approval u/s 153D given in this case is mechanical and ritualistic only and without any application of mind.*

- b) That the Ld. Addl. CIT even did not mention that he has looked into the records or the draft assessment order. That he has just signed the dotted lines.
- c) That the approval was sought by the AO on 29.12.2019. In this large search group containing more than 50 assessment orders and all these approvals were given in less than 5 working hours. Based on this limited time used by Addl. CIT, it would not have been possible to go through this voluminous assessment record, draft assessment orders containing such minute issues.
- d) Seized record was never sent to the Addl. CIT as is evident from approval note dated 30.12.2019 appended at Page 303 of Ld. CIT(A) order dated 31.10.2023 in case of SEARLE.
- e) Even the assessment record also does not show that there was any noting on the file when the assessment proceedings were ongoing.
- f) That when the above facts and contentions were raised before the Ld. CIT(A), he rejected this ground of the assessee by holding that approval u/s 153D is only an administrative action and its validity or invalidity will not impinge upon the validity of the assessment order.
- g) That the above action of Ld. CIT(A) is bad in law as now number of courts have held that the approval u/s 153D is not merely administrative and that if it is demonstrated by the assessee that the approval was mechanical, without application of mind, without giving reasonable time to the file and is ritualistic in nature, said approval u/s 153D and the consequential assessment order deserves to be quashed.
- h) The Ld. Counsel, in this respect has relied upon the following case laws, wherein the approval u/s 153D is granted within a short span of time without application of mind, such approval will not be a valid approval and the consequent assessment order framed would be liable to be quashed:

- 1. Inder International vs. ACIT, ITA No. 1573 of 2018, Chandigarh ITAT.**
- 2. Sanjay Duggal vs. ACIT, ITA No. 1813 of 2019, Delhi ITAT.**
- 3. PCIT vs. Shreelekha Damani, 307 CTR 218, Bombay High Court.**

- 4. ACIT vs Serajjudin & Co., 454 ITR 312, Orissa High Court, which is affirmed by Hon'ble Supreme Court in SLP(C) Diary No(s). 44989/2023 dtd. 28.11.2023.**
- 5. PCIT vs Siddharth Gupta, 450 ITR 534, Allahabad High Court.**
- 6. CIT vs Shiv Kumar Nayyar, 8 NYPCTR 1064, Delhi High Court.**
- 7. PCIT vs Anuj Bansal, 7 NYPCTR 1020, Delhi High Court.**

143. The Ld. DR on the other hand has relied upon the findings of the Ld. CIT(A) and has further submitted that the approval has been granted by the Addl. CIT after due application of mind. That moreover it was an administrative function and that intervention can be made on this issue on judicial side.

144. We have considered the rival contentions and gone through the record. It is a matter of record that about 50 assessment orders have been passed by the AO u/s 153A of the Act in the group cases of the assessee. The AO was required to get approval of the Addl. CIT/CIT u/s 153D of the Act before passing the impugned assessment orders. It is also a matter of record that the AO had forwarded the draft assessment orders to the Addl. CIT 29.12.2019 . We take a sample copy of the letter forwarding the draft order in the case of SEPL vide letter no 886 along with assessment record to seek the approval u/s 153D of the Act which was accorded on 30.12.2019. The copy of the letter sent by the AO to the Addl. CIT is reproduced as under (for reference only the letter for AY 2018-19 has been reproduced as under. However the AO has sent separate letter for different assessment years):-



GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT

Office of the Deputy Commissioner of Income Tax,
Central Circle-I, Chandigarh Room No.3, Ground Floor, C.R. Building,
Sector 17-E, Chandigarh

No. DCTT/CC-I/CHD/2019-20/142

Dated: - 29.12.2019

To

Joint Commissioner of Income Tax,
Range Central, Chandigarh

Sr.

Sub: - Draft Assessment Order in the case of M/s Scott Edil Pharmacia Limited, 54-55,
Industrial Area, Phase-2, Chandigarh (PAN- AAHKS1643K) for the A.Y. 2018-19-
Regarding-

Kindly find enclosed herewith draft assessment order in the aforementioned case for the
A.Y. 2018-19 framed u/s 143(3) r.w.s. 153B(1)(b) of the Income Tax Act, 1961. Your kind
approval under section 153D for passing of assessment orders in this case is solicited.
Assessment record of the assessee is also forwarded for your kind perusal.

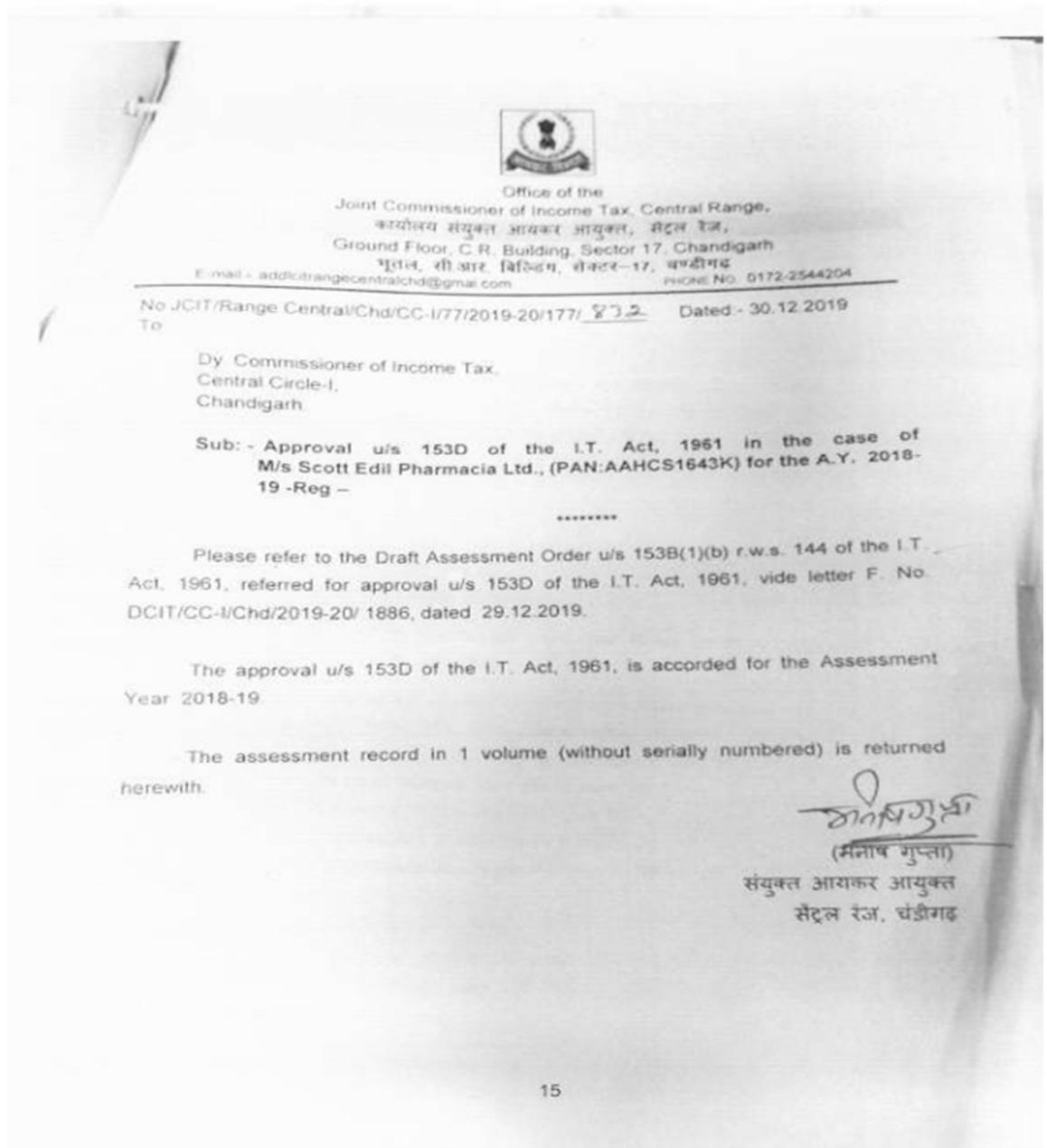
Yours faithfully,

Encl. As above

30 DEC 2019

Kamaljit Kaur
(Kamaljit Kaur)
Deputy Commissioner of Income Tax,
Central Circle-I, Chandigarh

145. A perusal of the above letter reveals that the AO had sent the draft Assessment Order on 29.12.2019 to the Addl. CIT along with assessment records. However, the AO did not send the seized material along with the assessment records. The Ld. Addl. CIT sent the approval in all the cases the next day i.e. on 30.12.2019. The contents of the approval in the said case are reproduced as under:



146. The identical approval letters have been sent by the Addl. CIT in respect of more than 40 draft assessment orders involving multiple issues, some of which required due application of mind and also reference to the seized material. Even one of the major issue raised during the assessment proceedings in most of the cases was that as to whether the seized material would constitute incriminating material or not. The other major issue as discussed above was regarding the discrepancies pointed out by the assessee in the DVO's reports. Further, whether the DVO was justified in applying CPWD rates or he was supposed to apply State PWD rates. There were many other disputed issues such as issue of deemed dividend, commission income estimated by the AO holding the transactions within the group entities as bogus. The issue of addition on account of jewellery found and seized during search action, addition on account of bogus sales and bogus purchases etc. proposed by the AO in the draft assessment order. It is also a matter of record that in many of the cases, the original assessment had already stood completed and not abated. The Ld. CIT(A) has also quashed assessment in many cases for which the department had preferred appeals before this Tribunal along with the captioned appeals, however the same have been decided by way of our separate common order dated 6.11.2024 passed in 501/Chandi/2023 and others. It is apparent that the Ld. Addl. CIT had not made a single comment on any of the issues and about the additions proposed in the draft assessment order. Though, the Ld. Addl. CIT is not supposed to give his comments on each or every issue, however, considering that these were set of about 50 draft assessment orders involving multiple issues proposing additions in crores of rupees, the lack of single comment on any of the issue with only a one line approval, "*the approval u/s 153D of the Act, 1961, is accorded for the AY 2014-15.*", without even a bare minimum discussion on any of the issues/additions proposed in any of the draft assessment orders, even without having perused the seized material and sending the approval letters in all the cases the very next day shows non application of mind by the Ld. Addl. CIT and shows that such approvals have been given in a mechanical manner. It is pertinent to mention here that these appeals along with other appeals pertaining to the same search action were earlier heard by this Tribunal on 20.08.2024

and the hearing continued for the next day also and concluded on 21.08.2024. The matter was again fixed for clarifications for 27.11.2024. This time the Ld. CIT (DR) Mr. K. MehboobAli Khan was also joined in arguments by another CIT(DR) Smt. Kusum Bansal. At their request, the matter was adjourned to 5.12.2024. On 5. 12. 2024, the matter was again heard at length, and both the Ld. CITs (DRs) and the counsel for the assessee addressed the arguments and hearing was concluded to their satisfaction. Thereafter, it took considerable time to us also to go through each of the issue and adjudicate upon the same. What we want to convey is that the above facts and circumstances show that the draft assessment orders were sent by the AO in approximately 50 cases, which required due application of mind , but the Ld. Addl CIT sent the approval on the very next working day in a casual and mechanical manner vide one line order saying that approval is accorded without even minimum deliberations. Under the circumstances, the case laws cited by the Ld. Counsel for the assessee are squarely applicable. The Coordinate Chandigarh Bench of the Tribunal, in the case of “**Inder International vs. ACIT**” (*supra*), in some what similar circumstances, has observed as under:

“7. The Ld.Counsel for the assessee before us stated that this issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of PCIT Vs. Shreelekha Damani (2019) 307 CTR 218. He also stated that the Tribunal is consistently taking view and he cited the following case laws:

S. No.	Name of the case	Citation
1.	Sanjay Duggal Vs. ACIT	ITA No. 1813/Del/2019
2.	M3M India Holdings Vs. DCIT	71 ITR(Trib.) 451
3.	Dilip Constructions Pvt. Ltd. Vs. ACIT	IT(SS)A No.66 to 71/CTK/2018
4.	Saurabh Agarwal Vs. DCIT	ITA Nos. 263 to 267/Agr/2017
5.	Rajesh Ladhani Vs. DCIT	ITA No. 106 to 108/Agra/2019
6.	Uttarakhand Uthan Samiti Vs. ITO	ITA No. 48 to 52/DDN/2019
7.	Rishabh Buildwell Pvt. Ltd. Vs.DCIT	ITA No. 2212/Del/2018
8.	AAA Paper Marketing Ltd. Vs. ACIT	ITA No. 167/Lkw/2016

- | | | |
|-----|--------------------------------------|-------------------------------|
| 9. | M/s Rajat Minerals Pvt. Ltd. Vs.DCIT | IT(SS)A Nos.41 to 47/Ran/2019 |
| 10. | Geetarani Panda Vs. ACIT | IT(SS)A Nos. I/CTK/2017 |
| 11. | ACIT Vs. CR Mittal & Sons (HUF) | IT(SS)A No. 100/JAB/2014 |

8. *The Ld.Counsel for the assessee also relied upon the recent decision of the ITAT, Mumbai Bench in the case of Arch Pharmalabs Ltd. Vs. ACIT, CC-32 in ITA No.6656/Mum/2017 & Others dated 07.04.2021, wherein exactly on identical facts the Tribunal has held that the approving authority has not mentioned any process of deriving satisfaction so as to exhibit due application of mind by the approving authority.*

9. *On the other hand, the Ld.CIT DR took us through the Departmental Circular F.No.286/161/2006-IT (Inv.II) dated 22.12.2006 wherein entire process of search and seizure assessment is mentioned and according to her this is strictly followed and there is no deviation from the same. She also stated that the Addl.CIT is supervising authority of the AO in case of search assessment and there is no allegation by the assessee that there is any deviation in the process. She read out the relevant clauses of the above circular issued by the Board.*

10. *We have gone through all the facts of the case first and also gone through the Paper Book filed by the assessee on 18.05.2021 wherein relevant two documents i.e. letter by the AO to the Addl.CIT which is enclosed in assessee's Paper Book at page No.1 and which reads as under:*

Government of India

*Office of the Asst. Commissioner of Income Tax, Central Circle-II,
Opp.B.V.M. School Kitchlu Nagar,
Ludhiana.*

No.ACIT/C-II/Ldh/2017-18/446

Dated:29.06.2017

To

*The Additional Commissioner of Income Tax,
Central Range, Ludhiana.*

Madam,

**Sub: Approval under section 153D of the Income Tax Act,1961- in the case of M/s
Inder International(PAN AABFI7996J) and Sh.Abhay Jain (PAN AHEPJ7203M) –
matter regarding-**

Kindly refer to the subject cited above.

Keeping in view the orders of Hon'ble Punjab & Haryana High Court Chandigarh (whereby directing the assessment order to complete the assessment proceedings by 30.06.2017), draft assessment orders of the following cases have been prepared:

S.No.	Name & address of the assessee	PAN	Assessment Years
1.	M/s Inder International, 594, Nirankari Mohalla No.1, Overlock Road, Ludhiana	AABF17996J	2011-12 to 2016-17 (six Years U/s 153A)
2.	S.Abhay Jain Prop. M/s Shree Lakshmi Steels, 467, Industrial Area-B, Millerganj, Ludjhiana	AHEPJ7203M	2012-13 to 2016-17 (Five Years U/s 153C)

Submitted for kind perusal and statutory approval U/s 153D of the Income Tax Act, 1961.

Yours faithfully

Encls: Assessment folders in
11 cases alongwith
Corresponding draft
assessment Orders.

Sd/-
(Manke Shah Kapoor)
Asstt. Commissioner of Income Tax
Central Circle-II, Ludhiana

12. On page 2, the relevant statutory approval accorded u/s 153D of the Act by the Addl.CIT is also enclosed and the same reads as under:

Government of India

Ministry of Finance

Office of the Addl. Commissioner of Income Tax, Central Range, Ludhiana.
SCO 1-6, 2nd Floor, Opp.B.V.M. School Kitchlu Nagar, Ludhiana.

F.No.Addl.CIT(C), R/Ldh./16-17/560

Dated:29.06.2017

To

*The Asst. Commissioner of Income Tax,
Central Circle-II, Ludhiana.*

Sub: Approval u/s 153D of the I.T. Act, 1961 in the case of M/s Inder International (PAN AABF17996J) and Sh.Abhay Jain (PAN AHEPJ7203M)

-regarding-

Kindly refer to the subject cited above. Please refer to your office letter No.446 dated 29.06.2017, received in this office on 29.06.2017 thereby submitted draft assessment order in the following cases:

<i>S.No.</i>	<i>Name & address of the assessee</i>	<i>PAN</i>	<i>Assessment Years</i>
1.	<i>M/s Inder International, 594, Nirankari Mohalla No.1, Overlock Road, Ludhiana</i>	<i>AABF17996J</i>	<i>2011-12 to 2016-17 (six Years U/s 153A)</i>
2.	<i>Sh.Abhay Jain Prop. M/s Shree Lakshmi Steels, 467, Industrial Area-B, Millerganj, Ludjhiana</i>	<i>AHEPJ7203M</i>	<i>2012-13 to 2016-17 (Five Years U/s 153C)</i>

Necessary statutory approval u/s 153D is given to pass the above assessment order, as sub. Assessment record in this case is returned herewith.

Encls: As above.

Sd/-

(Dr.Rajinder Kaur)

*Addl.Commissioner of Income Tax
Central Range, Ludhiana*

11. From these two documents it is clear that the AO has prepared a draft assessment order only either on 28.06.2017 or on 29.06.2017. This draft assessment order was sent to the Addl.CIT only on 29.06.2017 alongwith draft

assessment order of other group cases and the Addl.CIT, Central Range, Ludhiana has accorded approval u/s 153D of the Act that very day i.e. 29.06.2017 as is clear from the above approval reproduced. The Addl.CIT simply recorded that:

“Necessary statutory approval u/s 153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith.”

12. We have gone through the decision of Hon'ble Bombay High Court cited by the Ld.Counsel for the assessee in the case of Shreelekha Damani (supra) wherein almost identical approval was considered by the Hon'ble Bombay High Court and the relevant findings are as under:

“6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :-

*“To, The DCIT(OSD)-1 Mumbai
Subject : Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg.*

Ref : No. DCIT (OSD)-1/CR-7/Appr/2010-11 dt. 31.12.2010

As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted.

Approval to the above said draft order is granted u/s 153D of the I.T. Act, 1961.”

7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st 3 of 4 Uday S. Jagtap 668-16-ITXA15=.doc December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant

issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises."

13. We have also gone through the recent case law of Mumbai Tribunal in the case of Arch Pharmalabs Ltd. (supra) wherein the Tribunal held as under:

"11.1 It may be pertinent to observe at this stage that the impugned assessment orders were passed u/s. 143(3) rws 153A of the Act for the AY 2003-04 to AY 2008-09 and for the AY 2009-10 u/s. 143(3) of the Act pursuant to search carried out under s.132 of the Act. For passing such assessment orders, the Assessing Officer is governed by s.153D of the Act whereby the Assessing Officer should complete the assessment proceedings and prepare a draft assessment order which need to be placed before the approving authority i.e. Joint / Addl. Commissioner (designated authority giving approval to search assessments u/s. 153D of the Act). The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/ her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law. The AO is obligated to pass the assessment order exactly, as per approval/ directions of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of the assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement. 11.2 In the backdrop of facts narrated in the preceding paras, it is the contention on behalf of the assessee that approval granted under S. 153D does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment orders thus passed is vitiated in law which illegality cannot be cured. In support of charge of nonest approval, several contentions have been raised viz (i) the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind (ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 7 assessment years and thus only a symbolic exercise to meet the requirement of law (iii) Total lack of objectivity in drawing satisfaction on objective material while giving a combined approval for 7 assessments and also without evaluating the nuances of each assessment year involved (iv) the mundane action of Addl. CIT under S. 153D in a cosmetic manner gives infallible impression of approval on dotted line and thus

defeats the purpose of supervision of search assessments (iv) initialed draft assessment orders not available in office records. 11.3 As observed, Section 153D bestows a supervisory jurisdiction on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirement in letter and spirit. It is evident from the communication of AO and consequent approval thereon under S. 153D that no assessment record for any assessment year in question or any seized material had traveled to the authority concerned for his objective consideration of the same qua the draft assessment orders. No reference in this regard is made in the approval note either which may discard such allegation as untrue. No other material or order sheet in assessment proceedings etc. were placed before us either to establish otherwise. Except these two documents namely, a solitary communication from AO to the Addl. CIT dated 29/12/2010 and an in turn approval by Addl. CIT dated 31/12/2010, there is nothing else before us to gauge the facts differently. A bare glance at the approval so accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the 7 assessment years. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record which allegation has not been rebutted. The draft assessment orders showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw light on objectivity applied owing to total silence on any delineation on these aspects in the approval memo. The records before us are totally muted. 11.4 Based on solitary communication placed before us, it is ostensible that draft assessment orders were placed before the Addl. CIT on 29.12.2010 for the first time. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to 29.12.2010. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending

circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. 11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating

material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and can not be countenanced in law. 11.6 There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) and approved by jurisdictional High Court subsequently as reported in 307 CTR 218 affirms the plea of the Assessee. 11.7 Very recently, the co-ordinate bench in Sanjay Duggal & ors (ITA 1813/Del/2019 & ors; order dated 19.01.2021 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assessee against maintainability of hollow approval under S. 153D totally devoid of any application of mind. The approval so granted under the shelter of section 153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence quashed.”

14. In view of the above decision and the fact that in the present case before us also the Addl. CIT has accorded the approval u/s 153D of the Act only on 29.06.2017 when the AO placed the assessment order on that very date i.e. 29.06.2017. The relevant approval by the Addl. CIT reads as under:

“Necessary statutory approval u/s 153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith.”

15. From the above, it is clear that this is totally non application of mind by the Addl. CIT, who is the supervising authority of the AO, while granting statutory approval u/s 153D of the Act, the issue stands covered in favour of the assessee by various decisions cited above. In the present case before us, we noted that the Addl. CIT did not mention anything in the approval memo towards his process of deriving satisfaction so as to exhibit his due application of mind. We noted that the Addl. CIT merely approved the letter

and the relevant is noted in above paras. We noted that the relevant Para of the above approval letter merely says that "Necessary statutory approval u/s 153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his statutory functions and delightfully relegated his statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed additions with reference to incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and can not be considered as actual approval in law. Hence, we quash the assessment framed u/s 153A of the Act on this additional ground alone.

16. Needless to say that we need not to adjudicate the grounds raised on merits by the assessee as we have already quashed the assessment on jurisdictional issue that the statutory approval granted u/s 153D is without application of mind by the Addl.CIT."

147. The aforesaid case laws are squarely applicable to the case in hand. The approval/s 153D given in the above noted case being without application of mind and in a mechanical and casual manner, the assessment orders thereof are thus not sustainable, the same are hereby quashed.

148. Though, we have given our findings both on legal as well as factual issues raised in the captioned appeals, however, in view of our findings given on legal issues No. 1 and 18, the since assessment in all the cases stand quashed, hence all the appeals of the assessees herein are treated as allowed, whereas all the appeals of the revenue are treated as dismissed. Under the circumstances, at this stage, our findings given on the factual aspects in all the appeals are rendered in academic in nature, which can be taken note of at appropriate stage, if so required and legally permissible.

Order Pronounced on 03.03.2025.

Sd/-
(KRINWANT SAHAY)
Accountant Member

Sd/-
(SANJAY GARG)
Judicial Member

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Revenue
3. CIT(A)-5, Ludhiana
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
Assistant Registrar
ITAT, Chandigarh