



आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.03/RPR/2021  
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. NR TMT (India) Pvt. Ltd.  
Flat No.106, Goverdhan Tower,  
Chaitanya Nagar, Raigarh  
PAN: AAECP8302R

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax  
(Central)-2, Raipur (C.G.)

.....प्रत्यक्षी / Respondent

आयकर अपील सं. / ITA No. 09/RPR/2021  
निर्धारण वर्ष / Assessment Year : 2018-19

The Deputy Commissioner of Income Tax  
(Central)-2, Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. NR TMT (India) Pvt. Ltd.  
Flat No.106, Goverdhan Tower,  
Chaitanya Nagar, Raigarh  
PAN: AAECP8302R

.....प्रत्यक्षी / Respondent

Assessee by : S/shri Vijay Mehta,  
Sunil Kumar Agrawal, CAs

Revenue by : S/shri S.L Anuragi, CIT-DR  
Sunny Kachhwaha, A.O (virtually  
joined)

सुनवाई की तारीख / Date of Hearing : 08.10.2024

घोषणा की तारीख / Date of Pronouncement : 06.01.2025

**आदेश / ORDER**

**PER RAVISH SOOD, JM:**

The captioned cross-appeals filed by the assessee company and the revenue are directed against the order passed by the Commissioner of Income Tax (Appeals)-3, Bhopal, dated 03.12.2020, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 31.12.2019 for the assessment year 2018-19. As the issues involved in the present appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. The assessee company has assailed the impugned order passed by the CIT(Appeals)-3, Bhopal on the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in sustaining addition of Rs.1,77,86,577 on the count of excess stock of 'Sponge Iron' (i.e., raw material) computed by the Id AO; when it is not actually weighed by search team; which is on the basis of 'volume' taken randomly by the DVO at 925.01 on sampling method in place of correct volume of 249.580; books of account has not been rejected; alleged presumptive addition is invalid, unjustified in absence of any independent corroborative material evidence brought on record for unaccounted purchases of the alleged raw material, is liable to be deleted."

2. "On the facts and circumstances of the case and in law, the Id CIT(A) has erred in sustaining addition of Rs.1,77,86,577 on the count of alleged excess stock; while it is only based on DVO report without disposing off the objection raised before the DDI(T(Inv.)) against such arbitrary DVO report; while the search has been concluded on 26-10-17 and no excess stock has been found place in the 'Panchanama' drawn; no surrender has been made on that count in the statement recorded u/s132(4) on 24-10-17 to 26-10-17; books of account has not been rejected; alleged presumptive addition is invalid, unjustified in absence of any independent corroborative material evidence brought on record for any unaccounted purchases of the alleged raw material, is liable to be deleted."

3. "On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not quashing the search assessment u/s. 143(3) r.w.s. 153A for the search year, since the approval granted u/s. 153D as there is no application of mind on the part of the Jt. CIT and it has granted in a mechanical and hasty manner, merely a formality, an empty ritual; no satisfaction has been recorded by the Jt. CIT; all the responsibilities and duties has been shifted to the Ld. AO; the Id. AO has power to act/alter/add/amend as he thinks fit in the alleged 'assessment order'; in absence of a valid approval as mandated u/s. 153D as per Section 153B(1)(b), the alleged search assessment u/s. 143(3) r.w.s. 153A be treated as invalid, non-est, null & void ab initio and is liable to be quashed."

3. The Revenue, on the other hand, has assailed the impugned order passed by the CIT(Appeals)-3, Bhopal on the following grounds of appeal:

"1. "On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition partly on account of excess stock, rejecting the valuation report of the registered valuer which was prepared on the basis of valuation done during the course of search, and that CIT(A) relied upon the valuation report of a valuer appointed by the assessee.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that section 115BBE of the Income Tax Act, 1961 shall not be applicable in the case of the assessee in the wake of the fact that the income of the assessee as determined by the Assessing Officer includes income as referred to in section 69 of the Income Tax Act, 1961."

4. Also, the assessee company has filed an application under Rule 27 of the Income Tax Appellate Tribunal, Rules, 1963 raising the following preliminary objections:

**"Gr.No.1:**

"On the facts and circumstances of the case and in law, approval u/s.153D dt.30-12-19 is combined/ common approval for 35 AYs for 4 assessees; in absence of separate approval for the assessee for AY18-19 (i.e., each assessee & each AY) & without following the proper procedure as mandated by law u/s153D, 153A & 153B(1)(b); consequential search assessment made would be invalid and is liable to be quashed; relied on Shiv Kumar Nayyar (2024) (Del HC); Subash Dabas (2024) (Del HC); Sapna Gupta (2022) (All HC).

**Gr.No.2**

"On the facts & circumstances of the case and in law, addition made of Rs.2,66,45,091 by the AO on account of alleged excess 'Sponge Iron' is unjustified; addition merely on estimation of income on alleged unaccounted purchase of 'Sponge Iron' (i.e., raw material); books of account not been rejected; sec 145(3) not been applied; assessment made u/s.143(3); without rejecting

books of account & without making assessment u/s.144, estimation of income is not permissible in the eyes of law, is liable to be deleted; relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC)."

**Gr.No.3:**

"On the facts & circumstances of the case and in law, addition made of Rs.19,72,750 by the AO on account of alleged excess 'Pig Iron' is unjustified; addition merely on estimation of income on alleged unaccounted purchases of 'Pig Iron' (i.e., raw material); books of account not been rejected; sec145(3) not been applied; assessment made u/s143(3); without rejecting books of account & without making assessment u/s 144, estimation of income is not permissible in the eyes of law, is liable to be deleted."

**Gr.No.4:**

"On the facts & circumstances of the case and in law, addition made of 'Rs.3,13,140 by the AO on account of alleged excess 'M.S.Billets' is unjustified; addition merely on estimation of income on alleged suppressed production of 'MS Billets' (i.e., finished goods); books of account not been rejected; sec145(3) not been applied; assessment made u/s143(3); without rejecting books of account & without making assessment u/s144, estimation of income is not permissible in the eyes of law, is liable to be deleted."

**Gr.No.5:**

"On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.1,77,86,577 on excess stock of 'sponge iron' (i.e., raw material) based on 'volume' taken by DVO (i.e., Frontline) on 27-10-17 at 925.01, while, 'volume' by assessee's valuer (M/s.Right Value) at 213.30; actual weighment has not been done; addition based on sampling method is not permissible in the eyes of law; addition is unjustified & is liable to be deleted; relied on Utkal Steels Ltd (2002) (Ctk-Trib) (TM); Utkal Alloys Ltd (2009) (Ori HC); Balaji Wire (P) Ltd (2007) (Del HC); Bansal High Carbons PL (2009) (Del HC).

5. At the threshold, we may herein observe that in so far the preliminary objections raised by the assessee company vide Ground No.2

(partially), Ground No.3 and Ground No.4 are concerned, the same are based on misconceived facts. As the additions made by the A.O on account of alleged excess stock of pig iron of Rs.19,72,750/- and excess stock of MS billets of Rs.3,13,140/- had been vacated by the CIT(Appeals), therefore, we are unable to comprehend that on what basis the impugned additions made by the A.O which no more survive have been assailed before us. Be that as it may, as the preliminary objections raised by the assessee company at Ground No.2(partially), Ground No.3 and Ground No.4 does not emanate from the impugned order of the CIT(Appeals), therefore, the same being based on misconceived facts are dismissed.

6. In so far the preliminary objection raised at Ground No.5 is concerned, we are of the view that as the assessee company has assailed the sustainability of the addition of excess stock of “sponge iron” of Rs.1,77,86,577/- sustained by the CIT(Appeals) vide its “Ground of appeal Nos.1 & 2”, therefore, the same would stand subsumed and be taken care of while adjudicating the said issue.

7. Apropos the preliminary objection raised by the assessee company vide Ground No.1, we are of a firm conviction that the same stems out of Ground of appeal No.3 raised by the assessee company in its appeal, and thus, would be considered while adjudicating the same.

8. Succinctly stated, the assessee company which is engaged in the business of manufacturing of sponge iron and MS Ingots/Billets was as on 24.10.2017 subjected to search and seizure proceedings u/s.132 of the Act. The assessee company subsequent to the search proceedings had in compliance to notice issued by the A.O u/s.142(1) of the Act filed its return of income for A.Y.2018-19 on 29.09.2018, declaring its income at Rs.93,66,200/-.

9. The A.O, thereafter, framed the assessment for the year under consideration i.e. A.Y.2018-19 vide his order passed u/s.143(3) of the Act, dated 30.12.2019, wherein based on the difference in the quantity of physical inventory of raw material, finished goods, spare parts and consumable items that was got prepared and valued by the department from a registered valuer, viz. M/s. Frontline Consultants Pvt. Ltd. ("FCPL" for short) vis-à-vis that disclosed by the assessee company in its books of account, an addition towards suppressed investment of Rs.2,89,20,981/- was made in the hands of the assessee company. For the sake of clarity, the difference between the value of stock inventory as per physical verification vis-à-vis books of account of the assessee company as worked out by the department is culled out as under:

Sl. No.	Items	As per physical verification			As per Books			Difference
		QTY. IN M.T.	RATE PMT	VALUE	QTY. IN M.T	RATE PMT	VALUE	

1.	MS Billets	20.33	25500	518415	8.05	25500	205275	313140
2.	Sponge Iron	2278.3	14900	33946670	490.71	14900	7311579	26635091
3.	Pig Iron	281.26	25000	7031500	202.35	25000	5058750	1972750
4.	MS scrap	26.15	11000	2876500	26.15	11000	287650	0
5.	Sillico manganese	2.34	58000	193720	3.34	58000	193720	0
<b>Total</b>				<b>41977955</b>			<b>13056974</b>	<b>28920981</b>

10. Aggrieved the assessee company carried the matter in appeal before the CIT(Appeals). The assessee company assailed the addition made by the A.O before the CIT(Appeals) on two major counts, viz. (i) that the A.O had erred in making the impugned addition towards suppressed valuation of stock based on the Global Satellite Position (GSP)/sampling method that was adopted by the department's valuer and not based on any actual weighment; (ii) that the A.O had erred in passing the assessment order without obtaining the approval from the Jt. CIT, Range-Central, Raipur u/s.153D of the Act. The CIT(Appeals) observed that the assessee company had placed on record the valuation report of an approved valuer, viz. M/s. Right Value Consultants Pvt. Ltd. (M/s. RVCPL) which was based on the actual weighment of stock. The CIT(Appeals) was of the view that as the alleged difference in the valuation of the stock of pig iron and MS Billets of Rs.19,72,750/- and Rs.3,13,13,140/-, respectively, was worked out by the

department's valuer without carrying out any actual weighment, thus, the same could not be sustained and was liable to be struck down.

11. Apropos the difference in the valuation of the sponge iron, the CIT(Appeals) observed that the same had occasioned for the reason that the department's valuer had not carried out any actual weighment of stock and had merely taken recourse to a sampling method. It was observed by him that the density of stock items was a key factor for determining the actual stock and the same varied from different lots/heaps. It was further observed by him that the A.O ought to have considered the density calculated by the assessee's valuer i.e. M/s.Right Value Consultants Pvt. Ltd. ("RVCPL", for short) which was based on physical quantification of stock and not on the basis of a sampling method as was adopted by the department's valuer. Accordingly, the CIT(Appeals) held a firm conviction that the A.O should have made addition of actual excess/shortage of stock and not of the estimated stock as was worked out by department's valuer, viz. M/s.FCPL. The CIT(Appeals) after relying on a host of judicial pronouncements adopted the density calculated by the assessee's valuer viz. M/s. RVCPL which was based on the actual weighment of stock, as under:

M/s.NRTMT (India) Pvt Ltd (M/s.Prithvi Dealcomm P.Ltd)					
Detailed calculation of <b>bulk density</b> of various materials in container					
Volume of container	Length	Width	Height	Volume	Unit
	2.4	2.4	3.2	18.4320	Cumm
			Volume	0.0184	Cum
A.	<u>Sponge Iron</u>				
S.No.	Location	Detailed calculation			Weight Unit
1.	<u>Sponge Iron</u> within shed	Container gross wt.		34.300	KG
		Container tare wt.		0.790	KG
		Net wt. = gross wt. – tare wt.		33.510	KG
		Net wt.		0.0335	MT

12. Accordingly, the CIT(Appeals) after adopting the density calculated by M/s. RVCPL i.e. assessee's registered valuer worked out valuation of the stock of sponge iron at Rs.2,50,98,156/-, as under:

S. No.	ITEMS	Valuation of stock as per report of M/s RVCPL			Valuation shown by appellant in books of accounts	Difference
		QTY. IN M.T	RATE PMT	VALUE		
1	Sponge Iron	925.01 x 1.821 =1684.44	14900	25098156	7311579	17786577

Accordingly, the CIT(Appeals) after considering the value of the stock of sponge iron, as worked out hereinabove, as against that disclosed by the

assesse company in its books of account, restricted the addition towards suppressed value of stock to Rs.1,77,86,577/-.

13. The CIT(Appeals) based on his aforesaid deliberations had though vacated the additions regarding the alleged difference in the valuation of pig iron (Rs.19,72,750/-) and MS Billets (Rs.3,13,140/-), but restricted the addition qua the difference in the valuation of stock of sponge iron to an amount of Rs.1,77,86,577/-. For the sake of clarity, the observations of the CIT(Appeals) regarding the merits of the additions made by the A.O are culled out as under:

**“4.2 Ground No.5 to 7:-** Through these grounds of appeal the appellant has challenged the addition of Rs.2,66,35,091/- on account of excess stock of Sponge Iron, Rs.19,72,750/- on account of excess stock of Pig Iron and Rs.3,13,140/- on account of excess stock of Billets. During the course of search operation, physical inventory of raw material, finished goods, spare parts and consumable items were prepared and the same was got valued by the Registered Valuer in respect of factory premises of the appellant company located at Punj ipatra-Gharghoda, Raigarh. The valuation Report was received from the registered valuer and the valuation of each item was compared with the stock declared by the assessee group. On comparison of each item of inventory as valued by the Registered Valuer with that stock declared by the appellant, it is found that some items are in excess which are given below:-

Sl. No.	Items	As per physical verification			As per Books			Difference
		QTY. IN M.T.	RATE PMT	VALUE	QTY.In M.T	RATE PMT	VALUE	
1.	MS Billets	20.33	25500	518415	8.05	25500	205275	313140
2.	Sponge Iron	2278.3	14900	33946670	490.71	14900	7311579	26635091

3.	Pig Iron	281.26	25000	7031500	202.35	25000	5058750	1972750
4.	MS scrap	26.15	11000	2876500	26.15	11000	287650	0
5.	Sillico manganese	2.34	58000	193720	3.34	58000	193720	0
	<b>Total</b>			<b>41977955</b>			<b>13056974</b>	<b>28920981</b>

4.2.1 The valuation report of the registered valuer was confronted to the appellant for its comments. The appellant has been shown the letter from the valuer dated 04.04.2018. Thereafter, the appellant submitted valuation report done by its appointed registered valuer M/s Right Value Consultants Pvt Ltd (M/s RVCPL). The appellant before me as well as before AO has taken a plea that the valuer appointed by ADIT(Inv), Bilaspur has not done any actual weighment of stock. M/s FLCPL has adopted volumetric method by applying density method and the stock items were prepared on sampling method. Further, stock of Pig Iron and MS Billets were estimated on presumption basis and no actual volume/weight was taken. The appellant after receipt of valuation report filed detailed objections along with report of M/s RVCPL. The appellant has claimed that the valuation report prepared by M/s RVCPL was done on actual weight of stock. The AO has adopted volume and density estimated by M/s FVCPL. The density of stock item is key factor for determining actual stock and- varies from different lots/heaps. Therefore, the AO ought to have considered density calculated by M/s RVCPL which is based on physical quantification of stock and not on the basis of sampling method being adopted by M/s FLCPL. Also, the AO ought to have made addition on actual excess/shortage of stock and not on estimated stock by M/s FVCPL. Hon'ble Orissa High Court in the case of Utkal Alloys Ltd vs CIT (2009) CTR 676 (Orissa HC) has held that no addition can be made on the basis of difference in stock arrived at by sampling method. Similar view was taken in the case of Haribhagat Agarwalla vs CIT (1982) 51 STC 355 (Orissa HC). Further, Hon'ble jurisdictional High Court in the case of **Narmada Ginning & Pressing Factory (2007) 213 CTR 500 (MP HC)**, held as under:

"4. the Tribunal found in the impugned order that the CIT(A) had rightly held that the variation in stock should have been worked out after taking into account the entire stock of all the group concerns found in the course of search commodity wise. The Tribunal also held that the addition of Rs.4,96,021 on

account of such variation in stock as held by the CIT(A) was also not justified for the following reasons:

- (i) accurate weight of wheat, soyabean, unpressed cotton, cotton seeds, chana and cotton bales (rui) is not practically possible to estimate;
- (ii) due to weight loss, etc., there are chances of minor difference;
- (iii) the method adopted for weighment of stock by search party was not proper;
- (iv) no incriminating material was found during search 'which could prove that the assessee had purchased or sold the goods outside the books;
- (v) the difference in shortage was due to wrong estimation of loose commodities
- (vi) so far as shortage in bale (rui) is concerned, the difference in stock was on account of 256 quintals which was loaded in the trucks and 506.15 quintals which was received from Radha Ginning Factory, Harsood and this was evident from the sale bills and transport vouchers of cotton bales, affidavit, account and certificate of Radha Ginning Factory and other documents in respect of the sale of cotton bales which were in the PB filed before the Tribunal.

It is, thus, clear that on the materials available before it, the Tribunal found that the addition of Rs.4,96,021 in the hands of the respondent on account of variation of stock as sustained by the CIT(A) was not justified."

4.2.2 Further, Hon'ble Indore ITAT in the case of Sayyed Hamid Ali (2020) 205 TTJ 453 (Indore-Trib) has held that it was the duty of search team to get the actual weighment of stock found during the course of search operation, which was not done; that no other incriminating material was found during the course of search relating to unaccounted stock, excess physical stock was calculated by Revenue authority on estimative and presumptive basis. The relevant extract of the decision is as under:-

"4. During the assessment proceedings it was explained by the assessee about the excess stock of Rs.1,17,00,000 being difference between the stock found in the books of accounts on

the date of survey i.e., 12-7-11 stating that after obtaining the stock valuation sheet from the Deptt, it was found by the assessee that excessive stock was got declared, without weighment of the quantity lying in the heaps (lots, masses) at the premises of the assessee.

On the date of survey, stock inventories by the survey team was quantified at 617.183 MT, whereas as per books of accounts only stock of 85.433 MT was found. Therefore, difference of 531.750 MT was treated as excessive stock.

5. It was also submitted by the assessee that physical stock found at the time of survey was kept separately and the same was sold and the quantity of such stock sale was 250.703 MT

11. The assessee is a dealer in Iron and steel. Survey u/s 133A was carried out on 12-7-11. As per the survey team the physical stock was quantified 617.183 MT whereas the stock recorded in the books of accounts was 85.433 MT.

12. Before us id counsel for the assessee contended that there was no basis for taking above quantity. No weighment was done and only by an eye view above table was prepared.

In fact it was also not possible to store huge stock of 617.183 MT in the factory premises of the assessee looking to the availability of space.

The total area of land with the assessee unit is 10,000 sqfi. as allotted by the Development Authority, Ujjain on which besides open area, godown, factory Building and works shop erected.

The space available for storing of stock is approx. 6,000 Sqfi. The nature of scrap stock, in terms of size & placing, is also haphazard.

It is practically not possible to store 617.183 MT of scrap stock of haphazard shape in approx. 6,000 sq. ft. area.

Besides this stock, scrap of PVC (high volume with low weight covering major area of available space) pertaining to wife's concern M/s.Saif Enterprises, weighing 30.767 MT was also lying. This fact was recorded in the statement and verified by the survey team during the survey operation.

13. Ld counsel for the assessee also contended that it was the duty of survey party to let the actual weighment of stock found during the course of survey proceedings, which was not done.

It is at all not possible that exact 15 MT in 12 Trucks; 13 MT in 15 trucks; 13.5 MT in 13 trucks; 11.4 MT in 6 trucks of scrap can be loaded in the trucks.

Even otherwise, looking to the nature of scrap of variety, at the same time each truck could not be loaded by net weight of 15 MT. It may be worth to note that while replying to question 15 of statement given during survey operation by Shri Shamaan Ali that whenever the goods are purchased or sold, weighment of tare trucks and loaded trucks is got done at Mahavir Taul Kanta, so as to know exact quantity of goods purchased/ sold. However, during the survey operation no loading and unloading of material was done, which was must for correct weighment of stock.

Moreover, no truck was used for the weighment purpose, during the course of survey and no truck wise weighment slips were prepared, which is evident from the inventory prepared.

14. We observe that there certainly seems merit in the contention of the ld. counsel for the assessee to the extent that the area of land available with the assessee to store the scrap was only 6,000 sq. ft. survey team have mentioned the quantity in the form of number of Trucks.

There is no iota of evidence to show that the goods were loaded in a truck before weighment. It is also not practically possible to huge stock of 671.83 MT on 6,000 Sq.ft. area, too without stacking.

Even some stock from sister concern M/s.Saif Enterprises, weighing 30.767 MT was also lying, at the very same premise which has been recorded by the Revenue team.

Apart from the physical stock which has been computed in the above referred table no other incriminating material was found such as the undisclosed bank statement unrecorded purchase, sale bills or unrecorded vouchers.

Therefore, the stock taken by the survey team seems to be based on a guess work, presumption and assumption.

It is also undisputed fact that survey statement was recorded at late night.

In the stock sheet estimated stock have been mentioned along with number of trucks whereas actually no such trucks was available at the survey site and therefore, the stock sheet prepared by the survey team does not look to be a full proof and perfectly prepared stock sheet at the time of survey.

15. We, further observe that the assessee in order to be a prudent assessee, in order to compute the actual unrecorded stock, claimed to have kept the physical stock found on the date of survey separately and as and when the goods were sold the details were prepared. The details of the quantitative details of stock before the date of survey and the date of survey during financial year 2011-12 and the details of stock sold to various parties post survey on the basis of which unrecorded stock of Rs.33,00,000 is offered to tax are mentioned below

25. In the instant case also no other incriminating material was found during the course of survey relating to unaccounted stock, excess physical stock was calculated by Revenue authority on estimative and presumptive basis. The stock statement prepared by the survey team on the date of survey itself seems to be on a loose wicket since the remarks column mentioning about the weighment of stock in trucks do not correlate with any actual weighment slip and also the alleged unrecorded stock is practical impossible to be stored on the available space with the assessee.

26. We, therefore, in the given facts and circumstances of the case and respectfully following the decision referred hereinabove are of the considered view that 1d CIT(A) erred in confirming the addition made by the 1d AO for unrecorded stock of Rs.84 lakhs merely on the basis of recorded statement and without basis of any material evidence and there the same needs to be deleted.

4.2.3 Therefore, judiciously following the cited decisions, the density calculated by M/s RVCPL is found to be correct as the same is based on actual weightment of stock. The calculation for density of stock is as under:-

M/s.NRTMT (India) Pvt Ltd (M/s.Prithvi Dealcomm P.Ltd)					
Detailed calculation of <b>bulk density</b> of various materials in container					
Volume of container	Length	Width	Height	Volume	Unit
	2.4	2.4	3.2	18.4320	Cumm
			Volume	0.0184	Cum
<u>Sponge Iron</u>					
A.					
S.No.	Location	Detailed calculation		Weight	Unit
1.	<u>Sponge Iron</u> within shed	Container gross wt.		34.300	KG
		Container tare wt.		0.790	KG
		Net wt. = gross wt. – tare wt.		33.510	KG
		Net wt.		0.0335	MT

of MS Billets were not measured. Therefore, the stock of Pig Iron and length of MS Billet was estimated on presumption and guess work by valuer M/s FVCPL.

4.2.4 Furthermore, the AO has adopted valuation report of M/s FLCPL as correct despite being aware of the fact that the valuation of stock was done on estimate basis and sampling method. Therefore, the AO was not justified in adopting valuation report which lacks genuineness and correct estimation of stock. Further, valuation of stock of Pig Iron and MS Billets being made on sheer presumption basis deserved to be deleted. Therefore, the correct valuation of stock as per revised density of stock is as under:-

S. No.	ITEMS	Valuation of stock as per report of M/s RVCPL			Valuation shown by appellant in books of accounts	Difference
		QTY. IN M.T	RATE PMT	VALUE		
1	Sponge Iron	925.01 x 1.821 =1684.44	14900	25098156	7311579	17786577

In view of the above discussion, addition made by the AO amounting to Rs.1,77,86,577/- w.r.t excess stock of Sponge Iron is Confirmed and appellant gets relief of Rs.88,48,514/-

w.r.t excess stock of Sponge Iron, Rs.19,72,750/- w.r.t excess stock of Pig Iron and Rs.3,13,140/- w.r.t excess stock of Billets. Thus, addition made by the AO amounting to Rs. 1,77,86,577/- is Confirmed and appellant gets relief of Rs. 1,11,34,404/- (Rs.88,48,514/- + Rs.19,72,750/- + Rs. 3,13,140/-). Therefore, appeal on these grounds is Partly Allowed.”

14. Apropos the assessee's claim that the A.O had wrongly assumed jurisdiction for framing the assessment without obtaining a valid approval u/s. 153D of the Act of the Jt. CIT(Central), Raipur, the CIT(Appeals) did not find favour with the same. The CIT(Appeals) was of the view that as the A.O had taken the necessary approval from Jt.CIT(Central), Raipur vide the latter's letter F.No.JCIT(C)/RPR/153D/2019/348 dated 30.12.2019, therefore, it could safely be held that he had followed the proper procedure as was required per the mandate of law. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“4.3 Ground No. 4:- Through these grounds of appeal the appellant has challenged legality of assessment order stating that no approval u/s.153D was taken by the AO. On perusal of assessment order it is seen that the AO has taken necessary approval from JCIT(Central), Raipur vide letter F.No.JCIT(c)/RPR/153D/2019/348 dated 30.12.2019. Thus, the AO has followed proper procedure and approval' was taken u/s.153D of the Act from competitive authority before passing the impugned assessment order, therefore plea raised by appellant has no merit and is therefore, rejected. Therefore, appeal on this ground is Dismissed.”

15. Both the assessee company and the revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

16. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

17. Shri Vijay Mehta, Ld. Authorized Representative (for short 'AR') for the assessee company, at the threshold of hearing, submitted, that as per instructions he is not pressing the grounds of appeal Nos.1 & 2. Considering the concession of the Ld. AR the **Grounds of Appeal Nos. 1 & 2** raised by the assessee company are dismissed as not pressed.

18. As the assessee company has assailed the validity of the jurisdiction assumed by the A.O for framing the assessment without obtaining the requisite approval of the Jt. CIT (Central), Raipur u/s. 153D of the Act, therefore, we shall first deal with the same, as under:

**(A) Re: In absence of a valid approval u/s.153D r.w.s. 153B(1)(b) of the Act, the assessment order passed by the A.O u/s. 143(3) of the Act dated 30.12.2019 is invalid and bad in law:**

19. Apropos the ground of appeal No.3, we find that the assessee company has assailed the order of the CIT(Appeals) to the extent he had rejected its claim that in absence of a valid approval as mandated u/s.153D r.w.s. 153B(1)(b) of the Act the assessment order passed by the

A.O u/s. 143(3) of the Act, dated 30.12.2019 being invalid and bad in law was liable to be struck down/quashed on the said count itself.

20. S/shri Vijay Mehta and Sunil Kumar Agrawal, the Ld. ARs for the assessee company had at the threshold drawn our attention to the "draft assessment order" that was forwarded by the DCIT, Central Circle-2, Raipur, to the Jt. CIT (Central), Raipur for approval u/s.153D of the Act on 26.12.2019 (Page 17 of APB). Also our attention was drawn towards the approval that was granted by the Jt. CIT, Range-Central, Raipur u/s.153D of the Act, dated 30.12.2019, Page 75 of APB. The Ld. AR submitted that the approval of the Jt. CIT, Range-Central, Raipur dated 30.12.2019 in itself revealed that the same was granted in a mechanical and a routine manner without any application of mind, i.e. as an idle formality/empty ritual on the part of the approving authority. Elaborating further on his contention, the Ld. AR averred that a common approval in 34 cases for four different assessee's (including the assessee company) was granted by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019. Apart from that, the Ld. AR submitted that a perusal of the approval letter dated 30.12.2019 in itself revealed that the Jt. CIT, Range-Central, Raipur had not looked into the "draft assessment order" in the backdrop of the seized records and had merely presumed that the needful would have been done by the A.O. The Ld. AR to fortify his aforesaid claim had drawn our attention to Para 3 of the letter granting the approval u/s.153D of the Act,

dated 30.12.2019. The Ld. AR submitted that a similarly worded perfunctory approval that was granted by the Jt. CIT, Range-Central, Raipur had been quashed by the Tribunal for the reason that the same suffered from non-application of mind and was left dependent on a presumption of proper performance of duty by the A.O. Our attention was drawn to the orders passed by the Tribunal in the cases of, viz. (i) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA No.244, 245/RPR/2019 dated 27.03.2023, Page No.155 to 165 of APB; (ii) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA No.246/RPR/2019 dated 17.09.2021, Page No. 155 to 165 of APB; (iii) Goyal Energy & Steel P. Ltd. Vs. ACIT, ITA Nos. 240 to 243/RPR/2019 dated 27.03.2023, Page No. 87 to 108 of APB; and (iv) Akshata Realtors P. Ltd. Vs. ACIT, IT(SS)A No.9/RPR/2018 dated 27.03.2023, Page No.131 to 154 of APB.

21. Apart from that, the Ld. AR submitted that as per Section 153D of the Act the approving authority is required to apply independent mind to the seized material for "each assessment year" in respect of "each assessee" separately. The Ld. AR took us through Section 153D of the Act. The Ld. AR in support of his aforesaid contention had relied upon the judgments of the Hon'ble High Court of Allahabad in the case of Pr. CIT Vs. Sapna Gupta (2023) 147 taxmann.com 288 and Pr. CIT Vs. Siddharth Gupta (2023) 450 ITR 534 (All. HC) and that of the Hon'ble High Court of Delhi in the case of Pr. CIT Vs. Shiv Kumar Nayyar (2024) 163 taxmann.com 9

(Del.HC). Also the Ld. AR in support of his contention that in case approval was granted in a mechanical manner without application of mind by the Addl./Jt. CIT then the same vitiated the assessment order had relied upon the judgment of the Hon'ble High Court of Orissa in the case of ACIT Vs. Serajuddin & Co. (2023) 454 ITR 312(Orissa). The Ld. AR further submitted that a mechanical approval without application of mind by the Addl./Jt. CIT would be invalid in the eyes of law. The Ld. AR in support of his contention had relied on the judgment of the Hon'ble High Court of Delhi in the case of Pr. CIT-(Central)-2 Vs. Anuj Bansal (2024) 165 taxmann.com 2 (Del.). The Ld. AR further submitted that the "Special Leave Petition" (SLP) filed by the revenue in the aforementioned case had been dismissed by the Hon'ble Apex Court vide its order passed in the case of Pr. CIT Vs. Anuj Bansal (2024) 165 taxmann.com 3 (SC).

22. Elaborating further on his contention, the Ld. AR submitted that as in the present case the approval u/s.153D of the Act was mechanically granted by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019 without any independent application of mind and on a mere presumption of proper performance of duty by the A.O, thus, such perfunctory approval could not be termed as legitimate. The Ld. AR once again had drawn our attention to the contents of the approval letter dated 30.12.2019 (supra), wherein the Jt. CIT, Range-Central, Raipur by referring to an office letter No. F.No. Jt.CIT(Central)/RPR/Draft

Assessment order/2016-17, dated 09.09.2016 had observed that it was being presumed by him that the A.O had, viz. (i) given proper opportunity of hearing to the assessee; (ii) thoroughly verified the seized material; and (iii) satisfied himself that all the issues emanating from the record have been verified and the additions wherever required have been proposed; and, thus, based on such presumption granted the impugned approval and directed the A.O to act accordingly. The Ld. AR submitted that the aforesaid letter dated 30.12.2019 (supra) revealed beyond doubt that the Jt.CIT (Central), Raipur without carrying out any verification of the seized material and independently applying his mind to the records before him, had based on a mere presumption that whatsoever needful was required to be done by the A.O must have been done by him granted the approval u/s. 153D of the Act.

23. Apart from that, the Ld. AR submitted that the final assessment order passed by the A.O u/s. 143(3) r.w.s. 153A, dated 30.12.2019 was not the one that was proposed by the A.O vide the "draft assessment order" that was forwarded by him vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur and was approved u/s.153D of the Act by the latter vide his letter 30.12.2019. Elaborating further on his contention, the Ld. AR submitted that the A.O after forwarding the "draft assessment order" on 26.12.2019 had thereafter continued with the assessment proceedings. Carrying his contention further, the Ld. AR submitted that the A.O had

received a letter dated 27.12.2019 from the Registered Valuer of the department, viz. M/s. Frontline Consultants Pvt. Ltd., Raipur, wherein the latter had commented on the objections that were earlier raised by the assessee company to its valuation of stock, Page 44 of APB. Further, the A.O on 27.12.2019 had issued a letter to the assessee company and directed it to submit its reply regarding the comments of the department Valuer, viz. M/s. Frontline Consultants Pvt. Ltd. latest by 27.12.2019 (upto 05:00 pm), Page 45 of APB. Also, a "Show Cause Notice" ("SCN"), dated 27.12.2019 was issued by the A.O wherein the assessee company was called upon to put forth an explanation that as to why an addition of Rs.2,89,20,981/- towards difference in value of stock may not be made in its case u/s. 69 of the Act latest by 28.12.2019 (upto 2:00 pm), Page 46 of APB. The Ld. AR submitted that the assessee company in response to the letter/summon dated 27.12.2019 (supra) of the A.O had submitted its reply on the same date, i.e. on 27.12.2019, Page 47-48 of APB. Referring to the aforesaid facts, the Ld. AR submitted that now when the A.O had forwarded the impugned "draft assessment order" for approval to the Jt. CIT, Range-Central, Raipur on 26.12.2019, therefore, it was incomprehensible that as to how he had thereafter continued with the assessment proceedings. The Ld. AR submitted that there is nothing available on record which would reveal that another "draft assessment order" incorporating the addition u/s.69 of Rs.2.89 crore (approx.) towards

suppression in valuation of stock, based on the aforesaid subsequent set of events, viz. (i) receipt of report of the departmental valuer on 27.12.2019 ; (ii) letter dated 27.12.2019 issued by the A.O to the assessee company therein calling upon it to file its reply on the same date, i.e. on 27.12.2019 (upto 5:00 pm); (iii) "Show cause Notice" (SCN), dated 27.12.2019 issued by the A.O to the assessee company directing it to submit its reply latest by 28.12.2019 (upto 2:00 pm) as to why an addition of Rs.2,89,20,981/- towards difference in value of stock may not be made in its case u/s.69 of the Act; and (iv) the reply filed by the assessee company to the aforesaid letters/SCNs on 27.12.2019, was once again forwarded by the A.O on 30.12.2019 (date of grant of approval itself) to the Jt. CIT, Range-Central, Raipur for his approval u/s. 153D of the Act. The Ld. AR to fortify the aforesaid factual position had drawn our attention to the relevant pages of the assessee's "Paper Book" ("APB"), viz. (i) receipt of report of the department valuer on 27.12.2019 (Page 44 of APB), (ii) letter dated 27.12.2019 issued by the A.O calling upon the assessee company to file its reply regarding the comments/letter of the department valuer, viz. M/s. Frontline Consultants Pvt. Ltd. by 27.12.2019 (upto 5:00 pm), Page 45 of APB, (iii) "Show Cause Notice" dated 27.12.2019 issued by the A.O to the assessee company directing it to file its reply to the letter/comments of the registered/government valuer, viz. M/s. Frontline Consultants Pvt. Ltd. dated 27.12.2019 latest by 28.12.2019 (upto 2:00 pm), (Page 46 of APB);

and (iv) the reply filed by the assessee company to the valuation report on 27.12.2019 (Page 47-48 of APB). Also, the Ld. AR had drawn our attention to Page 5-6 of the CIT(Appeals)'s order, wherein the chronology of the events/developments subsequent to forwarding of the impugned assessment order on 26.12.2019 was charted out by the assessee company in the course of proceedings before the first appellate authority, as under:

Table-A'

<i>Sequence of events</i>	<i>Submission/ reply/ compliance made by the assessee-Co</i>
26-9-19	<i>Notice u/s143(2) issued for AY18-19</i>

	<i>Copy of audited financial statements for AY12-13 to AY18-19 submitted</i>
15-10-19	<i>Questionnaire (Part-B) issued u/s142(1) for AY12-13 to AY17-18</i>
18-10-19	<i>Notice issued with query for AY18-19</i>
22-10-18	<i>Questionnaire (Part-A) issued u/s142(1) for AY12-13 to AY18-19</i>
9-12-19	<i>Written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.22-10-19; (copy enclosed.....)</i>
13-12-19	<i>Written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.15-10-19; (copy enclosed.....)</i>
13-12-19	<i>Further written submission for AY12-13 to AY18-19- against questionnaire u/s142(1) dt.15-10-19; (copy enclosed.....)</i>
26-12-19	<b><i>On 26-12-19,</i></b> <i>The Id AO has <u>sent</u> 'draft assessment order' to the Office of the Jt.CIT, Central, Raipur vide a letter dt.<b>26-12-19</b> for <b>seeking approval</b> for AY12-13 to AY18-19; (copy enclosed.....)</i>
26-12-19	<b><i>On 26-12-19,</i></b> <i>that letter dt.26-12-19 seeking approval has been <u>received</u> on 26-12-19 at the Office of the Jt.CIT, Central, Raipur; (copy enclosed.....)</i>
27-12-19	<b><i>On 27-12-19,</i></b> <i>the 'Departmental Valuer' (M/s.<u>Frontline</u> Consultants) <b>has submitted reply for the valuation report</b> of inventories at different location of the assessee-Co, before the DCIT, Central-2, Raipur (i.e., the AO); (copy enclosed.....)</i>
27-12-19	<b><i>On 27-12-19,</i></b> <i>the Id AO (the DCIT, Central-2, Raipur) has <b>issued Show Cause Notice</b> to the assessee-Co on <b>27-12-19</b> to submit reply with time allowed up to <b>28-12-19 2.00 PM</b> with respect to the alleged '<b>valuation</b>' submitted by the Departmental Valuer (M/s.<u>Frontline</u> Consultants) to the Id AO; it means that- the Id AO has given an opportunity to the assessee by way of <b>SCN</b> dt.<b>27-12-19</b> to</i>

	<p>submit reply/ explanation <u>up to 28-12-19 2.00 PM</u> against the 'valuation made' by the 'Departmental Valuer', of the Inventories of the assessee-Co as on the date of search on 24-10-17, <u>asking that the difference of stock</u> amounting to <b>Rs.2,89,20,981</b>, why it should not be added to its income and thereby time allowed up to <b>28-12-19 2.00PM</b>;</p> <p>(copy enclosed.....)</p> <p><u>On 27-12-19</u></p> <p>the Id AO has also issued <u>another letter</u> to the assessee-Co to give/ submit reply with time allowed up to 27-12-19 5.00PM with respect to the alleged 'valuation' submitted by the Departmental Valuer (M/s.Frontline Consultants) to the Id AO;</p>
27-12-19	<p><u>On 27-12-19</u></p> <p>the assessee-Co has <u>submitted counter reply/ written submission</u> as against the letter/ query/ SCN dt.27-12-19 by the Id AO in respect of the 'valuation report of inventories' as submitted by the 'Departmental valuer' (M/s.<u>Frontline</u> Consultants) before the AO on 27-12-19 itself;</p> <p>(copy enclosed.....)</p>

Carrying his contention further, the Ld. AR submitted that the subsequent developments which in turn were based on the proceedings carried out by the A.O from 27.12.2019 till 28.12.2019, i.e. after forwarding the "draft assessment order" to the Jt. CIT, Range-Central, Raipur, had resulted to a final assessment order, dated 30.12.2019 that was substantially different from the "draft assessment order".

24. The Ld. AR to fortify his contention had carried out a conjoint reading of the "draft assessment order" (forwarded by the A.O to Jt. CIT (Central), Raipur on 26.12.2019) vis-à-vis the final assessment order, dated 30.12.2019. The Ld. AR had placed on record his written submissions dated 27.09.2024 wherein he had pointed out the detailed instances of differences between the consolidated "draft assessment order" that was forwarded by the A.O to the Jt. CIT, Range-Central, Raipur under his covering letter dated 26.12.2019 and the consolidated final assessment order passed by him u/s.143(3) r.w.s. 153A/143(3) of the Act, dated 30.12.2019, Page 105-110 of APB.

25. The Ld. AR submitted that as there were glaring differences between the "draft assessment order" (copy of which was provided by the Ld.CIT-DR in the course of hearing of the appeal) and the final assessment order passed by the A.O u/s. 143(3) of the Act, dated 30.12.2019, therefore, it could safely be concluded that the final assessment order passed by the A.O, i.e. DCIT, Central Circle-2, Raipur for A.Y.2018-19 was not the one that was approved by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019. The Ld. AR submitted that as the final assessment order, dated 30.12.2019 was not the same that was approved by the Jt. CIT, Range-Central, Raipur vide his letter dated 30.12.2019, therefore, the assessment framed by the A.O could not be sustained and was liable to be struck down for want of valid assumption of jurisdiction. The Ld. AR in

support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013, wherein the Hon'ble High Court had observed that in a case where the Jt.CIT had no occasion to consider the changes that were subsequently incorporated by the A.O in the final assessment order, then the impugned assessment order was to be held as having been passed without approval of the concerned authority as required per the mandate of law. Also, the Ld. AR had drawn support from the order of the ITAT, Pune in the case of BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023. The Ld. AR submitted that the Tribunal in its aforesaid order taking cognizance of the fact that the A.O after obtaining approval of the Jt. CIT u/s.153D of the Act had carried out certain rectification/improvements and passed the final assessment order, observed that the same was to be held as having been passed without obtaining the approval as required per the mandate of law.

26. Apropos the merits of the case, the Ld. AR submitted that as the Global Satellite Position (GSP) method which involves estimation of stock rather than actually counting/weighing the same was adopted by the department's valuer, viz. M/s. FCPL for valuation of the raw material, finished goods, spare parts and consumable items is not a correct method and had not been approved by the courts, therefore, the adverse inferences to the extent sustained by the CIT(Appeals) were liable to be vacated on the

said count itself. The Ld. AR in support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Bansal High Carbons (P) Ltd, 223 CTR 179 (Del) and that of the Hon'ble High Court of Orissa in the case of CIT Vs. Utkal Alloys Limited 319 ITR 339 (Orissa). Apropos the statement of an employee of the assessee company that was recorded in the course of the search proceedings when the aforesaid valuation was being carried out, the Ld. AR stated that the said person had merely confirmed the fact that the measurements were done in his presence and had never accepted or in any manner approved the validity of the same. The Ld. AR submitted that the fact that the assessee company since inception had objected to the valuation carried out by the department valuer could safely be gathered from the fact that it had immediately on receipt of the report of the department's valuer dated 06.11.2017 rebutted the same by filing a report of its registered valuer dated 07.11.2017. It was, thus, the Ld. AR's claim that the CIT(Appeals) had grossly erred in law and facts of the case in partly approving the addition which was based on the GSP/sampling method that was adopted by the department's valuer for drawing adverse inferences based on presumptive and estimated quantification of the stock, which smacked of arbitrariness on his part and could not be sustained.

27. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the CIT(Appeals) to the extent he had rejected the

assessee's claim that the order of assessment passed by the A.O stood vitiated in absence of a valid approval u/s. 153D of the Act. The Ld. DR submitted that as the Jt. CIT, Range-Central, Raipur had granted a valid approval u/s. 153D of the Act, dated 30.12.2019, therefore, the final order of assessment that was passed by the A.O after satisfying the said statutory obligation did not suffer from any infirmity. Rebutting the Ld. AR's contention that the Jt. CIT had mechanically granted the approval without any independent application of mind in the backdrop of the seized material, the Ld. DR submitted that as the Jt. CIT had granted the approval, therefore, it could safely be concluded that the order of assessment passed u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 did not suffer from any infirmity. The Ld. DR in support of his aforesaid contention had relied on the order of the Hon'ble High Court of Chhattisgarh in the case of Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur, TAXC No.88 of 2024, dated 16.04.2024.

28. Rebutting the Ld. AR's claim that the A.O after sending the "draft assessment order", dated 26.12.2019 to the Jt. CIT(Central), Raipur had thereafter at the latter's back continued with the assessment proceedings, and after receiving the letter from the department's valuer, dated 27.12.2019 called for the reply of the assessee company, but had without bringing the said subsequent chain of events to the notice of the Jt. CIT, (Central), Raipur framed the impugned assessment u/s.143(3) of the Act,

dated 30.12.2019, the Ld.DR submitted that the said averment was factually incorrect. Elaborating further on his contention, the Ld. DR submitted that though it is a matter of fact that the A.O after forwarding the “draft assessment order” vide his letter dated 26.12.2019 to the Jt. CIT (Central), Raipur had received a letter dated 27.12.2019 (received on the same date) from the department’s valuer viz. M/s. FCPL and, based on the same, had called for the comments of the assessee company vide his letter dated 27.12.2019, which, thereafter, was received on the very same date i.e. 27.12.2019, but all the said subsequent developments were brought by him to the notice of the Jt. CIT(Central), Raipur by placing before him a revised “draft assessment order” on 30.12.2019 which was approved on the same date by him as per the mandate of Section 153D of the Act. The Ld. DR to fortify his claim that the A.O after receiving the letter of the department’s valuer on 27.12.2019 and calling for the objections of the assessee company had modified the earlier “draft assessment order” and put up the same for necessary approval before the Jt. CIT (Central), Raipur had taken us through the “draft assessment order” dated 30.12.2019, Page 49-74 of APB.

29. The Ld. DR on being queried by the bench about the covering letter vide which the “draft assessment order” dated 30.12.2019 was forwarded by the A.O to the Jt. CIT, (Central), Raipur and the acknowledgement of the receipt of the same by the latter’s office submitted that the same was

this time forwarded through a pen-drive which was considered by the Jt. CIT (Central), Raipur before granting the approval. The A.O (who had joined virtually) submitted that the report of the department valuer, dated 27.12.2019; letter, dated 27.12.2009 addressed by the A.O to the assessee company calling for its comments by 5:00 pm on the same date; show cause notice dated 27.12.2019 issued by the A.O to the assessee company (calling for his comments latest by 2:00 pm of 28.12.2019); and the letter reply of the assessee company dated 27.12.2019 were all separately placed before the Jt.CIT for his kind perusal. However, the A.O (who had jointed virtually) as well as the Ld. CIT-DR on being called upon to place on record any material to substantiate their aforesaid claim, failed to do so. The Ld. CIT-DR to buttress his aforesaid claim had further taken us through the letter/written submissions dated 07.10.2024 received from the ACIT(Central), Bilaspur (C.G.), wherein it was stated by him that the “draft assessment order” on the second occasion was made available to the Range Head by the A.O in a pen-drive and the same was duly considered by him before granting of the approval u/s. 153D of the Act on 30.12.2019. The Ld. DR on being confronted with the fact that it was not a practice of the department to forward the “draft assessment order” through a pen-drive as could safely be gathered from the fact that on 26.12.2019 (supra), the “draft assessment order” was forwarded to the Jt. CIT, (Central), Raipur vide a covering letter of even date which was duly

acknowledged by the latter's office, failed to come forth with any reply. Also, the Ld. DR on being queried that on what basis the present A.O i.e. ACIT (Central), Bilaspur had vide his letter/written submission dated 07.10.2024 claimed that the "draft assessment order" was on 30.12.2019 forwarded to the Jt. CIT, (Central), Raipur vide a "pen-drive"; failed to come forth with any reply. Apart from that, the Ld. DR on being confronted with the fact that the Jt. CIT (Central), Raipur in his approval letter dated 30.12.2019 (supra) while granting approval u/s. 153D of the Act in the case of the assessee company a/w. three other entities, had referred to two letters received from the office of the DCIT (Central-2), Raipur i.e. dated 26.12.2019 and dated 28.12.2019, therefore, on what basis it was being claimed that the approval was granted by him after considering the fresh modified "draft assessment order"(revised), dated 30.12.2019 that was forwarded to him incorporating the addition of Rs.2.89 crore (approx.) which was based on the developments/modifications post 26.12.2019, failed to come forth with any plausible explanation on the said material aspect. All that was stated by him was that as the Jt.CIT (Central), Raipur had granted the approval u/s.153D of the Act after considering the "draft assessment order" dated 30.12.2019 that was forwarded to him by the A.O, therefore, no infirmity did emanate from the assumption of jurisdiction and framing of the assessment by the latter vide his order u/s. 143(3) of the Act, dated 30.12.2019.

30. The Ld. DR had further relied on the consolidated report of the A.O dated 29.08.2024 on the aforesaid issue, wherein the latter had rebutted the assessee's claim that the A.O in absence of a valid approval having been granted by the Jt. CIT, Range-Central, Raipur had wrongly assumed jurisdiction and framed the impugned assessment vide his order passed u/s. 143(3) of the Act, dated 30.12.2019, which reads as under:

**Report on Grounds of Appeal raised by the appellant M/s NR TMT (India) Pvt. Ltd that assessment proceedings were still going on after submission of draft assessment order before the Joint commissioner of Income Tax, central range, Raipur for approval u/s 153D.**

1. The assessee company is mainly engaged in the business of manufacture and sale of MS Billets under the flagship entity M/s. NRTMT (India) Pvt Ltd, Raigarh. The head of the business group is Sanjay Kumar Agrawal, who is one of the directors of the assessee company.
2. Search and seizure action u/s 132 of the IT Act, 1961 was conducted at the business premises of M/s NR Group on 24/10/2017.
3. Consequently, notice u/s 153A of the Act dated 26/09/2019 was issued. Subsequently, assessment order under section 153A read with section 143(3) of the Income Tax Act, 1961 was passed on 30/12/2019 for the A.Ys. 2009-10 to 2017-18 and under section 143(3) of the Act for A.Y. 2018-19.
4. The AO has made addition of Rs. 2,89,20,981/- in AY 2018-19 on account of stock difference found in the factory premises of M/s NR TMT (India) Pvt., Ltd. And passed assessment order with the prior approval of the Joint Commissioner of Income Tax (Central), Raipur (C.G) communicated vide letter in F.No.JCIT(C)/RPR/153D/2019/348 dated 30-12-2019.
5. During the hearing, it was the contention of the Ld A.R that the copies of draft assessment order which were sent to the Joint Commissioner of Income Tax (Central Range), Raipur for approval on 26.12.2019 have not been made available to the assessee in spite of their specific request. It has also been submitted by the Ld. AR that after submitting the draft assessment orders on 26.12.2019 to the Joint Commissioner of Income Tax (Central Range), Raipur for approval, two more letters dated 27.12.2019 were issued to the assessee asking to make compliance on the same on or before 27.12.2019(5PM)/28.12.2019 (2PM).

It was the argument of the Ld AR that as the assessment proceeding were still going on after 26.12.2019 whether any revised / Fresh draft assessment order were submitted by the AO on or after 28.12.2019.

**Approval in terms of the provisions of Section 153D of the Act**

7. The approval by the Joint CIT, Central, Raipur, has not been granted on the same/very next day of submission of draft assessment order and JCIT has granted approval proper application of mind without any hasty manner. In the letter approving the draft assessment order, it is mentioned that *"Further, in view of this office letter No. JCIT(C)/RPR/153D/2016-17 dated 09.09.2016 it is presumed that the AO has*

- *"Given proper opportunity of hearing has been given to the assessee*
- *Thoroughly verified the seized material and that there are no adverse findings*
- *Satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed"*

*this itself shows that the Range Head was specifically supervising the Assessing officer in this case. Further the approval letter dated 30-12-2019 (last para) of Range head clearly shows that case record (which comprises various notices issued, replies of assessee, seized material etc) were returned to the AO after approval". From records, it is clear that approval was granted by the range head on 30-12-2019 i.e. after 04 days of letter dated 26-12-2019 written by the AO seeking approval. Hence, it is clear that the approval has not been granted in mechanical and routine manner without application of mind in hasty manner.*

8. As regards the non-application of mind before going through the entire material & case records, it needs to be emphasized that every income tax officer in general is very used to critically analysing hundreds of pages of dense legal material on a daily basis & in central charges specially going through the huge record, data, material is a routine matter on daily basis. In

present case context, a range head is a senior officer and is eminently capable of carefully considering several hundred pages in a day. In fact, it is a primary requirement of his / her job.

9. So far as the consultation / monitoring with the Range head is concerned, the approval by the Range head u/s 153D in all search cases, is merely administrative in nature. While giving such administrative approval, the Range head does not act as an appellate authority to allow or disallow the additions proposed by AO.

10. The CBDT Circular No. 3 of 2008 dated 12.3.2008, vide which the legislative intent may be gathered for enactment of new Sec. 153D, has only prescribed that assessment of search cases orders of assessment and reassessment are to be approved by the Joint Commissioner. Nowhere under the scheme of Sec. 153D, has the procedure and manner of granting approval u/s 153D been prescribed. Therefore, the approval u/s 153D by supervisory authority is merely administrative in nature to safeguard internal checks and balances without affecting the quasi-judicial powers of the AO or creating any prejudice to assessee.

11. Approval u/s 153D is therefore purely an administrative function performed by Joint CIT, which is also borne out from the fact that the Joint CIT can give directions to make assessment in a particular manner only u/s 144A of I T Act, which has not been invoked in this case. Both provisions u/s 153D and u/s 144A operate in different domains and are for different purposes, which further strengthens the position of law that 153D approval is only administrative in nature intended to ensure that there was no jurisdictional error or illegality or violation of principles of natural justice and that the procedural requirements are duly met before the assessment order is passed by AO.

12. In the Sahara Credit Cooperative IT(SS)A No.09/RPR/2018 23 Society Ltd. Vs. DCIT/ACIT (supra) adjudicated by Hon'ble Allahabad High Court as this case discusses about the communication of approval in whatever mode. On the other hand, in the instant case, approval was granted by Ld JCIT

Central) Raipur not only in written mode but also in oral mode from time to time.

**13.** In the realm of administrative approval as contemplated u/s 153D, the preliminary satisfaction of Range Head requires only to the extent that the AO has looked into all seized material and has given opportunity to assessee by confronting the evidences and the additions proposed are based on one of the plausible interpretations. The Range Head here does not enter into the realm of deciding whether the additions proposed by AO is legally sustainable or not as Range Head does not enter into the role of adjudication of merits of the addition as he does u/s 144A or as appellate authority, which has been separately provided under the Act.

**14.** The fact that judicial review of administrative function is limited and applicable only if the decision suffer from the vice of illegality, irrationality or procedural impropriety has been held by the Hon'ble Supreme court in the judgment of **Municipal Council, Neemuch Vs Mahadev Real Estate & Others (Civil Appeal Nos. 7319-7320 of 2019)**. Therefore, there was no jurisdictional error or illegality or violation of principles of natural justice while giving approval u/s 153D as it did not further worsen the case of assessee than what was proposed by AO in the draft assessment order after giving due opportunity by the AO.

**15.** Hon'ble Supreme court of India in **Deepak Agro Foods Vs State of Rajasthan &Ors (2008)** observed that in the light of the settled law, the assessments orders could not be held to be null and void on account of the stated irregularities and in case of an irregularity in assessment proceedings by the officer, at best, it was an illegality, which defect is capable of and can be set aside the order. The Hon'ble court also added that Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit in as much as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not strictly apply to assessment proceedings. There is a clear distinction between a "null and void" order and an "illegal or irregular" order. All irregular or erroneous or even illegal orders cannot be held to be null and void as there

is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal.

In the instant case also the approval of JCIT Central Raipur doesn't make the assessment order itself invalid, bad in law & non-est and is liable to be quashed as challenged by the assessee.

16. In **Commissioner of Income Tax vs Bharatkumar Modi (2000)**, **Hon'ble Bombay High court** opined that a proceeding is a nullity when the authority taking it has no power to have seized in over the case. The omission of the assessing officer, in the present case, to confront the assessees with the material in his possession does not affect the ab initio jurisdiction enjoyed by the assessing officer in respect of the above proceedings.

17. Courts have even approved the service of notices / orders through emails or even social media such as WhatsApp etc. Hence, there can be no specific requirement for Range Head also to be physically present at the station where assessment records are physically available to be able to apply his / her mind on relevant material before granting the approval u/s 153D to the draft assessment order proposed by the AO. It is also not the case that the supervisory authority comes to know of the facts / details of assessment proceedings in any case only at the time when it receives the draft order from AO seeking approval u/s 153D. The entire process of monitoring is a continuous process even before the receipt of draft order seeking the final approval u/s 153D.

This aspect has indeed been emphasized in the approval in the present case where the approval letter states that "the cases have also been discussed with you (AO) from time to time". From the above, it may be seen that it was not merely one time approval of the assessment order, but it was the result of constant monitoring, supervision and discussion regarding the progress made in the assessment proceedings, which finally resulted in approval of the order.

18. Approval by Joint CIT Central range Raipur was in "normal course of duty" as the range head and assessing officer of Central charge (where only search related assessment are done) discuss the cases on a routine basis

and continuous & regular monitoring of assessment proceeding is done by range head from day one. Thus, the word 'Presumed' mentioned in approval letter dated 30-12-2019 should be interpreted in that context only.

**19.** Approval letter Dated 30-12-2019 also shows that "word presumed" in para 3 is to be read not only in context of normal course of business but also in connection with letter dated 09.09.2016 which was issued by range head JCIT (C) Raipur to the same A.O.

**20.** Perusal of the approval letter dated 30-12-2019 also shows that range head returned the case record of the case along with the impugned approval letter which shows that the range head after applying his mind & going through the case records granted approval as desired by DCIT(C) – 2 Raipur with his letter dated 26-12-2019 (i.e. 04 days before) granting approval to the A.O.

**21.** Above logic also gets strength from the fact that since the day assessment proceedings starts, not only the A.O. but the range head also is given one original copy of appraisal report by the Inv. authorities so that the range head officer going through the same supervises and guides the A.O. on regular basis. Appraisal report, questionnaire & draft assessment order on record also discuss the seized material in detail which were with the range head for considerable period.

**22.** In the instant case, Approval of JCIT(Central)Raipur which is only, administrate in nature and is open for Judicial review in a limited way. Such judicial review is applicable only if the decision suffers from the vice of illegality, irrationality or procedural ~~impropriety~~ has been held by the Hon'ble Supreme court in the judgment of **Municipal Council, Neemuch vs Mahadev Real Estate & Others (Civil Appeal Nos. 7319-7320 of 2019)**.

**23.** In this case the AO has issued letter dated 15-10-2019 with detailed questionnaire to the assessee asking him to submit his reply by 25-10-2019. In the letter, the AO has asked the assessee regarding the stock difference found during the search proceeding. The assessee has submitted its reply on 13-12-2019 where he had raised his objection regarding the valuation of stock.

24. On 27-12-2019 Frontline Consultation Pvt Ltd has submitted its report on "Valuation of Plant & Machinery and determination of quantity, Value of inventories, at different location in the case of NR TMT (INDIA) Pvt Ltd and NR Ispat & Power Pvt Ltd." Dated 27-12-2019. (**Copy of the forwarding letter is enclosed**) in response to the letter issued by the AO on 17-12-2019 (**Copy enclosed**). In the said letter Frontline Consultation Pvt Ltd has mentioned the following in the last para

*"the objection raised by the party for certain things has nothing but to linger on the proceedings which has no merit there in. our previous valuation report had been widely discussed and correct to the best of our knowledge and belief."*

25. As there is no change in the valuation report as per the letter of Frontline Consultation Pvt Ltd and to follow the principal of Natural Justice, an opportunity has been given to the assessee for explanation/clarification in the way of show cause issued by the AO on the same date i.e., 27-12-2019 without wasting any time as the case was going to time barred on 31-12-2019. Again, in the mean time on 26-12-2019 the AO has already sent the draft assessment order to the Joint Commissioner of Income Tax, Central range, Raipur for approval as the time barring date was 31-12-2019. Here it is to be noted that the report of Frontline Consultation Pvt Ltd has not been received by the AO at the time of sending the draft assessment order for approval.

26. The Ld AR of the assessee has submitted that after submission of draft assessment order, the AO has issued two more letters dated 27.12.2019 were issued to the assessee asking to make compliance on the same on or before 27.12.2019(5PM)/28.12.2019 (2PM) is not completely correct. The AO has issued only one show cause letter on 27-12-2019 and fix the hearing on 28-12-2019 at 02.00 PM (**copy enclosed**). In the show cause the assessee was asked to offer its comments and show cause why the difference of stock amounting to Rs.2,89,20,981/- should not be added u/s 69 of the Act. The show cause was being issued to follow the principal of Natural Justice by giving an opportunity to explain the comments given by Frontline

nsultation Pvt Ltd in relation to the valuation of stock made during the search proceeding.

**27.** Accordingly the value of stock difference of Rs.2,89,20,981/- was added u/s 69 after considering the reply of the assessee submitted on 27-12-2019. On 30-12-2019, a revised draft order has been put up before the Joint Commissioner of Income Tax, Central Range, Raipur **(copy enclosed)** and approval has been given on 30-12-2019 after considering all the facts brought in the record after proper application of mind.

**28.** The approval u/s 153D was only administrative in nature to ensure that order approved did not suffer from any vice of illegality, irrationality or procedural impropriety and such approval has duly met the requirement of law”.

**29.** Therefore, in view of all the facts & circumstances of the case, it is seen that the AO has issued a show cause on 27-12-2019 after receiving a report from Frontline Consultation Pvt Ltd who has made valuation of the stock of the assessee company during the search regarding the objection made by the assessee company on the valuation report. The assessee had submitted its reply on 27-12-2019 and the AO after considering the reply of the assessee sent a revised draft assessment order to the Joint Commissioner of Income Tax, Central Range, Raipur for necessary approval. As the case was going to be time barred, the Joint Commissioner of Income Tax, Central Range, Raipur after carefully considering all the facts brought in the record after proper application of mind has given approval u/s 153D of the Act on 30-12-2019.

Submitted for your kind perusal.

Encl: **As above**



**(Pradeep Kumar Swarnakar)**  
Assistant Commissioner of Income-tax  
Central Circle, Bilaspur

31. On merits, the Ld. DR submitted that as the valuation of stock of the assessee company was carried out by the department's valuer in the presence of latter's employee who had at no stage objected to the method of valuation, therefore, the assessee company could not now be permitted to raise any objection as regards the validity of the method of valuation that was so adopted by the valuer. The Ld. DR submitted that the CIT(Appeals) without giving any cogent reason had grossly erred in partially vacating and scaling down the addition that was made by the A.O u/s. 69 of the Act.

32. Shri Vijay Mehta, Ld. AR rebutted the claim of the department that the A.O after having forwarded the "draft assessment order" to the Jt. CIT (Central), Raipur on 26.12.2019, had thereafter modified the same and after incorporating the addition of suppressed valuation of stock of raw material, finished goods and scrap of Rs.2.89 crore (approx.) had forwarded a fresh modified "draft assessment order" (revised) on 30.12.2019 to him for his approval u/s. 153D of the Act. Also, the Ld. AR submitted that the A.O though after having forwarded the "draft assessment order" to the Jt. CIT(Central), Raipur on 26.12.2019 was rendered as *functus officio* qua the assessment proceedings and was obligated to have framed the assessment in conformity with the "draft assessment order" as was approved by the Jt. CIT (as was forwarded to

him on 26.12.2019) but he had thereafter continued with the assessment proceedings and based on a chain of subsequent events which were never brought to the notice of the Jt. CIT, viz. (i) letter dated 27.12.2019 of the department valuer disposing off the objections that were earlier raised by the assessee company to its valuation of stock; (ii) issuance of letter/SCN, dated 27.12.2019 to the assessee company calling upon it to put forth its explanation to the observations of the department valuer; and (iii) reply filed by the assessee company objecting to the observations of the department valuer- had passed the final assessment order u/s. 143(3) of the Act, dated 30.12.2019 which was substantially at variance from the “draft assessment order” that was forwarded by him to the Jt. CIT(Central), Raipur on 26.12.2019 and was approved by the latter on 30.12.2019. Elaborating further on his contention, the Ld. AR vehemently submitted that neither there was anything discernible from the record nor produced or referred to by the Ld. CIT-DR or the A.O (who had joined virtually), which would reveal that the impugned fresh modified “draft assessment order” (revised) was again forwarded by the A.O to the Jt. CIT (Central), Raipur for his approval u/s. 153D of the Act on 30.12.2019. Also, it was submitted by him that no material/evidence had been led by the Ld. CIT-DR or the A.O (who had joined virtually) which would irrefutably establish that the subsequent chain of events i.e. post/after forwarding by him of the “draft assessment order” to the Jt. CIT (Central), Raipur on 26.12.2019

were brought to the latter's notice, viz (i) letter dated 27.12.2019 of the department valuer disposing off the objections that were earlier raised by the assessee company to its valuation of stock; (ii) issuance of letter/SCN, dated 27.12.2019 to the assessee company calling upon it to put forth its explanation to the observations of the department valuer; and (iii) reply filed by the assessee company objecting to the observations of the department valuer-which, thus, had resulted to passing of the final assessment order u/s.143(3) of the Act, dated 30.12.2019 that was substantially at variance/difference from the "draft assessment order" that was forwarded by him to the Jt. CIT(Central), Raipur on 26.12.2019 and was approved by the latter on 30.12.2019. Shri Vijay Mehta, Ld. AR submitted that the entire claim of the department of having once again forwarded a fresh modified "draft assessment order" (revised) on 30.12.2019 for approval to the Jt. CIT (Central), Raipur for his approval u/s. 153D of the Act in absence of any material/evidence supporting the same and existence of facts which rather disproved the same, thus, was devoid and bereft of any substance.

33. Shri Vijay Mehta, Ld. AR submitted that the claim of the department of having once again forwarded a fresh modified "draft assessment order" on 30.12.2019 (revised) to the Jt. CIT (Central), Raipur was in fact a brainchild of an afterthought to wriggle out of and undo the effect of the

observations that were arrived at by the Tribunal while disposing off the appeals in the case of a “sister concern” of the assessee company, viz. ACIT (Central)-2, Raipur Vs. M/s. NR Ispat & Power P. Ltd., ITA Nos. 4, 6 to 10/RPR/2021 and CO Nos.12 to 15/RPR/2022 for AY(s) 2010-11 to 2013-14 & A.Y.2018-19, dated 30.08.2024, wherein on same set of facts involved in the said appeals the Tribunal had quashed the assessment framed by the same A.O i.e. DCIT (Central)-2, Raipur, inter alia, for the reason that the consolidated final assessment order passed by the A.O vide his order u/s. 143(3) r.w.s. 153A of the Act, dated 30.12.2019 was found at variance with the “draft assessment order” that was forwarded by him on 26.12.2019 to the Jt. CIT(Central, Raipur for his approval u/s. 153D of the Act. The Ld. AR submitted that the impugned fresh modified “draft assessment order” (revised) that is claimed by the department to have been forwarded to the Jt. CIT (Central), Raipur in the case of the present assessee company viz. NR TMT (India) Pvt. Ltd. (supra) which till date was not available on record, had now been brought into picture only to plug the lapse that had resulted to quashing of the assessment by the Tribunal in the case of its “sister concern”, viz. M/s. NR Ispat & Power Pvt. Ltd. (supra). Elaborating on his contention, the Ld. AR submitted that independent of the facts that undeniably fortified his claim that no fresh modified “draft assessment order” (revised) was ever forwarded on 30.12.2019 by the A.O to the Jt. CIT (Central), Raipur for his approval u/s.

153D of the Act, even otherwise, it was incomprehensible that though the same A.O had not forwarded any fresh modified “draft assessment order” (revised) while simultaneously framing parallel assessments involving same set of facts in the case of the “sister concern”, viz. NR Ispat & Power Pvt. Ltd. (supra), but at the same point of time had done so while framing the assessment in the case of the present assessee company.

34. Controversy involved in the present appeal lies in a narrow compass, i.e. (i) as to whether or not the A.O had framed the assessment vide his order passed u/s.143(3) of the Act, dated 30.12.2019 in absence of a valid approval of the Jt. CIT, Range-Central, Raipur u/s.153D r.w.s. 153B(1)(b) of the Act?; and (ii) that as to whether or not the CIT(Appeals) is right in law and facts of the case in partially vacating/sustaining the addition made by the A.O towards suppression in the valuation of sponge iron?

35. Before proceeding any further, we deem it fit to cull out the provisions of Section 153D of the Act as had been made available on the statute vide the Finance Act, 2007 w.e.f. 01.06.2007, as under:

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

**Provided** that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the

prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

It transpires on a careful perusal of Section 153D of the Act that the same establishes a critical procedural safeguard in the assessment and reassessment process contemplated under sections 153A(b) and 153B(b) of the Act. As per the aforesaid safeguard as had been made available on the statute by the legislature in all its wisdom, no order of assessment or reassessment, *inter alia*, pursuant to search & seizure proceedings conducted on the assessee shall be passed by an A.O below the rank of Joint Commissioner without obtaining the prior approval of the Joint Commissioner. We find that the primary objective of Section 153D is to introduce a higher degree of scrutiny of an assessment order framed pursuant to search proceedings. It is not merely a procedural step but a substantive legal requirement as underscored by the Central Board of Direct Taxes (CBDT) in Circular No.3 of 2008, dated 12.3.2008. The purpose of incorporating the aforesaid statutory provision is to prevent arbitrary or biased decisions by introducing a layer of accountability in the assessment process.

36. We find that the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Anuj Bansal (2024) 165 taxmann.com 2 (Del.)** and the **Hon'ble High Court of Allahabad** in the cases of **Pr. CIT Vs. Sapna Gupta (2023) 147 taxmann.com 288** and **Pr. CIT Vs. Siddharth Gupta (2023) 450 ITR**

**534 (All. HC)**, while approving the view taken by the Tribunal, had held, that the approving authority is required to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. Also, it was observed that in case approval was granted in a mechanical manner without application of mind by the Lt. CIT then the same vitiated the assessment order. Further, we may herein observe that the **Hon'ble Supreme Court** in the case of **ACIT Vs. Serajuddin & CO, SLP (Civil) Diary No.44989/2023 dated 28.11.2023**, had approved the order of the **Hon'ble High Court of Orissa** in the case of **ACIT Vs. Serajuddin & Co. (2023) 454 ITR 312 (Orissa)**, wherein it was held that non-compliance with the requirements of Section 153D or granting approval without proper examination can lead to the invalidation of the assessment order. It was, thus, observed that a mere mechanical approval without proper examination and understanding of the draft assessment order or case records vitiated the assessment order. Based on the aforesaid settled position of law, we are of a firm conviction that an approval u/s. 153D of the Act granted after due application of mind and verifying the draft assessment order in the backdrop of the seized material is *sine-qua-non* for framing of a valid assessment u/s.143(3) r.w.s. 153B(b) of the Act.

37. We shall now in the backdrop of the aforesaid settled position of law deliberate upon the contentions advanced by the Lt. AR, based on which, he has assailed the validity of the assessment order that is alleged to have

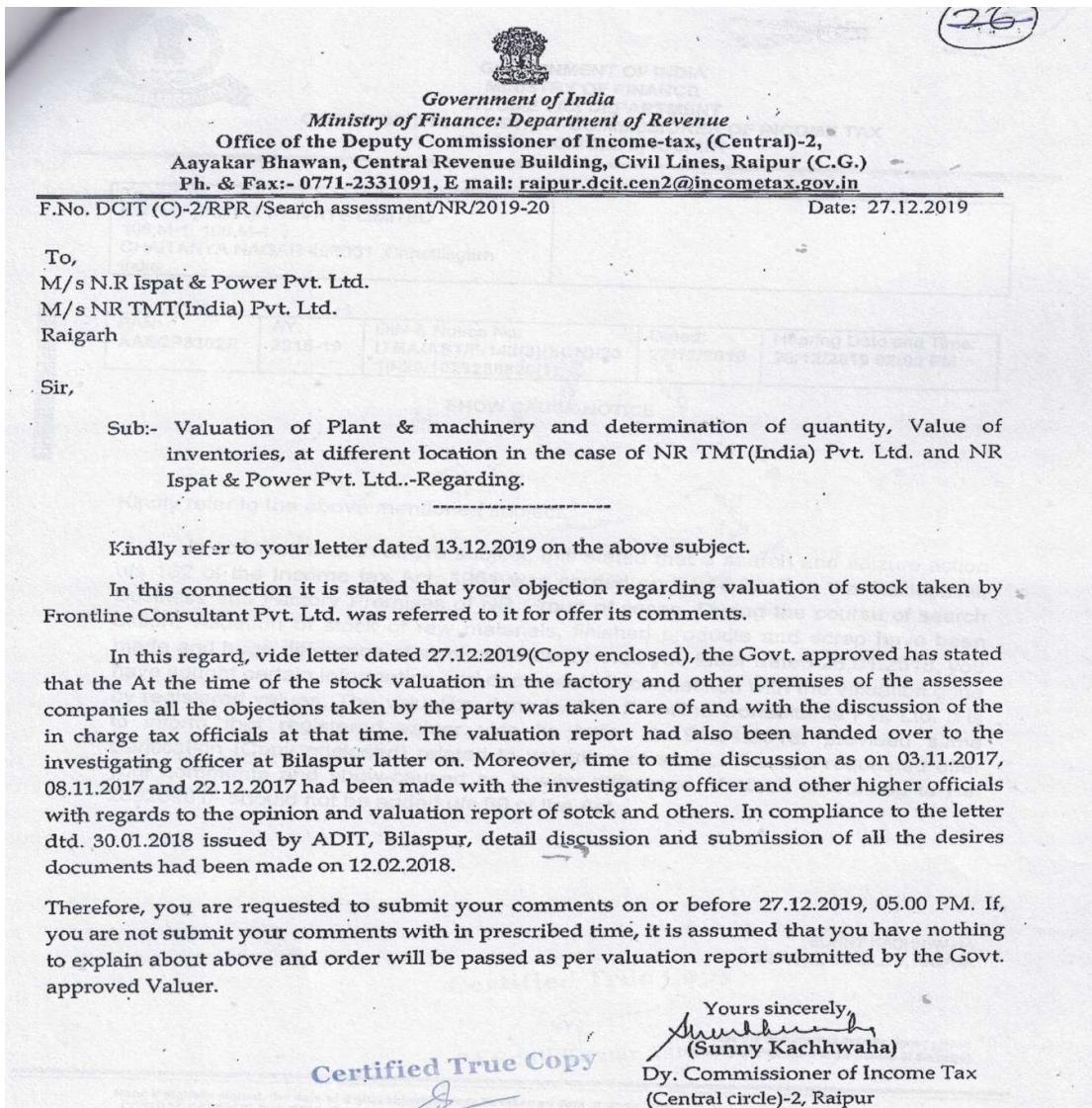
been passed by the A.O u/s.143(3) r.w.s. 153A of the Act dated 30.12.2019 in absence of a valid approval u/s.153D of the Act of the Jt. CIT, Range-Central, Raipur.

38. Admittedly, it is a matter of fact borne from record that the A.O had vide his letter dated 26.12.2019 forwarded the "draft assessment order" to the Jt. CIT, Range-Central, Raipur for approval u/s. 153D of the Act, Page 75 of APB. Also, it transpires that the Jt. CIT vide his common letter dated 30.12.2019 had granted approval u/s.153D of the Act in the case of the assessee company for A.Y.2009-10 to A.Y.2018-19 as well as 34 cases of three other assessee's. For the sake of clarity, the letter of the Jt. CIT, Range-Central, Raipur dated 30.12.2019 granting approval u/s. 153D of the Act is culled out as under:

	<p>Office of the Joint Commissioner of Income tax, Range Central Aayakar Bhawan, Civil Lines, Raipur (CG) Email:raipur.addlcit.cen@incometax.gov.in Ph.&amp; Fax 0771-2331044 F.No. JCIT(C)/RPR/153D/2019-20/348</p>	<p>आयकर दस्तावेज (केंद्रीय-2) 26/12/2019 502 Dated 30.12.2019 (E.T.) SEARCHED Shri Pramod</p>																				
<p>The Dy. Commissioner of Income tax (Central)-2, Raipur</p>																						
<p>Subject - Approval u/s 153D of the I.T. Act -N. R. and Indermani Groups – Regarding.</p>																						
<p>Please refer to your letters in F.No. DCIT(C)-2/RPR/Search assessment/2019-20 dated 26.12.2019 and dated 28.12.2019.</p>																						
<p>2. The draft assessment orders u/s 153D and 143(3) in the following cases submitted vide above mentioned letter are hereby approved u/s 153D of the I.T. Act</p>																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">S.No.</th> <th style="text-align: left;">Name of the assessee</th> <th style="text-align: left;">PAN</th> <th style="text-align: left;">AY</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>N.R. Ispat &amp; Power Pvt. Ltd.</td> <td>AACCN6591Q</td> <td>2009-10 to 2018-19</td> </tr> <tr> <td>2</td> <td>N.R. TMT (India) Pvt. Ltd.</td> <td>AAECP8302P</td> <td>2012-13 to 2018-19</td> </tr> <tr> <td>3</td> <td>NRVS Steels Pvt. Ltd.</td> <td>AAHCS4369L</td> <td>2008-09 to 2018-19</td> </tr> <tr> <td>4</td> <td>Sambhavi Energy and Coal Beneficiation Pvt. Ltd.</td> <td>AALCSS5140B</td> <td>2012-13 to 2018-19</td> </tr> </tbody> </table>			S.No.	Name of the assessee	PAN	AY	1	N.R. Ispat & Power Pvt. Ltd.	AACCN6591Q	2009-10 to 2018-19	2	N.R. TMT (India) Pvt. Ltd.	AAECP8302P	2012-13 to 2018-19	3	NRVS Steels Pvt. Ltd.	AAHCS4369L	2008-09 to 2018-19	4	Sambhavi Energy and Coal Beneficiation Pvt. Ltd.	AALCSS5140B	2012-13 to 2018-19
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<p>3. Further in view of this office letter no. F.No. JCIT(C)/RPR/Draft Asst. Order/2016-17/ dated 09.09.2016 it is presumed that the AO has –</p> <ul style="list-style-type: none"> <li>• given proper opportunity of hearing has been given to the assessee</li> <li>• thoroughly verified the seized material and that there are no adverse findings</li> <li>• satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.</li> </ul>																						
<p>4. You may act accordingly. The copy of the final order may be submitted for record purpose in this office.</p>																						
<p>Encl: case records</p>																						
<p>(R.M. Mujumdar) Joint Commissioner of Income tax, Range- Central, Raipur</p>																						

As stated by the Ld. AR and, rightly so, we find that the A.O after forwarding the "draft assessment order", dated 26.12.2019 (received by the office of Jt. CIT on 26.12.2019) had thereafter continued with the assessment proceedings. The A.O had vide his letter dated 27.12.2019

(Page 45 of APB) forwarded to the assessee company a copy of the comments of the department valuer, viz. M/s. Frontline Constants Pvt. Ltd., dated 27.12.2019, Page 44 of APB, wherein the latter had dealt with the objections that were earlier raised by the assessee company regarding the valuation of its stock. Accordingly, the A.O had called upon the assessee company to submit its comments on the aforesaid report of the valuer before 27.12.2019 (up to 5:00 pm). For the sake of clarity, the letter dated 27.12.2019 of the Dy.CIT (Central Circle)-2, Raipur is culled out as under:



39. Also, the A.O vide his "Show Cause Notice" ("SCN") dated 27.12.2019, Page 46 of the APB, had called upon the assessee company to put forth an explanation that as to why the difference in the valuation of stock pertaining to raw material, finished goods and scrap amounting to Rs.2,89,20,981/- may not be added in its case u/s. 69 of the Act. The A.O

as per the "SCN" dated 27.12.2019 had directed the assessee company to furnish its reply latest by 28.12.2019 (upto 02:00 pm). For the sake of clarity, the aforesaid SCN, dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur is culled out as under:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE 2, RAIPUR

To, NRTMT (INDIA) PRIVATE LIMITED 106,M-1 106,M-1 CHAITANYA NAGAR 496001 ,Chhattisgarh India				
PAN: AAECP8302R	AY: 2018-19	DIN & Notice No: ITBA/AST/F/143(3)(SCN)/20 19-20/1023286828(1)	Dated: 27/12/2019	Hearing Date and Time: 28/12/2019 02:00 PM

SHOW CAUSE NOTICE

Kindly refer to the above mentioned subject.

In connection with above subject, it is stated that a search and seizure action u/s 132 of the Income tax Act, 1961 was carried on 24.10.2017 in the Residential, Business and Factory Premises of NR Group of cases. During the course of search action, valuation of stock of raw materials, finished products and scrap have been made and huge difference of stock was found. Vide you letter dated 26.01.2018, you have sought certain information and documents in connection with the valuation done by registered values. The valuation done by M/s Frontline Consultants Pvt. Ltd. It is to inform that registered valuer vide its letter dt. 04.04.2018, provided same clarification (Copy enclosed) related to valuation of stock. You are requested offer your comments and show-caused as to why difference of stock amounting to Rs. 28920981/- should not be added u/s 69 of the Act.

SUNNY KACHHWAHA  
CENTRAL CIRCLE 2, RAIPUR

*Certified True Copy*  
CA Sunil Kumar Agarwal

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

We find that the assessee company thereafter in compliance to the aforesaid letter/SCN, both dated 27.12.2019 issued by the Dy.CIT, Central

Circle-2, Raipur had on the same date, i.e. on 27.12.2019 filed its reply,  
Page 47-48 of APB.

40. Ostensibly, the aforementioned facts reveal that the A.O after forwarding the "draft assessment order" vide his letter dated 26.12.2019 had thereafter continued with the assessment proceedings. As observed by us hereinabove, the A.O after having forwarded the "draft assessment order", dated 26.12.2019 to the Jt. CIT (Central), Raipur for his approval u/s.153D of the Act had, thereafter, received a letter of the department's valuer viz. M/s. FCPL, dated 27.12.2019 wherein the latter had dealt with the objections to the valuation of stock that were earlier raised by the assessee company. The A.O had vide his letter/SCN dated 27.12.2019 confronted the aforesaid letter of the department valuer to the assessee company and had called upon it to furnish its reply within the specified time periods therein mentioned. In compliance, the assessee company had filed with the A.O its reply on the same date i.e. on 27.12.2019, wherein the disposal of its objections to the valuation of stock by the department's valuer based on the latter's general observations was objected. The Ld. CIT-DR and the A.O (who had joined virtually) had claimed that the A.O after considering the aforesaid developments which were subsequent to forwarding of the "draft assessment order", dated 26.12.2019, had come up with a fresh modified "draft assessment order" (revised) on 30.12.2019 (i.e. on the date of grant of approval itself), wherein he had based on the

aforesaid developments i.e. subsequent to 26.12.2019 (supra) made an addition of Rs.2.89 crore (supra) towards suppression of the valuation of stock and had forwarded the same to the Jt. CIT(Central), Raipur for his approval/s. 153D of the Act.

41. At the threshold, we may herein observe that the claim of the department of having forwarded a fresh modified “draft assessment order” dated 30.12.2019 (revised) to the Jt. CIT, (Central), Raipur for his approval u/s. 153D of the Act suffers from certain serious infirmities and thus, does not inspire any confidence as regards the veracity of the same for multiple reasons which are culled out as under:

**(A)** As the A.O on the earlier occasion had forwarded the “draft assessment order” on 26.12.2019, Page 17 of APB for approval of the Jt. CIT (Central), Raipur u/s.153D of the Act alongwith a covering letter of even date (the receipt of which was acknowledged by the office of the Jt. CIT on 26.12.2019), therefore, the claim raised by the A.O vide his letter/written submissions dated 07.10.2024 bearing F.No.ACIT (Central)/BSP/Valuation Report/2024-25/250, wherein it is stated that the fresh modified “draft assessment order”, dated 30.12.2019 was made available to the Jt. CIT (Central), Raipur by the A.O in a pen-drive does not inspire any confidence. We, say so, for the reason that the department had despite specific directions failed to place on record any such pen-drive or

any material/document which would substantiate its claim that a fresh modified “draft assessment order”, dated 30.12.2019 (revised) incorporating the addition of Rs.2.89 crore (supra) which was based on developments subsequent to 26.12.2019 was forwarded by the A.O to the Jt. CIT (Central), Raipur for his consideration on the same date on which approval was granted i.e. 30.12.2019. It would also not be out of place to point out that neither any entry in the “order sheet” nor any material/record substantiating the claim of the department that the fresh modified “draft assessment order” (revised) was forwarded by the A.O to the Jt.CIT (Central), Raipur on 30.12.2019 is either discernible from the assessment record or had been placed before us by the Ld. DR.

**(B)** Although the A.O vide his letter dated 07.10.2024 (supra) had stated that a fresh modified “draft assessment order”, dated 30.12.2019 (revised) was on the same date made available to the Jt. CIT, (Central), Raipur in a pen-drive, but we find that there is no mention of any such fresh modified “draft assessment order”, dated 30.12.2019 (supra) in the letter dated 30.12.2019 of the Jt. CIT(Central), Raipur wherein approval was granted by him u/s. 153D of the Act. Rather, the Jt. CIT (Central), Raipur vide his letter dated 30.12.2019 had, inter alia, granted the approval to the A.O for the “draft assessment order”, dated 26.12.2019 that was forwarded in the case of the assessee company. There is nothing available on record which would reveal that either the modifications to the “draft assessment order”,

dated 26.12.2019 or the developments/subsequent sequence of events that had transpired based on the continuation of the assessment proceedings by the A.O post 26.12.2019, i.e. subsequent to forwarding of the “draft assessment order” on 26.12.2019 were placed before the Jt. CIT (Central), Raipur for his consideration. Nothing can be gathered from the record which would establish that the proceedings carried out by the A.O post 26.12.2019, i.e. subsequent to forwarding of the “draft assessment order” on 26.12.2019 to the Jt. CIT (Central), Raipur, viz. (i) letter dated 27.12.2019 of the department’s valuer i.e. M/s. FCPL to the A.O dealing with the objections that were earlier raised by the assessee company regarding the valuation of its stock, Page 44 of APB; (ii) letter dated 27.12.2019 of the A.O to the assessee company directing it to file its reply to the comments of the department’s valuer on or before 27.12.2019 (upto 05:00 pm), Page 45 of APB; (iii) “Show Cause Notice” (SCN), dated 27.12.2019 issued by the A.O to the assessee company calling upon it to put forth an explanation as to why the addition of Rs.2,89,20,981/- towards difference in valuation of stock may not be made in its case u/s. 69 of the Act i.e. by 28.12.2019 (upto 05:00 pm), Page 46 of APB; and (iv) the reply of the assessee company dated 27.12.2019 in response to the aforesaid letter/SCN dated 27.12.2019 (supra) of the A.O; were all forwarded to the Jt. CIT, (Central), Raipur for his consideration. At this stage, we may herein observe that though it is claimed by the A.O (who

had joined virtually) that the aforesaid letter/SCN that were received/issued after forwarding of the “draft assessment order” dated 26.12.2019 were placed before the Jt. CIT (Central), Raipur a/w. the draft assessment order, dated 30.12.2019 (stated to have been forwarded through pen-drive) but as no material substantiating the said claim of the department has been placed before us, therefore, the same cannot be accepted.

**(C)** that on a perusal of the record, we find that the Jt. CIT (Central), Raipur vide his letter dated 30.12.2019 had while granting his approval u/s.153D of the Act in the case of the assessee company and three other entities referred to two letters that were received by him from the DCIT (Central)-2, Raipur i.e. letter dated 26.12.2019 and letter dated 28.12.2019. We find that the aforementioned letters referred by the Jt. CIT in his approval letter dated 30.12.2019 (supra) pertains to the approvals that was sought by the A.O, viz. (i) letter dated 26.12.2019 : the approval that was sought by the A.O in the cases of (a) M/s. NR Ispat & Power Pvt. Ltd.; & (b) M/s. NR TMT (I) Pvt. Ltd., Page 17 of APB; (ii) letter dated 28.12.2019: the approval that was sought by the A.O in the case of the other two entities, viz. (i) M/s. NRVS Steels Pvt. Ltd.; and (ii) M/s. Sambhavi Energy and Coal Beneficiation Pvt. Ltd. Interestingly, there is no mention in the approval letter of the Jt. CIT(Central), Raipur, dated 30.12.2019 that the DCIT(Central)-2, Raipur i.e. the A.O had ever sought

for any approval of a fresh modified “draft assessment order” (revised) dated 30.12.2019.

**(D)** that on a close scrutiny of the report/written submissions dated 05.08.2024 filed by the A.O, we find that he had in his rebuttal of the claim of the assessee company that there was no application of mind by the Jt. CIT (Central), Raipur while granting approval u/s.153D of the Act, dated 30.12.2019, had emphasized that **the “draft assessment order” was forwarded to the Jt. CIT (Central), Raipur on 26.12.2019 and the latter had thereafter, granted the approval after 04 days i.e. on 30.12.2019 and not on the same date.** Accordingly, the aforesaid claim of the A.O further proves to the hilt that the A.O had passed the final assessment order u/s.143(3) of the Act, dated 30.12.2019 based on the “draft assessment order”, dated 26.12.2019 that was approved by the Jt. CIT(Central), Raipur after 4 days i.e. on 30.12.2019. For the sake of clarity, we may herein cull out the relevant observations recorded by the A.O in his report dated 05.08.2024, which reads as under:

***“(7)..... From records, it is clear that approval was granted by the range head on 30-12-2019 i.e. after 04 days of letter dated 26-12-2019 written by the A.O seeking approval. Hence, it is clear that the approval has not been granted in mechanical and routine manner without application of mind in hasty manner.....;***

***(20) .....Perusal of the approval letter dated 30-12-2019 also shows that range head returned the case record of the case along with the impugned approval letter which shows***

***that the range head after applying his mind & going through the case records granted approval as desired by DCIT(C) - 2 Raipur with his letter dated 26-12-2019 (i.e. 04 days before) granting approval to the A.O.....”***

***(emphasis supplied by us)***

Although, the A.O, had thereafter, in his report/written submissions, dated 05.08.2024 (supra) claimed that a fresh modified “draft assessment order (revised)” dated 30.12.2019 was put up before the Jt. CIT (Central), Raipur, but the said observation in itself contradicts and rather militates against his claim that the Jt. CIT (Central), Raipur had granted the approval on 30.12.2019 i.e. after 04 days from the date of receipt of the “draft assessment order”, dated 26.12.2019. Considering the claim of the A.O that the Jt. CIT(Central), Raipur had granted the approval u/s. 153D of the Act after 04 days of the letter dated 26.12.2019 that was written by the A.O seeking his approval, thus, the same in itself is an admission on his part that the Jt. CIT (Central), Raipur had neither granted his approval to the impugned “draft assessment order”, dated 30.12.2019; nor had considered the subsequent sequence of developments/modifications that were carried out by the A.O in the body of the assessment order after he had forwarded to him the “draft assessment order” on 26.12.2019.

**(E)** that the A.O in his report dated 05.08.2024 (supra) had rebutted the claim of the assessee company that his predecessor after having forwarded the “draft assessment order”, dated 26.12.2019 had issued to the assessee

company two letters, i.e. (i) letter dated 27.12.2019 asking it to make necessary compliance to the same on or before 27.12.2019 (before 05:00 pm); and (ii) “Show Cause Notice”(SCN), dated 27.12.2019 calling upon it to put forth an explanation latest by 28.12.2019 (before 02:00 pm). However, we find that the aforesaid rebuttal of the A.O in itself is contradictory to the material available on record. We, say so, for the reason that it is a matter of fact borne from record that after the A.O had forwarded to the Jt. CIT (Central), Raipur the “draft assessment order”, dated 26.12.2019 for his approval u/s.153D of the Act that he had thereafter on receiving the report of the department’s valuer on 27.12.2019 issued a letter and a “Show cause notice” to the assessee company, viz. (i) letter dated 27.12.2019 wherein the assessee company was called upon to submit its comments to the valuation of the department’s valuer, viz. M/s. FCPL on or before 27.12.2019 (05:00 pm), Page 45 of APB; and (ii) show cause notice (SCN) dated 27.12.2019, wherein the assessee company was called upon to explain as to why the difference of stock amounting to Rs.2,89,20,981/- may not be added in its case u/s.69 of the Act latest by 28.12.2019 (02:00 pm), Page 46 of APB. The observation of the A.O in his report dated 05.08.2024 (supra) that the predecessor had only issued “SCN”, dated 27.12.2019 fixing the hearing on 28.12.2019 at 02:00 pm, wherein he had called upon the assessee company to put forth an explanation that as to why the difference in the valuation of stock of

Rs.2,89,20,891/- be not added u/s. 69 of the Act is found to be factually incorrect. It evidences the fact that the letter dated 27.12.2019 (supra) wherein the A.O had called upon the assessee company to submit its explanation latest by 27.12.2019 (05:00 pm), Page 45 of APB was admittedly never forwarded by the A.O to the Jt. CIT (Central), Raipur for his consideration.

42. Be that as it may, there is nothing discernible from the letter granting approval u/s.153D, dated 30.12.2019 (supra) of the Jt. CIT, (Central), Raipur that either the A.O had forwarded the fresh modified “draft assessment order” (revised), dated 30.12.2019 (as claimed by the A.O) for approval u/s. 153D of the Act to him; OR that the Jt. CIT, (Central), Raipur had granted approval to the fresh modified “draft assessment order” (revised), dated 30.12.2019. Considering the aforesaid facts, we are of a firm conviction that as the Jt. CIT, (Central), Raipur had not granted any approval to the impugned fresh modified “draft assessment order” (revised) dated 30.12.2019, therefore, the claim of the department that the A.O had validly assumed jurisdiction and framed the assessment vide his order u/s. 143(3) r.w.s. 153B(b) of the Act does not merit acceptance.

43. Based on our aforesaid observations, we find that the Jt. CIT, Range-Central, Raipur had vide his common approval letter dated 30.12.2019,

inter alia, granted approval u/s. 153D of the Act in the case of the assessee company for the subject year, i.e. A.Y.2018-19, but there is nothing on record which would reveal that either the impugned fresh modified "draft assessment order" (revised) dated 30.12.2019 was forwarded by the A.O to the Jt. CIT (Central), Raipur for his approval u/s. 153D of the Act; OR the sequence of proceedings that were carried out by the A.O subsequent to forwarding of the "draft assessment order" vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur were thereafter brought to the latter's notice. As is discernible from the record, we find that the assessment proceedings continued by the A.O after forwarding the "draft assessment order" to the Jt. CIT, Range-Central, Raipur for approval u/s.153D of the Act vide his letter dated 26.12.2019 (received by the office of Jt. CIT on same date) were never brought to the latter's notice. For the sake of clarity, the proceedings continued by the A.O after forwarding of the "draft assessment order" to the Jt. CIT, Range-Central, Raipur on 26.12.2019 are chronologically culled out as under:

Date	Particulars
27.12.2019	Receipt by the A.O of the letter/comments dated 27.12.2019 of the registered/department's valuer, viz. Frontline Consultants Pvt. Ltd. (FCPL), <u>Page 44</u> of APB for A.Y.2018-19;
27.12.2019	Letter dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur to the assessee company, wherein a copy of the letter/comments, dated 27.12.2019 of the department's valuer, viz. M/s.Frontline Consultants Pvt. Ltd. on the objections that were raised by the assessee company to the valuation of stock

	that it had earlier carried out was made available to the assessee company. The A.O had directed the assessee company to file its reply to the letter/comments of the department's valuer by 27.12.2019 (upto 5:00 pm), <u>Page 45</u> of APB for A.Y.2018-19;
27.12.2019	"Show Cause Notice" (SCN), dated 27.12.2019 issued by the Dy.CIT, Range-Central, Raipur to the assessee company, wherein he had called upon the assessee company to put forth an explanation that as to why the difference of stock amounting to Rs.2,89,20,981/- may not be added to its income u/s. 69 of the Act and had directed it to furnish its reply latest by 28.12.2019. (upto 02:00 pm), <u>Page 46</u> of APB for A.Y.2018-19.
27.12.2019	Reply of the assessee company dated 27.12.2019 to the letter dated 27.12.2019 received from the Dy. CIT, Central Circle-2, Raipur, wherein it had rebutted the comments of the department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd.

44. We, thus, in the backdrop of our aforesaid deliberations are of a firm conviction that the A.O after forwarding the "draft assessment order" to the Jt. CIT, Range-Central, Raipur vide his letter dated 26.12.2019 (received by the Jt. CIT on the same date) for his approval u/s.153D of the Act, had thereafter, not communicated to the said approving authority about the assessment proceedings that were continued by him after forwarding the said "draft assessment order". Also, we find no substance in the unsubstantiated claim of the department that the A.O after forwarding the "draft assessment order", dated 26.12.2019 had pursuant to the subsequent modifications/developments which were carried out by him

based on, viz. (i) department's valuer letter dated 27.12.2019; and (ii) the reply of the assessee company dated 27.12.2019, had thereafter, forwarded a fresh modified "draft assessment order" (revised), dated 30.12.2019 incorporating an addition u/s. 69 of the Act of Rs.2.89 crore (supra) towards suppression of the value of stock to the Jt. CIT, Range-Central, Raipur for his approval u/s. 153D of the Act. We may reiterate that there is nothing available on record which would support the department's claim that the assessment proceedings that were continued by the A.O after forwarding the "draft assessment order", dated 26.12.2019 to the Jt. CIT (Central), Raipur, viz. (i) receipt by the A.O of a letter/comments of the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd. dated 27.12.2019; (ii) letter dated 27.12.2019 issued by the Dy. CIT, Central Circle-2, Raipur to the assessee company calling upon it to offer its comments to the letter/comments dated 27.12.2019 of the registered /department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd. by 27.12.2019 (upto 05:00 pm); (iii) the "Show Cause Notice" (SCN) dated 27.12.2019 issued by the Dy.CIT, Central Circle-2, Raipur calling upon the assessee company to furnish its reply that as to why the difference of stock amounting to Rs.2,89,20,981/- may not be added to its income u/s. 69 of the Act latest by 28.12.2019 (upto 2:00 pm); and (iv) the reply dated 27.12.2019 of the assessee company filed with the A.O wherein it had pointed out the discrepancies in the letter/comments dated 27.12.2019 of

the registered/department's valuer, viz. M/s. Frontline Consultants Pvt. Ltd.; OR the impugned fresh modified “draft assessment order”, dated 30.12.2019 incorporating an addition u/s. 69 of the Act of Rs.2.89 crore (supra) towards suppression in the value of stock was forwarded by him to the Jt. CIT (Central), Raipur.

45. Apart from that, we find substance in the Ld.AR's claim that though the Dy. CIT, Central Circle-2, Raipur i.e. the A.O while simultaneously framing assessments in the case of M/s. NR Ispat & Power Pvt. Ltd. i.e. a “sister concern” of the assessee company, wherein same set of facts in so far grant of approval u/s. 153D of the Act by the Jt. CIT (Central), Raipur were involved, viz. (i) the Dy. CIT, Central Circle-2, Raipur had vide a common letter dated 26.12.2019 sought for the approval of the Jt. CIT (Central), Raipur u/s. 153D of the Act both in the case of the assessee company and M/s. NR Ispat & Power Pvt. Ltd. (supra); (ii) the Dy. CIT, Central Circle-2, Raipur after forwarding the “draft assessment order” on 26.12.2019 to the Jt. CIT (Central), Raipur for his approval u/s. 153D in the case of M/s. NR Ispat & Power Pvt. Ltd. (supra), had as in the case of the assessee company continued with the assessment proceedings and based on the subsequent developments came up with a final assessment order, dated 30.12.2019, which was in variance with the “draft assessment order” that was forwarded by him to the Jt. CIT on 26.12.2019 for his approval u/s. 153D of the Act; and (iii) the Jt. CIT (Central), Raipur vide

his common approval letter dated 30.12.2019 had, inter alia, granted his approval u/s. 153D of the Act in the case of the assessee company and M/s. NR Ispat & Power Pvt. Ltd.(supra)- but unlike the case of the assessee company wherein a fresh modified “draft assessment order”(revised) is claimed by the department to have been forwarded to the Jt. CIT (Central), Raipur on 30.12.2019 for his approval u/s.153D of the Act, no such fresh modified “draft assessment order” (revised) incorporating the changes in the “draft assessment order” was ever forwarded to the Jt. CIT in the case of its “sister concern”, viz. M/s. NR Ispat & Power Pvt. Ltd.

46. Independent of our aforesaid observations based on the facts available on record, we further find substance in the claim of Shri Vijay Mehta, Ld. AR, that the inconsistent course of action claimed by the department to have been taken recourse to at the same point of time by the Dy. CIT, Central Circle-2, Raipur in the case of the assessee company, i.e. forwarding of a fresh modified “draft assessment order” (revised) on 30.12.2019 (i.e. on the date of grant of approval itself) to the Jt. CIT (Central), Raipur for his approval u/s. 153D of the Act, unlike the case of M/s. NR Ispat & Power Pvt. Ltd. (supra) wherein based on same set of facts qua the grant of approval u/s.153D of the Act by the Jt. CIT (Central), Raipur, the assessments framed in the latter’s case had been quashed by the Tribunal vide its order passed in the case of ACIT (Central)-2, Raipur Vs. M/s. NR Ispat & Power Pvt. Ltd., ITA No. 4, 6 to 10/RPR/2021 and CO

Nos. 12 to 15 for AY(s) 2010-11 to 2013-14 & A.Y.2018-19, dated 30.08.2024, inter alia, for the reason that the final assessment order, dated 30.12.2019 in the said case was found at variance as against the "draft assessment order" [forwarded to the Jt. CIT (Central), Raipur on 26.12.2019] thus, raises serious doubts as regards the veracity of the A.O's unsubstantiated claim of having forwarded a fresh modified "draft assessment order" (revised) on 30.12.2019 (i.e. on the date of grant of approval itself) to the Jt. CIT (Central), Raipur for his approval u/s. 153D of the Act in the case of the assessee company before us, viz. M/s. NR TMT (India) Pvt. Ltd.

47. We, thus, backed by our aforesaid observations find substance in the claim of Shri Vijay Mehta, Ld. AR that the final assessment order passed by the A.O u/s.143(3) r.w.s. 153B(b) of the Act, dated 30.12.2019 is substantially different from the "draft assessment order" that was forwarded by the A.O vide his letter dated 26.12.2019 to the Jt. CIT, Range-Central, Raipur for approval u/s.153D of the Act and was approved by the latter on 30.12.2019.

48. As observed by us hereinabove, a conjoint reading of the "draft assessment order", dated 26.12.2019 (that was approved by the Jt. CIT, Range-Central, Raipur on 30.12.2019) vis-à-vis the final assessment order,

dated 30.12.2019, reveals material variance/difference in the same which have been brought to our notice by the Ld. AR, as under:

**Differences between draft assessment order dated 26.12.2019 and the final assessment order.**

Following differences are noted between the draft assessment order dated 26.12.2019 and the final assessment order dated 30.12.2019.

- a) Paragraph no. 3 on page no. 2 of the draft assessment order has been renumbered as paragraph no. 2 on page no. 2 (without any changes in the paragraph) in the final assessment order.
- b) Following additional text is appearing in paragraph no. 4.1 on page no. 2 of the final assessment order as compared to corresponding paragraph no. 5.1 on page no. 2 of the draft assessment order.

*"This company was subsequently acquired by the NR group and the shareholders were the family members and family concerns of NR group. From the analysis of the financial it is seen that the company remained a paper company till F.Y 2015-16. In F.Y 2016-17, the company started operation and acquired assets. It is also seen that the company has received share capital with premium from Kolkata-based shell/bogus companies as on 31.03.2009, which are as under."*

- c) Following text is appearing on page no. 3 of the draft assessment order, which is not appearing in the final assessment order.

*"Further, assessee company was submitted details non-current Investment for financial year 2011- 12 which are as under:*

<i>Name of the company</i>	<i>Amount</i>
<i>Fortune Multicorn Pvt. Ltd</i>	<i>1500000</i>
<i>Intellect Height Pvt. Ltd.</i>	<i>5000000</i>
<i>Mahshakti Vyappar Pvt. Ltd</i>	<i>466000</i>
<i>Mandhana Leafin Ltd.</i>	<i>2500000</i>
<i>Naman Mercantile Pvt Ltd</i>	<i>600000</i>
<i>NR Ispat &amp; Power Pvt. Ltd</i>	<i>90900000</i>
<i>Prithvi Dealcomm Pvt. Ltd</i>	<i>7500000</i>
<i>Singhai Vypaar Pvt Ltd.</i>	<i>664000</i>
<i>Vee Point Commerce Pvt. Ltd.</i>	<i>614000</i>
<i>Wise Mens Consultancy Pvt. Ltd.</i>	<i>500000</i>
<i>Unnati Commodeal Pvt. Ltd.</i>	<i>1000000</i>

*From above table, it is clear that except N.R Ispat & Power Pvt. Ltd. and M/s Seleno Steel Ltd. all other companies are Kolkata based shell companies, it is also amply clear that N.R Ferro and Power Pvt. Ltd was liquidated its investment for investment of N.R Ispat & Power Pvt. Ltd."*

d) Following text is appearing in the final assessment order on page no. 3 which is not appearing in the draft assessment order.

*"The entire amount is found to be invested into NR Ispat and Power Pvt. Ltd. and Maa Mahamaya Rolling Mill Pvt. Ltd.*

*It acquired the 791200 equity shares of NR Ispat and Power Pvt. Ltd. valued at Rs.9,89,00,000/- and 85,000 shares of Maa Mahamaya Rolling Mills Pvt. Ltd. valued at Rs.85,00,000/- ."*

e) Figures appearing in the table under the heading 'Profit & Loss account' for column 'Mar 18' and 'Mar 17' in the final assessment order on page no. 21 are not appearing in the draft assessment order.

- f) Figures appearing in the table under the heading 'Balance Sheet' in the final assessment order on page no. 21 and 22 are completely different than the corresponding figures on page 22 and 23 of the draft assessment order.
- g) Following text is appearing in the draft assessment order on page no. 24 and 25. (para 13 to 13.3) which is not appearing in the final assessment order.

*"13. During the course of search assessment, it is found from the submission, the business activities are not yet commenced and as such the entire expenditure is capitalized. Addition However, on going through the profit and loss account, it is noticed that the income has been set off against the expenditure against the income from other sources. This income is in the form of income from other sources (Interest income) of Rs. 551039/-, 2883487/- and 4205306/- for A.Y-2016-17, 2017-18 and 2018-19 respectively and need to be assessed as such. During the course of the assessment proceedings, the assessee company was asked to show caused as to why such expenditure is not set off against the income from other sources in view of Supreme Court order in the case of M/s Tuticorin Alkali Chemicals & Fertilizers Ltd.*

*13. 1. The assessee company furnished its reply on 12.12.2019. It is stated that*

*'the assessee has claimed very nominal expenditure such as Audit Fees & Fee for Income Tax Matters, filling fees and legal & professional fees. The assessee is a Private Limited Company and certain expenditures are bound to occur even if no business activity is being carried out by the assessee. Such expenditures are in the nature of preparation of Financial Statement and Return which is mandatory to be filed by the companies as per the Income Tax Laws and Companies Laws. Hence, the assessee has correctly claimed the expenditures and is allowable u/s 37 of the Income Tax Act since the assessee has offered the income under the business & profession.'*

*13.2. In the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax (1997) 227 ITR 0172, the SC laid*

*down the General principles as regards chargeability of interest income earned by the assessee under Income from other sources. The assessee may keep the surplus fund in short-term deposits or provide short term loans in order to earn interest. Such interest will be chargeable under section 56 of the I.T Act. The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilizing borrowed capital. The following ratio has been laid -*

*'(i) Interest earned is of revenue nature and is to be taxed and accounting practice is not necessarily good law. (ii) Income attracts tax as soon as it accrues and interest income is always of revenue nature unless it is received by way of damages or compensation.'*

*The stand of the department has been vindicated that wherever the receipts are from other sources which are not direct or incidental to the business activities are liable to be taxed. Therefore, the sum of Rs. 551039/-, 2883487/- and 4205306/- for A.Y 2016-17, 2017-18 and 2018-19 respectively which have been earned out of the surplus funds lying idle and kept as short term investment is hereby brought to the tax under the head 'income from other sources' and is not allowable to be set off against the general expenditure and other administrative expenditure.*

*13.3 During the course of assessment preceding it is found that the assessee has not started its business activities and interest earned at Rs. 551039/-, 2883487/- and 4205306/- for A.Y- 2016-17, 2017-18 and 2018-19 respectively by the assessee from the short term loans and advances would be chargeable to tax under the head 'Income from other sources. So, all expenses, including general administrative expenditure at Rs.63251, 371463 and 458208 for A.Y 2016-17, 2017-18 and 2018-19 respectively incurred by the company are capitalized under the head pre-operative/implementation period expenses. Penalty u/s 271(1)(c) for A.Y 2016-17 and 270A for the 2017-18 and 2018-19 are being initiated separately."*

h) Following text is appearing in the final assessment order on page no. 23 and 24 (para 12 to 13) which is not appearing in the draft assessment order.

*"12. In view of the above, it is established that the company was conduit for routing the unaccounted money of NR group. As stated above, the share capital brought by the company through Kolkata based shell companies was invested into acquiring the shares of NR Ispat & Power Pvt. Ltd. and Maa Mahamaya Rolling Mills Pvt. Ltd., who actually are the real beneficiaries. Therefore, the income declared by the assessee is accepted.*

**13. Stock**

*During the course of search operation, physical inventory of raw material, finished goods, spare parts and consumable items were prepared and the same was got valued by the Registered Valuer in respect of factory premise of M/s N. R. TMT (India) Private Limited situated at O. P. Jindal Industrial Park, Punjipara, The Valuation Report was received from the registered valuer and the valuation of each item was compared with the stock declared by the assessee group. On verification of each item of inventory as valued by the Registered Valuer with that, stock declared by the assessee, the same is as under-*

Sr. No.	Items	As per Physical Verification			As per Books RATE			Difference
		QTY. IN M.T.	RATE PMT	VALUE	QTY. IN M.T.	RATE PMT	VALUE	
1	MS Billets	20.33	25500	518415	8.05	25500	205275	313140
2	Sponge Iron	2278.3	14900	33946670	490.71	14900	7311579	26635091
3	Pig Iron	281.26	25000	7031500	202.35	25000	5058750	1972750
4	MS Scrap	26.15	11000	287650	26.15	11000	287650	0
5	Sillico Manganese	3.34	58000	193720	3.34	58000	193720	0
6	Total			41977955			13056974	28920981

*The valuation report of the registered valuer was confronted to the assessee for its comments. In response thereto the assessee companies viz. NR Ispat & Power Pvt. Ltd., NR TMT (India) Pvt. Ltd. and Seleno Steel Limited vide their letters dated 26.01.2018 received on 29.01.2018 had sought certain information and documents in connection with the valuation done by the registered valuer, particularly the assessee has sought for the copies of the following documents and information: -*

- (a) Survey base file data of all survey work.
- (b) Auto Cad Drawing soft and hard copy and measurement of raw material and finished product.
- (c) Initial level and final level of ground for quantity calculation purpose.
- (d) All pictures/photographs related to survey site of different angle.
- (e) Details quantity calculation sheet of all raw material and finished products.
- (f) Detail calculation sheet of valuer for calculating density and also quantity with picture/photographs.

In this regard, the letter from valuer dated 04.04.2018 was shown to the assessee. As per the said report there is no change in the valuation. The assessee sought time to file objections to the revised report. As there is no change either in the method of valuation or in the quantity and rate, therefore, the valuation arrived at by the valuer is adopted for the purpose of the assessment. Accordingly a sum of Rs.2,89,20,981/- being stock difference added to the total income of the assessee u/s 69 of the Act for A.Y 2018-19. Tax on the above income is calculated u/s 115BBE. Penalty u/s 271AAB is being initiated separately.

- i) Figures appearing in the table on page no. 24 (para 14) in the final assessment order on page no. 24 are completely different than the corresponding figures on page 25 draft assessment order.

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The Ld. CIT-DR on being confronted with the aforesaid difference/variance in the "draft assessment order" [forwarded to the Jt. CIT (Central), Raipur on 26.12.2019] and the final assessment order, dated 30.12.2019, had except for harping upon its unsubstantiated claim that the fresh modified "draft assessment order" (revised), dated 30.12.2019 was forwarded by the

A.O to the Jt. CIT (Central), Raipur for his approval, had, however failed to place on record any material/evidence to substantiate his said claim much the less dislodge and disprove the facts available on record which proved to the contrary.

49. Based on the aforesaid facts, we find that the A.O in the present case before us, had after forwarding the "draft assessment order" for approval u/s.153D of the Act to the Jt. CIT (Central), Raipur on 26.12.2019 continued with the assessment proceedings, and while framing the final assessment had tinkered with the said "draft assessment order" which, thus, had resulted to a material variance/difference between the final assessment order and the "draft assessment order" that was approved by the Jt. CIT.

50. We find that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013**, had observed, that in a case where the Jt.CIT had no occasion to consider changes that were incorporated by the A.O in the final assessment order, then it was to be held that the impugned assessment order was passed without approval of the concerned authority as required per the mandate of law. Also, we find that the **ITAT, Pune** in the case of **BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023**, taking cognizance of the fact that the A.O after obtaining the approval of the Jt. CIT u/s.

153D of the Act had thereafter carried out certain rectification /improvements and passed the final assessment order, observed that the said order was to be held as having been passed without obtaining the approval as per the mandate of law.

51. We are of a firm conviction that once the "draft assessment order" is approved by the Jt. CIT u/s. 153D of the Act, then the A.O is rendered as *functus officio* and can only pass the final assessment order as approved by the Jt. CIT. An analogy in support of our aforesaid view can safely be drawn from the judgment of the **Hon'ble Apex Court** in the case of **Panchmahal Steel Ltd. Vs. U.A.Joshi, ITO and another (1997) 225 ITR 458 (SC)**. In the present case before us the A.O had come up with a final assessment order, which as observed by us hereinabove is found to be materially different from the "draft assessment order" that was approved by the Jt. CIT on 30.12.2019.

52. Considering the aforesaid facts, we are of a firm conviction that as the Jt. CIT, Range-Central, Raipur had not considered the changes /modifications/alterations that were carried out by the Dy.CIT(Central Circle)-2, Raipur to the "draft assessment order" that was forwarded to him by the A.O on 26.12.2019 and was approved by him on 30.12.2019; nor was informed of the assessment proceedings that were continued by the A.O after forwarding of the "draft assessment order" on 26.12.2019,

therefore, we concur with the Ld. AR that the final assessment order was passed by the A.O without obtaining the approval of the Jt. CIT, Range-Central, Raipur as required per the mandate of Section 153D of the Act. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Akil Gulamali Somji, ITA No. 1416 to 1419 dated 15.01.2013** and the order of **ITAT, Pune** in the case of **BBG India Ltd. Vs. DCIT, ITA No.11 to 16/PUN/2023, dated 19.10.2023**. Accordingly, in absence of a valid approval having been granted by the Jt. CIT, Range-Central, Raipur, based on which, the final assessment order had been passed by the A.O u/s.143(3) of the Act, dated 30.12.2019, we are of the view that the same cannot be sustained and is liable to be struck down on the said count itself. Our aforesaid view that in absence of a valid approval u/s. 153D of the Act the assessment framed by the A.O cannot be sustained for want of valid assumption of jurisdiction is supported by the judgment of the **Hon'ble Apex Court** in the case of **ACIT Vs. Sirajuddin & Co. (supra.)**.

53. Apropos the reliance placed by the Ld. DR on the judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur, TAXC No.88 of 2024, dated 16.04.2024**, we find that the same being distinguishable on facts would not carry the case of the revenue any further. The Hon'ble High Court in its aforesaid order, had observed, that it cannot be presumed on the mere

say of the assessee that there is no application of mind while granting of approval u/s. 153D of the Act by the Jt. CIT. The Hon'ble High Court observed that the approval need not be a detailed assessment order. Also, it was observed that as per Section 114 of the Evidence Act, where an official Act had been done in accordance with the official procedure, it will lead to a presumption that due diligence was followed. Apart from that, the Hon'ble High Court had observed that as the matter was remanded back to the file of the A.O for fresh adjudication with a liberty to the assessee to raise the issue before the revenue authority and furnish necessary information/evidence in support of his contention, therefore, no prejudice was caused to him.

54. At this stage, we may observe that in the case of Hitesh Golchha Vs. ACIT, Central Circle-1, Raipur (supra), the assessee except for referring to the contents of the approval letter had failed to lead any evidence/material which could irrefutably prove to the hilt that the approval was mechanically granted in absence of any application of mind by the Jt. CIT. However, the facts involved in the present case before us are materially distinguishable. The A.O in the present case after forwarding the "draft assessment order" vide his letter dated 26.12.2019, had thereafter continued with the assessment proceedings over the period, i.e. 27.12.2019 to 28.12.2019 and had passed the final assessment order which is found to be substantially different from the "draft assessment

order" that was approved by the Jt. CIT, Range-Central, Raipur u/s.153D of the Act on 30.12.2019. As in the present case of the assessee company before us there is no approval u/s.153D of the Act by the Jt. CIT, Range-Central, Raipur of the final assessment order that had been passed by the A.O u/s.143(3) r.w.s. 153B(b) of the Act, dated 30.12.2019, therefore, the same renders the facts involved in the case before us as distinguishable as against those involved in the case of Hitesh Golchha Vs. ACIT (supra). We, thus, in terms of our aforesaid observations are of the view that as the A.O had passed the final assessment order u/s.143(3) r.w.s. 153B(b) of the Act, dated 30.12.2019 without seeking a prior approval of the same by the Jt. CIT (Central), Raipur u/s.153D of the Act, therefore, the order so passed by him in absence of valid assumption of jurisdiction cannot be sustained and is liable to be quashed on the said count itself. Thus, the **Ground of appeal No.3** raised by the assessee company is allowed in terms of our aforesaid observations.

55. As we have quashed the assessment framed by the A.O u/s.143(3) r.w.s. 153B(b) of the Act, dated 30.12.2019 for want of valid assumption of jurisdiction for framing the assessment in absence of any valid approval of the Jt. CIT (Central), Raipur u/s. 153D of the Act, therefore, we refrain from dealing with the contentions advanced by the Ld. authorized representatives of both the parties as regards the observations of the CIT(Appeals) qua the merits of the case which, thus, are left open.

56. In the result, while for the appeal/preliminary objection filed by the assessee company in ITA No.03/RPR/2021 for A.Y.2018-19 is allowed, and the appeal of the revenue in ITA No.09/RPR/2021 for A.Y.2018-19 is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 06<sup>th</sup> day of January, 2025.

**Sd/-  
ARUN KHODPIA  
(ACCOUNTANT MEMBER)**

**Sd/-  
RAVISH SOOD  
(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 06<sup>th</sup> January, 2025.  
\*\*\*###SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बैच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.