

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB': AGRA**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.337/AGR/2025
(Assessment Year: 2015-16)**

ACIT, Circle 2(1)(1), vs. Shri Vishwambhar Dayal Agarwal,
Agra. 16A, Prabhu Nagar, Jaipur House,
Agra – 282 002 (Uttar Pradesh).
(PAN : AAUPA1985G)

**CO No.04/Agr/2025
(in ITA No.337/AGR/2025)
(Assessment Year: 2015-16)**

Shri Vishwambhar Dayal Agarwal, vs. ACIT, Circle 2(1)(1),
16A, Prabhu Nagar, Jaipur House, Agra.
Agra – 282 002 (Uttar Pradesh).
(PAN : AAUPA1985G)

**ITA No.330/AGR/2025
(Assessment Year: 2015-16)**

Shri Vishwambhar Dayal Agarwal, vs. ACIT, Circle 2(1)(1),
16A, Prabhu Nagar, Jaipur House, Agra.
Agra – 282 002 (Uttar Pradesh).
(PAN : AAUPA1985G)

**ITA No.336/AGR/2025
(Assessment Year: 2015-16)**

ACIT, Circle 2(1)(1), vs. Shri Mayank Agarwal,
Agra. Pushpanjali Palace, Delhi Gate,
Hari Parwat,
Agra – 282 002 (Uttar Pradesh).
(PAN : AEOPA1776K)

CO No.03/Agr/2025
(in ITA No.336/AGR/2025)
(Assessment Year: 2015-16)

Shri Mayank Agarwal,
Pushpanjali Palace, Delhi Gate,
Hari Parwat,
Agra – 282 002 (Uttar Pradesh).
(PAN : AEOPA1776K)

vs.

ACIT, Circle 2(1)(1),
Agra

ITA No.338/AGR/2025
(Assessment Year: 2015-16)

ACIT, Circle 2(1)(1),
Agra.

vs.

Shri Puneet Agarwal,
16A, Prabhu Nagar, Jaipur House,
Agra – 282 002 (Uttar Pradesh).
(PAN : ABHPA0977A)

CO No.05/Agr/2025
(in ITA No.338/AGR/2025)
(Assessment Year: 2015-16)

Shri Puneet Agarwal,
16A, Prabhu Nagar, Jaipur House,
Agra – 282 002 (Uttar Pradesh).
(PAN : ABHPA0977A)
(APPELLANT)

vs.

ACIT, Circle 2(1)(1),
Agra.

(RESPONDENT)

ASSESSEE BY : Shri Sudhir Sehgal, Advocate
Shri Mirdual Pathak, CA

REVENUE BY : Shri Arun Kumar Yadav, CIT DR

Date of Hearing : 15.10.2025

Date of Order : 04.12.2025

ORDER

PER S.RIFAURRAHMAN,AM:

1. The Revenue and assessee (Vishwambhar Dayal Agarwal) has filed the cross appeals against the order of Id. Id. Commissioner of Income-tax (Appeals), Kanpur – 4 dated 09.04.2025 for Assessment Year 2025-16. The assessee, Vishwambhar Dayal Agarwal also filed cross objections against the appeal filed by the Revenue for AY 2015-16.
2. The Revenue has also filed appeals in the cases of Mayank Agarwal and Puneet Aggarwal, sons of Vishwambhar Dayal, against the order of Id. CIT (A), Kanpur – 4 dated 09.04.2025 for AY 2015-16. Both the assesseees have filed the cross objections against the appeals filed by the Revenue.
3. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up ITA No.330/Agr/2025 filed by the assessee, Sh. Vishwambhar Dayal Agarwal as lead case.
4. Brief facts of the case are, the substantive addition had been made in respect of “jewellery” found from the residence and lockers of the joint family, during the course of search conducted on assessee’s residential premises on 15.10.2024 and addition made on the basis of document found from the premises of the company and the cash found from the residential premises of the directors during the course of search. The protective additions have been made by the Assessing Officer in hands of two sons of assessee, namely, Sh.

Mayank Agarwal and Sh. Puneet Aggarwal in respect of jewellery found from the residential premises and from the lockers of the family. Thus, since common facts are involved, for the sake of clarity, the common order is being passed in all the three cases by taking the lead case of Sh. Vishwambhar Dayal bearing ITA No. 330/Agra/2025 and the appeal of the department bearing ITA No. 337/Agra/2025 and Cross Objection No. 04/Agra/2025.

5. A search and seizure operations on 15.10.2024 u/s 132(1) on “Pushpanjali Group” headed by Sh. Vishwambhar Dayal and his sons Sh. Mayank Agarwal and Sh. Puneet Agarwal, during the course of search, some loose papers were found and seized, which indicated some detail of advances given in cash for certain land deals and the loose papers as found during the course of search have been reproduced at page 3 and 4 of the assessment order. Further, it has been mentioned that as per loose documents, Sh. Vishwambhar Dayal had advanced a sum of Rs. 11,03,17,000, Sh. Puneet Agarwal had advanced an amount of Rs. 10,66,01,000/- and Sh. Mayank Agarwal had advanced an amount of Rs. 15,20,06,000/-
6. The AO observed that in the statement recorded u/s 132(4), Sh. V.D. Agarwal had admitted that the advances as per loose documents have been given against the purchases of land and the same were not recorded in the regular books of accounts and surrendered the amount of Rs. 40 crores as undisclosed income for F.Y. 2014-2015 in the hand of Sh. Vishwambhar

Dayal for taxation in the capacity of Managing Director of Pushpanjali Group, Sh. Puneet Agarwal and Sh. Mayank Agarwal. The Assessing Officer has also observed at page 5 of the order that Sh. Puneet Agarwal and Sh. Mayank Agarwal had also agreed to the statement of Sh. V.D. Agarwal, which was duly signed by them.

7. The Assessing Officer has relied upon on such statement of assessee and loose documents as found during the course of search and the letter submitted on the conclusion of date of search on 17.10.2014 at the business premises of company and relied upon the various case laws, made addition of the said advances of Rs.11,03,17,000/- in the hands of Sh. V.D. Agarwal and Rs.10,66,01,000/- in the hands of Sh. Puneet Agarwal and Rs. 15,20,06,000/- in the hands of Sh. Mayank Agarwal.
8. Besides, during the course of search, cash amounting to Rs.45,81,000/- was found, out of which, the assessee admitted during the course of search that a sum of Rs.42 lacs as undisclosed income for Fin. Year 2014-15 and, thus, the said amount of Rs.42 lacs were also surrendered during the course of search and which have been treated as “unexplained income”, accordingly, assessed as income from undisclosed sources.
9. Similarly, the jewellery was found during the course of search to the tune of Rs.1,65,43,114/- and out of which, during the course of search, the jewellery worth Rs.99,31,727/- was offered as undisclosed investment and the same

was added in the hands of Sh. V.D. Agarwal on substantive basis and on protective basis in the hands of Sh. Puneet Agarwal and Sh. Mayank Agarwal.

10. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A), Kanpur and detailed submissions were made by the assessee, which have been reproduced in the impugned order at page 10 to 57 and the ld. CIT(A) has discussed each and every issue from pages 58 onwards and observed as under:-

a). Regarding the unexplained jewellery of Rs.99,31,727/-, for which, the addition have been made in the hands of Shri V.D.Agarwal on substantive basis, it observed by the Ld. CIT(A) that jewellery belongs to the family as a whole and out of the same jewellery had been declared under the VDIS-97 and later on, some jewellery was purchased in same year and altered as well. On basis on evidences, the Ld. CIT(A) held that during the course of search at the residential premises of Shri V.D. Agarwal, the stated the jewellery was totally explained, when his statement was recorded on 16.10.2014, at his residential premises, Ld CIT(A) had noted that the said jewellery was offered under pressure and coercion during the course of recording of his statement at the premises of the company on 17.10.2014 i.e. after the conclusion of search in the case of assessee at his residence on

16.10.2014 and, therefore, the said statement cannot be considered as recorded u/s 132(4).

b). It was further observed by Ld CIT(A) that the statement of assessee after the conclusion of search at his residential premises recorded subsequently on 17.10.2014 at the premises of the company, the assessee had explained the source of jewellery, out of the VDIS, wealth tax returns and copy of the purchase bills and the AO has even accepted the source of silver found during search on the basis of same statement of search and no addition have been made in respect of silver and the CIT(A) also took into consideration at para 6.4.6 of the order various documents submitted before him, the relevant documents are:-

- i). Detailed explanation of jewellery
- ii). Chart showing reconciliation of jewellery
- iii). VDIS certificates
- iv). Valuation report under VDIS, 1997
- v). Bills for purchase and alteration of jewellery
- vi). Valuation report as on 31.03.2007
- vii). Valuation report as on 31.03.2013.
- viii). Wealth tax returns.

c). Ld. CIT(A) further observed that the admission was made by the assessee on 17.10.2014 in the statement recorded at the premises of company, after conclusion of the search at residential premises on 16.10.2014 and post-dated cheques were given at the time of search

were never encashed on the basis of intimation given to the department and the assessee also retracted the above statement subsequently.

- d). The Ld. CIT(A) deleted the addition in respect of family jewellery of Rs.99,31,727/- on the basis of statement u/s 132(4) on 17.10.2014 at the office premises of Pushpanjali Construction Pvt. Ltd. and other Group Companies, which was recorded after conclusion of search on 16.10.2014 in the case of the assessee at the residential premises situated at 15, Prabhu Nagar, Jaipur House, Agra. Further, he held that the assessee was entitled to benefit of CBDT Instruction No.1916, dated 11.05.1994 and on the basis of documentary evidences furnished, the addition of Rs.99,31,729/- was deleted, as made on substantive basis in the hands of Sh. V.D. Agarwal.
- e). With regard to the cash of Rs.42 lacs, the issue has been analyzed by the Ld. CIT(A) in para 6.5/ page 64 of the order and he held that the assessee has failed to explain that the cash was brought from site offices to the residence for security reasons and since the assessee could not satisfactorily explain and support its contention with documentary evidences, the said addition was sustained by the CIT(A).
- f). With regard to the addition of Rs.11,03,17,000/- on the basis of loose documents found from the premises of company as advances for land in respect of assessee and his two sons, for which, the amount of

Rs.36,89,24,000/- was surrendered in the following manner:-

Name of the Person Advance(s)	Page No. of Annexure A22	Amount of unaccounted surrender
Shri Puneet Agarwal	44	10,66,01,000/-
Sh. Mayan Agarwal	45	15,20,06,000/-
Shri Vishwambhar Dayal Agarwal	56	11,03,17,000/-

- g). In this regard, the assessee argued before CIT(A) that, the loose sheets of papers were the computer prints out, but the same cannot be treated as evidence u/s 34 of the Evidence Act and also stated that it was not speaking document, without any corroborated material found during the course of search, the said statement was retracted also. Further it was argued that it was a dumb document but the Ld. CIT(A) held that it cannot be classified as dumb document.
- h). Regarding the assessment proceedings completed u/s 153A/143(3) of the Act, the Ld. CIT(A) reproduced the chronology of events at page 72 of the order as under:-

S.No.	Date	Particulars
1.	15.10.2014	Search was conducted in the residential premises of the assessee at 15 and 16A, Prabhu Nagar, Jaipur House, Agra.
2.	16.10.2014	Search concluded at residential premises of the assessee at 15, Prabhu Nagar, Jaipur House, Agra.

3.	17.10.2014	Search was concluded at Pushpanjali Palace, Hari Parvat, Agra in the case of Pushpanjali Constructions Pvt. Ltd., Pushpanjali Hospital and Research Centre Pvt. Ltd. and PP Buildcon Pvt. Ltd. at Premises Pushpanjali Palace, Delhi Gate, and Agra.
4.	17.10.2014.	Page numbers 44,45 and 46 of Document Lp-22 from 1 to 50 were seized from the search of Pushpanjali Constructions Pvt. Ltd., Pushpanjali Hospital and Research Centre Pvt. Ltd. and P.P. Buildcon Pvt. Ltd. at premises Pushpanjali Palace, Delhi Gate, Agra.
5.	20.07.2015	The case of the assessee was transferred to the DCIT, Central Circle, Agra vide order passed under section 127 of the Income Tax Act, 1961.
6.	17.10.2016	The appellant filed return of income for Assessment Year 2015-16 vide e-filing Acknowledgement No.511576331171016.

- i). It was contended before CIT(A) that the said document was found from the premises of the company and, whereas the search in the case of assessee had concluded on 16.10.2014 as above and the search was concluded at the premises of company on 17.10.2014. A reference was made to sub section (1) of section 153C, which provides that the assessment or reassessment of income of the other person would be in accordance with the provisions of section 153A and also relied upon the judgments of “Supreme Court” in the case that the block period proceedings u/s 153C of the Act has to be computed from the date of receipt of books of accounts or documents by the AO of the non-

searched person and in the present case, the order u/s 127 of the Income Tax Act was passed on 20.07.2015 and the earliest date on which, the AO could have received the documents seized during search conducted on 17.10.2014 in the case of company and, thus, the Assessment year 2016-17, would be an year of search in the case of appellant and, thus, the assessment for the Asstt. Year 2015-16 should have been made u/s 153C. It was further stated by the CIT(A) at page 74 that neither any notice u/s 153C of the Income Tax Act have been issued nor any satisfaction has been contemplated in section 153C of the Income Tax Act 1961 have been issued and nor any satisfaction as contemplated in section 153C of the Act has been recorded and, thus, the assessment have been completed u/s 143(3) of the Act is bad in law. Further, it was stated by the CIT(A) that the addition have been made in the hands of assessee on the basis of documents seized from the premises of offices of three companies and, therefore, it was held that the present assessment is unsustainable in law, illegal, void ab-initio and liable to be quashed, in as much as, the addition on the basis of loose sheet of paper found and seized from the premises of other person viz-a-viz common office of the different companies, cannot be sustained vis-a-vis not the individual office of the assessee.

j). The Ld. CIT(A) has relied upon the various judgments of Jurisdictional

Bench of the ITAT, Lucknow Bench and Other case laws from page 74 of his order, of Delhi High Court at page 76 in the case of CIT (Central) Vs. Anand Kumar Jain HUF and several other case laws, including of Jurisdictional Allahabad High Court in the case of “Sh. Mohan Lal Vs. Union of India (2022) 138 Taxmann.com 292” and given his finding at page 81 and 82 of the order, accordingly held that the order passed u/s 143(3) is not sustainable, hence deleted the addition of Rs.11,03,17,000/-.

k). With regard to Ground of appeal on account of mechanical approval, the Ld. CIT(A) at page 83 of the order, dismissed the grounds of appeal of the assessee.

11. Aggrieved with the above order, both Assessee and Revenue are in appeal before us. First we shall deal with the appeal filed by the assessee wherein assessee has raised the following grounds of appeal :-

“1. That the authorities below have erred in law and on facts in sustaining the assessment order which has been passed without complying with the requirement of law and without taking proper approval of the Ld. JCIT, Central Range Kanpur, under section 153C of the Income Tax Act, 1961, therefore the assessment order is void ab-initio and liable to be quashed.

2. That the authorities below have erred in law and on facts in sustaining the addition of Rs.42,,00,000/- allegedly for unexplained cash found during the course of search ignoring the explanation of cash and its availability, hence the addition needs to be deleted.”

12. At the time of hearing, ld. AR of the assessee submitted as under :-

- i. The facts leading to appeals in this case are that there was search and seizure operations at the residential and business premises of the above assessee and all the above persons are directors in various companies of “Pushpanjali Construction Group” on 15.10.2014 and the following panchnamas were drawn:-
- a). Common Panchnama drawn at residential premises of Sh. Vishambhar Dayal, bearing House No. 15, Prabhu Nagar, Jaipur Housing, Agra, where search was started on 15.10.2014 and it was concluded on 16.10.2014, copy of the Panchnamas is placed at pages 23 to 26 of the ‘Paper Book’.
- b). Common Panchnama of ‘residential premises’ bearing House No. No. 16A, Prabhu Nagar, Jaipur Housing, Agra, where the panchnama was drawn in the name of ‘Sh. Vishambhar Dayal and his sons’, as per copy of the panchnama placed at pages 27 to 30 of the Paper Book. The search was conducted on 15.10.2014 and the search was concluded on 15.10.2014.
- c). The common Panchnama in the names of ‘Pushpanjali Construction Co. Ltd.’ and Other group of companies was also drawn and in that case, the search was conducted on 15.10.2014 and search was concluded on 17.10.2014. Copy of the Panchnama has been placed in the Paper Book at pages 31 to 38.
- ii. The Assessing Officer had made three additions while framing the assessment in the case of Sh. Vishambhar Dayal Agarwal and that is the lead case, being head of the family as under:-

S. No.	Particular	Addition	Relevant of the Assessment order	Page the
1.	Addition on account of Voluntary	11,03,17,000/-	Page 2 to 16	

	surrender during the course of search on the basis of the some 'dumb document', which was further retracted.		
2.	Substantive Addition on account of alleged Unexplained Jewellery. (Protective addition made in the hands of his two sons namely, Sh. Mayank Agarwal and Sh.Puneet Agarwal of the assessee.	99,31,727/-	Page 17 to 18
3.	Addition on account of unexplained cash u/s 68 found during search.	42,00,000/-	Page 15 to 16

13. The Ld. CIT(A) has passed the order and the brief description of the order of CIT(A) is as under:-

- i). The CIT(A) after reproducing the grounds of appeals of the assessee and statement of facts has discussed the brief facts of the case from 'pages 2 to page 5' of his order.
- ii). Thereafter, from page 5 to 10, he has discussed the brief facts of the assessment order.
- iii). Our submissions on additional ground of appeal filed before the CIT(A), have been discussed from pages 11 to 13 of the CIT(A) order.
- iv). Our submissions on additional ground of appeal No.8 with regard to 153D has been reproduced from pages 13 to 23 of the CIT(A) order.
- v). The additional ground of appeal No.9 with regard to 'digital evidence' as found during the course of search and our submissions with regard to that have been reproduced from pages 23 to 29 of the CIT(A) order.
- vi). Our submissions with regard to three unsigned Computer printout has been reproduced from pages 29 to 31 of the CIT(A) order.
- vii). Our additional ground of appeal with regard to Ground No. 10 & 2 with regard to 153C, compliance viz-a-viz 153A has been reproduced

from pages 31 to 46 with case laws and other facts starting from pages 38 to 46 of the CIT(A) order.

viii). Our submissions on account of Gold Jewellery as found and seized during the course of search as per Ground No.3 has been reproduced at pages 46 to 51 of the CIT(A) order.

ix). Our submissions on account of Ground of Appeal No.4 with regard to cash have been reproduced from pages 51 to 52 of the CIT(A) order.

x). Our submissions with regard to non-applicability of statement recorded during search having no evidentiary value has been reproduced at pages 53 to 57 of the CIT(A) order.

14. With this background, each of the ground of appeal in ITA No. 330Agra/2025 is being discussed as under:-

i). The first ground of appeal relates to 'mechanical approval' as granted by the JCIT, (Central), Range, Kanpur u/s 153D and, therefore, the assessment proceedings in this case are void ab-intio and liable to be quashed.

ii). It is submitted, that the Assessing Officer of the assessee is based at Agra and the JCIT (Central) Range is from Kanpur, which is more than 400 KMs away. Letter of the Assessing Officer for the permission was sent by AO by way of letter, dated 28.12.2016 and that approval was sought in respect of number of assessees, as is evident from pages 14 to 16 of the order of CIT(A) and approval were sought for in 98 cases by the AO and the approval was granted on the same day i.e. on 28.12.2016 and the assessment order was passed by the Assessing officer on 28.12.2016 itself. Thus, the finding of CIT(A) in dismissing this ground of appeal as per para 6.23, page

83 of the order is void ab-initio. Further, by way of one letter alone, the approval has been granted in large number of cases besides the group cases of the assessee and this is not permitted based on the number of case laws and for that, the reliance is being placed on the judgment of the Delhi Bench of ITAT, in the case of M/s Pushpanjali Construction Co. Ltd., a group concern, in ITA No. 1001/Del/2025, for which, the copy of the order is placed at pages 1 to 50 of the 'judgment set' and this issue has been discussed in that judgment in para 24 to 28, from pages 39 to 47 of the said judgment.

iii). Similar, is the case of Chandigarh Bench of the ITAT in the case of 'M/s AB Alcobev Pvt. Ltd.' in ITA No. 356/Chd/2024, for which, the copy has been placed at pages 51 to 126 of the said judgment and this issue has been discussed threadbare, from para 11, page 60 to 73 of the Judgement Set. Thus, relying upon the above said binding judgments of Apex Court and Jurisdictional High Court and Other High Courts and different Benches of the ITAT, the assessment as framed by the Assessing officer deserves to be quashed.

iv). **The 2nd ground in assessee's appeal is with regard to sustaining of addition of Rs. 42 lacs as 'unexplained cash' found during the course of search:-**

a). During the course of search, cash of Rs. 45,81,000/- was found from the residential premises bearing House No.15 and out of which, cash of Rs. 42 lacs was seized. During the course of search at the residential premises on 15.10.2014, the assessee had stated that cash, as found, from the residence to the tune of Rs. 45.81 lacs was of different companies, in which, there is substantial cash in hand in the books of accounts of the said Companies.

b). Kindly refer to relevant part of the statement of the assessee at Paper Book page 40, question No.7 and moreover, the assessee further clarified in

answer to Question No.8, and again stressed in answer to query of the Authorized Officer, that why the cash has been kept at home, he answered that the group is dealing in real estate, where the transactions are both, by way of cash and cheque and since in the office premises, there is always a chance of theft and burglary and the cash was brought at home for safe custody.

c). He further stated in answer to question No.9 that the cash is of different group concerns, though, more questions were put to the assessee as is evident from pages 40 to 43 of the Paper Book and the assessee categorically stated that there was sufficient cash in hand in the case of 'Pushpanjali Research Centre' and on 14.10.2014, the closing cash in hand was Rs. 65,29,177/- in the books of the company namely 'Pushpanjali Hospital & Research Centre. He also clarified that out of above part of the cash was deposited to the tune of Rs. 23.24 lakhs in the Bank account as per page 43 of the Paper Book and same was stated by Accountant as per page 51 of the Paper Book. The assessee also stated during search that the cash belongs to various companies of the group, which had been part of the cash lying at home. Please refer to statement of assessee at page 43, in answer to Question No. 12.

v). Similarly, there was a statement of one Sh. Sunil Kumar Mishra, Accountant of the group during search on 15.10.2014, copy has been placed at pages 46 to 52 of the 'Paper Book' and at page 51, he has categorically stated about the closing balance of cash as Rs. 67,68,770/ as per page 51 of the paper book. He is also stated that for the security reasons, the cash was set at Home of the directors and he also stated, some cash was deposited to the tune of Rs.23.24 lakhs on 15.10.2014 and, thus, the cash as found is totally explained.

vi). Thus, from the above said facts, it is very clear that nothing adverse was stated both by the assessee and Accountant at different places, in as much as, whereas the assessee has confirmed the same at the 'residential premises' about cash on 15.10.2014 and the Accountant had also confirmed the same at the business premises of assessee on 15.10.2014. It is further worthwhile to mention here that the search was concluded at the residential premises on 15.10.2014 and 16.10.2014, as per copies of the Panchnamas placed at pages 26 to 38 of the Paper Book and, no adverse view needed to be drawn by the CIT (A).

vii). However, the search was continuing at the business premises of the 'Pushpanjali Group' and it was concluded on 17.10.2014 and the assessee was called at the said premises to his statement on 17.10.2014, for which, the copy is placed at pages 53 to 68, consisting of 16 pages, wherein, he was asked various questions relating to seized documents and other detail of his bank accounts and many other issues were clarified. Then due to pressure and coercion, in reply to question No.25 at page 64 of the Paper Book, offered a sum of Rs. 42 lacs during search as undisclosed income of the current financial year.

viii). Thus, this answer to Question No.25. if read, with statement recorded during search at his residence and the statement of the Accountant, clearly proves that the cash was accounted for in the books of accounts of the group companies and the books of accounts have been seized during search and, thus, the offer of cash as seized during the course of search was definitely, under pressure and coercion, as it can be expected from a person, who had been subjected to search since 15.10.2014 to 16.10.2014 and then on 17.10.2014 at the business premises, he succumbed under pressure and offered a sum of Rs. 42 lacs in respect of cash, though, there is documentary evidence of the cash as per books of accounts of the group companies.

ix). It is submitted that reference may be made to the two Board Circulars, dated 10.03.202003 and 18.12.2014, which been placed at pages 169 to 172 of the 'Judgement Set', wherein, it has been mentioned that during search and seizure, focus should be on the gathering of evidences and it has been mentioned in that circular that Officer should strictly avoid obtaining of undisclosed income under coercion/undue influence since confession during search operation do not serve any useful purpose. Following further points needs to brought in your consideration:-

- a). There is a detailed statement of the assessee at the residence on 15.10.2014, about the cash in hands as per books of accounts of the company and reason of keeping the cash at home was explained both by the assessee and the Accountant as stated above.
- b). Even, there is a statement of the Accountant as stated above and the cash in hand as stated by the director and Accountant, there was more than sufficient cash in hand as per books of accounts of the group companies.
- c). Relevant extract of the cash book was also filed during the course of assessment proceedings for the year under consideration and enclosed at pages 126 to 127 of the Paper Book.
- d). No discrepancy in such cash book was found, which has been seized during the course of search or any omission or error have been noticed therein.
- e). All the entries are as per regular books of accounts and on the basis of which, final accounts have been drawn and assessment framed without any adverse conclusion. Copy of the assessment is being filed.
- f). The cash book has been seized during the course of search and these are audited books of accounts.

- g). The books of accounts of the assessee company have not been rejected u/s 145(3).
- h). No other expenditure of cash or any outgoing has been noticed during the course of search and later on, by the Assessing Officer during assessment proceedings and books of accounts have been accepted of the company.
- i). Now question arises that when each and everything has been explained in detail for two days and the search was concluded on 15.10.2015 and 16.10.2014 at the residential premises, then why the assessee would offer accounted for cash in hand, as unaccounted and the only answer is that the assessee was tired/depressed and under pressure and coercion and even in the custody of departmental Officers for three days, he offered the same.
- k). It is submitted firstly, that there is no evidentiary value of the statement recorded during search, which is evident from the Judgment of Apex Court in the case of CIT Vs Mantri Share Brokers Pvt. Ltd. reported in 96 taxmann.com 280, dated 3.7.2018, in which, it was held as under:-
- “...High Court in the impugned order held that where except statement of director of Assessee company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document in any other form to justify said statement, addition made on the said income in hands of Assessee under section 69B was to be deleted -Whether SLP against said decision was dismissed -Held, yes”.
- l). The said judgment has been followed by the Hon'ble Chandigarh Bench of the ITAT in the case of Jagbir Singh Nehra in ITA No. 687/Chd/2023, order dated 11.06.2024 ,placed at pages 317 to 327, in

which, by relying upon number of case laws, it has been held that no addition could be made only on the basis of statement recorded during search besides other judgments have been quoted therein.

- m). Further, there is no corroborated evidence was found during the course of search that the cash of Rs. 42 lacs was unaccounted and rather on the contrary, there is evidence that the cash was accounted for, duly reflected in the books of accounts of the company and since the Ld. Assessing Officer and CIT(A) could not find any evidence against the assessee, they have just dismissed the ground of appeal of the assessee without assigning any reason in a summary manner and it is contrary to the well settled law. Further, we rely on the judgment of Chandigarh Bench of the ITAT in the case of Atop Fastners Pvt. Ltd., copy placed at pages 173 to 256 of the Judgement Set, wherein, surrender was made and it was retracted only during the course of assessment proceedings when, it was noticed that the assessee had not declared the surrendered income and the Hon'ble Bench, after discussing the plethora of case laws and after analyzing number of judgments starting from page 203 of the Judgement Set have held that only on the basis of statement, no addition could be made. Reliance is being placed in the observation from the judgment at page 204, wherein, it has been held that, it was obligatory on the part of the Assessing Officer to substantially corroborate the same by other independent and cogent evidences in support of the facts so claimed by him.
- n). Similarly, number of case laws have been discussed at page 207 onwards and particularly, the judgment of Supreme Court in the case of Pullangode Rubber Produce Co. Ltd. Vs State of Kerala &Anr, reported in 9 ITR 18. In which, it has been held as under:-

“An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.”

- o). Similarly, we rely upon on number of judgments as discussed in this judgment and the finding of the Hon’ble Bench in the said case starts from para 54, page 230 and then by relying upon the ‘Board Circular’ and the case laws, it was held that no addition could be made on the basis of surrender made by the assessee during search without any corroborative evidence.
- p). Similarly, reliance is being placed on the judgment of Hon’ble Agra Bench in the case in the case of ACIT Vs M/s Maya Trading Co. in ITA No.31/Agra/2012, copy placed at pages 257 to 276 of the Judgement Set and again on the judgment of Hon’ble Punjab & Haryana High Court in the case of Krishan Lal Shiv Chand Rai Vs CIT, reported in 88 ITR 293, copy placed at pages 277 to 281 of the judgment. Thus, when the assessee had discharged the onus on the basis of documentary evidence during the course of search itself and there was sufficient cash in hand in the books of accounts of the assessee company, there was no reason to confirm the addition by the CIT(A). It is a settled law that, when the documentary evidences are pitted against the oral evidence, then the cause of documentary evidence shall always prevail as per judgment of Apex Court in the case of Daulat Ram Rawat Mull, reported in 87 ITR 349. Thus, the said addition of Rs. 42 lacs deserves to be deleted.

15. Ld AR had made detailed submissions on the issue of retraction as under :-

- i). It is submitted that, though, the assessee had retracted the surrender made in the sense that while filing the return of income for Asstt. Year 2015-16, nothing was declared in the return of income as an additional income since no payment of taxes were made on account of amount offered under pressure and coercion.
- ii). Further, even the post-dated cheques, which were taken by department on account of above said uncalled for surrender were not presented by the department, since we had conveyed to the departmental officials that the surrender was made under pressure and coercion and without any evidence on record and, thus, it was communicated to the department during post search Investigation and i.e. no cheques were presented in our bank account for encashment.
- iii). Further, it is submitted that as per the judgment of 'Apex Court' in the case of 'Pullangode Rubber Produce Co. Ltd. Vs State of Kerala' as cited above, it has been held that admission is not conclusive and the person, who made the admission can say it to be incorrect.
- iv) We have stated during the course of search, repeatedly that for safety purpose, the cash in hand of different companies is kept at home and the same was confirmed by both the Accountant and assessee that the cash in hands of the group companies was lying at home and in the

case of company, the assessment has been framed without drawing any adverse inference against the assessee. Further, the books of accounts of the company have not been rejected u/s 145(3) and, thus, the above are documentary evidences cannot be brushed aside and, thus, from the above, we had demonstrated that the surrender was made on the basis of incorrect facts as the books of accounts of the said company were seized, where there is sufficient cash in hand as stated by the assessee and the accounting during search.

- (v) Your goodself's attention is invited to the relevant page of the statement, where the assessee on the last day of the search at the company's premises in one line, was made to offer without any basis under pressure as the search was continuing for the last three days and there was no basis of making that incorrect surrender, except that it was made under pressure and coercion.
- (vi) It is like a case that if the tax rate is 30%, the assessee cannot be asked to agree to tax at 50% or less than that, because the search assessment has to be framed on the basis of evidence found during the course of search and not on the basis of statement for which, no corroborative evidence have been found. The law on such retraction is well settled

as per judgment at Serial No. 7, 8, 9 and 10, coupled with the 'Board Circulars' as cited above and the Board circulars are binding upon on all the Officers and officials of the department, that the assessment has to be framed on the basis of document seized during the course of search.

- (vii) It was further submitted that in the statement, which was concluded on 16.10.2010, but at the Paper Book, wherein, each and everything had been explained, but then in the last paragraph, without any reason, the adhoc surrender was made, which is contrary to the facts on record and since we have proved that the cash in hand and other items were as per documentary evidences and, as such, the addition could not be made only on surrender, without there being any corroborative evidence and further, there are no witnesses to said statement as is evident from page 45 of the Paper Book.

16. On the other hand, Ld DR submitted that the assessee had willingly surrendered the cash seized during the search. He opposed the submissions of the Ld AR on the issue of retraction, he submitted that it is only after thought since the return of income was filed after 2 years. In the retraction, the assessee had raised vague reasons. In this regard, he relied on the findings of

Ld CIT(A). With regard to issue of common approval u/s 153D of the Act, he submitted that it is administrative matter wherein there is continuous proceeding with range head and the assessing officer. The range head will regularly supervise the proceedings. He defended the approval process by submitting that it is not illegal, further, there is no prejudice caused to the assessee. Therefore, he relied on the findings of Ld CIT(A).

17. Considered the rival submissions and material placed on record. With regard to ground no.1 raised by the assessee on the issue of approval u/s 153D of the Act, we observed that the AO had taken common approval as under:

Viswambhar Dayal Agarwal A.Y. 2015-16
CIT (A) IV/KNP/11450/DCIT CC/Agra/2016-17

Government of India
Office of the
Joint Commissioner of Income
Tax (Central Range), Kanpur



7/81-B, Ground Floor
Titik Nagar, Kanpur-208002
Phone & Fax: 0512-2550079
0512-2548611

F No ICIT (CR)/KNP/Approval u/s 153D/2016-17

Dated: 28/12/2016

To,

The Asstt. Commissioner of Income Tax,
Central Circle-Agra

Sub: Approval U/s 153D for the assessment proceedings completed u/s 153A/153B of the IT Act 1961 - reg.

Please refer to your letters bearing F.No. ACIT/CC/Approval/2016-17/dated 28.12.2016 alongwith which case records pertaining to the cases as detailed in the said letter seeking approval U/s 153D of the Income Tax Act, 1961.

02 The approval u/s-153D of the Income Tax Act, 1961 is accorded in the following cases:

S No	Name of the assessee	PAN	AY	Case u/s
1	M/s Pushpanjali Constructions(P) Ltd	AAALP9604	2009-10	153A
2	-Do-	-Do-	2010-11	153A
3	-Do-	-Do-	2011-12	153A
4	-Do-	-Do-	2012-13	153A
5	-Do-	-Do-	2013-14	153A
6	-Do-	-Do-	2014-15	153A
7	-Do-	-Do-	2015-16	153A
8	M/s Pushpanjali Hospital & Research Centre(P) Ltd	AACCPS958M	2009-10	153A
9	-Do-	-Do-	2010-11	153A
10	-Do-	-Do-	2011-12	153A
11	-Do-	-Do-	2012-13	153A
12	-Do-	-Do-	2013-14	153A
13	-Do-	-Do-	2014-15	153A
14	-Do-	-Do-	2015-16	153A
15	M/s P.P. Builders(P) Ltd	AAIKP10776	2009-10	153A
16	-Do-	-Do-	2010-11	153A
17	-Do-	-Do-	2011-12	153A
18	-Do-	-Do-	2012-13	153A
19	-Do-	-Do-	2013-14	153A
20	-Do-	-Do-	2014-15	153A
21	-Do-	-Do-	2015-16	153A
22	M/s Krishna Kantha Shelter(P) Ltd	AAACK160L	2009-10	153C
23	-Do-	-Do-	2010-11	153C
24	-Do-	-Do-	2011-12	153C
25	-Do-	-Do-	2012-13	153C
26	-Do-	-Do-	2013-14	153C
27	-Do-	-Do-	2014-15	153C
28	-Do-	-Do-	2015-16	153C
29	M/s P.P.Shelter(P) Ltd	AAALP2004	2009-10	153C

Vishwambhar Dayal Agarwal A.Y. 2015-16
CIT (A)-IV/KNP/11450/DCIT CC/Agra/2016-17

30	-Do-				
31	-Do-		-Do-	2010-11	153C
32	-Do-		-Do-	2011-12	153C
33	-Do-		-Do-	2012-13	153C
34	-Do-		-Do-	2013-14	153C
35	-Do-		-Do-	2014-15	153C
36	-Do-		-Do-	2015-16	143(3)
37	Shri Vishambhar Dayal Agarwal	AAUPA1985G		2009-10	153A
38	-Do-		-Do-	2010-11	153A
39	-Do-		-Do-	2011-12	153A
40	-Do-		-Do-	2012-13	153A
41	-Do-		-Do-	2013-14	153A
42	-Do-		-Do-	2014-15	153A
43	-Do-		-Do-	2015-16	143(3)
44	Shri Pineet Agarwal	ARHPA0977A		2009-10	153A
45	-Do-		-Do-	2010-11	153A
46	-Do-		-Do-	2011-12	153A
47	-Do-		-Do-	2012-13	153A
48	-Do-		-Do-	2013-14	153A
49	-Do-		-Do-	2014-15	153A
50	-Do-		-Do-	2015-16	143(3)
51	Shri Mayank Agarwal	AEOPA1776K		2009-10	153A
52	-Do-		-Do-	2010-11	153A
53	-Do-		-Do-	2011-12	153A
54	-Do-		-Do-	2012-13	153A
55	-Do-		-Do-	2013-14	153A
56	-Do-		-Do-	2014-15	153A
57	-Do-		-Do-	2015-16	143(3)
58	Smt. Pushpa Agarwal	ABSPB3569L		2009-10	153A
59	-Do-		-Do-	2010-11	153A
60	-Do-		-Do-	2011-12	153A
61	-Do-		-Do-	2012-13	153A
62	-Do-		-Do-	2013-14	153A
63	-Do-		-Do-	2014-15	153A
64	-Do-		-Do-	2015-16	143(3)
65	M/s Ishita Holding(P) Ltd.	AACC11649G		2009-10	153A
66	-Do-		-Do-	2010-11	153A
67	-Do-		-Do-	2011-12	153A
68	-Do-		-Do-	2012-13	153A
69	-Do-		-Do-	2013-14	153A
70	-Do-		-Do-	2014-15	153A
71	-Do-		-Do-	2015-16	143(3)
72	Shri Prakhar Garg	ACJPG8778N		2009-10	153A
73	-Do-		-Do-	2010-11	153A
74	-Do-		-Do-	2011-12	153A
75	-Do-		-Do-	2012-13	153A
76	-Do-		-Do-	2013-14	153A
77	-Do-		-Do-	2014-15	153A
78	-Do-		-Do-	2015-16	143(3)
79	Smt. Asha Garg	ACJPG8779P		2009-10	153A
	-Do-		-Do-	2010-11	153A

Vishwambhar Dayal Agarwal A.Y. 2015-16
CIT (A)-IV/KNP/11450/DCIT CC/Agra/2016-17

80	-Do-	-Do-		
81	-Do-	-Do-	2011-12	153A
82	-Do-	-Do-	2012-13	153A
83	-Do-	-Do-	2013-14	153A
84	-Do-	-Do-	2014-15	153A
85	Shri S.C.Garg	-Do-	2015-16	143(3)
86	-Do-	ADUPG9614M	2009-10	153A
87	-Do-	-Do-	2010-11	153A
88	-Do-	-Do-	2011-12	153A
89	-Do-	-Do-	2012-13	153A
90	-Do-	-Do-	2013-14	153A
91	-Do-	-Do-	2014-15	153A
92	Shri Praveen Agarwal	-Do-	2015-16	143(3)
93	-Do-	ADUPA7337H	2009-10	153C
94	-Do-	-Do-	2010-11	153C
95	-Do-	-Do-	2011-12	153C
96	-Do-	-Do-	2012-13	153C
97	-Do-	-Do-	2013-14	153C
98	-Do-	-Do-	2014-15	153C
			2015-16	143(3)

03. A copy of the final order issued in the above cases should be sent to this office for record.

Encl: Case records.

(Signature)
(Tanvir Roshan Rahman)
Joint Commissioner of Income Tax
(Central Range), Kanpur

18. We observe that Assessing Officer of the assessee is based at Agra and the JCIT (Central), Range is from Kanpur, which is more than 400 KMs away. Further we observe that the letter of the Assessing Officer for the permission was sent by AO by way of letter, dated 28.12.2016 and that approval was sought in respect of number of assesseees and approval was sought for in 98 cases by the AO and the approval was granted on the same day i.e. on 28.12.2016 and the assessment order was passed by the Assessing officer on

28.12.2016 itself. We observe that it is not possible to get the permissions and approval on the same date. Thus, we observe that the finding of CIT(A) in dismissing this ground of appeal as per para 6.23, page 83 of the order is void ab-initio. Further, by way of one letter alone, the approval has been granted in large number of cases besides the group cases of the assessee and this is not permitted based on the number of case laws. We have also especially perused the approval granted u/s. 153D of the Act and the case laws cited by the ld. AR in the paper book and also at the time of hearing.

19. We find that Hon'ble jurisdictional Allahabad High Court in the case of PCIT Central vs. Siddharth Gupta (supra) has decided the similar legal issue in favour of the assessee and against the Revenue, which was upheld by Hon'ble Supreme Court in SLP (Civil) (supra) and Hon'ble High Court held as under :-

“The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement

of approval under [Section 153D](#) is pre-requisite to pass an order of assessment or re-assessment.

[Section 153D](#) requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of [Section 153A](#) which provides for assessment in case of search under [Section 132](#). [Section 153A\(1\)\(a\)](#) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in Clause (b) of sub-section (1) of [Section 153A](#). The proviso to [Section 153A](#) further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

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

20. We further find that Hon'ble Delhi High Court in the case of PCIT vs. Shiv Kumar Nayyar (supra) has decided the similar legal issue in favour of the assessee and against the Revenue. The relevant findings of the Hon'ble Delhi High Court are reproduced as under :-

"15. A similar view was taken by this Court in the case of Anuj Bansal (supra), whereby, it was reiterated that the exercise of powers under [Section 153D](#) cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval under [Section 153D](#) of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

16. In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-

"10. We have gone through the approval granted by the ld. Addl. CIT on 30.12.2018 [u/s 153D](#) of the Act which is enclosed at page 36

of the paper book of the assessee. The said letter clearly states This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order [u/s 153D](#) of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. NeetuNayyar from Central Public Information Officer who is none other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under [Right to Information Act](#), wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval [u/s 153D](#), 14 cases pertained to the assessee herein and Smt. NeetuNayyar. The remaining cases may belong to some other assesseees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, [section 153D](#) provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

17. *Notably, the order of approval dated 30.12.2020 which was produced before us by the learned counsel for the assessee clearly signifies that a single approval has been granted for AYs 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.*

18. *Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through This is a digitally signed order.*

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration.”

21. We also find that ITAT Delhi Bench in the case of M/s Millenium Vinimay (P) Ltd. vs. ACIT, (supra) has dealt the similar legal issue and decided the same in favour of the assessee. The relevant findings of the Coordinate Bench are reproduced as under:-

“15. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) which has been approved by jurisdictional High Court subsequently, reported in 307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held as under:-

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

2. Following question was argued before us for our consideration:

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"

3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007- 08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.

4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks : "To, The DCIT(OSD)1, Mumbai Subject: Approval [u/s 153D](#) of draft order [u/s 143\(3\)](#) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg. Ref: No. DCIT (OSD)1/ CR7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval [u/s 153D](#) on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyze the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted [u/s 153D](#) of the I. T. Act, 1961."

7. In plain terms, the Additional CIT recorded that the draft order for approval under [Section 153D](#) of the Act was submitted only on 31st December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues

arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.

8. *Accordingly, the Tax Appeal is dismissed."*

16. *In the case of [ACIT, Circle-1 \(2\) Vs. Serajuddin and Co.](#) the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval [u/s 153D](#) of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under [section 153D](#) of the Act.*

17. *Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the arguments advanced by the Ld. the Assessee's Representative on the Additional Ground of Appeal. In our considered opinion the approvals so granted under the shelter of [section 153D](#) of the Act does not pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments orders in the captioned appeals are non-est and a nullity and hence the same are quashed.*

18. *In view of prima facie merits found in the legal objections raised in the Addl. Grounds of the Assessee's, we do not consider it expedient to look into the aspects on merits of additions/disallowance as the legal*

objections on sanction granted under [Section 153D](#) of the Act has been answered in favour of the Assessee. Thus the other Grounds raised in the Appeals of the Assessee in both the Appeals have rendered infructuous, which do not need any separate adjudication.

19. *In the result, the Appeals filed by the Assessee in ITA Nos. 294/Del/2022 and ITA No. 295/Del/2022 are allowed.*

11. *Upon considering the entire aspect of the matter, we find that the approval has been granted not separately for each assessment year for the assessee whereas the provision of [Section 153D](#) of the Act stipulates conditions that no order of assessment or reassessment shall be made by an Assessment Officer below the rank of Joint Commissioner in respect of each assessment year referred to in Clause (b) of Sub Section (1) of [Section 153A](#) of the Act or the assessment year referred to in Clause (b) of Sub [Section 153B](#) of the Act except the prior approval of the Joint Commissioner. It further appears from the approval dated 08.06.2018 that the same was a common and composite order whereas the Addl. Commissioner is required to verify and approve that each of assessment year is complied with as well as procedural laid down under the Act.*

Such fact clearly reveals non-application of mind on the part of the Learned Addl. Commissioner of Income Tax, Central Range-7, New Delhi. Thus granting approval for all the common years instead of approval under [Section 153B](#) for each assessment year separately de hors the rules. The said approval is found to have been given in a mechanical and routine manner. We find that the order issuing authority has not discharged its statutory duties cast upon him even by assigning cogent reasons in respect of the issues involved in the matter. Thus granting approval in the absence of due application of independent mind to the material on record for each assessment year in respect of the assessee's case separately vitiates the entire proceedings; the same is found to be arbitrary and erroneous and therefore, liable to be quashed. We are also inspired by the [ratio laid down in](#) the Judgment narrated hereinabove passed by the Hon'ble Jurisdictional High Court and respectfully relying upon the same with the above observation, we quash the entire proceeding initiated under [Section 153C](#) r.w.s [153A of the Act](#) in the absence of a valid approval granted by the Learned Additional Commissioner of Income Tax, Central Range-7, New Delhi.

12. *In the result, appeal of the assessee is allowed.”*

22. Respectfully following the above precedents, we quash the entire proceedings initiated under section 153C r.w.s. 143(3) of the Act in the absence of a valid approval granted by the Ld. JCIT, Central Range, Meerut and ground no.1 of assessee's appeal is allowed.
23. With regard to ground no.2, we observed that common panchnama was drawn in the cases of the assessee, his sons and group companies dated 15.10.2014 and it was concluded in the case of assessee and his sons on 16.10.2014 whereas the search was concluded in the case of group companies on 17.10.2014. The cash was found at the residence place of the assessee, it was admitted by the assessee that this cash belonged to the group companies, the same was confronted with the accountant of the companies, who had also confirmed the same. It was submitted that the cash was kept with the assessee for security reasons. We observed that while concluding the search in the case of group companies on 17.10.2014, the assessee had voluntarily (allegedly) agreed to declare the above said amount as his additional income, it is relevant to notice that the cash was found at the residence of the assessee and the search was concluded on 16.10.2014 without the above said addition while concluding the proceedings. No discussion was recorded with regard to the above cash. However, only while concluding the search proceedings in the case of group companies on 17.10.2014, a formal declaration (preprinted)

was signed by the assessee with the agreement that he will declare the same as additional income, apparently it looks like the same was declared voluntarily. But the Ld DR could not substantiate the reason for making the assessee to agree the said cash as additional income of the assessee when the same issue was confronted to the accountant, who had submitted on oath that the cash belongs to the companies, it was kept at the residence of the assessee for security reasons. Since the ownership of the cash was established that it belongs to the companies, the same should have been made addition in the hands of the companies if the companies fail to substantiate the same. Since the cash was found at the residence of the assessee the same was not confirmed by the assessee while closing the proceedings of the assessee on 16.10.2014, whereas the same was accepted by the assessee on 17.10.2014, raised certain doubt, may be it might have been compromised for peace of mind, it is not clear from the records. Even the assessee had retracted the statement after 2 years and return of income was filed on 17.10.2016 and the assessee had retracted the surrender made during the search while filing the return of income for the impugned assessment year. However, we observed that the cash found during the search was declared as belonging to the group companies and the relevant cash book was submitted before AO to substantiate the above submissions. Since, the assessee had surrendered the same after conclusion of the search in his case and only during the conclusion

of proceedings in the case of group companies makes us believe the stance of the assessee. We do not know on what purpose the assessee had surrendered the above-said amount however, the circumstantial evidence proves that this amount does not belong to the assessee. Merely on the basis of surrender during the conclusion of the search proceedings in the case of group companies on 17.10.2014, wherein the assessee had accepted to declare the same as his income makes us believe that the assessee had declared the same under pressure or may be to buy peace. The various decisions of courts have held that mere admission is not enough but the AO had to bring on record the corresponding evidences to substantiate the material found during the search. In this case, the cash found during the search was matching with the cash balance declared by the group companies in their financial statements. Therefore, there is merit in the claim of the assessee. Therefore, we are inclined to allow ground no 2 raised by the assessee.

24. In the result, appeal filed by the assessee is allowed.
25. With regard to Revenue's appeal being ITA No.337/Agr/2025, the relevant grounds of appeal are as under:

“1) That the CIT(A) has erred on facts and in law in passing the appeal order without appreciating the facts that the case has been decentralized and jurisdiction is with present AO i.e. ACIT, Circle-2(1)(1), Agra and not with the AO of Central Circle, Agra at the time of passing appeal order. On PAN transfer history it is observed that the case has been decentralized way back in 2017. Thus, the order of the

CIT(A) is without jurisdiction as CIT(A)-4, Kanpur does have jurisdiction over the cases of Central Circle/Range only.

2) That the CIT(A) has erred on facts and in law in passing the appeal order which is contradictory in itself as on the one hand it is held that the present assessment order is unsustainable in law, illegal, void ab- initio and liable to be quashed as the addition on the basis of loose sheet of paper found and seized was from the premises of other person viz., the office of companies and on the other hand the addition of Rs.42,00,000/- on account of unexplained cash has been confirmed.

3) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.11,03,17,000/- by holding the assessee as 'other person' in this case, without considering the fact that in the present case, the assessee was a 'searched person' within the meaning of section 153A of the Act, as search under section 132 of the Act was also conducted at the residential premises of the assessee simultaneously and the search warrant was issued -in the name of the assessee. Since, the loose sheet of paper found and seized from the office of the companies belongs/pertains/relates to a 'searched person' and not 'other person', therefore, the Assessing Officer has rightly made the assessment under section 143(3) of the Act (not u/s 153A).

4) That the CIT(A) has erred on facts and in law in not appreciating the fact that present assessment is made u/s 143(3) as it is Current " Year/Search Year. The question of applicability of section 153C does not arise as 153C is applicable only to preceding assessment years. Even considering the date of handing over i.e. 20.07.2015 as date of search, provisions of section 143(3) are applicable and not 153C. Reliance placed by Ld. CIT(A) on the decision of Hon'ble Supreme Court in CIT v. Jasjit Singh (S.L.P.(C) No. 6644 of 2016) is misplaced as it is distinguishable on facts, as it pertains to the period for which the assessee is required to file the return u/ s 153C of the Act.

5) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.11,03,17,000/- made by the AO without appreciating the fact that statement has never been retracted. As per appeal order retraction was made on 18.10.2016; which is after two years of making voluntary disclosure on 17.10.2014. Retraction of surrender which if not made within reasonable time frame, cannot be considered as retraction. Reliance is placed on following judicial decisions:

- i) PCIT(C)-2 Delhi vs. Avinash Kumar Setia (ITA 935/ 2016) (Delhi) (HC)
- ii) CIT vs. MAC Public Charitable Trust (2022) 450 ITR 368 (Mad) (HC)
- iii) Bachittar Singh vs. CIT 2010 (AIR 328ITR400)(P&H HC)
- iv) Roshan Lal Sanchiti vs PC IT 2023 452ITR229 (SC)

Further, surrender is also based on incriminating material, which has been found and seized from a premise covered under search. Non deposit of post dated cheques does not tantamount to retraction of surrender.

6) That the CIT(A) has erred on facts and in law in deleting the addition, amounting to Rs. 99,31,727/-completely ignoring the fact that the assessee has not substantiated his claim that the jewellery found and seized during the course of search was continuously held since 1997, and no Wealth Tax Returns were filed by the assessee from the year 1997 onwards. The assessee had only filed the Wealth Tax Return for AY 2014-15 belatedly on 31.03.2016, i.e., almost 18 months after the date of search, which casts serious doubts on the assessee's claim of continued possession of the jewellery since 1997. If the assessee had actually been in possession of the said jewellery since 1997, the same ought to have been consistently disclosed in the Wealth Tax Returns of subsequent years in which- assessee failed.

7) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.99,31,727/- made by the AO on account of unexplained jewellery without appreciating the fact that the documents filed by the assessee during the appellate proceedings were in the nature of additional evidence u/r 46A of the I.T. Rules. These were not confronted/ provided to the assessing officer for his verification/ comments.

8) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.99,31,727/- made by the AO on account of unexplained jewellery without appreciating the fact that no one to one marking was done by the appellant with VDIS jewellery vis-a-vis jewellery found and seized.

9) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.99,31,727/- made by the AO on account of unexplained jewellery without appreciating the fact that during disclosure made u/ s 132(4) of the LT. Act the assessee admitted that the source of excess jewellery of Rs.99,31,727/-was not explained and it was over and above the jewellery purchased/remade/declared under VDIS 1997.

10) That the CIT(A) has erred on facts and in law in deleting the addition of Rs.99,31,727/ - made by the AO on account of unexplained jewellery without appreciating the fact no documentary evidence of sale/purchase/remaking of this jewellery was found during the search.

11) That the CIT(A) has erred on facts and in law without appreciating the fact that there was never an issue related to section 65B of the Indian Evidence Act as such. The document was found from a premises of a group company and Sh. Vishwambhar Dayal Agarwal in his capacity as Managing Director, has made voluntary disclosure. The assessee has never disputed that the documents were received from that premises. Thus, condition of section 65B of Indian Evidence Act has been fulfilled. There is no legal obligation cast on the AO to fulfill condition of section 658 of the Indian Evidence Act.

12) That the order of the CIT(A) being erroneous in law and on facts deserved to be set-aside and that of the order of the Assessing Officer deserves to be restored.

26. We shall deal with the issues raised by Revenue ground wise as under.
27. At the time of hearing, ld. DR of the Revenue submitted that the relevant grounds out of which Ground Nos.1 to 4 are technical and Ground Nos.7 & 11 relating to issue of additional evidences under Rule 46A and section 65B of the Indian Evidence Act. On merits, he submitted that Ground Nos.5, 6, 8 & 9 & 10 are on merits.

28. With regard to ground no.1 raised by the revenue, Ld. DR submitted that Id. CIT (A) did not appreciate the facts that the case was centralized and jurisdiction is with present Assessing Officer i.e. ACIT, Circle 2(1)(1), Agra and not with the Assessing Officer of the Central Circle, Agra at the time of passing the impugned order. He submitted that PAN transfer history clearly indicate that the case has been decentralized way back in 2017, therefore, the order of the Id. CIT (A) (impugned order) is without jurisdiction as Id. CIT(A)-4, Kanpur does have jurisdiction over the cases of Central Circle/Range.
29. On the other hand, Ld AR submitted as under:
- a). The first ground of appeal relates to the issue that the CIT(A)-4, Kanpur did not have the jurisdiction over the assessee in deciding the appeal and the facts are as under:-
 - i). There was search and seizure operation on 15.10.2014 on the assessee.
 - ii). The case was centralized on 20th of July, 2015 as per page-1 of the order of the Assessing Officer.
 - iii). The assessment was framed by the Assessing Officer, Central Circle, Agra vide order, dated 28.12.2016.
 - iv). The assessee filed appeal before the CIT (A) on 27.01.2017
 - v). The case was decentralized on 13.07.2017.
 - vi). Regarding the jurisdiction issue, this ground is totally misplaced and without any basis and the contention of the department is that, perhaps

the case should have been decided as per 'Faceless Scheme', is not correct as per following submissions:-

- a). Copy of the 'Faceless Scheme' is being enclosed at pages 1 to 5 of Paper Book-I and your goodself attention is invited to Page 5, where, it has been stated that the "search assessments will not fall under the 'Faceless Scheme'".
- b). We had filed the submissions before the CIT(A)-4 (Central) vide our submissions on 15.09.2017 as per copy placed at pages 6 to 7 of the paper book.
- c). Thereafter, our case was transferred to 'National Faceless Appeal Centre' and the notice of hearing was received for 03.03.2021 as per copy placed at pages 8 to 10 of the Paper Book.
- d). We wrote a letter to the 'National Faceless Appeal Centre' mentioning, that since the case has been decided by the Deputy Commissioner of Income Tax (Central) Agra and, thereafter, the jurisdiction of the case would lie with CIT(A)-4, Kanpur as per page 12 of Paper Book.
- e). Again, we wrote a letter on 5th of August 2023 as per page 12 to 13 of the Paper Book. Also, another letter to National Faceless Appeal Centre by way of letter, dated 22.07.2023 as per page 13 of the Paper Book.
- f). Letter was received from Faceless Centre for sending copy of assessment order and Form No.35 as per page 12 to 13, vide letter, dated 4.8.2023. A reply was received from the Delhi Samadhan Faceless Scheme, dated 27.09.2023 that our appeal has been transferred outside Faceless Appeal as is evident as per page 12 of the Paper Book.

- g). Then again, we wrote a letter to the CIT(A)-4, Kanpur that since the appeal has been transferred to your charge, so the case may, please, be fixed as per letter, dated 02.10.2023 as per page 14 of paper book.
- h). The same is document at Serial No. 15 & 16.
- i). Thereafter on 07.10.2024, we received a notice for hearing on 14.10.2024 from the CIT(A)-4, Kanpur followed by another notice, dated 19.02.2025 as per Paper Book pages 17 to 22 and then appeal was decided by the CIT(A) (Central)-4, Kanpur.
30. Considered the rival submissions and material placed on record. We observed that the assessee had submitted the sequence of events leading to the appeal filed before the present Ld CIT(A), it clearly indicate that the matter has been considered by the department and ultimately, they only directed the assessee to proceed with appeal filed with CIT(A)-4, Kanpur, since the direction was decided by the Deputy Commissioner of Income Tax, CC, Agra and, thus, based on the above documents, the ground no 1 raised by the department is deserves to be dismissed.
31. With regard to Ground No.2, ld. DR submitted that the addition is similar to assessee's Ground No.2, we observe that there is no prejudice caused to the Revenue, therefore, this ground of appeal is dismissed.
32. With regard to Ground Nos.3 & 4, ld. DR submitted that ld. CIT (A) has held that the assessment could be made u/s 153C instead of 143(3) of the Act on

the basis that assessee is other person u/s 153C of the Act without considering the fact that in present case, assessee was also a searched person within the meaning of section 153A of the Act and also search was initiated simultaneously in the name of the assessee and group concerns, belongs to searched person i.e. assessee and not falls under the other person as interpreted by the Id. CIT (A). Therefore, he supported the findings of the Assessing Officer that the assessment has to be completed u/s 143(3) not u/s 153C of the Act. Further he submitted that the question of applicability of section 153C does not arise as section 153C is applicable only to preceding assessment years. Even otherwise, considering the date of handing over i.e. 20.07.2015 as date of search, provisions of section 143(3) are applicable and not 153C. He submitted that relying on the decision of CIT vs. Jasjit Singh of Hon'ble Supreme Court is misplaced as the case is distinguishable to the present case. Further he brought to our notice page 23 of the paper book which is the Panchnama in the name of the assessee dated 15.10.2014 and the authorization was dated 09.10.2014 and the search was completed on 16.10.2014. Therefore, he once again supported the completion of assessment u/s 143(3) of the Act.

33. On the other hand, Ld AR submitted that the Ld. CIT(A) has allowed relief by holding that the addition of Rs.11,03,17,000/- should have been considered by the Assessing Officer in the proceedings u/s 153C of the Act

and not in current proceedings u/s 143(3) of the Act as per finding given by the CIT(A) in his order at page 81 to 82, by following the judgments of jurisdictional ITAT and Other judgments of High Court and facts, in brief, of this ground of appeal may, please, be considered viz-a-viz ground No.2 of assessee's Cross Objection.

34. The facts, in brief, are that the search of the premises of the company, M/s Pushpanjali Construction Ltd.' was concluded on 17.10.2014 and whereas the search of the residential premises was concluded on 15.10.2014, and 16.10.2014 as per page 3 of Brief Synopsis.
35. During the course of search at the premises of company, for which, the search was concluded on 17.10.2014, three computer prints out were seized and copies of which have been placed at page 3 to 4 of the assessment order and without making any enquiries, only on the basis of 'retracted statement' of the assessee under pressure and coercion, the addition of different amounts were made in three hands i.e. assessee and his two sons namely Sh. Mayank Agarwal and Sh. Puneet Agarwal.
36. The said facts have been mentioned at Pages 5 to 8 of the order of AO and the statement is only of 'Sh. Vishambhar Dayal Agarwal' and while his two sons has only penned their signatures at page 8, agreeing to the statement of father. Further, the only basis of making the addition is the admission by the assessee, ignoring the retraction made by the assessee and finally, the

addition was made on the basis of retracted statement as per page 16 of the order of AO.

37. The assessee during the course of hearing before the AO filed a letter, dated 15.11.2016, which copy has been placed at 'Paper Book' pages 69 to 72 and stated that there is no basis of making the addition on account of such dumb document and also before the Ld. CIT(A) on merits of the case from pages 29 to 31 of the order contending that such addition could not have been made, just on the basis of retracted statement, which is not justified and also our contention was that, since it was digital data, the compliance to section 65B of the I.T. Act 2002 does not appear to have been made and also in our submissions before the CIT(A), we raised a legal issue that addition on account of this so-called 'dumb document', if at all, could have been made u/s 153C and not in the order passed u/s 143(3) and the Ld. CIT(A), though, had not agreed the fact that this is a dumb document, for which, we are in our cross objection but the CIT (A) has allowed the relief on the legal issue, that such addition could not have been made in the order u/s 143(3).
38. Firstly, on the issue of merit of addition, the reference may be made to the documents as reproduced in the order of Assessing officer, which have been reproduced at pages 3 to 4 of the order and the following arguments may, please, be considered:-

- i). The document as found from the 'computer data' from the company premises after conclusion of search at the residential premises of assessee, for which, warrant was in the name of father and his two sons only and whereas, the Panchnama of the business premises was in the name of group of companies, for which, the search was concluded on 17.10.2014 and the search was concluded in the case of residential premises on 15.10.2014 and 16.10.2014 respectively as stated above, at page 3.
- ii). In the said computer prints out, there is no name of the person, to whom, the alleged advance has been given.
- iii). There is no mention of any property, for which, such amount of advance allegedly have been given.
- iv). There is no description of the property, area for which, the said alleged advance has been given.
- v). There are no signatures of the assessee or his sons on the said documents.
- vi). Neither, there are signatures of the alleged person, who had received the alleged advance.
- vii). Then, if the advance allegedly to have been made to some other person, why the names of the assessee and his two sons have been mentioned there and rather the names should have been mentioned of the persons, to whom, the advance allegedly have been given.
- viii). Further, there can be no reason of mentioning the name of assessee and his two sons and these documents appear to have been prepared at the instance of the department, during the course of search, under pressure and coercion.
- ix). No other corroborative evidence with regard to any investment of such amount have been found during the course of search and nor any

agreement of this nature have either been found during the course of search.

- x). The department has not made any enquiries, whatsoever, on the basis of so-called dumb document, which does not speak anything and merely on the basis 'retracted statement', given under pressure and coercion, the addition have been made.
- xi). Further on the basis of statement recorded during the course of search, no addition can be sustained as per the judgments cited above at page 12 and such statements have no evidentiary value, particularly the retracted statement.
- xii). Though, we had given detailed submissions before the CIT (A) both on the issue of section 65B from pages 23 to 29 of the order of CIT(A) and also on merits, that no clinching evidence was found with respect to giving of any alleged advance in cash for the purchase of any plot and further no description of property, measurement or any other evidence have been found and, thus, it is a dumb document.
- xiii). The Ld. CIT(A) has in a summary manner without going through our submissions has given a finding after discussing the facts of the case from page 65 and given the finding against the assessee on merits in para 6.14 & 6.15 and has confirmed the addition only on the basis of statement of the assessee and we have demonstrated that, how, this paper cannot lead to admission on the part of the assessee and there is no name of the person to whom, the advances have been made and all columns are blank and there cannot be any payment to self and finding of CIT(A), that it is not dumb document is devoid of any valid consideration, specially, when the statement has been retracted and we rely to the above said submissions with regard to the retracted statement.

- xiv). Further, we rely on the judgement of Chandigarh Bench in the case of Sh. Subhash Chander Gupta, copy placed at pages 285 to 316 of the 'judgment set' and in the present case, since that document was found and seized from the premises of the company and, therefore, on the basis of that, no addition could be made in the hands of assessee.
- xv). In the above said case of Sh. Subhash Chander Gupta, there is finding of the Hon'ble Bench at page 308, in para 16, that the assessee cannot said to have any control over other persons, what they do write in their accounts and assessee cannot be charged, to any liability on the basis of writing made by the 'third person' and since the company and directors are independent entities and, thus, the document are also not in the hand writing of the assessee and his two sons and, thus, the whole basis of making the addition is against facts and circumstances of the case and, thus, the finding of the CIT (A), that it is not a dumb document is not proper and correct.
- xvi). As regards the deletion of addition by the Ld. CIT (A) on the legal ground, that since the assessment was made u/s 143(3), which ought to have been made u/s 153C, since the document was found from the premises of company, where the search was concluded on 17.10.2014, the Ld. CIT(A) has given a finding on this issue, starting from page 72 of the order and at page 72, he has given chronology of the events, because when the case was centralized on 29,07.2015 and the appellant being a 'third person' in respect of search conducted on the companies, which was concluded on 17.10.2014, that document being found from another premises, no addition could be made in the hands of the assessee.
- xvii). Further, the first proviso to sub section (1) of section 153, states that in the case of such other person, the reference to the date of initiation of

search, in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of accounts or documents or assets seized by the Assessing Officer, having jurisdiction over such other person.

xviii). We are relying upon the discussion on this issue by the CIT(A) in para 6.19, page 73 to page 74 and he has relied upon on various judgments of Delhi High Court and other judgements of the ITAT at page 74 of the order and the judgment of Sh. Anand Kumar Jain at page 76, to which, facts are 'para materia' with our case and at page 77, another judgment of Delhi Bench of the ITAT, has been relied upon, wherein, it has been held as under:-

“In our considered opinion, when the case of assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party, then provision of section 153C of the Act would be applicable and have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings under section 153A in hand, which were initiated by way of notice, dated 30.06.2014 and thereafter, he was a liberty to take action under section 153C of the Act for brining the material found from the premise of Sh. Ashok Chaudhri to tax in the hands of assessee.”

ix). In the said judgment, the judgement of Jurisdictional 'Delhi High Court' has been followed and many more cases at page 81 of the order, which are being relied upon. Besides that we also rely upon the judgement of the Chandigarh Bench of the ITAT in the case of 'Sh. Subhash Chander Gupta' in ITA No. 765/Chd/2024, placed at pages 285 to 315 of the Judgement Set, wherein, the proceedings were initiated u/s 148 on the basis of document found from 'third party' and it was held following the decision of Hon'ble Supreme

Court in the case of Sh. Vikram Sujit Kumar Bhatia, reported in 453 ITR 417, wherein, it has been held that the amendment in Finance Act 2015, where the legislature has used expression 'pertains or pertain to' in place of 'belongs or belongs to' will have retrospective effect and the issuance of notice u/s 153C is mandatory and the finding on this issue has been given in that judgment in para-9, page 296 of the judgement set and also finding has been given in para 12, page 301 to 303 of the Judgement Set that the assessment ought to have been made u/s 153C and for the purposes of 153C, since the case was centralized on 20.07.2015, the search 'assessment year' would be Asstt. Year 2016-17 as per the Judgment of Hon'ble Supreme Court in the case of 'CIT Vs Jasjit Singh', reported in 155 taxmann.com 155 and it has rightly been followed by the Ld. CIT (A) and, thus, the ground of appeal of the department as per ground No. 3,4, & 5 are liable to be dismissed.

x). As regards the retraction of surrender, we have already stated above that we have also relied upon number of case laws and proved beyond any iota of doubt that the admission through important evidence but it cannot be said that it is conclusive. It is open to the person, who made the admission to show that it is incorrect as per case of Apex Court reported in 91 ITR 18.

39. Considered the rival submissions and material placed on record, we observed that the revenue had raised several issues in these grounds. The first issue is, Ld CIT(A) had considered the assessment completed u/s 143(3) is bad in law and held that the AO should have initiated the proceedings u/s 153C considering the fact that the search proceedings

were completed in the case of the assessee on 16.10.2014 whereas the documents found during the search at the premises of the group companies, relevant search was completed on 17.10.2014. Since the documents were seized at the premises of the group companies, the assessee being separate person distinct from the companies, the AO should have initiated the proceedings based on the provisions contained in section 153C of the Act, as submitted before us, the documents are submitted in the subsequent year and the relevant search assessment for the purpose of section 153C falls not in the impugned assessment year. After considering the facts on record, we are inclined to accept the reasoned order of Ld CIT(A). In the result, ground nos.3 and 4 raised by the revenue are dismissed.

40. With regard to Ground No.5 on the issue of retraction by the assessee, ld. DR submitted that assessee has retracted only on 18.10.2016 i.e. after two years of completion of search and he submitted that the date of search was 15.10.2014. In this regard, he submitted that the retraction of surrender which if not made within reasonable time frame, cannot be considered as retraction. In this regard, he relied on the following decisions :-

- i) PCIT(C)-2 Delhi vs. Avinash Kumar Setia (ITA 935/ 2016) (Delhi) (HC)
- ii) CIT vs. MAC Public Charitable Trust (2022) 450 ITR 368 (Mad) (HC)
- iii) Bachittar Singh vs. CIT 2010 (AIR 328ITR400)(P&H HC)

iv) Roshan Lal Sanchiti vs PC IT 2023 452ITR229 (SC)

41. Further he brought to our notice the retraction letter submitted by the assessee. He submitted that the reasons recorded are vague and it clearly shows that it is an after-thought. Further he submitted that assessee had surrendered the amounts found during the search which is incriminating material which was found and seized from the premises under search. Non-deposit of post-dated cheques does not tantamount to retraction of surrender and assessee could not explain and owned up the same at the time of search. He further brought to our notice page 9 of the assessment order that no coercive action was applied by the Department to compel the assessee to declare the income. He also brought to our notice pages 3 & 4 of the assessment order and also page 71 of the ld. CIT (A) and submitted that even ld. CIT (A) has rejected the plea of the assessee on the issue of dumb document and he read out para 6.14 of the appellate order. All these clear findings and documents have been during the search clearly indicate that the assessee had surrendered the value voluntarily.
42. Ld. AR of the assessee relied on the findings of the ld. CIT (A) on this issue.
43. Considered the rival submissions and material available on record. We observed that ground no.5 relating to issue of deletion of voluntary

disclosure by the assessee and the retraction of assessee is not proper. We observed that the relevant documents under consideration are found at the premises of the group companies, however, the final statement was recorded on 17.10.2014 while completing the search proceedings in the case of group companies. It is brought to our notice that the assessee had allegedly surrendered the above amounts mentioned in the documents found at the premises of the group companies. We are of the view that the addition should have been in the companies instead of individual hands, they may have surrendered in the capacity of directors of the companies. However, the AO had proceeded to make the addition in the hands of individuals based on the voluntary surrender, without even bringing on record any cogent material against the individuals. Keep that as it may, Ld CIT(A) had not accepted the documents found during the search as dumb documents and the assessee also heavily relied on the retraction submitted by the assessee at the time of filing the return of income. There are short coming in both sides, in our considered view, the issue under consideration is only for academic purpose considering the fact that the Ld CIT(A) had already treated the whole assessment as bad in law on the basis of jurisdictional ground, further, we have also allowed the ground raised by the assessee on the issue of approval granted u/s 153D is not proper. Therefore, we are partly allowing the ground raised by the

Revenue on the aspect of retraction, which was made after two years, it was retracted only during the filing of the return of income.

44. With regard to ground Nos.6, 7, 8, 9 & 10 on the issue of deletion of addition on account of 'jewellery' as found during the course of search from house and locker, Ld DR submitted that ld. CIT (A) has deleted the addition completely ignoring the fact that the assessee has not substantiated his claim that the jewellery found and seized during the course of search was continuously held since 1997 and no wealth-tax returns were filed by the assessee from the year 1997 onwards. Assessee had only filed wealth-tax return for AY 2014-15 belatedly on 31.03.2016 i.e. almost 18 months after the date of search which casts serious doubts on the claim of the assessee for continued possession of the jewellery since 1997. Since assessee has not disclosed the wealth-tax returns, the same cannot be substantiated. Further he submitted that the evidence/ documents submitted by the assessee during appellate proceedings are nothing but additional evidences under Rule 46A. These were not confronted or provided to the Assessing Officer. Further he submitted that ld. CIT (A) has not appreciated the fact that no one to one matching was done by the assessee with the VDIS jewellery for vis-à-vis jewellery found during search.

45. On the other hand, Ld AR submitted as under:

- a). During the course of search, the following statements were recorded in respect of jewellery as under:-
- i). In the statement recorded at the residential premises of Sh. Vishambhar Dayal on 15.10.2014, placed at Paper Book pages 29 to 45. Reference may be made to page 44 and in answer to Question No.16, the assessee had stated that theirs is a joint family and there are 9 members of the family and that jewellery is also joint, which has been kept in 'one locker' and the same jewellery was declared in VDIS-87 and also some jewellery was altered over the years.
 - ii). Further, the statement of assessee was recorded at pages 53 to page 68 and, though, the assessee gave minute details of each and everything, but then under pressure and coercion at page 64, he abruptly in a summary manner was made to surrender the value of jewellery, though, he stated that the jewellery has been acquired from time to time and declared under the VDIS-97 and also some jewellery was altered as per page 64 and this surrender as already stated was under pressure and coercion and cannot be relied upon.
 - iii). Further, during the course of assessment proceedings, we had filed a detailed reply for reconciliation of jewellery vide reply, dated 15.11.2016, placed at pages 69 to 124 and starting from page 73, all the documentary evidences were filed and also the wealth tax returns and no discrepancy noticed by the AO/CIT (A) either.

- iv). The Ld. Assessing Officer while framing the assessment has not found any fault in such documentary evidences but has summarily made an addition by just relying upon the statement during the search as per page 17 and 18 of the order.
 - v). It is submitted that the same submissions were made before the Ld. CIT(A) by way of submissions starting from pages 46 to 51 of the order and the finding of CIT(A) on this issue starts from page 58 and the Ld. CIT(A) has relied upon the statement recorded of the assessee at page 59 and as also the other documentary evidences, having been furnished and the retraction made by the assessee and given a finding at page 63 of the order, that the family is living jointly and addition had been made only on the basis of statement recorded during search is not proper since the Assessing Officer has failed to rebut the documentary evidences with cogent material.
 - vi). Our reliance is on the finding given by the CIT(A) and, thus the CIT(A) has rightly dismissed the ground of appeal and, as such, the ground of appeal No. 7,8,9 & 10 in the appeal of the department deserves to be dismissed.
 - vii). The Ground No. 11 has already been dealt in while dealing with the Ground No. 3 of the department appeal.
46. Considered the rival submissions and material placed on record. We observed that the gold jewellery were found during the search and it valued Rs. 99,31,727/-, it was submitted that all these jewellerys are belongs to the joint family living together. Further it was also submitted that the same jewellery

was declared under VDIS 1997 scheme, the relevant submission was appreciated by Ld. CIT(A) and the relevant details and certificates considered by Ld CIT(A) are as under :-

- (i) Detailed explanation of jewellery.
- (ii) Chart showing reconciliation of jewellery
- (iii) VDIS certificates
- (iv) Valuation report under VDIS, 1997
- (v) Bills for purchase and alternation of jewellery
- (vi) Valuation Report as on 31.03.2007
- (vii) Valuation Report as on 31.03.2013
- (viii) Wealth Tax Returns.

47. After considering the above documents, ld. CIT (A) observed that as per the allowance given in the CBDT circular/Guidelines No 1916 dated 11.05.1994, he held that the value of jewellery declared in VDIS are more than the jewellery found during the search. Further he observed that the jewellery determined based on the circular should be treated as explained and with regard to the difference, he had relied on the various case law, accordingly, gave relief to the assessee on the basis of high net worth and high incomes declared by the assessee over the years. After considering the reasoned findings of Ld CIT(A), we are inclined to accept the same and are of the view the assessee is one of high net worth individual and also declared high income in several assessment years, the relevant jewellery found during the

search are considered to be explained. Therefore, we do not see any reason to disturb the same. In the result, grounds raised by the revenue are dismissed.

48. With regard to Ground No.11, ld. DR submitted that the document was found from the premises of a group company and the assessee in his capacity as Managing Director has made voluntary disclosure. The assessee now dispute the documents which were found from the premises of the companies, therefore, the condition of section 65B of the Indian Evidence Act was fulfilled. There is no legal obligation cast on the Assessing Officer to fulfill condition of section 65B of the Indian Evidence Act.
49. On the other hand, ld. AR submitted that the Assessing Officer had relied on some documents found in the computer but failed to comply the provisions of section 65B of the Act.
50. Considered the rival submissions and material placed on record. We observed that the addition was made by the Assessing Officer on the basis of certain data found in the computer at the premises of the companies. In case, the Assessing Officer intend to use those data for the purpose of making addition either in the hands of the assessee or in the company's account, the relevant data has to be certified as per section 65B of the IT Act. In this case, it is not followed. Therefore, the submissions of the ld. DR are misplaced. Accordingly, this ground raised by the Revenue is dismissed.

51. In the result, appeal filed by the Revenue being ITA No.337/Del/2025 is dismissed.
52. With regard to CO filed by the assessee, we have already held that the ground raised by the Revenue on the issue of documents found during the search as academic and the assessment itself is bad in law, we are inclined to dismiss the CO raised by the assessee.
53. In the result, the appeal filed by the assessee is allowed, the CO raised by the assessee and appeal filed by the Revenue are dismissed.
54. In the Revenue's appeal in the cases of Shri Mayank Agarwal and Shri Puneet Agarwal (ITA No.336/Agr/2025 & 338/Agr/2025), since the facts are exactly similar to the case of Vishwambhar Dayal Agarwal in AY 2015-16, dealt by us above, our above findings are applicable *mutatis mutandis* in these cases also. Accordingly, the Revenue's appeals for AY 2015-16 in the cases of Mayank Agarwal and Puneet Agarwal are dismissed.
55. Further with regard to Ground No.1 of cross objections in the cases of Mayank Agarwal and Puneet Agarwal on the issue of section 153D, this issue is dealt by us in the case of Vishwambhar Dayal Agarwal above and allowed the same, accordingly, following the same, Ground No.1 of cross objections in both the cases is allowed. The other grounds taken by the assessee in both the cases are dismissed.
56. In the result, the appeals of the Revenue in the cases of Mayank Agarwal and

Puneet Agarwal are dismissed and the cross objections filed by Mayank Agarwal and Puneet Agarwal are partly allowed.

57. To sum up : appeal filed by the assessee, Vishwambhar Dayal Agarwal (ITA No.330/Agr/2025 is allowed and the CO (CO No.04/Agr/2025) raised by the assessee, Vishwambhar Dayal Agarwal and appeal (ITA No.337/Agr/2025) filed by the Revenue are dismissed. Cross Objections (CO No.03/Agr/2025 & 05/Agr/2025) filed by Mayank Agarwal and Punjeet Agarwal are partly allowed and appeals of the Revenue being ITA Nos.336/Agr/2025 & 338/Agr/2025 are dismissed.

Order pronounced in the open court on this 4th day of December, 2025

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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

**Dated: 04.12.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**