IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA Nos.36, 37, 38, 101, 125, 126, 127/ALLD/2023
A.Ys. 2005-06 to 2011-12

Ramji Vaish, 86, New Bairahana, Allahabad	vs.	Dy. Commissioner of Income Tax, Central Circle, Allahabad
PAN: AAKPV7963M		
(Appellant)		(Respondent)

ITA Nos. 105, 106, 107, 108/ALLD/2019
A.Ys. 2005-06, 2011-12, 2008-09 & 2010-11

M/s Subhash Stone Product (P.) Ltd., Subhash Nagar, Bari Dalla, Sonebhadra	vs.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad
PAN: AAICS3246F		
(Appellant)		(Respondent)

ITA Nos. 24 & 25/ALLD/2019
A.Ys. 2010-11 & 2011-12

M/s Jai Maa Sharda Service Station, Bari Dalla, Sonebhadra	vs.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad
PAN: AAFFJ1002L		
(Appellant)		(Respondent)

ITA Nos. 30, 31, 32, 33/ALLD/2019
A.Ys. 2007-08, 2009-10, 2010-11 & 2011-12

Vijay Stone Product, Bari Dalla, Sonebhadra	vs.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad
PAN: AAGFV4724J		
(Appellant)		(Respondent)

ITA Nos. 64 & 65/ALLD/2019
A.Ys. 2010-11 & 2011-12

Asstt. Commissioner of Income Tax, Central Circle, Allahabad	vs.	Vijay Stone Product, Bari Dalla, Sonebhadra
		PAN: ADNPB8534G
(Appellant)		(Respondent)

CO Nos. 5 & 6/ALLD/2020
(Arising out of ITA Nos. 64 & 65/ALLD/2019
A.Ys. 2010-11 & 2011-12

Vijay Stone Product, Bari Dalla, Sonebhadra	vs.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad
PAN: AAGFV4724J		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A. & Sh. Suyash Agarwal, Advocate
Revenue by:	Sh. Amalendu Nath Mishra, CIT DR & Sh. A.K. Singh, Sr. DR
Date of hearing:	14.08.2025
Date of pronouncement:	31.10.2025

O R D E R

PER BENCH:

All these appeals have been filed against the various orders of the ld. CIT(A)-3, Lucknow under section 250 of the Income Tax Act, 1961 on different dates in respect of the appeals against orders passed by the DCIT, Central Circle, Allahabad under section 153(A) r.w.s. 143(3) / 153(C) r.w.s. 153A & 143(3) / 143(3) r.w.s. 153(B)(1).

2. The facts of the case are that a search and seizure operation under section 132(1) of the Income Tax Act, 1961 was conducted in respect of all these assessees on 3.02.2011. Thereafter, assessment proceedings were taken up under section 153A r.w.s. 143(3) for the period starting from assessment year 2005-06 to assessment year 2011-12. After obtaining approval from the ld. JCIT under section 153D on 26.03.2013, all these assessment orders were passed in the closing days of the financial year 2012-13. The assessees filed appeals against all these assessment orders before the ld. CIT(A)-3, Kanpur, who, after considering the issues on the basis of the grounds raised before her, passed her orders in all these appeals and aggrieved by such orders passed by the ld. CIT(A)-3, Lucknow, these assessees have

come in appeals before us against various appeal orders. The Department has also come in appeals in two cases (in the matter of Vijay Stone Products) against which the assessee has filed cross objections.

In the case of Sh. Ramji Vaish, the following grounds of appeal in ITA Nos. 36, 37 & 38/ALLD/2023 were filed on 27.04.2023, in ITA No. 101/ALLD/2023 were filed on 04.08.2023 and in ITA Nos.125, 126 & 127/ALLD/2023 were filed on 4.12.2023, which read as under:-

ITA No. 36/ALLD/2023 (A.Y. 2005-06)
(Ramji Vaish)

"1. That in any view of the matter order passed u/s 153A r.w.s. 143 (3) of the act dated 30.03.2013 and determined the income at Rs. 1,07,64,383/- is highly unjustified illegal incorrect bad in law and assessing officer as well as CIT (Appeal) confirmed the action of assessing officer as per his order dated 07.02.2023 is highly unjustified incorrect illegal baseless and without any basis and both the two lower authorities failed to considered the facts and law properly hence the action of the two lower authorities liable to be declared illegal and invalid.

2. That in any view of the matter assessment as framed u/s 153A r.w.s. 143 (3) of the act without considering the facts in proper manner and likewise CIT (Appeal) failed to considered the facts and cited decision of various higher courts as well as failed to consider the contents of the affidavit filed before him and even no statement was recorded on the basis of affidavit nor any proper opportunity was allowed to the assessee hence the entire action of CIT (Appeal) is incorrect illegal. The allegation of the CIT (Appeal) in the order that sufficient opportunity was allowed is absolutely wrong and incorrect.

3. That in any view of the matter approval u/s 153D of the act as taken by the assessing officer from Joint Commissioner of Income Tax Lucknow in various assessee (Group cases) in one day which shows that prescribed authorities granted the approval without application of mind and without considering the search material facts, in all the cases (Group Cases) hence the entire assessment order is illegal invalid hence order of the two lower authorities liable to be declared void as well as non-est.

4. That in any view of the matter meaning of approval as contemplated u/s 153D of the act by the Joint Commissioner Lucknow required to verify the issue raised by the assessing officer in draft assessment order and to apply his

mind and to ascertain the entire facts from the assessing officer and to examined search material but in the present case in mechanical manner approval taken/ granted on one day in more than 45 cases (Group) hence the order passed by the assessing officer and his action as confirmed by CIT Appeal is highly unjustified. The legal issue in question is well covered by the decision Hon'ble Jurisdictional High Court as well as other Hon'ble I.T.A.T. benches hence the decisions are binding.

5. That in any view of the matter on the date of search original assessment u/s 143 (3) of the act was concluded and no assessment pending whereas only pending assessment shall abate and not concluded assessment and since no material was found hence as per the proviso only one assessment can be made hence sanctity of original assessment passed u/s 143 (3) should be maintained as a result the order passed u/s 153A r.w.s. 143 (3) is illegal.

6. That any view of the matter addition of Rs.3,26,400/- as made as per para 2.3 (i) of the order by alleging unexplained investment in immovable property is highly unjustified in the facts and circumstances of the case and such addition made without any material or evidence hence the addition is incorrect and more so the learned CIT(A) was also incorrect in treating the addition as unexplained investment in immovable property is highly unjustified. Likewise the transaction as considered during the year is uncalled for in the facts of the circumstances of the case.

7. That in any view of the matter the addition of Rs.3,26,400/-made and maintained by the two lower authorities without considering the relevant document filed in the paper book before CIT(A) also as the land in question agriculture land purchase on 29.03.2004 which fall in assessment year 2004-05 and the same was sold on 10.08.2005 which fall in assessment year 2006-07 and the appellant shared 1/3rd comes to Rs.1,10,000/- but since there was no transaction made during the year addition is unwarranted and the entire working of assessing officer is incorrect.

7A. That in any view of the matter the addition of Rs.3,78,200/-as per para 4.1 of the order and his action confirmed by CIT(A) is highly unjustified hence addition is unwarranted.

8. That in any view of the matter the addition of Rs.2,80,000/-as made by the assessing officer as per discussion in para 5.1 of the A.O. by alleging bogus gist and his action as confirmed by CIT(A) is totally incorrect without considering the fact and evidence placed on record so both the lower authorities acted in arbitrary manner and confirmed the addition which is highly unjustified.

9. That in any view of the matter the addition of Rs.2,80,000/-made as per discussion in para 5.1 of the order is not correct in so far as the issue of gift

already considered/adjudicated in original assessment passed u/s 143 (3) of the act hence the addition is unwarranted.

10. That in any view of the matter addition of Rs.91,85,908/- as per para 6.1 of the order made by the assessing officer and confirmed by CIT (Appeal) without considering the nature and manner of entries as recorded in the diary found in the course of search marked as Annexure A-4 and no.A-5 are nothing but only rough and dumb document but the two lower authorities without considering the nature of entries made and confirmed the addition which is highly unjustified.

11. That in any view of the matter a huge & arbitrary addition of Rs.91,85,908/ made on the basis of annexure no. A-4 & A-5 without cogent & credible material/evidence and even decoding figure by the lower authorities in their own liking without any corroborative evidence brought on record. The entries are mostly imaginary entries and had no value in the eye of laws hence addition as maintained is unwarranted.

12. That in any view of the matter that the diaries marked as annexure-4 & annexure A-5 are the dumb document, dubious entries without any corroborative material without any evidence brought on record but the two lower authorities made and maintained the addition in vague manner as such the said document liable to be discarded for the purpose of assessment hence addition is unwarranted. The lower authorities considered the issue in very vague and general manner.

13. That in any view of the matter in the course of hearing of appeal an affidavit was filed and in para 5 of the affidavit the appellant confirmed on oath that the diaries are rough diaries and on the basis of said the diaries there was no business transaction and also confirmed that on the basis of said diaries there was no business transaction and also that diary are dumb document but without taking statement of the appellant on the basis of affidavit addition maintained which action is not correct and against the settled law.

14. That in any view of the matter addition of Rs.2,90,000/- as per para 7 of the assessment order by saying unexplained cash deposit in bank is highly unjustified and more so the learned CIT (Appeal) failed to considered the submission/evidence hence addition is unwarranted.

15. That in any view of the matter finding an observation of two lower authorities in their order about the additions under different heads are in vague manner, incorrect baseless hence the addition on the basis of illegal documents addition is uncalled for and more so the two authorities failed to considered the addition and assets position of the appellant hence no addition called for on the said issue.

16. That in any view of the matter the total income as determined at Rs. 1,07,64,383/- is highly unjustified incorrect and the learned CIT Appeal simply allowed a token relief of Rs.1,06,555/- only against such huge addition thus the action and approach of CIT (Appeal) is uncalled for.

17. That in any view of the matter the appellant denied whole of the tax liability as have been determined in pursuance of assessment order dated 30.03.2013 and objecting to the proceeding initiated in pursuance of the said order is not correct.

18. That in any view of the matter penal interest charge u/s 234A is highly unjustified because the delay is not on the part of the appellant rather on department as the search material was not provided in time and even part search material still not provided hence the action of lower authority are not correct.

19. That in any view of the matter penal interest charge u/s 234B is not correct as the appellant never anticipated about such huge illegal addition made in illegal manner hence charge of interest not correct.

20. That in any view of the matter the assessee reserve is right to take any fresh of ground before hearing of appeal."

ITA No.37/ALLD/2023 (A.Y. 2006-07)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143 (1) of the act dated 30.03.2013 and determined the income at Rs. 1,97,72,920/- is highly unjustified illegal, incorrect, bad in law, and assessing officer as well as CIT (Appeal) confirmed the action of assessing officer as per his order dated 07.02.2023 is highly unjustified incorrect illegal baseless and without any basis and both the lower authorities failed to considered the facts and law properly hence the action of the two lower authorities liable to be declared illegal/ incorrect and invalid.

2. That in any view of the matter assessment as framed u/s 153A r.w.s. 143 (3) of the act without considering the facts in proper manner and likewise CIT (Appeal) failed to considered the facts and cited decisions of various higher courts as well as failed to considered the contents of the affidavit filed before him and even no statement was recorded on the basis of affidavit nor any proper opportunity was allowed to the assessee hence the entire action of CIT (Appeal) is incorrect illegal. The allegation of the CIT (Appeal) in the order that sufficient opportunity was allowed is absolutely wrong and incorrect.

3. That in any view of the matter approval u/s 153D of the act as taken by the assessing officer from Joint Commissioner of Income Tax Lucknow in various

assessee (Group cases) in one day which shows that prescribed authorities granted the approval without application of mind and without considering the search Material facts, and in all the cases (Group Cases) hence the entire Assessment order is illegal invalid as such the order of the two lower authorities liable to be declared void as well as non-est.

4. That in any view of the matter meaning of (approval) as contemplated u/s 153D of the act by the Joint Commissioner Lucknow required to verify the issue raised by the assessing officer in draft assessment order and to apply to mind and to ascertain the entire facts from the assessing officer and to examine search material but in the present case in mechanical manner approval taken/ granted on one day in more than 45 cases (Group) hence the order passed by the assessing officer and his action as confirmed by CIT Appeal is highly unjustified. The legal issue is well covered by the decisions Hon'ble Jurisdictional High Court as well as Hon'ble I.T.A.T. benches hence the decisions are binding.

5. That in any view of the matter on the date of search original assessment u/s 143 (1) of the act was concluded and no assessment pending whereas only pending assessment shall abate and not concluded assessment and since no material was found hence as per the proviso only one assessment can be made hence sanctity of original assessment passed u/s 143 (1) should be maintained as a result the order passed u/s 153A r.w.s. 143 (3) is illegal.

6. That in any view of the matter addition of Rs.4,90,000/- as made as per para 2.3 (i) of the assessment order as the property in question belong to two co-owner and the co-owners managed the fund for investment from bank and personal saving etc. hence the addition maintained by the CIT (Appeal) is highly unjustified.

7. That in any view of the matter addition of Rs.4,90,000/- made by assessing officer and confirmed by CIT Appeal without considering the document placed in the paper book as well as without considering the facts, hence the addition is unwarranted.

8. That in any view of the matter addition of Rs.3,55,520/- as per discussion in para 2.3 (ii) is not correct at all and more so identical addition was deleted in the case of appellant two younger brothers but in the present issue was not properly considered nor document was considered as enclosed in the paper book hence the addition is unwarranted.

9. That in any view of the matter addition of Rs.17,062/- as made by the assessing officer as per discussion in para 2.3 (iii) of the order by saying unexplained investment in immovable property is highly unjustified hence addition is incorrect and but the A.O. action as confirmed by CIT (Appeal) is

not correct at all. Thus both the lower authorities failed to considered the facts properly.

10. That in any view of the matter various addition made by the assessing officer without considering the documents place in the paper books and the two lower authorities failed to considered the facts properly and made and maintained the addition is not correct. The entire approach of the two lower authorities were in mechanical manner which is not permissible in the act.

11. That in any view of the matter addition of Rs. 1,69,38,500/- as per para 3.1 of the order made by the assessing officer and confirmed by CIT (Appeal) without considering the nature and manner of entries as recorded in the diary found in the course of search marked as Annexure A-4 and no.A-5 are nothing but rough and dumb document but the two lower authorities without considering the nature of entries made and confirmed the addition which is highly unjustified.

12. That in any view of the matter a huge & arbitrary addition of Rs. 1,69,38,500/ made on the basis of annexure no. A-4 made without cogent & credible material/evidence and even decoding figure considered by the lower authorities in their own liking without any corroborative evidence brought on record. The entries mostly imaginary entries and had no value in the eye of laws hence addition as maintained is unwarranted.

13. That in any view of the matter that the diaries marked as annexure-4 & annexure A-5 are the dumb document, dubious entries without any corroborative material without any evidence brought on record but the two lower authorities made and maintained the addition in vague manner as such the said document liable to be discarded for the purpose of assessment hence addition is unwarranted. The lower authorities considered the issue in very vague and general manner.

14. That in any view of the matter in the course of hearing of appeal an affidavit was filed and in para 5 of the affidavit the appellant confirmed on oath that the diaries are rough diaries and on the basis of said the diaries there was no business transaction the said diary are dumb document but without taking statement of the appellant on the basis of affidavit addition maintained which action is not correct and against the settled law. In this way addition of Rs.1,69,38,500/ made and maintained in vague manner.

15. That in any view of the matter addition of Rs.50,000/- as per discussion in para 4.1 of the assessment order and his action as confirmed by CIT (Appeal) is highly unjustified in the facts and circumstances of the case and on this issue submission as placed is not properly considered by the two lower authorities.

16. That in any view of the matter addition of Rs. 15,51,206/- as made by assessing officer as per discussion in para 5.1 of the assessment order in respect of cash deposit in bank is highly unjustified and incorrect in so far as the deposit in bank from definite sources but the two lower authorities failed to considered the facts in proper manner hence addition is unwarranted.

17. That in any view of the matter finding an observation of two lower authorities in their order about the additions under different heads are in vague manner, incorrect baseless hence the addition on the basis of illegal documents addition is uncalled for and more so the two authorities failed to considered the addition and assets position of the appellant hence no addition called for on any issue.

18. That in any view of the matter the total income as determined/computed at Rs.1,97,72,623/ is highly unjustified incorrect and the learned CIT (Appeal) simply allowed a token relief of Rs. 1,06,555/ only against such huge addition thus the action and approach of CIT Appeal is uncalled for as the two paper books filed before lower authorities were not considered in proper manner.

19. That in any view of the matter the appellant denied whole of he tax liability as have been determined in pursuance of assessment order dated 30.03.2013 and objecting to the proceeding initiated in pursuance of the said order is not correct.

20. That in any view of the matter penal interest charge u/s 234A is highly unjustified because the delay is not on the part of the appellant rather on department as the search material was not provided in time and even part search material still not provided.

21. That in any view of the matter penal interest charge u/s 234B is not correct as the appellant never anticipated about such huge illegal addition made in illegal manner hence charge of interest not correct.

22. That in any view of the matter the assessce reserve is right to take any fresh of ground before hearing of appeal."

ITA No. 38/ALLD/2023 (A.Y. 2007-08)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143 (3) of the act dated 30.03.2013 by determined the income at Rs.11,26,020/- is highly unjustified illegal incorrect bad in law and assessing officer as well as CIT (Appeal) confirmed the action of assessing officer as per his order dated 07.02.2023 is highly unjustified incorrect illegal baseless and without any basis and both the two lower authorities failed to considered the facts and law properly hence the action of the two lower authorities liable to be declared illegal and invalid.

2. That in any view of the matter assessment as framed u/s 153A r.w.s. 143 (3) of the act without considering the facts in proper manner and likewise CIT (Appeal) failed to considered the facts as well as failed to consider the contents of the affidavit filed before him assessment year 2005-06 and even no statement was recorded on the basis of affidavit nor any proper opportunity was allowed to the assessee hence the entire action of CIT (Appeal) is incorrect illegal. The allegation of the CIT (Appeal) in the order that sufficient opportunity was allowed is absolutely wrong and incorrect.

3. That in any view of the matter approval u/s 153D of the act as taken by the assessing officer from Joint Commissioner of Income Tax Lucknow in various assessee (Group cases) in one day hence prescribed authorities granted the approval without application of mind and without considering the search material facts, in all the cases (Group Cases) in one day hence the entire assessment order is illegal invalid hence order of the two lower authorities liable to be declared void as well as non-est.

4. That in any view of the matter meaning of approval as contemplated u/s 153D of the act by the Joint Commissioner Lucknow required to verify the issue raised by the assessing officer in draft assessment order and to apply his mind and to ascertain the entire facts from the assessing officer and to examined search material but in the present case in mechanical manner approval taken/ granted on one day in more than 45 cases (Group) hence the order passed by the assessing officer and his action as confirmed by CIT (Appeal) is highly unjustified. The legal issue in question is well covered by the decision of Hon'ble Jurisdictional High Court as well as Hon'ble I.T.A.T. benches hence the decisions are binding.

5. That in any view of the matter on the date of search original assessment u/s (1) of the act was concluded and no assessment pending whereas only pending assessment shall abate and not concluded assessment and since no material was found hence as per the proviso only one assessment can be made as such sanctity of original assessment passed u/s 143 (1) should be maintained as a result the order passed u/s 153A r.w.s. 143 (3) is illegal.

6. That in any view of the matter there was no abatement as the year under consideration in appeal is concerned there are assessment related to proceeding pending at the time of commencement of search accordingly, assessment order dated 30.03.2013 is illegal and his action as confirmed by CIT (Appeal) unwarranted as decided by the various court.

7. That in any view of the matter addition of Rs.8,10,400/- as made as per para 3.1 of the assessment unexplained cash deposit in bank is highly unjustified and the order by alleging action of assessing officer as confirmed by CIT (Appeal) is not correct at all in the facts and circumstances of the case.

8. That in any view of the matter addition of Rs.8,10,400/- in respect of bank deposit is not correct as the bank statement was furnished assessment proceeding so the bank statement cannot be called incriminating material hence addition made and maintained by lower authority are illegal.

9. That in any view of the matter the deposit in bank made from various sources such as withdrawal from books and withdrawal bank as well as business income utilized in depositing the money in bank hence action of the two lower authorities in making and confirming the addition is not correct.

10. That in any view of the matter in similar circumstances and on similar facts in the case of appellant sons addition made and deleted on account of bank credit but in the mechanical manner in the present case deposits added and confirmed.

11. That in any view of the matter finding an observation of two lower authorities in their order about the additions under different heads are in vague manner, incorrect baseless hence the addition on the basis of illegal documents addition is uncalled for and more so the two authorities failed to considered the addition and assets position of the appellant hence no addition called for on the said issue.

12. That in any view of the matter the total income as determined at Rs.11,26,020/ is highly unjustified incorrect and the learned CIT (Appeal) simply allowed a token relief of Rs. 1,06,555/- only against such huge addition thus the action and approach of CIT (Appeal) is uncalled for.

13. That in any view of the matter the appellant denied whole of the tax liability as have been determined in pursuance of assessment order dated 30.03.2013 and objecting to the proceeding initiated in pursuance of the said order is not correct.

14. That in any view of the matter penal interest charge u/s 234A is highly unjustified because the delay is not on the part of the appellant rather on department as the search material was not provided in time and even part search material still not provided hence the action of lower authority are not correct.

15. That in any view of the matter penal interest charge u/s 234B is not correct as the appellant never anticipated about such huge illegal addition made in illegal manner hence charge of interest not correct.

16. That in any view of the matter the assessee reserve is right to take any fresh of ground before hearing of appeal."

ITA No. 101/ALLD/2023 (A.Y. 2008-09)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143 (3) of the Act on 30.03.2013 is bad both on the facts and in law and by such order income was determined at Rs.67,04,560/- which is highly unjustified, illegal without any basis hence the action of the two lower authorities are not correct as such the declared income liable to be accepted in the facts and circumstances of the cases.

2. That in any view of the matter in the course of search operation since no incriminating material was found hence addition in absence of incriminating material made by the assessing officer and confirmed by CIT(A) is highly unjustified incorrect in the light of settled law by various high court till date.

3. That in any view of the matter the learned CIT(A) decided the appeal in a mechanical manner without providing reasonable opportunity which is nothing violation of natural justice hence the order passed by the two lower authorities are not a judicious order in the eye of law the facts as narrated were not properly considered.

4. That in any view of the matter the assessment as framed by the assessing officer is illegal and bad in law in so far as approval as granted by the Joint Commissioner of Income Tax Lucknow is nothing but a mechanical approval granted not based on due application of mind as per the requirement of law u/s 153D of the Act hence the assessment liable to be declared illegal.

5. That in any view of the matter the approval in 45 different cases of (Vaish Group) for 7 years approval was granted on 26.03.2023 in one day. In this way 315 cases approval was granted in one day which is humanly not possible hence the assessment liable to be declared illegal in the light of decision of Jurisdictional High Court and other high court as well as decision of various I.T.A.T. Benches.

6. That in any view of the matter addition of Rs.33,000/- made by the assessing officer by alleging unexplained cash deposit in bank as per discussion in para 3.1 of the order and his action as confirmed by CIT(A) as para 11.3 of the order is highly unjustified in so far as the appellant is assessed tax for the last number of years and disclosing huge income year after year hence the addition of Rs.33,000/- made and maintained is unwarranted.

7. That in any view of the matter addition of Rs.62,50,000/- made by the assessing officer by alleging unexplained investment as per discussion in para 4.1 of the order and confirmed by CIT(A) as per para 12.9 of the order are highly unjustified as the addition made without considering the facts evidence as well as in absence of incriminating material addition made and maintained by CIT Appeal as per par 12.9 is highly unjustified and incorrect.

8. That in any view of the matter about the investment a details explanation was furnished before the two lower authority with documentary proof but the two lower authority declined to accept the contention of the assessee is not correct the A.O. action as confirmed by CIT(A) is baseless and incorrect when other three cases family member's identical addition was deleted.

9. That in any view of the matter additions under different made and maintained by the CIT(A) is highly unjustified in the facts and circumstances of the case ignoring the evidence, explanation and details as furnished hence additions are unwarranted.

10. That in any view of the matter penal interest charge u/s 234A is highly unjustified in the facts and circumstances of the case.

11. That in any view of the matter penal interest charge u/s 234B and his action as confirmed by CIT Appeal without considering the facts is highly unjustified in the facts and circumstances of the case.

12. That in any view of the matter the assessee reserve is right to take any ground before hearing of appeal."

ITA No. 125/ALLD/2023 (A.Y. 2009-10)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143(3) of the Act dated 30.03.2013 is bad both on the facts and in law and by such order income as determined by the A.O. at Rs.6,75,93,340/- is highly unjustified, illegal as well as determining the income in arbitrary manner hence the declared income in the return liable to be accepted in the facts and circumstances of the case.

2. That in any view of the matter entire action u/s 132 of the Act and in consequences to which notices issued u/s 153A of the I.T. Act is illegal and without jurisdiction and also the income as determined is not based on any incriminating material which is preliminary condition and more so even no cash, no jewellery nothing was found in search operation but in spite of the fact addition made on the basis of dumb document which is confirmed by CIT(A) is not correct.

3. That in any view of the matter no reasonable opportunity was allowed by the A.O. nor by the CIT(A) and the allegations/observation made in the orders of the two lower authorities are totally incorrect and baseless.

4. That in any view of the matter while determining the income on the basis of dumb document possession of the assets/wealth with the assessee was altogether ignored. which clearly shows that such huge additions were made

on imaginary basis which has no value in the eyes of law hence the additions made and maintained under different heads is highly unjustified.

5. That in any view of the matter in the present case the approving authority u/s 153D has exercise their power mechanically which vitiated the entire proceeding because it was humanly impossible for the approving authority for applying his mind for granting approval. Thus, the approval granted in vague manner hence entire order is illegal, void in the eyes of law.

6. That in any view of the matter the approval u\s 153D of the Act given by JCIT for passing assessment order without application of mind, without considering of the record/file/folder as well as draft assessment order hence impugned order passes by A.O. and confirmed by CIT(Appeal) is uncalled for in the facts and circumstances of the case.

7. That in any view of the matter addition of Rs.2,00,000/-made as per para 3.1 by alleging unexplained cash credit and added in the assessment order and confirmed by CIT(A) as per Para 10.14 is highly unjustified in the facts and circumstances of the case.

8. That in any view of the matter addition of Rs.2,00,000/-made and maintained in first appeal is uncalled in so far as the entire transaction through banking channel confirmatory letter was also filed as well as disclosed in original return. In this way, the appellant discharged complete burden hence addition is highly unjustified.

9. That in any view of the matter addition of Rs.6,34,36,282/-made as per discussion in para 4.1 of the order and the ld. CIT(A) also confirmed the addition as per discussion in para 3 are totally incorrect and the entire observation of the two lower authorities in confirming the addition is highly unjustified as the issue was not properly considered.

10. That in any view of the matter the department failed to examined the nature of entries in said diaries found during the course of search in the premises having no evidentiary value to prove the fact of transaction when the diaries are dumb document in the eye of law hence addition on the basis of dumb document is unwarranted.

11. That in any view of the matter addition of Rs.6,34,36,282/-made on the basis of diaries do not constitute books of accounts as no evidence or any corroborative evidence found in support of the entries recorded in diary hence addition not is uncalled for.

12. That in any view of the matter addition of Rs.33,20,300/- as per 6.1 by alleging unexplained cash deposit is highly unjustified in the facts and circumstances of the case as deposits were made in bank from definite source

hence allegation of two lower authorities are not correct hence liable to be deleted.

13. That in any view of the matter search action did not lead to discovery of un-accountant money, bullion, jewellery or valuable article and no books of account reveals undisclosed transaction of the assessee and entire impugned proceeding liable to be reverse.

14. That in any view of the matter affidavit as filed before the lower authority was totally ignored and even no statement as such on basis of affidavit was recorded hence addition is unwarranted in view of the settled law.

15. That in any view of the matter there is nothing on record which suggest that there was any undisclosed income earned by the assessee based on any material found during search hence addition made in general manner is highly unjustified and illegal.

16. That in any view of the matter addition could not be made on the basis of noting which are irrelevant and in real sense diary in the nature (dumb document) having no evidentiary value hence the onus lay on the department which is not discharged.

17. That in any view of the matter addition of Rs.6,34,36,282/-made on the basis of diary without any corroborative evidence nor any in support of such corroborative material brought on record about rough noting except stated entries in diaries.

18. That in any view of the matter penal interest charge u/s 234A by the assessing officer and confirmed by CIT(A) is highly unjustified.

19. That in any view of the mater penal interest charge u/s 234B is totally incorrect as the assessee never anticipated about such type of arbitrary addition hence interest liable to be deleted.

20. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal."

ITA No. 126/ALLD/2023 (A.Y. 2010-11)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143(3) of the Act dated 30.03.2013 is bad both on the facts and in law and by such order income as determined by the A.O. at Rs.9,09,29,395/- is highly unjustified, illegal as well as determining the income by the A.O. in arbitrary manner hence the declared income in the return liable to be accepted in the facts and circumstances of the case.

2. That in any view of the matter entire action u/s 132 of the Act and in consequences to which notices issued u/s 153A of the I.T. Act is illegal and without jurisdiction and also the income as determined is not based on any incriminating material which is preliminary condition in such assessment and more so even no cash, no jewellery nothing was found in search operation but in spite of the fact addition made on the basis of dumb document which is confirmed by CIT(A) is not correct.

3. That in any view of the matter no reasonable opportunity was allowed by the A.O. nor by the CIT(A) and the allegations/observation made in the orders of the two lower authorities also about opportunity are totally incorrect and baseless.

4. That in any view of the matter while determining the income on the basis of dumb document possession of the assets/wealth with the assessee was altogether ignored which clearly shows that such huge additions were made on imaginary basis which has no value in the eyes of law hence the additions made and maintained under different heads is highly unjustified.

5. That in any view of the matter in the present case the approving authority u/s 153D has exercise their power in mechanical manner which vitiated the entire proceeding because it was humanly impossible for the approving authority for applying his mind for granting approval. Thus, the approval granted in vague manner hence entire order is illegal, void in the eyes of law.

6. That in any view of the matter the approval u\s 153D of the Act given by JCIT for passing assessment order without application of mind, without considering of the record/file/folder as well as draft assessment order hence impugned order passed by A.O. and confirmed by CIT(Appeal) is uncalled for in the facts and circumstances of the case.

7. That in any view of the matter the approval by JCIT had no legal sanctities as it treated no approval mere in mechanical manner hence the entire assessment as framed is illegal and void.

8. That in any view of the matter addition of Rs.6,40,000/-made by alleging unexplained investment in immovable property as per discussion in Para 2.3 of the order is highly unjustified, incorrect in the facts and circumstances of the case. In this regard, a detail explanation was offered before two lower authorities in detail with evidence but fail to consider as a result appellant was debar from justice hence addition is unwarranted.

9. That in any view of the matter addition of Rs.6,00,000/-made and confirmed by saying unsecured loan as per discussion in Para 3.1 of the order is highly unjustified in the facts and circumstances of the case hence on merit liable to be deleted.

10. That in any view of the matter addition of Rs.8,10,19,000/-made as per discussion in para 4.1 of the order and the ld. CIT(A) also confirmed the said addition as per discussion in para 4.1 are totally incorrect and the entire observation of the two lower authorities in making and confirming the addition is highly unjustified as the issue was not properly considered.

11. That in any view of the matter the department failed to examined the nature of entries in said diaries found during the course of search marked as annexure Al to A5 found in the premises having no evidentiary value in the eyes of law to prove the fact of transaction when the diaries are dumb document in the eye of law hence addition on the basis of dumb document is unwarranted and uncalled for.

12. That in any view of the matter addition of Rs.8,10,19,000/-made on the basis of diaries annexure Al to A5 do not constitute books of accounts as no evidence or any corroborative evidence found in the course of search in support of the entries recorded in diary hence addition of Rs.8,10,19,000/- is uncalled for and also bad in law.

13. That in any view of the matter addition of Rs.51,000/- made and confirmed by the two lower authorities by saying unexplained investment as per discussion in para 5.1 of the order is highly unjustified in the facts and circumstances of the case.

14. That in any view of the matter addition of Rs.52,81,000/-made and confirmed by two lower authorities by saying unexplained cash deposit is highly unjustified in the facts and circumstances of the case.

15. That in any view of the matter addition of Rs.21,93,500/-made and confirmed by two lower authorities by saying unexplained cash deposit is totally incorrect and the entire discussion in para 7.1 of the order is highly unjustified in the facts and circumstances of the case.

16. That in any view of the matter search action did not lead to discovery of unaccounted money, bullion, jewellery or valuable article and no books of account reveals undisclosed transaction of the assessee and entire impugned proceeding liable to be reverse.

17. That in any view of the matter affidavit as filed before the lower authority was totally ignored and even no statement nor discussed in the order as such on the basis of affidavit no statement was recorded hence addition is unwarranted in view of the settled law.

18. That in any view of the matter there is nothing on record which suggest that there was any undisclosed income earned by the appellant based on any material found during search hence addition made in general manner is highly unjustified and illegal.

19. That in any view of the matter penal interest charge u/s 234A by the assessing officer and confirmed by CIT(A) is highly unjustified.

20. That in any view of the mater penal interest charge u/s 234B is totally incorrect as the assessee never anticipated about such type of arbitrary addition hence interest liable to be deleted.

21. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal."

ITA No. 127/ALLD/2023 (A.Y. 2011-12)
(Ramji Vaish)

1. That in any view of the matter order passed u/s 153A r.w.s. 143(3) of the Act dated 30.03.2013 is bad both on the facts and in law and by such order income as determined by the A.O. at Rs.14,06,33,670/- is highly unjustified, illegal as well as the said determining the income in arbitrary manner hence the declared income in the return liable to be accepted in the facts and circumstances of the case.

2. That in any view of the matter entire action u/s 132 of the Act and in consequences to which notices issued u/s 153A of the I.T. Act is illegal and without jurisdiction and also the income as determined is not based on any incriminating material which is preliminary condition in search assessment and more so even no cash, no jewellery nothing was found in search operation but in spite of the fact addition made on the basis of dumb document which is confirmed by CIT(A) is not correct.

3. That in any view of the matter no reasonable opportunity was allowed by the A.O. nor by the CIT(A) and the allegations/observation made in the orders of the two lower authorities are totally incorrect and baseless.

4. That in any view of the matter while determining the income on the basis of dumb document possession of the assets/wealth with the assessee was altogether ignored which clearly shows that such huge additions were made on imaginary basis which has no value in the eyes of law hence the additions made and maintained under different heads is highly unjustified.

5. That in any view of the matter in the present case the approving authority u/s 153D has exercise their power mechanically which vitiated the entire proceeding because it was humanly impossible for the approving authority for applying his mind for granting approval. Thus, the approval granted in vague manner hence entire order is illegal, void in the eyes of law.

6. That in any view of the matter the approval u\s 153D of the Act given by JCIT for passing assessment order without of the application mind, without considering record/file/folder as well as draft assessment order hence

impugned order passes by A.O. and confirmed by CIT(Appeal) is uncalled for in the facts and circumstances of the case.

7. That in any view of the matter addition of Rs.25,00,000/-by alleging unexplained investment immovable property as per discussion in Para 3.1 of the order are totally incorrect and without any basis. The lower authorities failed to consider the facts properly.

8. That in any view of the matter addition of Rs.85,32,703/-made and confirmed by alleging unexplained cash credit is highly unjustified in the facts and circumstances of the case.

9. That in any view of the matter addition of Rs. 10,96,55,770/-made as per discussion in para 4.1 of the order and the ld. CIT(A) also confirmed the addition as per discussion in para 3 are totally incorrect and the entire approach observation of the two lower authorities in confirming the addition is highly unjustified as the issue was not properly considered.

10. That in any view of the matter the department failed to examined the nature of entries in said diaries found during the course of search in the premises having no evidentiary value to prove the fact of transaction when the diaries are dumb document in the eye of law hence addition on the basis of dumb document is unwarranted.

11. That in any view of the matter addition of Rs. 10,96,55,770/-made on the basis of diaries do not constitute books of accounts as no evidence or any corroborative evidence found in support of the entries recorded in diary hence addition not is uncalled for.

12. That in any view of the matter addition of Rs.8,03,936/- as per 6.1 of the order by alleging seized annexure is highly unjustified in the facts and circumstances of the case.

13. That in any view of the matter addition of Rs.8,03,936/-seized from Ajay International is a rough document having no value in the eyes of law hence addition is unwarranted.

14. That in any view of the matter addition of Rs.9,00,000/-made and confirmed by alleging unexplained money as per discussion in para 7.1 of the order only in 4 lines without facts hence addition is unwarranted and both the two lower authorities failed to consider the facts hence addition is unwarranted.

15. That in any view of the matter addition of Rs.52,53,910/- by saying unexplained cash deposit as per discussion in para 8.1 of the order is highly unjustified and incorrect in the facts and circumstances of the case and even the manner of addition is not proper nor legal hence addition is liable to be deleted.

16. That in any view of the matter addition of Rs.34,69,100/- as per discussion in para 9.1 of the order by alleging unexplained cash deposit is highly unjustified in the facts and circumstances of the case and both the two lower authorities failed to consider the facts properly hence addition is unwarranted.

17. That in any view of the matter search action did not lead to discovery of unaccounted money, bullion, jewellery or valuable article and no books of account reveals undisclosed transaction of the assessee hence entire impugned proceeding liable to be reverse.

18. That in any view of the matter affidavit as filed before the lower authority was totally ignored and even no statement as such on basis of affidavit was recorded hence addition is unwarranted in view of the settled law.

19. That in any view of the matter there is nothing on record which suggest that there was any undisclosed income earned by the assessee based on any material found during search hence addition made in general manner is highly unjustified and illegal.

20. That in any view of the matter penal interest charge u/s 234A by the assessing officer and confirmed by CIT(A) is highly unjustified.

21. That in any view of the mater penal interest charge u/s 234B is totally incorrect as the assessee never anticipated about such type of arbitrary addition hence interest liable to be deleted.

22. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal."

3. Subsequent to the filing of these grounds of appeal Sh. Ramji Vaish also filed additional grounds of appeal on 1.08.2024 which are as under: -

"1. That in any view of the matter the approval granted on the basis of draft assessment order by the Joint Commissioner of Income Tax Central Range, Lucknow u/s 153D of the I.T., Act on 26.03.2013 without examination of record & seized material and granted approval in mechanical manner without application of proper mind therefore the assessment framed u/s 153A r.w.s. 143 (3) on 30.03.2020 is illegal and nonest consequential assessment made on the basis thereof is illegal and deserved to annulled.

2. That in any view of the matter approval has taken from Joint Commissioner of Income Tax Central Range Lucknow dated 26.03.2013 is not an approval in the eye of law and therefore the assessment as framed on 30.03.2020 for all the block year are null and void hence liable to be declared illegal and more so without jurisdiction and specially in the light of decision of jurisdiction High

Court, Orissa High Court and decision of Supreme Court in SLP and as well as decision of I.T.AT. benches.

That the aforesaid additional ground goes to the very route of the matter and omission of the above ground from appeal was neither willful nor unreasonable and the provision of the Act specifically empower the appellate authorities to admit any new ground."

4. In the case of M/s Subhash Stone Product (P.) Ltd., the following grounds of appeal in ITA Nos. 105 & 106/ALLD/2019 were filed on 23.08.2019 and in ITA Nos. 107 & 108/ALLD/2019 were filed on 6.09.2019, which read as under:-

:-

ITA No.105/ALLD/2019 (A.Y. 2005-06)
(M/s Subhash Stone Product (P) Ltd.)

"1. That in any view of the matter assessment as framed vide order dated 30.03.2013 is bad both on the facts and in law and by such order income as determined at Rs. 86,80,710/- is highly unjustified and illegal hence the declared income should have been accepted.

2. That in any view of the matter entire action under undisclosed income section 132 of the income tax Act and inconsequence to which notice issued under section 153A of the Act is illegal and without jurisdiction and also income determined is not based on any incriminating material nor related to the appellant was found in search. Therefore the assessment framed is illegal and income determined at Rs. 86,80,710/- for the year under consideration as against NIL return is highly unjustified and against the provision of the Act hence such order is nullify, void and liable to be declared illegal.

3. That in any view of the matter addition of Rs. 47,78,319/- as maintained by Commissioner of Income Tax (Appeal) as per para 18 of the order as against Rs.73,37,664/ on account of extra profit addition as made by Assessing Officer by applying net profit rate of 15% is highly unjustified and the net profit rate as disclosed on the basis of closed books of accounts should have been accepted.

4. That in any view of the matter addition of Rs. 47,78,319/ on account of extra profit addition as maintained by the CIT(A) is not correct when the assessee Company is maintaining books of accounts, books are audited, no defect pointed out in books hence application of N.P. rate of 10% by CIT(A) as against 15% as applied by AO without giving any comparable case is not correct and the case laws as cited in the assessment order are not applicable to the assesse

case hence entire addition on this count is incorrect, improper and liable to be deleted.

5. That in any view of the matter findings and observations of the assessing officer in the order regarding the net profit additions as made are totally incorrect and contrary to the actual facts of the case.

6. That in any view of the matter the appellant reserves his right to take any fresh ground of the appeal before hearing of the appeal.

7. That in any view of the matter interest charged under section 234A, 234B and 234C of the Income Tax Act is highly unjustified."

ITA No.106/ALLD/2019 (A.Y. 2011-12)
(M/s Subhash Stone Product (P) Ltd.)

1. That in any view of the matter assessment as framed vide order dated 30.03.2013 is bad both on the facts and in law and by such order income as determined at Rs. 57,88,590/- is highly unjustified and illegal hence the declared income should have been accepted.

2. That in any view of the matter entire action under section 132 of the income tax Act and inconsequence to which notice issued under section 153A of the Act is illegal and without jurisdiction and also income determined is not based on any incriminating material nor undisclosed income related to the appellant was found in search. Therefore the assessment framed is illegal and income determined at Rs. 57,88,590/- for the year under consideration as against NIL return is highly unjustified and against the provision of the Act hence such order is nullify, void and liable to be declared illegal.

3. That in any view of the matter addition of Rs. 18,25,727/- as maintained by Commissioner of Income Tax (Appeal) as per para 18 of the order as against Rs. 27,38,591/- on account of extra profit addition as made by Assessing Officer by applying net profit rate of 15% is highly unjustified and the net profit rate as disclosed on the basis of closed books of accounts should have been accepted.

4. That in any view of the matter addition of Rs. 18,25,727/ on account of extra profit addition as maintained by the CIT(A) not correct when the assessee Company is maintaining books of not accounts, books are audited, no defect pointed out in books hence application of N.P. rate 10% by CIT(A) as against 15% as applied by AO without giving any comparable case is correct and the case laws as cited in the assessment order are not applicable to the assesse case hence entire addition on this count is incorrect, improper and liable to be deleted.

5. That in any view of the matter addition of Rs. 20,50,000/- on the basis of seized annexure BS- 2/A-1/12-15 as made by assessing officer which was maintained by CIT(A) as per para 23 of order is highly unjustified.

6. That in any view of the matter addition of Rs. 100000/- as made by assessing officer on basis of seized annexure BS-2/LP-1/82 and his action as confirmed by CIT(A) is highly unjustified.

7. That in any view of the matter findings and observations of the assessing officer in the order regarding the addition of Rs. 20,50,000/- and Rs. 1,00,000/- as made are totally incorrect and contrary to the actual facts of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground of the appeal before hearing of the appeal.

9. That in any view of the matter interest charged under section 234A, 234B and 234C of the Income Tax Act is highly unjustified."

ITA No.107/ALLD/2019 (A.Y. 2008-09)
(M/s Subhash Stone Product (P) Ltd.)

1. That in any view of the matter assessment as framed vide order dated 30.03.2013 is bad both on the facts and in law and by such order income as determined at Rs. 12,31,240/- is highly unjustified and illegal hence the declared income should have been accepted.

2. That in any view of the matter entire action under section 132 of the income tax Act and inconsequence to which notice issued under section 153A of the Act is illegal and without jurisdiction and also income determined is not based on any incriminating material nor undisclosed income related to the appellant was found in search. Therefore the assessment framed is illegal and income determined at Rs. 12,31,240/- for the year under consideration as against NIL return is highly unjustified and against the provisions of the Act hence such order is nullify, void and liable to be declared illegal.

3. That in any view of the matter no proper opportunity was provided to the assessee in the course of assessment proceedings for explaining the facts on the point in issue hence the additions made under different heads over and the above the declared income is unwarranted and illegal.

4. That in any view of the matter addition of Rs. 1,48,350/- as maintained by Commissioner of Income Tax (Appeal) as per Para 14 of the order as against Rs. 8,41,238/ on account of extra profit addition as made by applying net profit rate of 10% is highly unjustified and the net profit rate as disclosed on the basis of closed books of accounts should have been accepted.

5. That in any view of the matter addition of Rs. 1,48,350/ on account of extra profit addition as maintained by the CIT(A) not correct when the assessee

Company is maintaining books of accounts, books are audited, no defect pointed out in books hence application of N.P. rate of 15% by AO without giving any comparable case is not correct and the case laws as cited in the assessment order are not applicable to the assessee case hence entire addition on this count is incorrect, improper and liable to be deleted.

6. That in any view of the matter addition of Rs. 3,90,000/- on account of unexplained expenditure on the basis of LP-4/100 as made by the Assessing officer and confirmed by the CIT(A) is highly unjustified.

7. That in any view of the matter findings and observations of the assessing officer and confirmed by CIT(A) in the order regarding the net profit additions as made are totally incorrect and contrary to the actual facts of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground of the appeal before hearing of the appeal.

9. That in any view of the matter interest charged under section 234A, 234B and 234C of the Income Tax Act is highly unjustified."

ITA No.108/ALLD/2019 (A.Y. 2010-11)
(M/s Subhash Stone Product (P) Ltd.)

1. That in any view of the matter assessment as framed. vide order dated 30.03.2013 is bad both on the facts and in law and by such order income as determined at Rs. 1,19,62,290/ is highly unjustified and illegal hence the declared income should have been accepted.

2. That in any view of the matter entire action under section 132 of the income tax Act and inconsequence to which notice issued under section 153A of the Act is illegal and without jurisdiction and also income determined is not based on any incriminating to the material nor undisclosed income related appellant was found in search. Therefore the assessment framed is illegal and income determined at Rs. 1,19,62,290/- for the year under consideration as against Rs. 13,09,020/- as disclosed by the assessee is highly unjustified and against the provisions of the Act hence such order is nullify, void and liable to be declared illegal.

3. That in any view of the matter addition of Rs.2,64,485/- as maintained by Commissioner of Income Tax (Appeal) as per Para 19 of the order as against Rs. 2,64,485/- on account of extra profit addition as made by applying net profit rate of 10% is highly unjustified and the net profit rate as disclosed on the basis of closed books of accounts should have been accepted.

4. That in any view of the matter addition of Rs. 2,64,485/- on account of extra profit addition as is not correct when the maintained by the CIT(A) assessee

Company is maintaining accounts, books are audited, no books of defect pointed out in books hence application of N.P. rate of 15% by AD without giving any comparable case is not correct and the case lawn as cited in the assessment order are not applicable to the assessee case hence entire addition on this count is incorrect, improper and liable to be deleted.

5. That in any view of the matter addition of Rs. 3,03,100/-as an account per para 29 unexplained explained investment in land of as made by the Assessing officer and confirmed by the CIT(A) is highly unjustified.

6. That in any view of the matter income as determined at Rs. 1,19,62,290/- as per the discussion at Rs. 1,19,62,290/- as per the discussion in different Para are totally incorrect and such additions are not the real income of the assessee.

7. That in any view of the matter findings and observations of the assessing officer and confirmed by CIT(A) in the order regarding the net profit additions as made are totally incorrect and contrary to the actual facts of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground of the appeal before hearing of the appeal.

9. That in any view of the matter interest charged under section 234A, 234B and 234C of the Income Tax Act is highly unjustified."

5. Subsequent to the filing of the grounds of appeal, the assessee on 6.08.2024 filed the following additional grounds of appeal which reads as under:-

"1. That in any view of the matter the approval granted on the basis of draft assessment order by the Joint Commissioner of Income Tax Central Range, Lucknow u/s 153D of the 1.T., Act on 26.03.2013 without examination of record & seized material and granted approval in mechanical manner without application of proper mind therefore the assessment framed u/s 153A r.w.s. 143 (3) on 30.03.2013 is illegal and nonest and consequential assessment made on the basis thereof is illegal and deserved to annulled.

2. That in any view of the matter approval has taken from Joint Commissioner of Income Tax Central Range Lucknow dated 26.03.2013 is not an approval in the eye of law and therefore the assessment as framed on 30.03.2013 for all the block year are null and void hence liable to be declared illegal and more so without jurisdiction and specially in the light of decision of jurisdiction High Court, Orissa High Court and decision of Hon'ble Supreme Court in SLP and as well as decision of other Hon'ble I.T.AT. Benches.

3. That in any view of the matter there is no year-wise reasoning in the said approval dated 26.03.2013 granted."

6. In the case of M/s Jai Maa Sharda Service Station, the assessee preferred appeals in two years on the following the grounds of appeal filed on 28.02.2019 as under:-

ITA No.24 /ALLD/2019 (A.Y. 2010-11)
(M/s Jai Maa Sharda Service Station)

1. That in any view of the matter the order passed u/s 153A/143(3) of the Act dated 28/03/2013 and by such order income as determined by the assessing officer in arbitrary manner and the same as partly confirmed by the Commissioner of Income Tax (Appeal) is highly unjustified and incorrect in the facts and circumstances of the case.

2. That in any view of the matter extra addition of Rs.7,32,003/- as maintained by the Commissioner of Income Tax (Appeal) is highly unjustified in so for as the trading result is supported by day to day register and purchase and sale was fully vouched, no defect was found in books and in the case of sister concern book result has been accepted in similar set off fact hence the extra addition as maintained by the commissioner of Income Tax (Appeal) by applying 1% rate of the sales is uncalled for in the fact and circumstances of the case.

3. That in any view of the matter extra addition of Rs.7,32,003/- as maintained by the first appellate authority is incorrect illegal especially when in sister concern book result in similar type of facts has been accepted. Moreso when sales and purchases have been accepted then there is no justification to maintain extra addition so made arbitrarily hence the same is liable to be deleted in the facts and circumstances of the case.

4. That in any view of the matter addition of Rs.8,07,800/- as maintained by the Commissioner of Income Tax (Appeal) by alleging unexplained investment is not correct and her observation for maintaining the addition partly without appreciating the correct facts is totally incorrect in the facts and circumstances of the case, hence the same is liable to be deleted.

5. That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

6. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

ITA No.25/ALLD/2019 (A.Y. 2011-12)
(M/s Jai Maa Sharda Service Station)

"1. That in any view of the matter the order passed u/s 153A/143(3) of the Act dated 28/03/2013 and by such order income as determined by the assessing officer in arbitrary manner and the same as partly confirmed by the Commissioner of Income Tax (Appeal) is highly unjustified and incorrect in the facts and circumstances of the case.

2. That in any view of the matter extra addition of Rs.6,30,320/- as maintained by the Commissioner of Income Tax (Appeal) is highly unjustified in so for as the trading result is supported by day to day register and purchase and sale was fully vouched, no defect was found in books and in the case of sister concern book result has been accepted in similar set off fact hence the extra addition as maintained by the commissioner of Income Tax (Appeal) by applying 1% rate of the sales is uncalled for in the fact and circumstances of the case.

3. That in any view of the matter extra addition of Rs.6,30,320/- as maintained by the first appellate authority is incorrect illegal especially when in sister concern book result in similar type of facts has been accepted. Moreso when sales and purchases have been accepted then there is no justification to maintain extra addition so made arbitrarily hence the same is liable to be deleted in the facts and circumstances of the case.

4. That in any view of the matter addition of Rs.8,21,910/- as maintained by the Commissioner of Income Tax (Appeal) by alleging unexplained expenditure is not correct and her observation for maintaining the addition partly without appreciating the correct facts is totally incorrect in the facts and circumstances of the case, hence the same is liable to be deleted.

5. That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

6. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

7. Subsequently on 17.03.2023, the assessee filed additional grounds of appeal as under:-

"That in any view of the matter since the approval granted by the Joint Commissioner of Income Tax, Central Circle, Lucknow, u/s 153D of the I.T. Act is in mechanical in nature and without proper application of mind therefore,

the assessment as framed is illegal and non-est and consequential assessment made on the basis thereof is illegal and deserve to be annulled.

*2. That in any view of the matter the manner the approval has taken from the Joint Commissioner of Income Tax, Lucknow is no approval in the eyes of law and therefore the assessment as framed in all the **"Block Years"** are null and void and in the light of decision of Hon'ble Allahabad High Court and decision of ITAT benches wherein the issue had been decided in favour of assessee and assessment declared illegal.*

3. That the aforesaid additional ground goes to the very root of the matter and omission of the above ground from form of appeal was neither willful nor unreasonable and the provision of the act specifically empower the appellate authorities to admit any new ground."

8. In the case of Vijay Stone Product, the following grounds of appeal in ITA Nos. 30, 31, 32 & 33/ALLD/2019 were filed on 28.03.2019, which read as under:-:-

ITA No.30/ALLD/2019 (A.Y. 2007-08)
(Vijay Stone Product)

1- That in any view of the matter the assessment order dated 29.03.2013 passed u/s 153C r.w.s. 153A r.w.s. 143(3) of the IT Act is bad both on the facts and in law because it was framed against the settled law of various courts, hence the disclosed income is liable to be accepted.

2- That in any view of the matter extra addition of Rs.2,89,689/-maintained by the first appellate authority without appreciating the correct facts is not correct because all the information, facts & figures were already brought on record in the audit report prior to the search, no incriminating material was found in search about any suppression of extra income and even proviso to section 145(3) of the Act was not invoked. Therefore the extra addition is liable to be deleted in the facts and circumstances of the case.

3- That in any view of the matter in similar set of facts extra addition so made during the A.Y. 2008-09 on account of extra profit was deleted, hence there is no justification to maintain such type of addition in the present year during the during year when every entry was recorded in books.

4- That in any view of the matter addition of Rs.45,00,000/- as partly maintained as per para 16 of the Commissioner of Income Tax (Appeal) order ignoring the correct facts is highly unjustified and illegal in the facts and circumstances of the case, hence the addition is liable to be deleted.

5. That in any view of the matter the addition so made and partly maintained u/s 40A(3) of the IT Act is totally incorrect SO as the payments were made under unavoidable circumstances beyond control of the assessee. Moreso when book entries have been accepted there is no justification to maintain the addition in part, hence the addition is liable to be deleted in the facts and circumstances of the case.

6. That in any view of the matter in the facts and circumstances of the case the additions/disallowances so made by the assessing officer and partly maintained by the Commissioner of Income Tax (Appeal) under two heads are without appreciating the correct facts are unjustified and illegal hence the same are liable to be deleted in interest of justice.

7. That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

ITA No.31/ALLD/2019 (A.Y. 2009-10)
(Vijay Stone Product)

1- That in any view of the matter the assessment order dated 29.03.2013 passed u/s 153C r.w.s. 153A r.w.s. 143(3) of the IT Act is bad both on the facts and in law because it was framed against the settled law of various courts, hence the disclosed income is liable to be accepted.

2-That in any view of the matter extra addition of Rs. 1,17,142/-maintained by the first appellate authority without appreciating the correct facts is not correct because all the information, facts & figures were already brought on record in the audit report prior to the search, no incriminating material was found in search about any suppression of extra income and even proviso to section 145(3) of the Act was not invoked. Therefore the extra addition is liable to be deleted in the facts and circumstances of the case.

3- That in any view of the matter in similar set of facts extra addition so made during the A.Y. 2008-09 on account of extra profit was deleted, hence there is no justification to maintain such type of addition in the present year during the during year when every entry was recorded in books.

4. That in any view of the matter addition of Rs 4,91,000/- by alleging donation as maintained is highly unjustified in the facts and circumstances of the case.

5- That in any view of the matter Rs.20,71,000/-(Rs 4,91,000/- Rs.15,80,000/-) as partly maintained as per para 29 of the Commissioner of Income Tax (Appeal) order ignoring the correct facts is highly unjustified and illegal in the facts and circumstances of the case, hence the addition is liable to be deleted.

6- That in any view of the matter the addition so made and partly maintained u/s 40A(3) of the IT Act is totally incorrect so for as the payments were made under unavoidable circumstances beyond control of the assessee. Moreso when book entries have been accepted there is no justification to maintain the addition in part, hence the addition is liable to be deleted in the facts and circumstances of the case.

7- That in any view of the matter in the facts and circumstances of the case the additions/disallowances so made by the assessing officer and partly maintained by the Commissioner of Income Tax (Appeal) under two heads are without appreciating the correct facts are unjustified and illegal hence the same are liable to be deleted in interest of justice.

8-That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

9- That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

ITA No.32/ALLD/2019 (A.Y. 2010-11)
(Vijay Stone Product)

1- That in any view of the matter the assessment order dated 29.03.2013 passed u/s 153C r.w.s. 153A r.w.s. 143(3) of the IT Act is bad both on the facts and in law because it was framed against the settled law of various courts, hence the disclosed income is liable to be accepted.

2- That in any view of the matter extra addition of Rs.7,11,766/-maintained by the first appellate authority without appreciating the correct facts is not correct because all the information, facts & figures were already brought on record in the audit report prior to the search, no incriminating material was found in search about any suppression of extra income and even proviso to section 145(3) of the Act was not invoked. Therefore the extra addition is liable to be deleted in the facts and circumstances of the case.

3- That in any view of the matter in similar set of facts extra addition so made during the A.Y. 2008-09 on account of extra profit was deleted, hence there is

no justification to maintain such type of addition in the present year during the during year when every entry was recorded in books.

4-That in any view of the matter addition of Rs.37,44,100/- as partly maintained as per para 28 of the Commissioner of Income Tax (Appeal) order ignoring the correct facts is highly unjustified and illegal in the facts and circumstances of the case, hence the addition is liable to be deleted.

5. That in any view of the matter the addition so made and partly maintained u/s 40A(3) of the IT Act is totally incorrect so for as the payments were made under unavoidable circumstances beyond control of the assessee. Moreso when book entries have been accepted there is no justification to maintain the addition in part, hence the addition is liable to be deleted in the facts and circumstances of the case.

6. That in any view of the matter in the facts and circumstances of the case the additions/disallowances so made by the assessing officer and partly maintained by the Commissioner of Income Tax (Appeal) two heads are without appreciating the correct facts are unjustified and illegal hence the same are liable to be deleted in interest of justice.

7. That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

ITA No.33/ALLD/2019 (A.Y. 2011-12)
(Vijay Stone Product)

1- That in any view of the matter the assessment order dated 29.03.2013 passed u/s 153 r.w.s. 153A r.w.s. 143(3) of the IT Act is bad both on the facts and in law because it was framed against the settled law of various courts, hence the disclosed income is liable to be accepted.

2-That in any view of the matter extra addition of Rs. 1,46,692/-maintained by the first appellate authority without appreciating the correct facts is not correct because all the information, facts & figures were already brought on record in the audit report prior to the search, no incriminating material was found in search about any suppression of extra income and even proviso to section 145(3) of the Act was not invoked. Therefore the extra addition is liable to be deleted in the facts and circumstances of the case.

3- That in any view of the matter in similar set of facts extra addition so made during the A.Y. 2008-09 on account of extra profit was deleted, hence there is no justification to maintain such type of addition in the present year during the during year when every entry was recorded in books.

4- That in any of the matter addition of Rs. 40,67,850/- as partly maintained as per para 28 of the Commissioner of Income Tax (Appeal) order ignoring the correct facts is highly unjustified and illegal in the facts and circumstances of the case, hence the addition is liable to be deleted.

5. That in any view of the matter the addition so made and partly maintained u/s 40A(3) of the IT Act is totally incorrect so for as the payments were made under unavoidable circumstances beyond control of the assessee. Moreso when book entries have been accepted there is no justification to maintain the addition in part, hence the addition is liable to be deleted in the facts and circumstances of the case.

6. That in any view of the matter in the facts and circumstances of the case the additions/disallowances so made by the assessing officer and partly maintained by the Commissioner of Income Tax (Appeal) under two heads are without appreciating the correct facts are unjustified and illegal hence the same are liable to be deleted in interest of justice.

7. That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

8. That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."

In A.Y. 2010-11, the Department also filed the appeal as under:-

ITA No.64/ALLD/2019 (A.Y. 2010-11)(Departmental Appeal) Vijay Stone Product)

1. On facts & circumstances of the case and in law, the CIT(A) erred in restricting the GP rate @ 20% instead of 30% applied by the AO, without giving any finding as to why the GP rate of 30% as applied by AO was excessive and that the CIT(A) herself upholding the action of the AO in rejecting the books of accounts as unreliable.

2. On facts & circumstances of t circumstances of the case and in law, the CIT(A) erred in restricting the GP rate @20% instead of 30% applied by the AO, without giving any finding as to why the GP rate of 30% as applied by AO was excessive when the CIT(A) herself upheld the action of the AO in applying GP rate of 25% in AY 2009-10 in assessee's own case in same line of business.

3. On facts & circumstances of the case and in law, the CIT(A) erred in restricting the GP rate @20% instead of 30% applied by the AO. without appreciating that no bills/vouchers, etc, were produced by assessee either before the AO or even before the CIT(A) and that the CIT(A) herself upheld the action of the AO in rejecting the books of accounts as unreliable.

4. On facts & circumstances of the case and in law, the CIT(A) erred deleting the addition of Rs.2,93,58,147/- u/s 40A(3) without appreciating that no justification at all was submitted before the AO to prove that such expenses were covered under the exception u/r 6DD(j), even though the CIT(A) herself recorded a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

5. On the facts and circumstances of the case and in law, the CIT(A) erred concluding that the payments in excess of Rs.20,000 in violation 40A(3) were covered by exception within Rule 6DD(j) without appreciating that in absence of any cogent material, the existence of exceptional circumstances beyond control of payer for application of rule 6DD(j) could not be said to be established in view of the ratio of decisions in case of Natesan Krishnamurty Vs ITO 103 Taxmann.com 342(Mad), Jhunjhunwala & Co Vs CIT 167 Taxman 58(Delhi), CIT Vs Singamshetty Subba Rao 357 ITR 529(A.P.), Pawar Patkar Constructions 159 ITD 406(Pune Trib).

6. On the facts and circumstances of the case and in law, the CIT(A) erred in holding that the payments in excess of Rs. 20,000 in violation 40A(3) were covered by exception within Rule 6DD(j). without appreciating that when the genuineness of such expenses itself was doubtful as these expenses were unrecorded in books, no benefit of rule 6DD was available in view of decision in case of S Venkata Subba Rao Vs CIT 173 ITR 340(AP), K.R. Ganesh Kumar Vs. CIT 383 ITR 165, Dilipchand & Sons 301 ITR 276(HP).

7. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the disallowance ignoring that conditions of exception from application of section 40A(3) r/w Rule 6DD(j) needs to be strictly interpreted by applying the Hayden's rule of Mischief and also the ratio laid down by Supreme Court in case of Commissioner of customs Vs M/s Dilip Kumar And Company.

8. On the facts and circumstances of the case and in law, the CIT(A) failed to allude to the relevant facts & circumstances and misread the provisions to arrive at the conclusion that the payments were covered by exception under Rule 6DD(j). The order of the CIT(A) therefore suffers from perversity in view of the ratio of decision in case of Vijay Kumar Talwar 330 ITR 1 (SC). Sudarshan Silk sarees 300 ITR 205(SC).

9. On facts & circumstances of the case and law, the CIT(A) while deleting the addition u/s 40A(3), erred in admitting the additional evidence without giving opportunity to AO, when the assessee had failed to produce any evidence/explanation regarding the justifying the fulfillment of exceptional conditions for applicability of Rule 6DD(j) in respect of cash payments exceeding 20,000/-. That the CIT(A) has accepted the explanation of assessee without giving a finding on veracity of such claims made before her for first time and existence of the exception exceptional circumstances as provided u/r 6 DD(j).

10. On facts & circumstances of the case and in law, the CIT(A) while deleting the addition u/s 40A(3), erred in admitting the additional evidence as the CIT(A) failed to record any findings with reference to the sufficiency of circumstances under which the assessee was prevented from producing those evidence/explanations before the AO, when CIT(A) herself records a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

11. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence without passing any order u/r 46A(2) to show that the conditions for filing addl. Evidence u/r 46A(1) are satisfied, thereby violating the principles of admissions of addl. Evidence as explained in Ranjit Kumar Choudhary 288 ITR 179 (Guj), when CIT(A) herself records a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

12. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence at appellate stage without appreciating that the purpose of rule 46A is to ensure that evidence is primarily led before the Income-tax Officer as held in Rajkumar Srimal 102 ITR 525 (Call), Ganpatrai & Sons Ltd. 24 ITR 362 (Bom).

13. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

In the case of M/s Vijay Stone Products, the assessee filed the following grounds of appeal in the Cross Objection No. 05/ALLD/2019 arising out of ITA No. 64/ALLD/2019, as under:-

"1. That in any view of the matter the learned Commissioner of Income Tax (Appeal) was perfectly justified in reducing the G.P. rate specially when books are properly maintained and no specific defect found in books therefore the action of Commissioner of Income Tax (Appeal) is correct.

2. That in any view of the matter finding and observation of Commissioner of Income Tax (Appeal) in the order are correct.

3. That in any view of the matter it is not correct to say that no bills/vouchers etc. were produced by the assessee when the two lower authority examined the vouchers and books of account and then allowed the appeal hence the action of Commissioner of Income Tax (Appeal) is correct.

4. That in any view of the matter the learned Commissioner of Income Tax (Appeal) is perfectly justified in deleting the addition of Rs. 2,93,88,147/- made u/s 40A(3) of the IT Act and the issue is covered under exception under Rule 6DD(J) as well as issue is supported by various case laws.

5. That in any view of the matter the learned Commissioner of Income Tax (Appeal) deleted the addition made u/s 40A(3) of the IT Act after considering the facts and law, case law as well as Rules and case laws.
6. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified and correct is admitting the additional evidence in the facts and circumstances of the case.
7. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified in granting relief under various heads in the light of submission evidence and cited case law."

In A.Y. 2011-12, the Department also filed the appeal as under:-

ITA No.65/ALLD/2019 (A.Y. 2011-12) (Departmental Appeal) Vijay Stone Product)

1. On facts & circumstances of the case and in law, the CIT(A) erred in restricting the GP rate 23% instead of 30% applied by the AO, without giving any finding as to why the GP rate of 30% as applied by AO was excessive and that the CIT(A) herself upholding the action of the AO in rejecting the books of accounts as unreliable.
2. On facts & circumstances of the case and in law, the CIT(A) crred in restricting the GP rate @23% instead of 30% applied by the AO, without giving any finding as to why the GP rate of 30% as applied by AO was excessive when the CIT(A) herself upheld the action of the AO in applying GP rate of 25% in AY 2009-10 in assessee's own case in same line of business.

3. On facts & circumstances of the case and in law the CIT(A) erred in restricting the GP rate @23% instead of 30% applied by the AO, without appreciating that no bills/vouchers, etc. were produced by assessee either before the AO or even before the CIT(A) and that the CIT(A) herself upheld the action of the AO in rejecting the books of accounts as unreliable.

4. On facts & circumstances of the case and in law, the CIT(A) erred deleting the addition of Rs.2,59,74,163/- u/s 40A(3) without appreciating that no justification at all was submitted before the AO to prove that such expenses were covered under the exception a'r 6DD(j) even though the CIT(A) herself recorded a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

5. On the facts and circumstances of the case and in law, the CIT(A) erred concluding that the payments in excess of Rs 20,000 in violation 40A(3) were covered by exception within Rule 6CC(j) could not be said to be established in view of the ratio of decisions in case of Natesan Krishnamurty VS ΠO 103 Taxmann.com 342(Mad), Jhunjhunwala & Co Vs II 167 Taxman 58(Delhi), CIT Vs Singamshetty Subba Rao 357 ITR 529(A.P.), Pawar Patkar Constructions 159 ITD 406(Pune Trib).

6. On the facts and circumstances of the case and in law, the CIT(A) erred in holding that the payments in excess of Rs 20,000 in violation 40A(3) were covered by exception within Rule 6DD(J), without appreciating that when the genuineness of such expenses itself was doubtful as these expenses were unrecorded in books, no benefit of rule 6DD was available in view of decision in case of S Venkata Subba Rao Vs CIT 173 ITR 340(AP), K.R. Ganesh Kumar Vs. CIT 383 ITR 165. Dilipchand & Sons 301 ITR 276(HP).

7. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the disallowance ignoring that conditions of exception from application of section 40A(3) r'w Rule 6DDj) needs to be strictly interpreted by applying the Hayden's rule of Mischief and also the ratio laid down by Supreme Court in case of Commissioner of customs Vs M/Dilip Kumar And Company

8. On the facts and circumstances of the case and in law, the CIT(A) failed to allude to the relevant facts & circumstances and misread the provisions to arrive at the conclusion that the payments were covered by exception under Rule 6DD(j). The order of the CIT(A) therefore suffers from perversity in view of the ratio of decision in case of Vijay Kumar Talwar 330 ITR 1 (SC), Sudarshan Silk sarees 300 ITR 205(SC).

9. On facts & circumstances of the case and law, the CIT(A) while deleting the addition u/s 40A(3), erred in admitting the additional evidence without giving opportunity to AO, when the assessee had failed to produce any evidence/explanation regarding the justifying the fulfillment of exceptional conditions for applicability of Rule 6DD(j) in respect of cash payments exceeding 20,000 That the CIT(A) has accepted the explanation of assessee without giving a finding on veracity of such claims made before her for first time and existence of the exception exceptional circumstances as provided u/r 6 DD(j)

10. On facts & circumstances of the case and in law, the CIT(A) while deleting the addition u/s 40A(3), erred in admitting the additional evidence as the CIT(A) under which the assessee was prevented from producing those evidence/explanations before the AO, when CITEA) herself records a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

11. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence without passing any order u/r 46A(2) 10 show that the conditions for filing addl evidence u/r 46A(1) are satisfied, thereby violating the principles of admissions of addl. Evidence as explained in Ranjit Kumar Choudhary 288 ITR 179 (Guj), when CIT(A) herself records a finding that the AO has given adequate opportunity to the assessee during the assessment proceedings.

12. On facts & circumstances of the case and in law, the CIT(A) erred in admitting the additional evidence at appellate stage without appreciating that the purpose of rule 46A is to ensure that evidence is primarily led before the Income-tax Officer as held in Rajkumar Srimal 102 ITR 525 (Call), Ganpatrai & Sons Ltd 24 ITR 362 (Bom).

13. On facts & circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs 38,00,000/- on account of unexplained expenditure as recorded on papers seized from residence of assessee, without appreciating that even during the search or subsequently before the AO, no explanation was furnished for the entries recorded therein.

14. On facts & circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs. 38,00,000/- on account of unexplained expenditure as recorded on papers seized treating the same as dumb paper without appreciating that the relevance and probative value of the entries recorded therein and that the assessee was not able to provide any cogent material/evidence to repel the presumption u/s 132(4A) of the IT. Act.

15. On facts & circumstances of the case and in law, the CIT(A) armed in relying upon the decision of apex court in Common Cause & others vs UOI 194 ITR 220, without appreciating that the said decision was distinguishable because the income tax proceedings being civil in nature, the rules of evidence are different and even the circumstantial evidence is also enough to fasten the tax liability, as held in case of Sumati Dayal 214 ITR 801 (SC).

16. On facts & circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs. 2,08,97,456/- on account of gross profit earned and Rs. 1,44,00,000 on account of stock for the unaccounted mining turnover as mentioned in seized annexure 23 on grounds that the alphabets Band "W" as mentioned on the seized registered referred to color of stones quarried by

assessee, without appreciating that the turnover mentioned therein was never shown before the AO to be included in the regular stock register or sales.

17. On facts & circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs. 2,08,97,456 on account of gross profit earned and Rs. 1,44,00,000 on account of stock for the unaccounted mining turnover as mentioned in seized annexure-23 by accepting the fanciful reply of the assessee without alluding to the relevant facts and probative value of the evidences in the background that the assessee never produced my books of accounts or stock, register before the AD to show that the entries were duly recorded.

18. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds me without prejudice to each other."

In the case of M/s Vijay Stone Products, the assessee filed the following grounds of appeal in the Cross Objection No. 06/ALLD/2019 arising out of ITA No. 65/ALLD/2019, as under:-

"1. That in any view of the matter the learned Commissioner of Income Tax (Appeal) was perfectly justified in reducing the G.P. rate specially when books are properly maintained and no specific defect found in books therefore the action of Commissioner of Income Tax (Appeal) is correct.

2. That in any view of the matter finding and observation of Commissioner of Income Tax (Appeal) in the order are correct in granting relief.

3. That in any view of the matter it is not correct to say that no bills/vouchers etc. were produced by the assessee when the two lower authority examined the vouchers and books of account and then allowed the appeal hence the action of Commissioner of Income Tax (Appeal) is correct.

4. That in any view of the matter the learned Commissioner of Income Tax (Appeal) is perfectly justified in deleting the addition of Rs. 2,59,74,163/- made u/s 40A(3) of the IT Act and the issue is covered under exception under Rule 6DD(J) as well as case law.

5. That in any view of the matter the learned Commissioner of Income Tax (Appeal) deleted the addition made u/s 40A(3) of the IT Act after considering the facts and law, case law as well as Rules.

6. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified and correct is admitting the additional evidence in the facts and circumstances of the case.

7. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified in deleting the addition of Rs. 38,00,000/- under the alleged

unexplained expenditure. The relief was allowed after considering the entire facts as well as case laws and evidences.

8- That in any view of the matter the Commissioner of Income Tax (Appeal) was perfectly justified in deleting the addition of Rs. 2,08,97,456/- on account of R.P. Rate and Rs. 1,44,000/- on account of stock and such relief was allowed after considering the facts and law as well as case law.

9. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified in deleting the addition under various heads hence departmental appeal is liable to be dismissed.

10. That in any view of the matter Commissioner of Income Tax (Appeal) was perfectly justified in granting relief under various heads in the light of submission evidence and cited case law."

9. Subsequently, in the case of M/s Vijay Stone Product, the additional grounds of appeal were filed (by the assessee in ITA Nos. 30, 31, 32 and 33/ALLD/2019.) on 5.08.2024 which reads as under:-

"1. That in any view of the matter the approval granted on the basis of draft assessment order by the Joint Commissioner of Income Tax Central Range, Lucknow u/s 153D of the I.T. Act on 26.03.2013 without examination of record & seized material and granted approval in mechanical manner without application of proper mind therefore the assessment framed u/s 153A r.w.s. 143 (3) on 30.03.2013 is illegal and nonest and consequential assessment made on the basis thereof is illegal and deserved to annulled.

2. That in any view of the matter approval has taken from Joint Commissioner of Income Tax Central Range Lucknow dated 26.03.2013 is not an approval in the eye of law and therefore the assessment as framed on 30.03.2013 for all the block year are null and void hence liable to be declared illegal and more so without jurisdiction and specially in the light of decision of jurisdiction High Court, Orissa High Court and decision of Hon'ble Supreme Court in SLP and as well as decision of other Hon'ble I.T.AT. Benches.

3. That in any view of the matter there is no year-wise reasoning in the said approval dated 26.03.2013 granted u/s 153D of the Act but there is only a reference of a letter dated 25.03.2013 of the I.T. Act there is no reference regarding the draft assessment order being sent for approval of JCIT hence the entire action is illegal and the assessment order liable to be declared void.

4. That in any view of the matter in the facts and circumstances of the case and in law, the learned assessing officer has erred in making assessment u/s 153D as approval granted u/s 153D on 26.03.2013 by JCIT is invalid approval granted u/s 153D by JCIT is without application of mind, in a mechanical &

haste manner merely a formality an empty ritual in absence of valid approach as mandated by law u/s 153D of the Act would be treated as invalid and assessments liable to be quashed.

That the aforesaid additional ground goes to the very root of the matter and omission of the above ground from appeal was neither willful nor unreasonable and the provision of the Act specifically empower the appellate authorities to admit any new ground of appeal."

10. All these additional grounds of appeal filed by the various assesses have essentially challenged the approval given by the Range head (approving authority) vide his letter dated 26.03.2013 and argued that the said approval, being mechanical in nature, was not an approval in the eyes of law. Therefore, the assessment orders framed under section 153A r.w.s. 143(3), after obtaining such approval were null and void and deserved to be quashed. Shri Ramji Vaish has also challenged the said approvals on his regular grounds of appeal for all assessment years. As all these cases, pertain to one group and emerge from the same approval that was granted by the ld. JCIT, Central Range, Lucknow on 26.03.2013, they are being taken up together for the sake of convenience.

11. On going through the additional grounds of appeal it is noted that they are all on the same lines and as the issues involved in all these additional grounds are the same , they were argued commonly by both parties and are therefore, being taken up for consideration together .For the sake of convenience dates of issuance of notices ,filing of returns, submission of letter for approval , receipt of letter of approval, passing of the assessment order , date of raising additional grounds and date of filing of affidavit, contents of affidavit by the approving officer etc are being extracted from the assessments of Shri Ramji Vaish (PAN No. AAKPV7963M) but as the facts are common to most cases and issues emerging from these additional grounds are the same ,our findings on the same would be common to all assesses of the group who have challenged the validity of the orders on account of the manner of approval under section 153D.

12. Commencing their arguments, Shri Suyash Agarwal, Advocate and Sh. Praveen Godbole, C.A. (hereinafter referred to as the ld. ARs) submitted that in the present case, a search and seizure operation under section 132 of the Act was conducted on 03.02.2011, at the residential and business premises of the assessee. After the date of search, notices under section 153A were issued on 17.07.2012 and in compliance to those notices, returns were filed on 22.08.2012. After issuance of notices, to which compliance was made, the ld. AO framed assessment orders on 30.03.2013 under section 153A/143(3) of the Act. In the assessment order for each year, on the last page of the order, the Assessing Officer narrated that the order had been passed after approval from the Joint Commissioner of Income, Central Range, Lucknow. It was submitted that while preparing the appeal against the decision of the ld. CIT(A), the assessee came to know that a legal issue was involved and therefore, a prayer had been made by the assessee for admission of additional grounds as under: -

> *"3.That in any view of the matter approval u/s 153D of the as taken by the assessing officer from Joint Commissioner of Income Tax, Lucknow in various assessee (Group cases) in one day which shows that prescribed authorities granted the approval without application of mind and without considering the search material facts, in all the cases (Group cases) hence the entire assessment order is illegal invalid hence order of the two lower authorities liable to be declared void as well as non-est.*
>
> *4. That in any view of the matter meaning of approval as contemplated u/s 153D of the Act by the Joint Commissioner Lucknow was required to verify the issue raised by the assessing officer in draft assessment order and to apply his mind and to ascertain the entire facts from the assessing officer and to examine search material but in the present case in mechanical manner approval taken/granted on the day in more than 45 cases (Group) hence the order passed by the assessing officer and his action as confirmed by CIT(A) is highly unjustified. The legal issue in question is well covered by the decision of Hon'ble Jurisdictional High Court as well as other Hon'ble ITAT benches hence the decisions are binding."*

13. It was submitted that the aforesaid grounds were pure legal grounds and by virtue of them, the validity of assessment had been challenged in the light of the provisions of section 153D of the Act as well as in the light of settled law. The

assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of NTPC Limited vs. CIT 229 ITR 383 (SC). It was submitted that in such cases, the ld. AO, before passing the assessment order, was bound to take, "approval" from the JCIT under section 153D of the Act. For such purposes, the Approving Authority was required to see all such materials, seized documents, appraisal report, enquiries made by the Investigation Wing as well as various enquiries made by the ld. AO in the assessment proceedings as well in compliance to inquiries made by the ld. AO and was required to give the approval after due application of mind to the said material. It was only after approval was given in such a manner, that the ld. AO could frame the assessment order. It was submitted that, contrary to the above, in the present case, the ld. AO submitted all the assessment orders pertaining to the assessee for consideration on 25.03.2013. It was submitted that in the said letter, which was placed on page no. 39 of the assessee's paper book, a total of 290 orders pertaining to 45 assessees had been submitted for approval. Thus, it was submitted that in view of the fact that the reference to the JCIT was made on 25.03.2013 and the approval was also given on 26.03.2013, it was humanly impossible for any person to grant approval in so short a period of time, after examining the voluminous details (documents and books etc.) in a single day. Thus, it was argued that it was self-evident that the approval granted on 26.03.2013 was given in a mechanical manner without due application of mind and that the entire proceeding was vitiated on this account. Since the approval under section 153D was the foundation for passing the impugned assessment order dated 30.03.2013, but the same was in fact not an approval in the eyes of law, because it was given mechanically, the said assessment order was rendered illegal and void. The ld. ARs submitted that there was no indication in the letter dated 26.03.2013, issued by the JCIT, that the JCIT had examined the draft order and found that it met the requirements of law. It was submitted that therefore, the approval was not an approval but mere, "rubber stamping" of the assessment order. It was reiterated that these draft assessment orders had been put up to the JCIT (according to the AO

on 25.03.2013) at the fag end of the assessment period, thereby not giving the JCIT anytime to go through the voluminous material relating to the search and apply his mind. The approval given by the JCIT did not mention the fact that the JCIT had applied his mind by considering the contents of the draft order and was totally silent on whether he had considered the seized material. It was submitted that it was a settled principle of law that the power of granting approval was not to be exercised in a casual or routine manner, but should be given after examining the entire material. It was further submitted that the Department had failed to produce any evidence justifying the granting of approval in this mechanical manner. The ld. ARs argued that the provisions contained in section 153D as enacted by the Parliament could not be treated as a formality. It required proper application of mind by a senior officer. Since in the present case, the so-called approval did not constitute an approval as envisaged under section 153D, therefore, the impugned assessment order was void and bad in law. It was further submitted that the facts of the assessee's case were proved by the fact that the Joint Commissioner was stationed at Lucknow, whereas the ld. AO was stationed at Allahabad and the distance between the two places was nearly 200 Kilometers. It was therefore clear that the entire seized material was never placed before the Joint Commissioner at the time of granting of approval and therefore, it was a clear-cut case of mechanical approval granted by the superior authority, which could not be said to meet the conditions of an approval as contemplated under section 153D of the Act. The ld. AR invited our attention to the order of the Hon'ble High Court in the case of PCIT vs. Siddhartha Gupta (2023) 450 ITR 534 (All), in which the Hon'ble Allahabad High Court had held that the approval of draft assessment order, being an inbuilt protection against any arbitrary or unjust exercise of power by the ld. AO, cannot be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. The Court had held that prior approval of a superior authority meant that the said authority should appraise the material before it, so as to

appreciate the factual and legal aspect to ascertain that the entire material had been examined by the Assessing Authority before preparing the draft assessment order. It held that it was clear that the approval must be granted only on the material available on record and the approval must reflect the application of mind to the facts of the case. Accordingly, it was held that requirement of approval in this manner was not met in the case of that assessee, where draft assessment orders in 123 cases were placed before the Approving Authority on 30th December, 2017 and approved by him on 31st December, 2017, as it was impossible to go through records of so many cases in one day so as to apply independent mind to the material before the Approving Authority. After a conjoint reading of sections 153A(1) and section 153D, the Court had held that approval had to be obtained with respect to, "each assessment year" before passing the assessment orders under section 153A and since in that case, they were not so obtained, the Hon'ble High Court had upheld the conclusion drawn by the Tribunal that the approval was a mechanical exercise of power and justified its decision to treat the consequent assessments as void. The ld. ARs also took us through the judgment of the Hon'ble Allahabad High Court in the case of PCIT vs. Sapna Gupta (2023) 147 taxman.com(All), wherein the Hon'ble Allahabad High Court had held that it was humanly impossible to go through the records of 85 cases in one day, to apply independent mind to appraise the material before the Approving Authority, therefore it had held that the conclusion drawn by the Tribunal, that it was a mechanical exercise of power, was justified. The ld. ARs placed further reliance on the decision of the Hon'ble Allahabad Court in the case of PCIT & Ors vs. Subodh Agarwal 450 ITR 526 (2023) (All),wherein the Hon'ble Allahabad High Court had held that it was humanly impossible for the Approving Authority to peruse and apply his mind to appraise the material in one day in respect of 38 assessees, therefore, the conclusion of the Tribunal that the authority under section 153D had been exercised mechanically and that it vitiated the entire proceedings under section 153A, was neither perverse nor contrary to the material on record. Further the Court had held that the submission of the Department that

the grant of approval was an administrative exercise of power and the existence of the approval meant the order could not be vitiated, was a fallacy as prior approval of superior authority required him to appraise the material before him, so as to appreciate the factual and legal aspects of the case and assure himself that it had been examined by the AO before preparing the draft assessment order. Thus, it too had held, that orders passed without such application of mind were vitiated in the eyes of law. The ld. ARs pointed out that the Hon'ble High Court in the said order had referred with approval to the decision of the ITAT Lucknow in the case of Naveen Jain and Others vs. DCIT (2021) 91 ITR-Trib 682 (Lucknow), wherein the Hon'ble Tribunal had held that though the word, "approval" had not been defined in the Income Tax Act, but due to various decisions of the Hon'ble Courts, it had been held to mean that the grant of approval means due application of mind on the subject matter approved, which satisfies all the legal and procedural requirements and if an approval had been granted by the Approving Authority in a mechanical manner without application of mind, then the very purpose of obtaining approval under section 153D of the Act would be defeated. The Tribunal had held in that case, that the Approving Authority would have to apply its independent mind to the material on record for, "each assessment year" in respect of, "each assessee" separately. The Tribunal had noted that the provisions contained in section 153A to 153D provide for separate notices to be given to the assessee for each assessment year and for passing of separate assessment orders. Therefore, separate approval of draft assessment orders for each assessment year was required to be obtained under section 153D of the Income Tax Act. The Tribunal in that case had held, that the approval of the Approving Authority serves two purposes i.e. it has to ensure the interest of Revenue by guarding against any omission or negligence by the Assessing Officer and it also had to do justice to the taxpayer by granting protection against arbitrary or baseless tax liability. Therefore, an order passed mechanically, which did not do these, could not be held to be valid. The ld. ARs, thereafter, drew our attention to the decision of the Hon'ble Orissa High Court in the case of CIT vs.

Serajuddin and Co. (2023) 453 ITR 312 (Orissa), wherein the Hon'ble Orissa High Court had stated that a letter that simply granted approval without mentioning what the thought process involved was, does not satisfy the requirements of law and since in that case, the approval did not mention the reasons for granting the approval, the approval had been given mechanically, thereby vitiating the assessment order itself. The ld. ARs submitted that subsequently the SLP of the Department against this decision of the Hon'ble Orissa High Court had been dismissed by the Hon'ble Supreme Court and therefore, this position now stood affirmed by the Hon'ble Supreme Court. Taking cues from these case laws, the ld. ARs pointed out, that in the present case, no discussion between the AO and the JCIT was recorded in the order-sheets and no reasons had been discussed for granting of the approval. The ld. ARs drew reference to the CBDT manual of office procedure that was referred to in the order of the Hon'ble Orissa High Court in the case of CIT vs. Serajuddin & Co. (supra) and submitted that as per the said manual, orders which required approval of the superior authority under section 158BG, were required to be submitted to the Approving Authority, "well in time". As in the present case, this had not been done, the said order was also violative of the said office procedure manual. In the circumstances, the ld. ARs argued that the order in question was deserving of being quashed.

14. Responding to the paper books filed by the ld. DR before the hearing, including submissions opposing the admission of the additional ground raised by the assessee, the ld. ARs submitted that the additional ground was a purely legal ground, it went to the root of the matter and on identical facts and grounds, the matter stood concluded by decisions of various Courts including the Hon'ble Supreme Court, the Hon'ble jurisdictional High Court and the jurisdictional Bench of the ITAT, Lucknow. Our attention was invited to the latest decision of the ITAT Bench of Lucknow in ITA No. 667 to 669/LKW/2018 vide order dated 6.08.2024, wherein the ITAT had admitted the identical additional ground in the light of the decision of the Hon'ble Supreme Court in the case of NTPC Limited vs. CIT 229 ITR

383 (SC), on the grounds that they were of the opinion that the additional ground raised by the assessee was a purely legal ground which was germane to the issue involved in the appeal. Similarly, in the case of Subodh Agarwal in ITA No.674/LKW/2018, the ld. CIT DR had not voiced any objection to the admission of the additional ground since the ground was a purely legal ground. Reference was also invited to the decision of the ITAT in various cases where the additional grounds questioning the validity of the approval under section 153D had been admitted. On the issue of validity of proceedings under section 153D, it was once again reiterated that there was series of decisions in support of the contention that if many orders were approved on the same day, it reflected non application of mind. Therefore, it was prayed that the legal ground may be admitted as the issues involved were identical to various other cases, where the Courts had admitted challenges to the approval under section 153D, on account of the fact that it was purely a legal ground.

15. Further, in response to an affidavit of the JCIT, who had given the approval under section 153D on 26.03.2013, which formed a part of the DR's paper book, the ld. ARs raised an objection, that such affidavit of a retired officer had no sanctity in the eyes of law, firstly because it had been filed after eleven years (it was dated 23.08.2024) and secondly because it was an afterthought and the Department had only filed this affidavit to give life to a dead approval, which could not be permitted in the eyes of law. It was submitted that by filing this affidavit, the ld. DR had contended that the Tribunal had committed error in annulling good assessment orders due to non-application of mind by JCIT under section 153D by ignoring the contention that the JCIT is not required to follow the principles of natural justice. It was submitted that this contention was totally misconceived. In the light of the orders passed by various Courts it was a settled proposition that the JCIT had to grant approval under section 153D after due application of mind as he was acting in his capacity as a quasi-judicial authority. It was also a settled proposition of law, that orders and judgments passed by a Tribunal or Court had binding effect unless

set aside by the Hon'ble Supreme Court and for this proposition the ld. ARs placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India and Others vs Kamlakshi Finance Corporation Ltd. (1991) 55 ELT 433 (SC), wherein the Hon'ble Apex Court had held that even if the order of a superior court was not acceptable, the lower authority was still bound to follow the orders of the superior judicial authority. It was submitted that the approval dated 26.03.2013 granted by the JCIT under section 153D was without application of mind and now the DRs, with a view to cure the defect, had filed the affidavit dated 23.08.2024, justifying the approval and stating that the same was approved after due application of mind, which is clearly an afterthought. The ld. ARs drew our attention to the decision of the Hon'ble Supreme Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405, in which the Hon'ble Supreme Court had held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise as an order bad in the beginning could not get validated by additional grounds that were later brought out. Therefore, it was submitted that the affidavit of the retired officer was liable to be ignored and justice ought to be provided to the assessee, in the light of settled law and the contention of the Department that a legal issue could not be raised before the Hon'ble Bench, had no force and therefore should be ignored. The ld. ARs also emphasized that the legal issue that had been raised as an additional ground was required to be adjudicated first, keeping other issues on merits pending, until the legal issue had been determined. As per Order XIV Rule 2 of the CPC, it had been laid down in Rule II (2) that where issues of law and of fact arise in the same suit and the court finds that the suit or any part thereof may be disposed of on an issue of law only, it may try that suit first. They also drew reference to the decision of the Hon'ble Supreme Court in the case of Major S.S. Khanna vs. Brigadier F.J. Dhillon (AIR 1964) SC 497, where the Hon'ble Supreme Court had held, that the jurisdiction to try an issue of law under Order XIV Rule 2 CPC, may be exercised only where the

whole suit or a part thereof could be disposed of on the issue of law alone and relying upon such judgments, the ld. ARs prayed that a decision be first pronounced on the legal issue of the validity of the assessment, in view of their contention that the approval under section 153D, was given without due application of mind.

16. The Department has opposed the admission of these additional grounds raised for the first time before the ITAT in respect of approval under section 153D, under the provisions of Rule 11, Rule 18 and Rule 29 of the ITAT Rules, 1963. Sh. Amalendu Nath Mishra, CIT DR and Sh. A.K. Singh, Sr. DR (hereinafter referred to as the ld. DRs) argued the matter before the Bench and submitted that the said additional ground had been sought to be raised for the first time before the ITAT. The assessee had not explained why it did not raise this ground before the ld. CIT(A). The ld. DRs submitted that the aforesaid additional grounds were based on the AOs letter dated 25.03.2013, soliciting approval under section 153D and the JCIT's letter dated 26.03.2013 conveying the approval under section 153D, both of which have been filed by the assessee along with its application for admission of additional ground. It was, therefore, self-evident that since the assessee was not a party to the process under section 153D, that these two documents were in the nature of the additional evidences adduced by the assessee and it was on the basis of these additional evidences, that the additional ground was sought to be raised. The ld. DRs pointed out that under Rules 11, 18 and 29, no additional evidences could be adduced and no additional ground could be raised, except with the leave of the Tribunal and for the reasons to be recorded by the Tribunal for allowing the additional evidences and for raising the additional ground. Moreover, as the issue of approval under section 153D was not the subject matter of appeal before the ld. CIT(A), the ld. CIT(A) had no occasion to record his finding on the said issue. Therefore, the said issue does not emanate out of the order under section 250 of the ld. CIT(A) and was not a subject matter of appeal before the ITAT. In fact, the ld. DRs submitted that the approval under section 153D was not an appealable order and therefore, it did not fall within the jurisdiction of the Tribunal as defined under

section 253(1) of the Income Tax Act. It was submitted that the jurisdiction of the ITAT and the powers of the ITAT were two different things. The issue of approval under section 153D, which did not emanate out of the orders of the ld. CIT(A), was beyond the jurisdiction of the ITAT in the present appeal. The ld. DRs argued that had the issue been within the jurisdiction of the ITAT, (in terms of the subject matter of appeal), then it would have had the widest powers to adjudicate upon the same, but it is not so in the present case. Therefore, since the Tribunal did not enjoy the jurisdiction to rule upon an approval under section 153D dehors of the matter being considered by the ld. CIT(A), where was the question of the Tribunal exercising the power to do so. Thus, it was submitted that the additional ground should not be entertained by the ITAT on account of this.

17. The ld. DRs also submitted, that the question as to whether in a given case, approval under section 153D has been accorded with due application of mind or not, is essentially a question of fact, which would depend upon the facts of each case and therefore, this was not a legal issue which could be raised as an additional / legal ground for the first time before the ITAT. The ld. DRs questioned the submissions made by the ARs that the issue of approval under section 153D went to the root of the matter, because the AOs jurisdiction or power to assess the income of a searched person is dependent upon the fulfillment of the requirements of section 153A and not on the approval under section 153D. It was, therefore submitted, that the impugned assessment proceedings having been validly initiated and completed under section 153A, after approval under section 153D, cannot be called into question on account of alleged non-application of mind in approval under section 153D, so as to render the impugned assessment order *ab initio void* as the assessee was trying to make out by means of the said additional / legal ground. It was submitted that the provisions requiring statutory approval under section 153D were analogous to the provisions of section 158BG (for block assessments applicable up to 31.05.2003) and section 274(2) for imposition of penalties, and in the context of the said two analogous provisions requiring

approval of the Additional / Joint CIT, the Courts have repeatedly held, that such an approval is only an administrative act, which does not affect the AOs inherent jurisdiction to assess the income of the assessee or to levy penalty upon the assessee. Hence, the reasons being presented by the assessee, firstly for showing that this was a legal ground and secondly for showing that it went to the root of the matter and effected the validity of the assessment, were both misplaced and for the aforesaid reasons, the ld. DRs submitted that the aforesaid legal grounds should not be considered and admitted for adjudication by the Tribunal.

18. Continuing their arguments, the ld. DR submitted that approval, prior to assessment under section 153D was an administrative act and not a quasi-judicial act. Such administrative acts were believed to have been performed in the manner which they were supposed to be performed unless some positive tangible material is brought on record to show that the converse is true. They argued that no such material had been brought on record by the ld. ARs in this case. It was submitted that the Legislature had mandated approval to an assessment under section 153A/153C of the Income Tax Act. The manner and method of the same had not been prescribed. Hence, if the JCIT was satisfied with the assessment as proposed by the ld. AO and had conveyed his approval for the same, the requirement of law was fulfilled. It was argued that if the Hon'ble Tribunal was to venture into whether the approval could have been accorded by the JCIT under certain circumstances or not, it was only creating fetters (which the Legislature did not consider it necessary to do) and thereby exceeding its jurisdiction. The artificial requirement imposed by the Tribunal that the JCIT should go through the entire body of material available on record at the time of according approval was not only harsh but vicious, because by such logic as the final fact-finding authority, the Tribunal was also required to go through the entire body of material available on record and if it did not do so, its decisions ought not to pass muster. There was, therefore, no occasion to annul any assessment on this count, without finding any fault in the assessment, due to which it could be said to be incapable of receiving approval of a person reasonably

instructed in law. It was further submitted that the difference between procedural irregularity and judicial defect was well known. While the latter was incurable, the former may not be. In the case in question, the fact that the JCIT had accorded approval was not in dispute and furthermore the approval had been accorded after due deliberations and discussions with the ld. AO, on overall consideration of the entire material on record. However, if the Hon'ble Tribunal felt that something more was needed to be done, it could remand the matter back for fresh consideration of the JCIT and give such directions as it thinks fit under the given circumstances, for appropriate disposal of the case. This was not a case where any prejudice had been caused to the assessee by the alleged so-called deficiency in the approval by the JCIT. The acid test in such cases was whether the assessment order was such, that a person reasonably instructed in law would not approve it ? If the answer was in the affirmative, the approval may be vitiated but even then, it would be a mere procedural irregularity or error of judgment, which could be corrected in appeal. If an assessment was based on improper appreciation of facts, it could be remanded back to the ld. AO for fresh adjudication after removing deficiencies, if any. The question of annulment only arose when a mandatory requirement of law at the time of initiation of the impugned proceedings had not been complied with. That being the benchmark of appeal against deficiencies in assessment, there was no reason why there should be any differential treatment to the approval which was part and parcel of assessment proceedings and it was merely a procedural mechanism to avoid glaring arbitrariness or omissions in assessment. The question of nullity of the assessment could possibly arise if the statutory approval was wanting altogether but, in this case, since the statutory approval had been accorded, the ld. DRs argued that there was no case for annulling the assessment on the account that the approval had been accorded for particular number of cases simultaneously.

19. The ld. DRs then took us through the working of the Central Ranges. It was pointed out that a Central Range was specialized range set up for the assessment of

search and seizure cases, where an Assessing Officer is assigned a limited number of cases requiring in depth and coordinated investigation. The main role of the JCIT in a Central Range was to keep on monitoring and supervising the assessment work in his range. The assessment work was conducted under the direct and constant supervision of the JCIT Central, and the draft assessment order was formally submitted to him as and when the order was ready to be made. It was submitted that the view of the Tribunal that the JCIT should go through the entire assessment records (including the seized material etc.) while according approval, was based on the assumption that the JCIT was a stranger to the assessment work until he was provided with the draft assessment order. But that was factually incorrect. It was, therefore unfair and improper to say that the JCIT should go through the voluminous records at the time of recording approval and hold that the same was, "humanly impossible" in the short time that it took for giving an approval, to hold that the said approval had been given without application of mind. The ld. DRs sought to explain the issue by pointing out that the Assessing Officer was expected to make an assessment after thoroughly familiarizing himself with the facts of a case and evaluating the entire body of evidences. He naturally could not make such orders in one day, but kept working throughout the year during which the assessment work went on as work in progress and because of that continuous work, he was able to complete a large number of assessments on a particular day. Ignoring the work in progress of the assessment work, would lead to a conclusion that all assessment orders bearing one common date must have been made without application of mind. It was argued that a similar conclusion had been drawn by other Benches of the Tribunal with regard to approvals granted by JCITs in search cases, but this ignored the continuous work done by the JCITs in relation to day-to-day monitoring of the progress in cases of the Range. Therefore, merely because the JCIT had accorded approval for a large number of cases in one day and by one letter, this could not be a ground to conclude that he had not applied his mind to the facts of the case or acted mechanically. It was further submitted that if the logic of taking

the date of order as the only date on which work was done was applied, then superior courts passed orders running into hundreds of pages on a particular day, but it was obvious that the said order was not prepared on that day, but a result of continuous efforts overtime. Similarly, the approval was not accorded by consideration of the matters in one day, but over a period of time and therefore, the fact of simultaneous approval in a large number of cases could not be held to be without application of mind or mechanical.

20. The ld. DRs thereafter submitted that, without prejudice to their submissions that the consideration of approval under section 153D was beyond the jurisdiction of the Tribunal, that the matter of whether there was due application of mind was a matter of fact and not a matter of law and that even if there was a mechanical approval, it was a procedural irregularity that could be cured by remand rather than meriting annulment of the assessment, they would also demonstrate that, in this particular case, there was no mechanical approval and that the approval had been given with due application of mind. The ld. DRs invited our attention to the CBDT general guidelines for search and seizure assessments in F No.286/161/2006-IT (Inv. II) dated 22.12.2006 contained in Appendix V of the search and seizure manual and stated that the same demonstrated that the ld. AO and the Range Head were jointly involved in the assessment, right from the stage of receipt of appraisal report and the seized material. A copy of the same was filed before us. It was submitted that in a search case, after the conclusion of search, the Investigation Wing prepared an appraisal report with regard to the findings in the search and the documents recovered and sent copies of the same to the ld. AO, Range Head and Pr. CIT, Central within a period of 60 days. It was submitted that as per para 1.2 of the said guidelines, the seized material should be handed over to the Assessing Officer within a week of sending of the said appraisal report. The Board has laid down that in case of any delay, the CIT, Central is to be informed. The ld. DRs thereafter pointed out, that as per para 1.3 of the said guidelines, after receiving the said appraisal report, the CBDT has directed that the Assessing Officer and

Range Head would jointly scrutinize the appraisal report and seized material in order to prepare an examination note to decide where cases were required to be taken up under section 153A, 153C or section 148 and such cases where the seized material pertained to cases other than those which had been centralized with the ld. AO. Thus, it was submitted that the JCIT was acquainted with the seized material and the appraisal report at the very commencement of the assessment. The ld. ARs thereafter invited our attention to para 1.5 of the said guidelines, which directed that an action note based upon a comprehensive and methodical examination of the seized material, in addition to the comments in the available appraisal report, should be prepared within 90 days of the receipt of the seized material and that as per para 1.7, this action note had to be sent to the CIT, Central through the Addl. CIT/ Jt. CIT, as part of a compliance report, to enable proper supervision by him. The ld. DRs thereafter submitted, in their capacity as officers of the Court, that in fact the said action notes were usually prepared by the ld. AO and the Range Head in consultation with each other. Thereafter, our attention was invited to para 1.8 of the said guidelines, wherein the Board had laid down that proper satisfaction should be recorded before the issue of notices under section 153C or under section 148, as the case may be, and the Range Heads had been directed to ensure proper action in this regard. It was further pointed out that as per these guidelines, a detailed questionnaire was to be prepared after considering the seized materials and where it was considered necessary, directions under section 144A could be given by the Range head, as laid down in para 2.2 of the said guidelines. The ld. DRs pointed out that, in practice, since the detailed questionnaire was prepared in consultation with the Range Head, it was usually not necessary to issue formal directions under section 144A. The ld. DRs thereafter drew our attention to para 2.10 of the said guidelines and pointed out that the same laid down that after receiving replies of the assessee's on the questionnaire and after gathering further evidence in the case, the instructions could be issued by the Range Head under section 144A, either on his own motion or on a reference by the Assessing Officer.

We were also made aware of para 3.2 of the said guidelines which laid down that the final show cause notice in the case should be prepared by the Assessing Officer, in consultation with the Range Head. Finally, the ld. DRs invited our attention to para 3.10 wherein the AO was advised to consult his higher authorities, while making large additions. It was, therefore, submitted that the said guidelines demonstrated that the Range Head (in this case the JCIT who gave the approval under section 153D) had already seen the seized material and participated in the assessment various stages and therefore, the approval under section 153D was only for the purposes of meeting the statutory requirement, so that the assessee should not allege that the order had not been passed in accordance with law. However, as the JCIT had been involved in the assessment process throughout the period of assessment, it was not necessary for him at the stage of granting of approval, to examine the material and records again. He only had to see that the orders had been passed in accordance with the discussions held by him with the Assessing Officer. Thus, any imputation that he did not apply his mind and acted mechanically, only because he did not require a long time to grant such approvals, was unfounded in the light of these facts. It was submitted that there is no instrument that could measure application of mind. However, the JCIT was a responsible officer having sufficient experience and therefore would know what is to be seen in which case and no conclusion could be reached regarding non application of mind, only on account of the fact that the approvals had been given within a short period of time. Since the JCIT was familiar with the facts of the case, he was in a position to grant these approvals. It was further submitted that the assessee had not been able to point out even a single instance or issue on which the impugned order could be held to have been made without any basis or without application of mind. Hence, there could not be any allegation of approval under section 153D, given without due application of mind, in such circumstances. The ld. DRs thereafter invited our attention to an affidavit that had been sworn by the then JCIT, Sh. Buddhadeb Mukhopadhyay on 23.08.2024 which reads as under: -

Affidavit

"I, Buddhadeb Mukhopadhyay, S/o Late Amiyalal Mukherjee aged about 69 years P./o Fiat No. 801, Moore Heights, 93, M. B. Sarani, Kolkata 700040 Solemnly affirm as under:

1. That, during the period 19.07.2012 to 15.10.2014, 1 was posted as Joint/Addi Commissioner of Income Tax, Central Range, Lucknow.

2. That, apart from other supervisory roles, I was also approving authority for the Assessment orders prepared by Assessing Officer of Central Circle within jurisdiction of these ranges.

3. That, vide letter F.No. DCIT(CC)/Alld/Vaish Groups/2012-13/1037 dated 125.03.2013, the A.O. sought approval for passing assessment orders in the case of Shri Ramji Vaish for A.Y. 2005-05 to 2011-12 which are under appeal for Hon'ble ITAT.

4. That, after proper application of mind, accorded approval for-passing assessment orders in the case of ShriRanji Vaish for A.Y. 2005-06 to 2011-2, which are under appeal before Hon'ble ITAT, vide my office letter F.No. dated 26.03.2013. Jt. CIT/CR/LKO/Approval/2012-13/158

5. That, before approving the draft assessment orders submitted by Assessing Officers, a regular monitoring and supervision of assessment proceedings were made since examination of seized materials till scrutinizing of final reply.

6. That, since I, as Range Head constantly supervised the proceedings therefore at the time of submitting droit assessment order, I was well acquainted with facts and findings of the case.

7. That, for the purpose of proper monitoring and firsthand information of the progress of the cases, time and again I made my Camp Office at Allahabad during the material time. Moreover, the Assessing Officer used to give the draft orders in my e-mail and after due diligence, I used to return those draft order, after necessary correction and modification, through e-mail.

8. That, this is the reason that approval process took minimum time.

9. That, the regular monitoring was also necessary because in the most of cases assessee took long time for giving responses and submitted final reply at the fag-end of the year.

10. That, the approval has been accorded after due diligence and proper application of mind.

DECLARATION

I, Buddhadeb Mukhopadhyay, S/o Late Amiyalal Mukherjee aged about 69 years R/o Flat No.- 301, Moore Heights, 93, M. B. Sarani, Kolkata- 700040, solemnly affirm that contents of point no. 1 to 10 are true and correct to the best of my knowledge and belief."

21. The ld. DRs pointed out that only because these extensive discussions between the Assessing Officer and the Range Head were not recorded in the order-sheet of the assessment folder, it could not be presumed that the said joint examination of seized material or joint consideration of the case over a period of time had not taken place. It was submitted that since the role of the Range Head was in the nature of administrative supervision and the assessee was not involved in the same, JCIT's devise their own method in order to ensure proper supervision over the case, in accordance with the guidelines. The writing of an order-sheet was just a procedure and not a requirement and it could not be said that if something was not recorded in an order-sheet, the said discussions, did not take place. Drawing reference to the affidavit, the ld. DRs submitted that the then JCIT, who was now a retired Government Servant on pension had sworn an affidavit that he had engaged himself in regular monitoring and supervision of the assessment proceedings, right since the examination of seized materials till the receipt of final reply from the assessee and because he had constantly supervised the proceedings, therefore, at the time of submitting the draft assessment order, he was well acquainted with the facts and finding of the case. The ld. former Range Head had also submitted that he had set up a Camp office at Allahabad time and again during the material time period for this purpose and furthermore, that draft assessment orders were submitted on email, which after diligently going through and making corrections or modifications as necessary, he would approve and return by e-mail. The ld. DRs submitted that the said former JCIT, was a retired Government Servant on pension

bound by the CCS Pension Rules, 1972. Therefore, he was a responsible person whose statement on oath was worthy of consideration. Countering the objections of the ld. ARs to the submission of this affidavit, it was submitted that by virtue of the affidavit, he had explained his actions and as he was the person whose order was under challenge, his statement was a vital piece of evidence which was required to be considered. It was further submitted that if there was any doubt on the submissions made by him, the AR's could get him summoned and cross examined. However, without disproving the contents of his affidavit, the affidavit could not be disregarded. With regard to the delay in the submission of the affidavit, it was submitted that the assessee had raised the issue of approval under section 153D for the first time on 1.08.2024 i.e. eleven years after the appeal had been filed. It was therefore natural that the Department would offer evidence to counter this ground only after the issue had been raised by the assessee in appeal. The ld. DRs also drew our attention through the decision of the Hon'ble Supreme Court in the case of Chuharmal vs. CIT 172 ITR 250. It was submitted that in the said case, the Hon'ble Supreme Court had held that there was a presumption in law, specifically section 114(e) of the Evidence Act that Judicial and Official Acts supposed to be performed in a particular manner had actually been performed in the way they were supposed to be conducted. There could not be presumption of illegality. Thus, when the guidelines existed that search assessments had to be carried out in a particular manner and the officer giving the approval had come on record to swear that he had involved himself in the assessment proceedings and given approval after due application of mind, the burden of proof was clearly on the assessee to prove non-application of mind. In the instant case, the assessee had not brought on record a single instance of arbitrariness or unjust behavior, so how could it be proved that the actions of the Assessing Officer and the JCIT were illegal. Since, the fact of approval was not denied, the Department was protected by the said provisions of the Evidence Act and the insinuations of illegality that had been raised by the assessee without any evidence had no basis whatsoever.

22. With regard to the objections filed by the ld. AR on account of this affidavit citing the case of Mohinder Singh Gill, it was submitted that the said objections had no basis, because the said case law had no application to the facts of the particular case. In the case of Mohinder Singh Gill, the Hon'ble Court had held that an order must speak for itself and cannot be modified by way of any additional document. But in this particular case, the order was not being modified in any way. The affidavit was only an assertion by the approving authority that he had applied his mind in the matter that he was required to under the provisions of the Act and thereafter given his approval. Since, it was the actions of this officer which were under challenge by the assessee, the Department had every right to place the response of the concerned officer before the Tribunal to refute and rebut the insinuations levied by the assessee. It was further submitted that in the case of State of Uttaranchal vs. Rajpal Singh Pahwa, the case of Mohinder Singh Gill had been distinguished by the Hon Supreme Court itself on the grounds that an order cannot be modified, but could be explained. It was, therefore, submitted that the objections filed by the assessee had no basis whatsoever and the affidavit deserved to be considered. Our attention was also invited to the decision of the ITAT, Mumbai Bench in the case of Pratibha Pipes and Structural Limited vs. DCIT in ITA Nos. 3874 to 3826/MUM/2015 dated 8.04.2019 wherein on consideration of the affidavit of the Additional CIT (who had accorded approval under section 153D), the Tribunal dismissed the additional ground taken by the assessee challenging the validity of the assessment order passed under section 143(3) r.w.s. 153A. It was submitted that this order of the Tribunal had been followed by the ITAT in the case of Usha Satish Salve vs. ACIT in ITA Nos. 4239, 4237 and 4238/MUM/2023 vide their order dated 23.01.2025, therefore, the ld. DRs submitted that the officer who had given the approvals, having sworn an affidavit which was not disproved by the assessee, there was no reason to hold that the approvals given in the instant case were given in any manner that was violative of the Act.

23. Without prejudice to this argument, the ld. DRs submitted that even otherwise there was no reason to hold the assessments to be invalid on account of any irregularity in the approval process. It was submitted that cases had come up for decision where there was absolute lack of approval and there too the Courts had not held such assessments to be invalid. The lack of approval had been held to be a procedural irregularity that was not fatal to the order passed. Our attention was invited to the judgment of the Hon'ble Karnataka High Court in the case of Gayathri Textiles vs. CIT (2000) 111 taxman 123 (Kar) wherein the ld. CIT(A) had cancelled the penalty levied under section 271(1)(c), holding that the ld. AO had not obtained the previous approval of the IAC as required under section 274(2). On appeal by the Revenue, the Tribunal had reversed the order, holding that the failure to obtain the previous permission from the IAC for imposing penalty under section 271(1)(c) was only a procedural error and it was not fatal to the order of penalty under section 271(1)(c). The Hon'ble High Court held that in the said case, the proceedings were validly initiated and the proceedings under section 271(1)(c)(iii) only require prior approval of the IAC for direction for payment of penalty and not for the initiation of proceedings. Therefore, it was a procedural defect and as such the Tribunal was justified in holding that the failure to obtain the previous permission from the IAC for imposing the penalty under section 271(1)(c) was only a procedural error and it was not fatal to the order of penalty passed under section 271(1)(c) and also that the Tribunal was right to remand the matter back to the Department to pass a fresh penalty order. The ld. DRs also invited our attention to the judgment of the ITAT Jodhpur Bench in the case of Ratan Lal Dalmiya vs. ITO (2004) 1 SOT 281 (Johdhpur) in which a similar view had been taken with reference to penalty under section 271(1)(c), the judgment of the Hon'ble Madhya Pradesh High Court in the case of CIT vs. Vijay Dal Mills (1998) 230 ITR 301 (M.P.) where the Hon'ble Madhya Pradesh High Court followed its earlier order in the case of Prabhudayal Amichand vs. CIT (1989) 180 ITR 84 (M.P.) which in turn held that a procedural irregularity not involving the question of jurisdiction can be cured. It

was held in that case that there could be no doubt that levy of penalty by the ITO without the previous approval of the IAC was illegal, but the case could go back to the ld. AO for curing the defect, by obtaining the prior approval of IAC. The ld. DRs also referred to the decision of the Hon'ble Kerela High Court in the case of G. Manoharan vs. ACIT (2006) 155 taxman 569 (Ker),the decision of the Hon'ble Kolkata High Court in the case of Sagar Dutta vs. CIT (2014) 44 taxman.com 311 (Calcutta) and the decision of the Hon'ble Supreme Court in the case of Guduthur Bros. vs Income-Tax Officer (1960) 40 ITR 298 (SC), in which the Hon'ble Courts had taken a similar view, that in case an illegality vitiated the proceeding after it was lawfully initiated, the proceedings were to be restored back to the stage at which the illegality occurred and not quashed altogether. The ld. DRs pointed out that in this instant case, the proceedings had been validly and lawfully initiated following a search against the assessee under section 153A. The notice that had been issued had been served upon the assessee. The jurisdiction to assess the assessee arose out of the search under section 132 and the subsequent service of notice under section 153A. It was not dependent upon the approval under section 153D, therefore, it was argued that when the proceedings had been validly and lawfully initiated, the resultant assessment orders could not be *void ab initio* and therefore could not be nullified. The obtaining of approval in a particular manner could be held to be a procedural irregularity and following the decision of the Hon'ble Supreme Court, as rendered in the case of Guduthur Bros. vs Income-Tax Officer (supra), the proceedings were to continue from the stage of such illegality. Therefore, if the Tribunal was of the opinion, that any irregularity had crept in to the approval process, then the right course of action would be to send it back to the JCIT for the removal of lacuna / irregularity. In support of this stance, the ld. DRs further relied upon the judgments of the Hon'ble Madhya Pradesh High Court in the case of Prabhudayal Amichand vs. CIT (1989) 44 taxman 213 (M.P.) and CIT vs. Damodar Das Muralilal (1997) 93 taxman 651 (M.P.), where this principle was that a procedural irregularity can be corrected at the point in which the regularity

occurred when it was discovered, was re-affirmed. Acknowledging the fact that Tribunal's and Courts had taken a different view on the matter on previous occasions, the ld. DRs submitted that the said Tribunal's and Courts had no occasion to consider the facts and position in law as explained by them, before they had arrived at their conclusion. It was submitted that when a new set of arguments that were not presented before Courts earlier were submitted, then the Tribunal could and was duty bound to apply its mind to the issue afresh. For this proposition, the ld. DRs placed reliance on the decision of the ITAT Cuttack Bench in the case of Orissa State Civil Supplies Corporation Limited vs. DCIT (2003) 130 taxman 218 (Cuttack) (Mad) ,wherein the Tribunal had considered this aspect and held that in the name of adhering to the principles of consistency, it could not leave any scope for perpetuation of errors and therefore, in deserving cases and for cogent reasons to be placed on record, the Tribunal had the liberty of applying its mind afresh to the matter, irrespective of the decision taken in earlier years in the assessee's own case and even on the same set of facts. The ld. DRs submitted that it had been held by the Hon'ble Supreme Court in the case of CIT vs. Assam Travels Shipping Service (1993) 67 taxman 269 (SC) and Hukum Chand Mills Limited vs. CIT (1967) 63 ITR 232 (SC), that in appropriate cases, the Tribunal had the power to remand the matter back. It was, therefore, prayed that if the ITAT was not convinced that the approval granted in the present case was in accordance with the Act, then it should in the interest of justice remand the matter back to the ld. AO for obtaining approval in the correct manner. Finally, the ld. DRs placed their reliance upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) to further reiterate this point.

24. Continuing their arguments further, the Ld. DRs sought to distinguish the present case from the cases cited by the Ld. ARs. It was submitted that in the case of Subodh Agarwal, approval was accorded to 38 cases on the same day and the approval letter did not even mention the fact of approval. Similarly in the case of Siddhartha Gupta, it was pointed out that in that case, 123 cases had been placed

before the Approving Authority on the 31st and approvals had been granted on the same day. In the case of Naveen Jain, 67 cases had been approved on the same day, while in the case of Serajuddin, the approval given by the Additional Commissioner was not even mentioned in the assessment order. It was submitted that in none of these cases had the Courts been made aware of the CBDT guidelines dated 22.11.2006 nor had the approving authority come forward to refute the assessee's allegations. Thus, it was submitted that none of these cases were binding precedents in the case of the assessee as they were all based on the different set of facts. Our attention was invited to the reference to the decision of Ashok Kumar Sahu vs. Union of India AIR 2006 SC 2879, wherein the Hon'ble Apex Court had observed that when the power of approval was rested in a higher authority and such authority approves an order of the lower authority, it means that he has gone through the order of the lower authority. The word, 'Approval' in the context of an administrative act, does not mean anything more than the aforesaid acts. Therefore, it was submitted that considering the meaning of, 'approval' in the context of an administrative act, the consent/confirmation of the draft assessment orders by the approving authority was good and sufficient exercise of power for the purposes intended under the Act. It was further submitted that the process of approval had not been placed before the Hon'ble High Court in those cases and therefore, the Hon'ble High Court had had no occasion to consider it. Therefore, it was argued that when the Hon'ble High Court had no occasion to apply its mind to the particular facts of a case and decide on those issues, its orders could not be regarded as binding, as laid down by the Hon'ble Supreme Court in the case of Union of India & Ors vs. Dhanvanti Devi (1996) 6 SCC 44.

25. Responding to the arguments of the ld. DRs, the ld. ARs once again invited our decision to the Constitution Bench judgment in the case of Mohinder Singh Gill and pointed out, that as per the same, the affidavit filed by the DCIT was not maintainable to explain the approval. The ld. ARs also sought to counter the arguments of the ld. DRs by drawing reference to the decision of the Delhi Tribunal

in the case of Shiv Kumar Nayyar to show that the Tribunal had held that even where a plea was taken of the involvement of the JCIT in the assessment proceedings, the approval that was given had to show application of mind failing which it rendered the approval under section 153D as mechanical and accordingly the assessment was held to be invalid. The ld. ARs once again placed reliance upon the decisions given by the Hon'ble Courts in the cases of Sapna Gupta and Serajuddin. The ld. ARs thereafter, submitted that the Act was very clear that approval had to be granted for each case separately and by the rule of strict interpretation this had to be followed and there had to be independent application of mind for each assessment before granting the approval. As this was not the case in the present matter, the approvals were mechanical and rendered the assessment orders invalid. The ld. ARs also drew reference the judgment in the case of Naveen Jain (supra) wherein it had been pointed out that the proceedings under section 153D were a substantive and mandatory provision and a default with regard to the same could not be cured. It was submitted that the doctrine of stare decisis laid down that if a decision is given in respect of a particular case and is not upset, then that has to be followed by the subordinate and co-ordinate Tribunals. Furthermore, it was submitted that even if there was an ambiguity in the section, but if the section had been judicially explained then also it was not required to look into the matter afresh every time. The ld. ARs thereafter proceeded to point out that it had been judicially held that the word 'Approval' did not mean writing of one word of approval but natural justice was of wide import and application of mind was required to fulfil it, as the assessee's rights were affected by non-application of mind .The ld. ARs drew our attention to the principal of Stare Decisis and pointed out that as per the same, judgments which had held the field for a long time should be followed and not unsettled by deviation. Our attention was thereafter invited to the decision of the Hon'ble Supreme Court in the case of Shankar Raju vs. Union of India (2011) 2 SCC 132, in which the Hon'ble Supreme Court had explained the doctrine of stare decisis and pointed out that binding precedents must be followed and must

not be disregarded. In this case, the binding precedents laid down that there must not be rubber stamping of assessment orders but independent application of mind to the law. Secondly, it had been laid down that, if approval is there, it must be demonstrative of this application of mind and therefore, these principles of law which had been consistently laid down by the various judgments quoted by the ld. ARs must consistently be applied. Our attention was also invited to the decision of the Hon'ble Allahabad High Court in the case of M/s Johnson Mathhey Chemicals India Pvt. Ltd. with regard to Rule 24 of CPC on the issue of remand, wherein the Hon'ble High Court had held that where all materials were there before the authority then the issue must be decided by that authority. Only where further enquiry was required, could it be sent back to the lower courts. It was argued that a matter could not be sent back to the lower courts to rectify a defect, unless the power to correct the defect was enshrined in the law. The ld. ARs further submitted that the powers of the Tribunal were limited to the scope of the Act and did not extend to sending back such matters for rectification of defects.

26. On the merits of the issue, the ld. ARs conceded that the JCIT and the AO worked together on the preparation of the action note and that the JCIT was conversant with the facts of the case at the time of the preparation of the action note, but they pointed out that there was no role thereafter for the JCIT until the final show cause notice that was prepared in consultation with him or the consultation that was required for making large additions. They argued that the powers of the JCIT had to be exercised under section 144A and the day-to-day interaction did not have much relevance. The ld. ARs also argued that internal guidelines issued by the CBDT were an obiter but they were not a ratio. Therefore, since they were only guidelines and not an instruction, they could not be held to be sacrosanct. The Leaned ARs argued that guidelines overlooked the fact that there should be independent application of mind by the ld. AO and not joint application of mind in any case. Furthermore, it was argued that there was no mention of these guidelines in the affidavit sworn by the Retired JCIT, that he had followed the same.

In support of these arguments, the ld. ARs placed reliance on the judgment of the Mumbai Tribunal in the case of Vrushali Sanjay Shinde in ITA no 198/Mum/2023, wherein the Hon Tribunal had held that the approval process has to indicate the proper procedure and application of mind and that the affidavit filed by the JCIT was an afterthought. They also invited our attention to the judgment by the Jodhpur Bench of the Tribunal in the case of Indira Bansal in ITA numbers 321-324,279 - 281,325-331& 404-404/Jodh/2016 where the Tribunal had reaffirmed that the approval given in similar circumstances to the assessee's case was mechanical thus vitiating the assessment. They submitted that prior knowledge of the matter, as argued by the learned DRs, had no value. What was essential was proper application of mind to the approval process and since the circumstances indicated that this had not been done in this particular case , the orders were vitiated and deserving of being quashed .Finally, they argued that the judgment of the Supreme Court in the case of Mohinder Singh Gill was rendered by a constitution bench and still held the fort and therefore no credence should be given to the affidavit filed by the JCIT, who was since retired.

27. We have duly considered the rival arguments raised by the assessee and the Revenue on this matter and in our view, the preliminary question to be decided is whether the additional grounds that have been raised by the assessee are questions of fact or whether they are questions of law that could be raised before the Tribunal for the first time, in view of the judgment of the Hon'ble Supreme Court in the case of NTPC Limited vs. CIT 229 ITR 383 (SC). It has been constantly held by various Courts and Tribunals that the fact of whether approval was exercised in a mechanical way is purely a question of fact to be determined from the facts and circumstances of each individual case. However, the question, as emerges from the grounds of appeal that have been raised are whether, if the approval under section 153D has been given in a mechanical manner and without application of mind, the assessment as framed under section 153A r.w.s. 143(3) of the Act are illegal and nonest. It has also been contended that the approval as taken from the JCIT, Central

Range, Varanasi is not an approval in the eyes of law and therefore, the assessments are null and void, liable to be declared illegal as they are without jurisdiction. These questions are undoubtedly questions of law that go to the root of the matter as they deal with the validity of the assessment. Time after time, similar questions have been raised before the ITAT on the grounds that they are questions of law and they have repeatedly been admitted as such. In view of our understanding of the issues raised, we are not in doubt that the essential question of whether the assessments are null and void on account of a mechanical approval, which would not be an approval in the eyes of law, are questions of law that deserve to be admitted in view of the judgment of the Hon'ble Supreme Court in the case of NTPC Limited vs. CIT (supra). It has been argued by the ld. DRs that these issues, which could have been raised before the ld. CIT(A), have not been raised and therefore, the ld. CIT(A) has not had occasion to apply his mind to these legal issues. Therefore, these do not emerge out of the orders of the ld. CIT(A) and are therefore, beyond jurisdiction of the Tribunal. One of the cases that has been cited before us by the ld. ARs is the decision of the Hon'ble Allahabad High Court in the case of M/s Johnson Mathhey Chemicals India Pvt. Ltd. (Sales / Trade Tax Revision No.361 of 2022), in which the Hon'ble Allahabad High Court has referred to order XLI of the Code of Civil Procedure, 1908 and perusal of Rule 24 of the said order reveals that the Appellate Court is competent to pronounce judgment upon an issue to determine the case finally, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has preceded wholly upon some other ground other than on which the Appellate Court proceeds. Furthermore, the Hon'ble Bombay High Court in the case of PCIT vs. Sreelekha Damani (2019)307 CTR 218 (Bom) has held that the question of validity of approval goes to the root of the matter and could have been raised at any time. In these circumstances, and in view of these precedents, we cannot accept the arguments offered by the ld. DRs that the Tribunal does not have the jurisdiction to hear such issues simply because they did not emanate out of the orders of the ld. CIT(A). The ld. DRs have also argued that the assessee could

have raised these issues before the ld. CIT(A) so that the CIT(A) could apply his/her mind to the issue, but we observe that the ld. ARs have admitted that it was only when drawing up the grounds of appeal for the appeal before us, that it came to their knowledge that this legal issue had not been raised earlier. We would look at this submission, in the context of the legal developments happening with regard to the approvals under section 153D. It is entirely possible that the assessee realized that he was in a position to take the shelter of law, after certain Tribunals and Courts had rendered their judgments regarding the validity of assessments if the approval under section 153D was rendered mechanically. Thereafter, once he came to know of the same, he could not be precluded from raising this ground simply because he had not raised this ground earlier before the ld. CIT(A). We accept the argument that whether or not the approval rendered by the JCIT was mechanical, was a question of fact which was required to be looked into before the legal issue could be addressed. However, we note that the Tribunal is the final fact-finding authority, and if all the materials are already available with the Tribunal, then the Tribunal is fully competent to discover the true facts without needing to remand the matter to the ld. CIT(A) or the ld. AO. In the circumstances, we do not find merit in the contentions of the ld. DRs that the Tribunal was necessarily obliged to refer the matter back to the lower authorities before it could proceed on the issue.

28. The ld. DRs have also raised objections in the context of Rule 11, Rule 18 and Rule 29 of the ITAT Rules, 1963. We observe that the additional grounds that have been raised have been sought to be argued by the assessee with the permission of the Tribunal and the Tribunal has heard the Department before concluding whether such grounds should be admitted or not. Thus, objections to the admission of the grounds on account of Rule 11 are not maintainable. Similarly, under Rule 18, it has been laid down that for submitting supplementary paper books, the leave of the Bench must be sought. We note that in the present case, both parties have filed supplementary paper books on account of the additional grounds that have been raised by the assessee. The admission of these supplementary paper

books depends upon the necessity of considering them if the Bench were to admit the additional grounds of appeal. Since we have deemed it fit to admit the additional grounds of appeal on account of reasoning given in the foregoing paragraph, we also admit the supplementary paper books submitted on this account. In any case, the objection to filing of documents subsequent to the filing of the original paper book, being a matter within the discretion of the Tribunal, the objections on such grounds are again held to be not maintainable. Rule 29 deals with the production of the additional evidence. The ld. DRs have argued that since the assessee was not a party to the proceeding between the ld. AO and the ld. JCIT, the letters written by the Assessing Officer to the ld. JCIT seeking his approval and the subsequent approval rendered by the JCIT constitute additional evidences as far as the assessee is concerned and before admitting any such document, the Tribunal must record its reason in writing pointing out that the conditions outlined in Rule 29 have been met. Our observation upon this objection is that documents which form a part of the assessment record cannot be classified as additional evidences merely because they have not been relied upon a previous occasion by either party. Therefore, the objections raised by the ld. DRs against the admission of the additional grounds are held to be not maintainable and we accordingly admit the additional grounds of appeal for consideration and adjudication. Moreover, as the additional grounds of appeal challenge the very validity of the assessments that are before us, it is appropriate that they must be decided first before proceeding to hear the case on merits.

29. The next question which we must decide before proceeding is whether the said additional grounds that have been raised by the assessee are already covered by judicial precedents that are binding upon us and preclude us from looking into issues raised by the DRs on account of the principle of stare decisis. The assessee has cited various Court judgment of the Hon'ble jurisdictional High Court, the Hon'ble Orissa High Court and the Hon'ble Delhi High Court and the Lucknow Bench of the Tribunal to show that the matter has already been decided by the various

courts, leaving us with little option but to follow those judgments. The DRs have argued otherwise and pointed out that each case was decided on a different set of facts and decision on the facts of a particular case cannot constitute precedents that would preclude us from looking into the matters afresh, if a different set of facts were presented for the first time. We may examine these rival arguments with reference to the cases that have been cited.

30. At the very outset, it has been urged by the ARs that the Hon'ble Supreme Court, having dismissed the SLP filed by the Revenue against the decision of the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (2024) 163 taxman.com 118, the orders of the Hon'ble Orissa High Court in the matter of ACIT vs. Serajuddin & Co. (2023) 150 taxman.com 146 (Orissa) stood affirmed by the Hon'ble Supreme Court and therefore, was now the view of the Hon'ble Supreme Court. However, we observe from a perusal of the said order that the SLP was dismissed by the Hon'ble Supreme Court with the following observations: -

> *"Having regard to the facts and circumstances of the case, we are not inclined to interfere in the matter. The Special Leave Petition is dismissed."*

It is settled law that an in limine dismissal of an SLP has no binding force in terms of Article 141 of the Constitution of India. Consequently, it has no binding precedent value, in contra distinction with a reasoned order of the Hon'ble Supreme Court or an order that has been passed in appeal. In the case of State of Orissa and Anrs vs. Dhirendra Sundar Das & Ors (2019) 6 SCC 270, the Hon'ble Supreme Court has clarified this issue with the following observations:-

> *"**9.27** It is a well settled principle of law emerging from a catena of decisions of this Court including Supreme Court Employees' Association vs. Union of India and Anr and State of Punjab vs. Davinder Pal Singh Bhullar, that the dismissal of the SLP in limine simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such in limine dismissal at the threshold, without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under article 141 of the Constitution."*

Thus, in view of the judgment of the Hon'ble Supreme Court itself on this subject, the contention of the ld. ARs that the Hon'ble Supreme Court has affirmed the order of Hon'ble Orissa High Court is not maintainable.

31. We may, thereafter, turn our attention to the judgments of the Hon'ble Allahabad High Court which have been cited by the ld. ARs as precedents that, in their opinion would bind us to concluding that the approvals given in the instant case were mechanical and therefore, the assessments were vitiated on that account. It is observed that in the case of PCIT vs. Subodh Agarwal (2023) 450 ITR 526 (Alld), the Hon'ble High Court was hearing a case to determine whether, in view of the undisputed fact of 38 draft assessment orders being approved by the JCIT on the same day that they were put up, whether a substantial question of law arose for their consideration from the finding of the Tribunal that it being humanly impossible to apply the mind to all the materials and facts necessary for granting a considered approval in one day, the orders in question were passed after mechanical approval and therefore vitiated. The Hon'ble High Court after referring to the decisions of the Tribunal in the case of Navin Jain vs. DCIT (2021) 91 ITR (Trib) 682 (Lucknow) held that the approval of the draft assessment order being an inbuilt protection against any arbitrary or unjust power of the ld. AO cannot be a mechanical exercise without application of independent mind by the approving authority on the material placed before him and the reasoning given in the assessment order. It rejected the submission of the Department that the mere fact that approval was in existence on the date of the passing of the assessment order, it could not have been vitiated, by holding that prior approval of a superior authority meant that he must apprise the material before him to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the ld. AO before preparing the draft assessment order. The Hon'ble Court also held that section 153D required that the ld. AO should obtain approval of the JCIT in respect of, 'each assessment year' falling within six assessment years and the search year and therefore, on account of failure of the ld. AO to obtain approval with

respect to, 'each assessment year' but instead by obtaining common approval in 38 cases on the last day, made it humanly impossible for the approving authority to apply independent mind to appraise material before approving those orders. Therefore, the Hon'ble High Court held that the conclusion drawn by the Tribunal that it was a mechanical exercise of power could not be said to be perverse or contrary to the material and record and it specifically pointed out that as the facts stood admitted, the questions of law framed on factual issues did not give rise to any substantial question of law. In the case of PCIT vs. Siddhartha Gupta (2023) 450 ITR 534 (Alld), the Hon'ble High Court held that the draft assessment orders under section 153A in the case of 123 assessee's placed before the approving authority on December 30, 2017 and December 31, 2017 that were approved under section 153D on December 31, 2017, not only included the case of the assessee but the cases of other groups. Having regard to this fact, the Hon'ble High Court held that it was humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the approving authority. Therefore, the conclusion drawn by the Tribunal that it was a mechanical exercise of power by the approving authority was not perverse or contrary to the material on record and no question of law arose for the consideration of the Court. Approvals had to be obtained for, 'each assessment year' on the draft assessment orders before the passing of the assessment orders. In the case of PCIT vs. Sapna Gupta, 147 taxmann.com 288, the Hon'ble High Court reiterated its position that the ld. AO was required to obtain prior approval of the Joint Commissioner in respect of, 'each assessment year' for which assessment was being done under section 153A and that before such approval was granted, the superior authority must appraise the material before it so as to appreciate on the factual and legal aspects as also to ascertain that the entire material has been examined by the ld. AO before preparing the draft assessment order. In the instant case, it held that since the draft assessment orders had been placed before the approving authority on 30.12.2017 and was approved by the approving authority on the very same day which not only

included the cases of the assessee but the cases of other groups as well, it was humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the approving authority and therefore, the conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, could not be said to be perverse or contrary to the material on record. Consequently, the Hon'ble High Court held that no substantial question of law arose for consideration before it.

32. What emerges from a reading of these three orders by the Hon'ble jurisdictional High Court, that have been cited before us by the ld. AR, is that the Hon'ble Court laid down the following 2 principles of law;

i. That as per the provisions of the Act, before an assessment order was passed under section 153A of the Income Tax Act, the approval under section 153D had to be given by the superior authority after appraising the material before it, so that it may appreciate the factual and legal aspects to ascertain that the entire material had been examined by the assessing authority before preparing the draft assessment order.

ii. Careful and conjoint reading of section 153A(1) and section 153D left no room for doubt that approval with respect to, 'each assessment year' of 'each assessee' was to be obtained by the ld. AO on the draft assessment order before passing the same under section 153A.

It had also observed/ concluded, that approving of a larger number of orders on a single day, that had been put up to the JCIT on the same day or a day before, made it humanly impossible for the approving authority to appraise the material and apply his mind to it and since they had been addressed through a common approval therefore, the conclusion drawn by the Tribunal that such approvals had been given mechanically was neither perverse nor contrary to the material on record.

33. The ld. ARs have argued that the case of the assessee fits squarely under the parameters laid down by the Hon'ble High Court in these matters as in the instant case also, the draft assessment orders in respect of the assessee had been put up on 25.03.2013 along with other cases of the group and the same had been approved on the next working day i.e. on 26.03.2013. Thus, it was clear that there was no time for the approving authority to go through the voluminous material and assessment records before granting the approval, thereby rendering the said approval to be a mechanical exercise of power and in terms of the aforesaid judgments of the Hon'ble High Court rendering such assessments to be void on this account. The ld. DRs, on the other hand, have argued that the judgments of the Hon'ble Allahabad High Court in the aforesaid three cases have been rendered with reference to the specific facts of those cases. They have attempted to demonstrate that in the instant case, the JCIT was involved with the assessment process throughout the assessment period and therefore, was not a stranger to the materials or records at the time of according the approvals. Therefore, the ratio laid down by the Hon'ble jurisdictional High Court in the aforesaid three cases, would not hold good in the facts of the assessee's case as they were predicated on the arguments that the approving authority had no access to the materials or the records before the submission of the draft assessment orders and therefore, had too little time to apply his independent mind to the facts of the case.

34. The next important decision which has been cited before us the decision of ACIT vs. Serajuddin & Co. (2023) 454 ITR 312 (Orissa). In this case, the Hon'ble High Court had observed that the requirement of prior approval under section 153D of the Act was comparable with a similar requirement under section 158BG of the Act and quoting from para 9 of Chapter 3 of Volume -II (Technical) of the manual of office procedure issued by the CBDT in February, 2003 in respect of assessment orders under Chapter XIV-B, it had noted that as per the said manual, the draft assessment order had to be submitted to the Assessing Officer, 'well in time', the approval had to be given in writing and the fact that the approval had been obtained

was to be mentioned in the body of the order. The Hon'ble High Court has observed that in that instant case, the assessment orders were silent about the Assessing Officer having written to the Additional CIT seeking his approval or of the Additional CIT having granted such approval and orders were therefore, not in compliance with the requirements spelt out in para 9 of the manual of office procedure. It further held that since the manual, which was issued as a guideline to Assessing Officers had been issued by the CBDT, it could be traced back to section 119 of the Income Tax Act and was therefore, binding on officers of the Department. The Hon'ble High Court also observed that the approval of the superior officer could not be a mechanical exercise and this had been emphasized in several decisions. It was, therefore, not correct on the part of the Revenue to contend that the approval was not justiciable. Where the approval was granted mechanically, it would vitiate the assessment order itself. Going through the approval letter in that case, the Hon'ble High Court observed that even the bare minimum requirement of the approving authority indicating what thought process was involved was missing in the aforementioned approval order and held that while elaborate reasons were not required, there had to be some indications that the approving authority had examined the draft orders and find that it meets the requirements of law. The Hon'ble High Court held that merely rubber stamping of the letter seeking sanction with an approval would not satisfy the requirements of law.

35. The ld. ARs have held that in their case also, the approval issued by the approving authority merely rubber stamped the proposals of the Assessing Officer and this made the approvals mechanical, thereby vitiating the assessment. Further, it was argued that the contravention of the guidelines so quoted by the Hon'ble Orissa High Court in the instant case also, the orders were put up at the last minute and therefore, were in contravention of the Board's guidelines. On the other hand, the ld. DRs have argued that the facts of the assessee's case are entirely different. A fresh set of guidelines for search and seizure assessment had been issued vide F. No. 286/161/2006-IT (Inv. II) on 22.12.2006, which had not been considered by

the Hon'ble High Court while passing the said order. Furthermore, there was no corresponding prescription in the new guidelines of orders being placed before the approving authority, 'well in time' because the new guidelines envisaged close interaction between the ld. Assessing Officer and the approving authority throughout the course of assessment and as the present set of assessments were framed in accordance with the new guidelines, the order of the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra) would not be applicable to the facts of the assessee's case. Moreover, in that case, the AO had not even mentioned the fact of approval in the assessment orders, which was not true in the assessee's case and therefore that order did not have relevance to the assessee's case.

36. Another decision cited by the ld. AR as a legally binding precedent is the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Shiv Kumar Nayyar, (2024) 299 Taxman 385. In the said case, the Hon'ble Delhi High Court placed reliance on the orders of the Hon'ble Allahabad High Court in the case of PCIT vs. Sapna Gupta (supra) and on the decision of the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra),as also the earlier decision of the Hon'ble Delhi High Court in the case of PCIT vs. Anuj Bansal in ITA No. 368/2023, wherein it had been held that the exercise of powers under section 153D could not be done mechanically. Noting that in the present case before it, the Additional CIT had granted approvals in 43 cases on the very day they had been submitted for approval and noting that the Additional CIT had granted a single approval for all assessment years put together when section 153D provided for approval to be granted for each assessment year, the ld. High Court observed that the said order failed to make any mention of the fact that the draft assessment orders were perused or perused with an independent application of mind. Therefore, considering that the authority had granted approval for 43 cases in a single day and covered all assessment orders under a single approval, the Hon'ble High Court did not find the existence of any question of law arising out of the orders of the Tribunal to declare the entire search assessment as illegal. The ld. ARs have pointed out that vide this order, the Hon'ble

Delhi High Court have affirmed the orders of the Tribunal, which rejected the arguments of the Department that the fact of the ld. Additional CIT getting involved in search assessment proceedings right from the receipt of copy of appraisal report as not material and held that the ld. Additional CIT is supposed to independently apply his mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. The Tribunal had held that the law provides that only the AO can frame the assessment but checks and balances are provided in the act by conferring powers on the approving authority to grant judicious approval under section 153D of the Act, de hors the conclusions drawn by the Investigation Wing in the appraisal report or by the ld. AO in the draft assessment order. Thus, it has been argued that by implication, the Hon'ble Delhi High Court has debunked the arguments of the Department on joint application of mind being a substitute for independent approval by the JCIT. On the other hand, the ld. DRs have submitted that the Hon'ble Tribunal did not consider the guidelines issued F. No. 286/161/2006-IT (Inv. II) on 22.12.2006 before coming to the conclusions that they had and, in any case, the issue in question was not decided by the Hon'ble Delhi High Court, which upheld the orders of the Tribunal only on the facts of that particular case.

37. The orders passed by the Hon'ble Allahabad High Court referred to above arose out of the orders of the Lucknow Bench of the ITAT in the cases of Sh. Siddhartha Gupta, Smt. Sapna Gupta and Sh. Subodh Agarwal. In each one their cases, the ITAT Lucknow Bench had held the assessments to be vitiated on account of the fact that no evidence was presented before it to show that the JCIT had examined the material relating to the search and / or the assessment records prior to giving the approval. In all these cases, the ITAT had held that it was humanly impossible for the approving authority to apply his mind to a very large number of cases that were put up to him at the fag end of the assessment period and this implied that the approvals had been given mechanically and without application of mind to the materials, on the basis of which the assessment was conducted, and the

orders of the ld. AO. All these orders essentially followed the earlier order of the Lucknow Bench passed in the matter of Sh. Navin Jain vs. DCIT (2021) 91 ITR (Trib) 682 (Lucknow). The order passed in the case of Sh. Navin Jain and Ors has also been quoted by the Hon'ble High Court while holding that no substantial question of law arose in the actions of the Tribunal in holding the approvals granted by the approving authority to be a mechanical exercise of power. Therefore, it would be pertinent to examine the orders of the ITAT Lucknow Bench in the case of Sh. Navin Jain & Ors to understand the gist of the findings of the ITAT in all these cases. In the case of Sh. Navin Jain, the ITAT held that for granting approval under section 153D of the Income Tax Act, the approving authority should apply his independent mind to the material on record for each assessment year in respect of each assessee separately. It held that the rational of the word, 'each' specifically referred to in section 153D and 153A deserved to be given effective and proper meaning so that the underlying and legislative intent as per the scheme of assessment of sections 153A to 153D was fulfilled. The Tribunal also held that the meaning of, 'approval', as contemplated under section 153D of the Act is that the Joint Commissioner was required to verify the issues raised by the ld. AO in the draft assessment order and apply his mind to ascertain as to whether the entire facts had been properly appreciated by the ld. AO. The Joint Commissioner was also required to verify whether or not the required procedure had been followed by the ld. AO in framing the assessment. In that case, the ITAT observed that the Assessing Officer had passed the draft assessment orders on the same day that approval under section 153D was accorded by the Additional Commissioner in 67 cases. It held that the *panchnama* prepared by the Revenue authorities consisted of 15,800 pages and the replies filed by the assessees belonging to the group consisted of about 2000 pages. There were also documents belonging to other groups, approvals for which had also been granted by the same approving authority along with the assessees on the same day through the same approval letter. Accordingly, the ITAT held that it was humanly impossible for a person to apply his mind on all cases individually and that

too on a single day. Therefore, the approval granted by the Additional Commissioner under section 153D was mechanical in nature, without proper application of mind and therefore, it was illegal and non-est. Consequentially, the assessment made on the basis of such approvals were also illegal and deserved to be annulled.

38. Ongoing through the above decisions rendered by the various Courts and Tribunals, which the assessee has cited as binding precedents which we are obliged to follow, we cannot help but observe that the fact of the approving authority being associated with the assessment procedure right through the process of assessment, has never been brought to the knowledge of the Tribunals or the Hon'ble High Court by the officers and counsels representing the Revenue. Therefore, all these orders are predicated on the belief that prior to the submission of the draft assessment order, the approving authority is a stranger to the proceedings and the materials on the basis of which the assessment orders have been framed. Thus, while the principles of law that have been laid down by the Hon'ble jurisdictional High Court on the issue of the nature of the approval, the requirement of the approving authority to consider the materials judiciously before granting the approval, the need for application of mind to the case of each assessee for each assessment year and the fact that any approval not given in the aforesaid manner would be a mechanical exercise of power which vitiates the assessment process, is binding upon us and must be the test for evaluating any approval given by the approving authority in a proceeding under section 153A, the affirmation of the Tribunal's findings in particular cases that there was no application of mind because a large number of cases were approved on the same day would not create a binding precedence of what constituted mechanical approval if the Revenue were to bring on record material which suggested that the JCIT who had granted the approval under section 153D, was well acquainted with the materials on record that related to the search and actively associated with the assessment proceedings for the entire duration of the proceedings. We are also not in agreement with the ld. ARs that in

the aforementioned cases, the Court has laid down any principle of law that all cases of approvals given in a short period of time in a large number of cases are *ipso facto* cases of mechanical approvals. In fact, the Hon Allahabad High Court while dismissing the appeals of the Department, has done so on the facts of those cases, pointing out that no substantial question of law arises for its' consideration. In this context, it is worthwhile to consider the case of Anuj Bansal, which is one of the cases cited by the assessee. On similar facts as presented to the Hon'ble Allahabad High Court, the Hon'ble Delhi High Court in its order in ITA 368 of 2023 dated 23rd July 2023, upheld the decision of the Tribunal to quash the assessment order. However, subsequently in another assessment year pertaining to the same assessee, Department filed another appeal in which it brought the fact of the Departmental guidelines dated 22.11.2006 (contained in Search and Seizure Manual 2007) and an internal correspondence folder that showed monitoring by the Addl CIT, to the knowledge of the Court. The Hon'ble Court in ITA No. 8 of 2024, after considering these arguments was pleased to admit the following question of law for consideration;

> *"1. Whether the supervisory and advisory involvement of the Approving authority would be liable to be borne in consideration while examining the validity of approval accorded under section 153D of the Act ?"*

The Hon'ble Delhi High Court ultimately dismissed that appeal on account of the fact that a common and composite approval was given in the case of the assessee and the invalidity of that approval had attained finality with the in limine dismissal of the Departmental SLP, but even while it did so, it held,

> "W*e leave the question pertaining to the effect and impact of section 144A of the Act as well as the provision contained in the Search and Seizure Manual 2007, open to be addressed in appropriate proceeding*".

Thus, the Hon'ble Delhi High Court, in effect, acknowledged that these were issues that had not been considered by it in its earlier order, which could potentially have a bearing on the issue. For these reasons, we are of the view that the finding

of the Hon'ble Allahabad High Court in the cases of Sh. Siddhartha Gupta, Smt. Sapna Gupta and Sh. Subodh Agarwal, with regard to a given set of facts do not preclude us from inquiring into the nature of approval on another set of facts. Thus, in our understanding, every case where it was agitated that the approval was given mechanically would have to be examined with reference to the facts of that particular case and the arguments presented by the parties in that particular case to determine whether the approval in such case was the culmination of the exercise of assessment or whether it was a perfunctory exercise to meet a statutory requirement and examination of this question to our mind, would not interfere with the principle of stare decisis as long as the analysis of whether the approval was mechanical, took due cognizance of the parameters laid down by the Hon'ble Court in determining the legality of the exercise.

39. With regard to the decision rendered by the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra), while the same is not rendered by the jurisdictional High Court, it has been raised by the assessee and therefore, must be considered by us while rendering our decision. In consideration thereof, we cannot help but notice that the Hon'ble Orissa High Court has based its findings on the search manual guidelines laid down by the CBDT for block assessments under Chapter XIV-B and the CBDT has issued a separate set of guidelines for search assessments to be done under Chapter XIV. Therefore, even while the provisions of section 158BG may be para materia to the provisions of section 153D, the guidelines laid down by the CBDT in respect of conduct of assessments under sections 153A to 153D are completely different. In those circumstances, the guidelines laid down for search assessments under Chapter XIV that have been brought to our knowledge by the ld. DRs through the third supplementary paper book filed on 22.10.2024 would be the parameter under which these particular assessments must be judged. Thus, to our mind, the decision rendered by the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra) would not be applicable to the facts of the assessee's case, as it was based on an

inapplicable guideline. It is pertinent to mention that the Cuttack Bench of the ITAT in the case of Gobardhan Matia in IT(SS)A Nos. 62-68/CTK/2018, has differed with the judgment of the Hon'ble High Court on this account.

40. Coming to the assessee's case, it has been brought to our notice by the ld. DRs that the CBDT has issued guideline for search and seizure assessments in F. No. 286/161/2006-IT (Inv. II) on 22.12.2006 contained in Appendix V of the Search & Seizure Manual 2007 which involves the Range Head in the assessment process right from the stage of receipt of the appraisal report and the seized material to the granting of the final approval. As brought out by the ld. DRs, it is observed that the Range Head (approving authority) is involved in scrutinizing the appraisal report and the seized material at the time of preparation of the examination note to decide which cases were to be taken up under section 153A, 153C or section 148. Subsequently, he was also supposed to vet the action note prepared by the AO within 90 days of receipt of seized material after methodological examination of the seized material and it has been brought to our knowledge by the DRs that usually these action notes are prepared by the ld. AO and the Range Head in consultation with each other. We also observe that the Range Head has been directed to ensure proper satisfaction note are recorded before issuance of notices under section 153C or under section 148. Furthermore, it appears that the Board envisaged that the Range Head was to be associated with the preparation of the detailed questionnaire and could even give directions under section 144A where it was considered necessary. As has been explained to us by the ld. DRs, since the said questionnaires are prepared in consultation with the Range Head, formal directions under section 144 were usually not required in the matter. It is also observed that the Range Head is also to be involved in examining the final replies of the assessee on the questionnaire and that the final show cause notice in the matters were to be prepared by the ld. AO in consultation with Range Head. As per the said guidelines, the ld. AO has been advised to consult his higher authorities while making large additions. Thus, it appears that the Range Head is not envisaged as merely an

approving authority of the actions of the ld. AO but has been assigned the supervisory role in the conduct of the search assessments by way of such guidelines that have been issued by the CBDT. As held by the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra), such guidelines are necessarily to be complied with by the officers as they can be said to emerge from the powers granted to the CBDT under section 119 of the Income Tax Act, 1961. Therefore, in view of these specific guidelines, which were not brought to the knowledge of the Co-ordinate Bench of the ITAT in the case of Shiv Kumar Nayyar vs. ACIT (ITA No.1986 & 1987/DEL/2022), the findings of the Tribunal that the Additional CIT while granting approval under section 153D has to independently apply his mind to the conclusions drawn by the Investigation Wing in the appraisal report or the draft assessment order do not appear to account for the association of the Range Head in the conceptualization and drafting of the assessment order itself. After all, if the Range Head is to be involved in the preparation of the questionnaire and thereafter in the preparation of the show cause notice upon receipt of replies from the assessee and if he is to be consulted on major additions, then it is clear that he would have duly appraised all the materials upon which the case of the ld. AO was sought to be made out and the responses of the assessees to the queries made in this regard. Having already familiarized himself with the same material and the line of enquiry being pursued by the ld. AO, with his concurrence, the only action left for the Additional CIT at the time of granting of approval was to ensure that the issues had been marshalled properly while giving the final shape to the assessment order. We are, therefore, unable to agree with the Co-ordinate Bench that the law only provides that the ld. AO will frame the assessment and because, in the aforesaid scheme laid down by the CBDT under the powers drawn by it under section 119 of the Income Tax Act, 1961, the scheme of assessment as envisaged in such guidelines is a cooperative enterprise, in which both the ld. AO and the approving authority are equal participants in the preparation of the final assessment order. Furthermore, it is pertinent to note that it was shortly after the promulgation of

these guidelines that the Act was amended to include section 153D and provide for approvals by the Range Head. The guidelines have therefore to be read in the light of the subsequent amendment, as laying down the roadmap regarding exercise of jurisdiction under section 153D. To our mind such guidelines and the subsequent introduction of Section 153D to the Act made it mandatory for the AO to act in concert with the Range head, otherwise his orders would not pass muster. In such circumstances, decisions rendered by Courts with regard to normal assessments or assessments under section 147 relating to the independence of the ld. AO, which have been relied upon by Coordinate Benches, cannot apply to search assessments under section 153A, which have to be conducted by the officers of the Department in accordance with the amended provision of the Act and the guidelines issued by the Board. Thus, the premise that the ld. AO is obliged to act independently prior to the submission of the draft assessment order and the Range Head is required to independently appraise the material only thereafter is a flawed premise in view of the guidelines furnished before us. After consideration of such guidelines, it must be held that the approval given by the Range Head under section 153D, is the culmination of the process of assessment, whereby the ld. approving authority records his final concurrence with the assessment order that has been framed by the ld. AO in consultation with him at various stages. Such approval therefore, in our mind need not separately indicate why the approval was being granted, because the entire line of investigation and the conclusions arrived at after considering of various replies would be under the close supervision of the ld. Range Head and therefore, the approval under section 153D must be viewed as being the final stamp of concurrence, in accordance with the statutory provisions. Furthermore, since such approval of an assessment framed in accordance with the guidelines issued by the CBDT necessarily presumes familiarity with the materials on record and in fact the entire assessment proceedings that were conducted by the ld. AO, an approval given at the fag end of the process, in a short span of time after the submission of the draft assessment order cannot be held to be mechanical, when such guidelines

are considered. It is observed that in none of the cases that were argued before the Lucknow Bench of the ITAT have the facts of the existence of these guidelines and the functioning of the assessment authorities in accordance with them, have ever been brought to the attention of the Tribunal. Accordingly, the same has led to a premise that the approval have been issued in a large number of cases without examination of the materials on record or without considering the issues involved, thereby rendering the said approvals to be mechanical and thereby invalid and vitiating the assessment process itself. Neither were these guidelines brought to the knowledge of the Hon'ble High Court by the Revenue, when the orders of the ITAT were challenged before it. In the circumstances, the conclusions that approvals granted in a large number of cases were mechanical because they did not lead scope for examination of the materials on record for consideration of the issues at hand were arrived at without any submission to the effect that the officers of the Department were functioning in accordance with the guidelines issued by the CBDT, that deeply involve the approving authority in the assessment process itself, right from inception till conclusion. We further note that the search manual of February, 2003, which has been referred to by the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra) does not involve a similarly close association of the approving authority in the assessment process, prior to the date of approval. It is in this context that ld. Assessing Officers have been advised to submit the draft assessment order in block assessments to the approving authority" well in time" and it is also in this context that the due opportunity of being heard is required to be given by the Supervisory Officer to the assessee before giving approval to the proposed block assessment. Thus, since the guidelines laid down by the CBDT in respect of search assessments to be conducted under section 153A to 153D are completely different from the guidelines that were in existence for block assessments to be done under Chapter XIV-B, the said guidelines could not be pointer to hold that a search assessment under section 153A or 153C was not in accordance with law if the same conformed to the specific guidelines issued by the

Board in F. No. 286/161/2006-IT (Inv. II) on 22.12.2006. As the judgment of the Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra) is not based on consideration of the relevant guidelines, it cannot be held as a valid judicial precedent in the case of the assessee. Similarly, decisions of co-ordinate Benches that place reliance on the guidelines of February 2003, cannot be a binding precedent.

41. The question that must exercise our mind in the instant case is whether the CBDT guidelines as laid down in F. No. 286/161/2006-IT (Inv. II) on 22.12.2006 have been followed by the Assessing Officer and the Range Head during the course of assessment. The assessee has furnished a copy of the letter sent by the Assessing Officer to the JCIT dated 25.03.2013 and a copy of the approval issued by the JCIT on 26.03.2013 to demonstrate that in fact these guidelines have not been followed. The assessee has also argued that irrespective of the guidelines, the JCIT is a stranger to the assessment process after the preparation of the Action Report and till the receipt of the draft assessment order and therefore, he is required to independently examine the material after he receives the draft assessment order. The Department on the other hand had furnished an affidavit from the approving authority which reads as under:-

Affidavit

"I, Buddhadeb Mukhopadhyay, S/o Late Amiyalal Mukherjee aged about 69 years P./o Fiat No. 801, Moore Heights, 93, M. B. Sarani, Kolkata 700040 Solemnly affirm as under:

1. That, during the period 19.07.2012 to 15.10.2014, 1 was posted as Joint/Addi Commissioner of Income Tax, Central Range, Lucknow.

2. That, apart from other supervisory roles, I was also approving authority for the Assessment orders prepared by Assessing Officer of Central Circle within jurisdiction of these ranges.

3. That, vide letter F.No. DCIT(CC)/Alld/Vaish Groups/2012-13/1037 dated 125.03.2013, the A.O. sought approval for passing assessment orders in the case of Shri Ramji Vaish for A.Y. 2005-05 to 2011-12 which are under appeal for Hon'ble ITAT.

4. That, after proper application of mind, accorded approval for-passing assessment orders in the case of ShriRanji Vaish for A.Y. 2005-06 to 2011-2, which are under appeal before Hon'ble ITAT, vide my office letter F.No. dated 26.03.2013. Jt. CIT/CR/LKO/Approval/2012-13/158

5. That, before approving the draft assessment orders submitted by Assessing Officers, a regular monitoring and supervision of assessment proceedings were made since examination of seized materials till scrutinizing of final reply.

6. That, since I, as Range Head constantly supervised the proceedings therefore at the time of submitting droit assessment order, I was well acquainted with facts and findings of the case.

7. That, for the purpose of proper monitoring and firsthand information of the progress of the cases, time and again I made my Camp Office at Allahabad during the material time. Moreover, the Assessing Officer used to give the draft orders in my e-mail and after due diligence, I used to return those draft order, after necessary correction and modification, through e-mail.

8. That, this is the reason that approval process took minimum time.

9. That, the regular monitoring was also necessary because in the most of cases assessee took long time for giving responses and submitted final reply at the fag-end of the year.

10. That, the approval has been accorded after due diligence and proper application of mind.

DECLARATION

I, Buddhadeb Mukhopadhyay, S/o Late Amiyalal Mukherjee aged about 69 years R/o Flat No.- 301, Moore Heights, 93, M. B. Sarani, Kolkata- 700040, solemnly affirm that contents of point no. 1 to 10 are true and correct to the best of my knowledge and belief."

42. Thus, the approving authority has affirmed the fact under oath, that before approving the draft assessment orders submitted by the ld. AO, regular monitoring and supervision of assessment proceedings was done by him since the examination of seized materials till scrutinizing of the final reply and since he had constantly supervised the proceedings, therefore, at the time of submitting the draft assessment order, he was well acquainted with the facts and findings of the case and for this reason the approval process took minimum time. The approving authority has also affirmed that from time to time he set up Camp at Allahabad for

this purpose. He submits that in these cases regular monitoring was necessary because the assessees took a long time to respond to queries. He has also submitted that the Assessing Officer and he were regularly exchanging e-mails wherein draft orders were submitted, corrected and returned. The ld. AR have protested to the submission of consideration of this affidavit by the approving authority (since retired) on two counts. Firstly, that in terms of the judgment of the Hon'ble Supreme Court in the case of Mohinder Singh Gill and Anr vs. Chief Election Commissioner, New Delhi & Ors, (1978) 1 SCC 405, an order had to be judged by the reasons stated while making the order and supplementary reasons in the shape of affidavits were to be excluded. It has argued that the affidavit submitted by the approving authority is nothing but an attempt to improve upon the defect of mechanical approval in the existing assessment order and therefore, cannot be accepted as evidence before the Tribunal. It has also been argued that the affidavit having been filed after eleven years of the assessment, had no evidentiary value due to the lag of time. It has also been submitted that by filing such an affidavit, the Department was attempting to challenge the wisdom of earlier decision of the Tribunal and finally according to the ld. ARs, the affidavit does not make any mention of having followed the CBDT guidelines as laid down in F. No. 286/161/2006-IT (Inv. II) on 22.12.2006. On the other hand, the ld. DRs have pointed out that the affidavit is not an attempt to improve upon any defect in the order because there was no such defect, it is a statement on oath by the person against whom allegations of mechanical exercise of power have been alleged and represents his rebuttal to the allegation. The ld. DRs have argued that the reason for the affidavit being submitted so long after the assessment was completed was that the assessee had raised the additional ground challenging the approval granted by the ld. JCIT for the first time on 1.08.2024 i.e. nearly eleven years after the assessment had been finalized. It was, therefore, natural that the rebuttal to this allegation would be filed after the allegation was made.

43. We have duly considered the matter and we find ourselves in agreement with the arguments placed by the ld. DRs. In our view, the case of the assessee is completely different from the case of Mohinder Singh Gill and Anr vs. Chief Election Commissioner, New Delhi & Ors (supra). We noticed that in the case of Mohinder Singh Gill and Anr vs. Chief Election Commissioner, New Delhi & Ors (supra), the Hon'ble Supreme Court had relied upon its earlier order in the case of Commissioner of Police, Bombay vs. Gordhandas Bhanji AIR 1952 SC 16, wherein the Hon'ble Supreme Court had held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or what was in his mind or what he intended to do. That such orders must be construed objectively with reference to the language used in the order itself. Following this order, the Hon'ble Supreme Court had held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. Otherwise, an order bad in the beginning, made by the time it comes to Court on account of a challenge, get validated by additional grounds that were later brought out. The facts of the assessee's case are totally different. The affidavit filed by the ld. approving authority does not seek to add anything to the order that was passed by the ld. Assessing Officer. The ld. JCIT, by virtue of filing an affidavit has refuted the allegations levelled upon him for the first time on 27.04.2023 that he acted mechanically while giving the approval in the case and he has sought to defend his actions by pointing out that he had done all that he was required to do as a Supervisory Officer and as evidence of this, he has referred to his numerous visits to Allahabad for this purpose and the exchange of e-mails with the Assessing Officer. Therefore, in our view, an affidavit filed by the officer refuting the allegations levelled against him cannot be equated with an affidavit supplementing the reasons for a particular course of action in a particular order and accordingly we hold that the challenge to the admission of the affidavit by the

assessee has no basis. We also observe that while the ld. Range Head may not have specifically referred to the CBDT guidelines in question, he has pointed out the activities that he undertook during the assessment proceedings which are in consonance with such guidelines. Hence, the affidavit has to be viewed as an assertion by the approving authority that he had performed his role as envisaged in the said CBDT guidelines. We further note that Rule 10 of the ITAT Rules permits facts which cannot be borne out from the record, to be stated in the form of an affidavit.

44. We have also noticed that the Hon'ble ITAT, Mumbai 'C' Bench in the case of Pratibha Pipes & Structural's Limited vs. DCIT, Central Circle-17 and 28, Mumbai (ITA No.3874/Mum/2015, ITA No.3875/Mum/2015, ITA No.3876/Mum/2015 & ITA No.7120/Mum/2016 dated 10.04.2019) was seized of a similar situation. In that case, as the letter seeking approval and the letter granting approval were not to be found in the assessment folder, the assessee had argued that the assessments were void on account of the absence of approval under section 153D. In that case, affidavits were filed by two senior officers who were in charge of the assessment proceedings. The then AO, who had since retired, had filed an affidavit and stated that the mandatory requirement of approval under section 153B had been obtained. Furthermore, the then Additional CIT had also filed an affidavit and stated that he had granted approval required to be given under section 153D vide letter No. Addl CIT/CR-4/Approval/153D/2012-13 dated 25.03.2013. The ITAT held that the affidavits filed by the officers could not be ignored as not having any evidentiary value. The contents of the affidavits filed by the officers coupled with the circumstantial evidences available in the assessment folders clearly established the fact of obtaining the necessary approval under section 153D. The matter was subsequently considered again by the ITAT Mumbai 'F' Bench in the case of Usha Satish Salvi vs. ACIT, (ITA Nos. 42391, 4237 & 4238/MUM/2023 dated 23.01.2025). In that case also the assessee has alleged that the approving authority had not gone through the seized material and the assessment records leading to an allegation of

non-application of mind by the approving authority. Affidavits were filed on behalf of the approving authority as well as for the assessment orders in support of the contention that the assessment orders were approved after due application of mind. The ld. AO deposed that in that instant case, discussion on various issues between him and the approving authority happened regularly based on the appraisal reports and seized / impounded materials. Similarly, the approving authority also deposed that all the issues involved in the assessment were regularly discussed since the stage of issuing notice for query letter to the stage of making draft assessment order. The ITAT observed that in the affidavits filed before it, it had been unequivocally stated by the ld. AO and the Additional CIT that all the issues involved in the assessments were discussed on regular basis from time to time between the two authorities and each issue dealt with in the draft assessment order had been examined properly and only thereafter had approval been granted. The Tribunal noted that certain modifications were suggested to the ld. AO in the draft assessment order, which had been carried out by the ld. AO in the assessment order that was passed which also showed that the approving authority approved the draft order, not in a mechanical manner, but after due application of mind. The fact of modification suggested in the order showed that the approving authority had gone through the assessment order and analyzed the issue involved therein. The ITAT, thereafter referred to the decision of the Coordinate Bench in the matter of Pratibha Pipes & Structural's Limited vs. DCIT (supra) and held that the approval was granted by the Addl Commissioner of Income Tax, after due application of mind. Accordingly, the objections raised by the assessee in an additional ground were accordingly rejected. Thus, in view of these judicial precedents and the fact that the said affidavit did not seek to modify the order in any way but was only an assertions by the then Range Head that he had closely involved himself with the assessment proceedings and given the approval after due application of mind, we reject the objections to the assessee against the admission of the said affidavit holding that the decision of the Hon'ble Supreme Court in the case of Mohinder

Singh Gill and Anr vs. Chief Election Commissioner, New Delhi & Ors (supra) has no application to the facts of the present case. We also note that while presenting the said affidavit to the Bench, the ld. DRs had suggested that the concerned officer was available for cross examination in respect of the same but no request was made on behalf of the assessee for this. Neither was any counter affidavit filed by the assessee in opposition to the said affidavit. The officer swearing the affidavit is a responsible former Government Servant who is still bound under the CCS Pension Rules to conduct himself in a manner befitting of a Government Servant and therefore, the sworn testimony of such a person against whom the allegations have been levelled cannot be disregarded as having been made for any reasons other than to clarify the actual position. We further observe that the decision of the co-ordinate Bench in Vrushali Sanjay Shinde (ITA No. 198/MUM/2022) has no application to the facts of this case because in that case the affidavit was sworn by an officer who had no association with the approval process. We also note that none of the averments that have been made in the said affidavit have been disputed by the assessee with any counter affidavit or evidence. The assessee has not been able to demonstrate that the JCIT did not visit Allahabad regularly for monitoring these cases or that no e-mails were exchanged between the then AO and Range head during the assessment process. He has also not been able to point to any instances of failure to apply mind to any submission, fact or legal issue. Thus nothing has been placed before us that would lead us to reject the affidavit and hold that the JCIT had granted the approval 'mechanically' without application of mind to the materials or record. In the case of Chuharmal vs. CIT 172 ITR 250 (SC) the Hon Supreme Court has held that there was a presumption in law, specifically section 114(e) of the Evidence Act that Judicial and Official Acts supposed to be performed in a particular manner had actually been performed in the way they were supposed to be conducted. There could not be presumption of illegality. Therefore, as the assessee has not been able to prove that the JCIT gave the approvals mechanically, while the Department has placed both the guidelines and the uncontroverted affidavit of the

Approving Authority, we are not able to hold the view that the approvals have been rendered mechanically, without reference to the materials or the records.

45. Be that as it may, perusal of the letter seeking approval in respect of the assessee's case and the letter granting the approval under section 153D in respect of the assessee's case reveals that in neither of the two letters have the approvals been solicited for or granted in respect of, 'each assessee' for 'each assessment year'. In fact, it is seen that in his letter dated 26.03.2013 granting the approval for the assessment under section 153D, the ld. JCIT, Central Range, Lucknow has granted approvals in respect of 45 different assessees and in respect of several years assessments together. Due to the fact that we have observed that there exist guidelines which enjoined him to be an active participant in the assessment proceedings right from the stage of receipt of seized material to the preparation of the final show cause notice and directed consultations between him and the ld. AO on all large additions, and in view of affidavit filed by him that before approving the draft assessment orders submitted by the ld. AO regular monitoring and supervision of the assessment proceedings were done by him and therefore he was well acquainted with the facts and findings of the case and furthermore that for the purpose of proper monitoring, he had time and again visited Allahabad to go through the materials as also the submission that draft orders were submitted to him by the ld. AO on email and after going through them, he would return the draft orders with necessary corrections and modifications, we cannot hold that the approval was granted without perusal of the materials on record or understanding the issues involved. But at the same time, it is quite clear that the approval has not been granted in respect of 'each assessee' separately in respect of 'each assessment year' and, as observed by the Hon'ble Allahabad High Court by quoting from the ITAT in the case of Navin Jain vs. DCIT (2021) 91 ITR (Trib) 682 (Lucknow), the provisions of the Act require that each assessment under section 153D in respect of each assessee be approved separately. Thus, the approval granted by the ld. JCIT,

Range, Lucknow is clearly not in accordance with the provisions of the Act and therefore, renders the assessment orders as defective or vitiated.

46. The question that thereafter arises is whether, after observing that the ld. JCIT was involved in the assessment process right since the receipt of seized material till the preparation of the draft assessment order, the failure to give approval in the manner as required under the Act and as laid down by the Hon'ble Allahabad High Court in its orders in the cases of Sh. Siddhartha Gupta, Smt. Sapna Gupta and Sh. Subodh Agarwal, could render the assessment vitiated to the extent that it was required to be annulled. The ld. ARs have drawn our attention to the orders of the ITAT Lucknow Bench in the cases of Sh. Navin Jain and Ors, Sh. Siddhartha Gupta, Smt. Sapna Gupta and Sh. Subodh Agarwal in which after consideration of orders of various Coordinate Benches, the Lucknow Bench of the Tribunal has annulled all these orders on finding them to be without proper approval that vitiated the entire assessment. They have pointed out that the Hon'ble Allahabad High Court has affirmed the orders passed by the Tribunal and therefore, set a binding precedent that we are obliged to follow. On the contrary, the ld. DRs have submitted that the Hon'ble Supreme Court in the case of Guduthur Bros. vs Income-Tax Officer (1960) 40 ITR 298 (SC) had observed that in case an illegality vitiated the proceedings after it was lawfully initiated, the proceedings were to be restored back to the stage at which the illegality occurred and not quashed altogether. They have also pointed that the decision to annul the proceedings in the cases of Sh. Navin Jain, Sh. Siddhartha Gupta, Smt. Sapna Gupta and Sh. Subodh Agarwal had been taken on the assumption and premise that the Range Head was a stranger to the assessment proceedings prior to the submission of the draft assessment order and had the fact of the said CBDT guidelines being brought to the knowledge of the Tribunal at that point of time, the results may have been quite different. They have also argued that the Hon'ble Allahabad High Court has merely upheld the decision of the Tribunal to hold that the approval was mechanically granted on the given facts and circumstances of those cases. It has not passed any

order with regard to what should happen if and when the proceedings were vitiated as a result of an illegality having crept in after a proceeding was validly initiated. Nor had any such matter been argued before the Hon'ble Allahabad High Court, therefore, it could not be said that the Hon'ble Allahabad High Court had pronounced any orders on the said subject that required us to annul the proceedings, if we were of the opinion that the approval granted vitiated the assessment proceedings. The ld. DRs have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors vs. Dhanvanti Devi (1996) 6 SCC 44, wherein the Hon'ble Supreme Court had observed,

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

And further…….

> "It is only the principle laid down in the judgment that is binding law under article 141 of the Constitution. A deliberate judicial decision arrived at after hearing argument on a question which arises in the case or is put in any issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and the circumstances of the case which constitutes its ratio decidendi.
>
> Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent interpretation in the use of precedents……."

47. On consideration of these arguments, we observe that the fact of what should be the fate of an assessment if the approval had not been granted in the manner as envisaged under section 153D, was not a matter argued before the Court and was not a matter on which the Court exercised its mind, even while it held that

it could find no perversity in the decision of the ITAT in holding the assessment to be bad in law, in view of the facts on record. Thus, any assumption that the Hon'ble Allahabad High Court affirmed the principle that if the approval under section 153D was not given in the prescribed manner, it would necessarily lead to annulment of assessment does not automatically emerge from its findings that it could find no perversity in the order of the Tribunal to hold the assessments to be bad in law on account of mechanical approvals, given the facts of those cases. Therefore, in view of our reading of the order of the Hon'ble Allahabad High Court and our understanding of the said order in the light of the decision rendered by the Hon'ble Supreme Court in Union of India & Ors vs. Dhanvanti Devi (supra) we cannot accept the contention raised by the ld. ARs that the Hon'ble High Court has laid down the principle that the orders which are vitiated by improper approval under section 153D must invariably be annulled or that such a principle is binding upon us, particularly when the orders that have been affirmed, have been rendered by the Tribunal without reference to the existence of guidelines for assessments under section 153A to 153D. We are therefore of the view that examination of the question of the fate of the assessment subsequent to it being vitiated on account of an irregular approval, is within the domain of our enquiries.

48. We observe, that the co-ordinate Bench in the case of Navin Jain (supra) has held that the defect of improper approval to be incurable and on this basis has annulled the order of the assessees in that case, which has subsequently been repeated by it in the cases of Siddharth Gupta, Sapna Gupta and Subodh Agarwal. However, we observe that such conclusion was not arrived at after any discussion or reasoning on why the defect was incurable. Accordingly, it is a decision sub silentio, which according to the judgment of the Hon'ble Supreme Court in State of U.P. & Another vs. Synthetics and Chemicals Ltd., (1972) 87 STC 289, cannot be a binding precedent. We have also scoured through the judgments filed by the assessee in his paper book. We noticed that in each and every case where a decision had been taken to annul the assessment, there was a corresponding finding by the

coordinate bench that the approvals had been rendered mechanically and without examination of the materials on record, while there is no such finding in our case. In the circumstances, we feel that the decisions cited by the ld. DRs are of relevance in helping us to resolve this matter. In the case of Gayatri Textiles vs. CIT (2000) 111 taxman 123 (Karnataka), the Hon'ble Karnataka High Court held in a matter relating to penalty u/s 271(1)(c), that where the proceedings were validly initiated and only required prior approval of the IAC for direction for payment of penalty and not for the initiation of proceedings, the failure to obtain approval was a procedural defect and the Tribunal was justified in holding that the failure to obtain previous permission from the IAC was not fatal to the order of penalty passed under section 271(1)(c) and the Tribunal was right to remand the matter back to the Department to pass fresh penalty order. In the case of CIT vs. Vijay Dal Mills (1998) 230 ITR 301 (M.P.), the Hon'ble Madhya Pradesh High Court followed its earlier order in the case of Prabhudayal Amichand vs. CIT (1989) 180 ITR 84 (M.P.) and held that a procedural irregularity not involving the question of jurisdiction can be cured. It held that there could be no doubt that the levy of penalty by the ITO without the previous approval of the IAC was illegal, but the case could go back to the AO for curing the defect by obtaining that prior approval. In the case of CIT vs Damodardas Murarilal (1996) 222 ITR 401 (MP) the Hon High Court held that the procedural irregularity in passing a penalty order without taking the approval of the IAC could be cured by remanding the case to the AO and that such remand would not be affected by the limitations ordinarily prescribed for the levy of penalty. Most importantly, in the case of Guduthur Bros. vs Income-Tax Officer (1960) 40 ITR 298 (SC), the Hon'ble Supreme Court has laid down the principle that a proceeding that is validly initiated cannot be quashed altogether, only because an illegality had vitiated the proceedings after it was lawfully initiated and affirmed the principle that such proceedings were to be restored back to the stage at which the illegality occurred. It could be argued that these decisions have been rendered in the context of penalty orders and not in the context of an assessment under section

153D.However, the moot point is that by virtue of such orders, the Hon'ble Supreme Court has laid down the law and other courts have affirmed it ,that if a proceeding is validly initiated and an illegality creeps into the proceeding after it has been lawfully initiated, the proceedings cannot be held to be *void ab initio* and quashed as such but rather should be restored back to the stage at which the illegality occurred for removal of the said illegality. We also observe from going through the paper books furnished by the assessee and the Revenue that there are narrations within orders therein, which suggest that in several matters relating to approvals u/s 158 BG and 153D, the co-ordinate Benches have either felt that any deficiency in the approval process will not invalidate the assessment or require that the matter should be restored back to the point at which the illegality occurred. The ITAT Delhi Bench 'A' (Special Bench) in Kailash Moudgil vs. DCIT (2000) 72 ITD 97 (Delhi) (SV) held that,

"The approval of the Commissioner without recording any reasons in writing for approving the order would not render the order of the Assessing Officer void ab initio and would not invalidate the assessment order. Assuming without admitting that some infirmity is there, it is curable under law, since the order under section 158BG is made appealable under section 253(1)(b) of the Income Tax Act, in which the assessee is entitled to canvass all the points available to invalidate any part of the assessment and thus the defect if any existing previously would be completely cured.

The Kolkata Bench of the Tribunal in the case of Shaw Wallace & Co. vs. Commissioner of Income Tax (1999) 68 ITD 148 (Kol), observed,

> *"In our opinion the purpose / necessity to take approval u/s 158BG by AO to pass block assessment order appears to be that the CIT should monitor and supervise the assessment of the block period for the reason of this not being a routine assessment but a special assessment being a case of search and seizure and involving a block period of 10 years. It is from this angle that the Board's instruction contained in its circular letter dated 2nd January 1996, directs the CIT to keep themselves involved in search assessments proceedings right from the beginning and for proper monitoring of search cases, internal correspondence folder should be maintained. While*

considering the giving of approval u/s 158BG the CIT may on perusal of record consider some part of the draft assessment order to need a modification or some addition not to be made, and to advise / instruct the AO accordingly. This process may rid the appellate authority of some its exercise. Therefore, even if their appears to be some irregularity in giving approval, the same hardly has any fatal consequence inasmuch as the resultant block assessment order remain very much assailable in appeal before the Tribunal and thus approval hardly entails any material prejudice to the assessee. Such approval, even if laconic in some aspects, will not invalidate / vitiate the order itself. The only understandable impact seems to be that it may necessitate somewhat more exercise at the appellate stage."

It is generally accepted that the provisions of section 158BG are Para Materia to that of section 153D. Thus, the view that a defect in the approval u/s 158 BG would not render the assessment invalid must be considered which deciding the matter of the effect of irregular approval u/s 153D. The Cuttack Bench of the Tribunal, in the case of Gobardhan Matia 62-65/CTK/2013, following the judgment of the Hon'ble Orissa High Court in the case of Shiv Kumar Agarwal 186 ITR 734 (Ori), held,

"Let us now for a moment assume that there has been a violation of section 153D of the Act. The consequence of the same would not be annulment of the assessment order. The provisions of section 153D is an administrative procedure in the course of assessment. The breach of such administrative procedure could at best lead to the assessment proceeding being redone from the point which the breach took place."

49. We further observe that the ITAT Cuttack Bench in the case of Bibhudutta Panda vs. ACIT Corporate Circle-1(2) Bhubneshwar in ITA Nos. 76 to 81/CTK/2022, after holding the approval granted by the Additional CIT as bad in law, have held that the approval under section 153D of the Act is an administrative act and if an administrative act has been prescribed in respect of the statutory documents, such administrative act has to be done in respect of statutory document. Failure of such act or waiver of such act would lead to a statutory document being passed erroneously. Admittedly such a document does not become *void ab initio.* Therefore, following the decision of the Hon'ble Orissa High Court in the case of

PCIT vs. Shiv Kumar Agarwal (supra) and also the decision of the ITAT in the case of Goberdhan Das Matia (supra), as the irregularity in the assessment proceedings has taken place when the final assessment order has been passed without obtaining the approval of the Additional CIT, it deemed it appropriate to restore the matter to the point before the passing of the impugned assessment order to obtain the approval of the Additional CIT and then to proceed therefrom in accordance with law.

50. Accordingly, in view of our findings that the Range Head was bound by the guidelines issued by the CBDT on 22.11.2006, to associate himself with the assessment process right from the inception of the seized material to the preparation of the draft assessment order and considering that he had filed an affidavit where he rebutted the allegations made against him by the assessee that he had not applied his mind to the facts of the case, it could not be said that the Range Head had granted the approvals under section 153D in a mechanical manner without reference to the materials on record or the facts of the case. However, considering that the approvals had not been granted in respect of each assessment year and in respect of each assessee as envisaged under the act and as pointed out by the Hon'ble Allahabad High Court and the Lucknow Bench of the Tribunal in its various orders referred to earlier, we hold that the resultant orders under section 153A are defective on this account. However, after considering the judgment of the Hon'ble Supreme Court in the case of Guduthur Bros. vs Income-Tax Officer (supra), the decisions of the Karnataka and Madhya Pradesh High Courts ,as cited above, on the impact of erroneous and deficient approvals , the decision of the Special Bench of the Tribunal in the cases of Kailash Moudgil vs. DCIT (supra),the Kolkata bench in the case of Shaw Wallace & Co. vs. ACIT (supra)and the Cuttack Bench in the cases of Gobardhan Matia & Bibhudutt Panda (supra), we deem it appropriate to restore all these matters back to the file of the Assessing Officer for seeking fresh approvals from the Range Head , in accordance with law. Accordingly, the Additional grounds of appeal preferred by the assessee are partly allowed. Further , in the case of Ramji

Vaish, those grounds in the original grounds that relate to the approvals under section 153D are also held to be partly allowed.

51. Since the additional grounds of appeal have been partly allowed and the matters stand restored to the file of the ld. AO for seeking therefore, approvals from the Range head in accordance with law, the challenge to the orders of the ld. CIT(A) on the merits of the additions and on other issues are rendered infructuous and do not survive anymore. Accordingly, all the original grounds raised by the assessee barring those that relate to the issue of approvals under section 153D, in ITA Nos. 36, 37,38,101,125,126 & 127/ALLD/2023 are dismissed as infructuous and all the aforesaid appeals are held to be partly allowed.

52. In view of our findings in the case of Sh. Ramji Vaish and in view of the fact that the additional grounds of appeal in the case of Sh. Subhash Stone Products are on the same set of issues, the additional grounds are held to be partly allowed and all the assessments in ITA Nos. 105, 106, 107 & 108/ALLD/2019 are restored to the file of the Assessing Officer for obtaining fresh approvals from the Range head in accordance with law. Accordingly, since the matters stand restored to the file of the Assessing Officer, the original grounds of appeal in ITA Nos. 105, 106, 107 & 108/ALLD/2019 are all rendered infructuous and dismissed as such. These appeals are accordingly held to be partly allowed.

53. Furthermore, in view of our findings in the case of Sh. Ramji Vaish and after considering that the issues involved in the additional grounds in the case of M/s Vijay Stone Products are identical in nature, the said additional grounds are partly allowed and the assessments in ITA Nos.30,31,32,33/ALLD/2019 are restored to the file of the Assessing Officer for seeking fresh approvals from the Range head in accordance with law. Since the matters stand restored to the file of the Assessing Officer, the original grounds against the orders of the ld. CIT(A) in the aforesaid appeals as also in ITA numbers 64 & 65 /Alld/2019 filed by the Department and in the Co numbers 5 & 6/Alld/2019 arising out of these appeals are also are rendered

infructuous and are dismissed as such. Thus the appeals in ITA Nos.30,31,32,33, /ALLD/2019 are held to be partly allowed while the Departmental appeals in ITA numbers 64/Alld/2019 and 65/Alld/2019 and the corresponding cross objections 5 & 6 are dismissed as infructuous.

54. In view of our findings in the case of Sh. Ramji Vaish and in view of the fact that the additional grounds are on identical issues, the additional grounds in ITA Nos. 24 & 25/ALLD/2019 in the case of Jai Maa Sharda service station are held to be partly allowed and the assessments are restored to the file of the Assessing Officer for obtaining fresh approval from the Range head in accordance with law. Accordingly, since the assessments stand restored to the file of the Assessing Officer for the said purpose, the original grounds against the orders of the ld. CIT(A) are rendered infructuous and are accordingly dismissed as such. Therefore, the aforesaid appeals are held to be partly allowed.

55. In the result, all the appeals filed by the assessees are held to be partly allowed as above, while the Departmental appeals in the matter of Vijay Stone Products and the cross objection against the same are dismissed.

56. Order pronounced on 31.10.2025 under Rule 34(4) of the ITAT Rules, 1963.

Sd/-	***Sd/-***
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 31/10/2025
Sh
Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.*