IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

AND

MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.3585/M/2024
Assessment Year: 2017-18

M/s. Utility Supply Private Limited, A 205 Godrej Colleseum off Western Express Highway Near Pan Bazar, Sion, Maharashtra – 400 022 **PAN: AABCU0100B**	Vs.	**DCIT, Central Circle-8(4),** Room No.658, 6th Floor, Aaykar Bhavan, M.K. Road, Mumbai Maharashtra - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dhaval Shah, Ld. A.R.
Revenue by : Ms. Smiti Samant, Ld. D.R.

Date of Hearing : 23.01.2025
Date of Pronouncement : 03.04.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 14.06.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. Brief facts relevant for adjudication of the instant appeal are that the Assessee has claimed that it is also engaged in share trading and investment activities and during the assessment year under consideration, has declared income at Rs. 14,090/- by filing its return of income on dated 11.10.2017, which was processed u/s 143(1) of the Act.

3. Subsequently, on dated **22.03.2018** a search and seizure action u/s 132 of the Act was conducted in the case of Aachman Group and other related entities by the DDIT (Investigation), Unit-6(1), Mumbai. The case of the Assessee was also covered under such search and seizure operation and consequently notice dated **06.12.2019** u/s 153A of the Act, was issued to the Assessee, in response to which the Assessee filed its return of income on dated **10.12.2019,** declaring total income at Rs."14,090/-".

4. Thereafter, various statutory notices were issued, in response to which the Assessee from time to time, attended the proceedings and filed the requisite details, as called for. On verification of the details filed by the Assessee during the course of assessment proceedings and examining the return of income, it was observed by the Assessing Officer (AO) that the Assessee, during the assessment year under consideration, has purchased following shares:

Sl. No.	Name of the share	Number of shares	Consideration amount
1.	M/s. Navratan Management Pvt. Ltd.	3000	Rs.3,00,000/-
2.	M/s. Muktamani Distributors Pvt. Ltd.	50,000	Rs.50,000/-
3.	M/s. Mecons Pro Comotrade Pvt. Ltd.	60,000	Rs.6,00,000/-

4.	M/s. Aachman Vanijya Pvt. Ltd.	3,30,000	Rs.33,00,000/-

5. The AO on perusing the financials of the Assessee observed that the fair market value per share of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. appears to be more than the face value, on which the shares were purchased and therefore, he asked the Assessee to furnish the valuation of the shares of such companies. The Assessee furnished the valuation report of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd.

5.1 On perusing the valuation reports, the AO observed that fair market value per share of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. was more than the purchase value per share and therefore he show caused the Assessee *"as to why the provisions of section 56(2)(viia) of the Act should not be invoked for the purchase of such shares of and the differential amount {of the fair market value and purchase value} should not be added as income in the hands of the Assessee".*

6. The Assessee furnished its explanation, more or less claiming as under:

> *"The assessee is a company registered with the Registrar of companies under the Companies Act 1956. The assessee is carrying on the business of investment and trading in shares and securities. During the year under consideration assessee has bought 33000 shares @ Rs. 10 per share of Robert Commercial (P) Ltd by making payment by way of account payee cheque of Rs. 3,30,000/-, Similarly it has purchased 50000 shares of M/s. Muktamani Distributors (P) Ltd @ Rs. 10 per shares by making payment by way of account payee cheque of Rs.5,00,000/-, 30000 shares of M/s. Navratna Management Pvt Ltd @ Rs. 10 per shares by making payment by way of account payee cheque of Rs. 3,00,000/-, 60000 shares of M/s. Mecons Commtrade Put Ltd @ Rs. 10 per shares by making payment by way of account payee cheque of Rs. 6,00,000/-, 330000 shares of Aachman Vanijya Pvt Ltd @ Rs. 10 per shares by making payment by way of account payee cheque of Rs.33,00,000/-. Here it is pertinent to*

bring to your goodself notice that the said shares were purchased by the assessee for trading purposes and not not as an investment so as to be categorized as capital assets (Property). Before proceeding further it is worthwhile to discuss the provisions of section 56(2)(viia) of the IT Act 1961 which is reproduced here under.

"where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010 but before the 1st day of April, 2017, any property, being shares of a company not being a company in which the public are substantially interested,

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation. For the purposes of this clause, "fair market value of a property. being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);"

1.1. A plain reading of the said section, its provision & explanation it is crystal clear that the intent of the revenue is not to tax the transactions entered into during the normal course of business or trade the profits of which are taxable under specific head of income. Before proceeding further your good offices attention is drawn to the definition of property as defined in section 56(2)(vii) of the Act. Wherein the definition of property is discussed. The definition discussed therein will have same meaning in the extended proviso to section 56(2)(vita) because the said proviso is an extension of section 56(2)(vii) only. If your goodself read the section strictly and harmoniously you will admit and appreciate that the proviso to the said section applies only in case of the property which is in the nature of capital asset in the hands of the recipient but would not apply where the property is in the nature of stock in trade, of any business of such recipient

1.2. Further the said explanation prescribes the method for valuation of fair market value of the share which is discussed in para (b) to clause h of section 56(2)(vii).

1.3. The said proviso also says fair market value of a property (emphasis provided) which is defined in clause (d) to para 4 of section 56(2)(vii). If the meaning of property is read strictly and holistically it speaks of FMV of capital asset. Further capital asset is defined in section 2(14). The said section is produced above for better understanding as under.

"capital asset" means-

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

Your goodself attention is now drawn to para below clause (b) of section 2(14) which reads as under:

"but does not include-

(i) any stock-in trade other than the securities referred to in sub-clause (b), consumable stores or raw materials held for the purposes of his business or profession:

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes-
a) jewellery;
b) archaeological collections;
c) drawings;
d) paintings;
e) sculptures; or
f) any work of art"

Any stock in trade [other than the securities referred in sub clause(b)] consumable stores of raw materials held for the purposes of his business or profession.

From the above definition it is crystal clear that securities held for the purposes of business is not a capital asset unless it is for investment purposes.

1.4. Moreover, if the meaning of property as provided in clause (d) to para (h) of section 56(2)(vii) is read in its true sense and strictly

your goodself will appreciate that all the assets mentioned in this clause i.e. from (i) to (ix) are in the nature of enduring and capital assets only and the concept of valuation of fair market value strictly applies in case of a property in the nature of capital asset. Therefore, to treat out of these capital assets shares and securities as non capital asset will defeat the purpose of this section because the main reason for introducing this provision was to curb black money. As far as purchases of shares and securities are concerned it can be for both capital or trading and the treatment depend upon the intention of the assessee and the entries passed in the books of accounts. If the intention of the assessee is to treat the purchase of stock as capital assets it will appear as Investment in balance sheet whereas in case for trading purposes it will appear as closing stock in balance sheet hence the true test is the intention, purpose and recording of same in books of accounts. The treatment of capital asset will decide the profit which can be as either STCG or LTCG or business profit. Hence it is crystal clear that purchase of share and security can be for both Investment and trading, in the impugned assessee's case the shares have been shown as trading asset in balance sheet, which was filed prior to search action it cannot be said now that it is for investment purposes. By doing so the meaning of capital asset will get defeated. Since in the case of assessee the shares have been purchased for trading purposes only and have been shown as such in balance sheet and read with the provision strictly & in harmonious manner it should not be interpreted as investment without any cogent/valid reason.

1.6 In view thereof your goodself will appreciate that the provision of section 56(2)(viia) are not applicable on purchases of shares for trading purposes. In this connection support is taken from the decision of Hon'ble ITAT Jaipur in the case of ITA No.392/JP/2019.

1.7 In view of the aforesaid facts and submission your good offices will find and appreciate that assessee company has bought the shares for trading purposes only and have correctly been shown as closing stock under the head current asset before the date of search it could not be now treated as investment for the purposes of invocation of provisions of section 56(2)(vita) without any valid reason. Since the aforesaid provision applies only to investment being capital asset and not as trading stock it has no application to the facts of the assessee's case. It is therefore submitted that the shares have been purchased at the prevailing market value & no addition as proposed in the notice should be made."

7. The AO though considered the aforesaid submissions of the Assessee, but found the same not acceptable, on the following reasons:

> *"That section 56(2)(viia) of the Act was inserted by Finance Act, 2010 to prevent the practice of transferring of unlisted shares at a price different from the fair market value (i.e. no or inadequate consideration) of the shares and also included within its ambit transactions undertaken in shares of the company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration, where recipient is a firm or a company (not being a company in which public are substantially interested). The Assessee has claimed to be engaged in the business of investments and trading of the shares and securities, however, from the website https://www.zaubacorp.com, the Assessee is identified being engaged in the business of other wholesale includes specialized wholesale not covered in any of the previous categories and wholesale is a variety of goods without any particular specialization.*
>
> *Further, the Assessee also contended that the section 56(2)(viia) of the Act is an extension of section 56(2)(vii) and section 56(2)(viia) of the Act is applicable only to the capital assets, however, sections 56(2)(vii) and 56(2)(viia) of the Act of the Act, are clearly distinguishable from each other. It is very clear from the definition of section 56(2)(vii) and 56(2)(viia) of the Act that section 56(2)(vii) of the Act is applicable to the individual and HUF only and section 56(2)(viia) of the Act is applicable to Firm and Private Company Assessee. Beside, this section 56(2)(viia) of the Act is applicable to the disallowance of shares of private companies only but not to "any property" as mentioned in the section 56(2)(vii) of the Act. Further, the non-applicability clause is also very clear in both the sections. Beside the above, the explanation applicable for section 56(2)(viia) of the Act is only related to "fair market value" as described in the explanation to section 56(2)(vii) of the Act, not all the explanation. In the light of above, it is very clear that the section 56(2)(viia) of the Act is not an extension of section 56(2)(vii) of the Act. Therefore, the contention of the Assessee is not acceptable at all.*

8. The AO also distinguished the decision of the Hon'ble ITAT, Jaipur in the case of ITA No.392/JP/2019, as relied on by the Assessee, by holding as under:

"That the present case is distinguishable from the case law relied on by the Assessee. As the decision of the Hon'ble ITAT in said case pertains to the individual Assessee and focused on the applicability of section 56(2)(vii) of the Act, however, the Assessee's case is related to section 56(2)(viia) of the Act, which is applicable to the company and firm and is clearly distinguishable from the applicability of section 56(2)(vii) of the Act, related to individual and HUF Assessee.

9. The AO by observing that as per the valuation report furnished by the Assessee, the fair market value of each share of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. is Rs.93.97 and Rs.94.19 respectively, calculated the differential amount of Rs.49,40,600/- (fair market value – purchase value) for the purpose of section 56(2)(viia) r.w.r. 11UA, as under:

6.2.4 As per the valuation report furnished by the assessee, the fair market value of each share of M/s. Navratan Management Pvt. Ltd, M/s. Muktamani Distributors Pvt. Ltd, s Rs.93.97 and Rs.94.19 respectively. The differential amount (fair market value minus purchase value) for purpose of section 56(2) (viia) r.w.r 11UA is calculated here as under:

Sl No.	*Navratan Management Pvt. Ltd.*	*Muktamani Distributors Pvt. Ltd*
Financial Year	*2016-17*	
No. of shares bought during the year	*30,000*	*50,000*
FMV per share as per valuation report)	*Rs. 93.97*	*Rs.49.43*
Aggregate Value fair value	*30,000 x 93.97 = 28,19,100/-*	*50,000 x 49.43= 24,71,500/-*
Total Consideration paid	*Rs.3,00,000/-*	*Rs.50,000/-*
Difference amount	*Rs.25,19,100/-*	*Rs.24,21,500/-*
Total Difference as per section 56(2)(viia)	*Rs.49,40,600/-*	

10. The AO on the analysis of financials of M/s. Aachman Vanijya Pvt. Ltd. and M/s. Mecons Pro Como Trade Pvt. Ltd., worked out the fair market value of such shares as under:

	F.Y 2016-17		
1		**M/s. Aachman Vanijya Pvt Ltd**	**M/s. Mecons Commtrade Pvt Ltd**
2	Book value of assets as per financials	97,79,52,293/-	10,46,76,888/-
3	Amount of tax paid as deduction or collection at sources	2,19,72,240/-	20,51,300/-
4	Amount of tax paid as advance tax	45,00,000/-	0
5	Amount of tax claimed as refund	0	0
6	Any amount shown as assets including the unamortized amount of deferred expenditure which does not represent the value of any asset	0	18,30,917/-
7	**Total (A) [2-(3+4-5)-6]**	**95,14,80,053/-**	**10,07,94,671/-**
8	Book value of liabilities as per financials	97,79,52,293/-	10,46,76,888/-
9	Paid up capital	2,18,02,000/-	1,99,82,000/-
10	Amount set apart for payment of dividend	0	0
11	Reserves and Surplus	94,38,07,055/-	6,04,32,469/-
12	Any amount representing provision for taxation	93,40,499/-	19,50,012/-
13	Any amount representing provision made for meeting liabilities other than ascertained liabilities	8,00,583/-	0
14	Any amount representing contingent liabilities	0	1,35,407/-
15	**Total (L) (8-9-10-11-12-13-14)**	22,02,156/-	2,21,77,000/-
16	**(A-L)**	94,92,77,897/-	7,86,17,671/-
17	Paid up value of one equity shares **(PV)**	10/-	10
18	Total amount of paid up equity share capital **(PE)**	2,18,02,000-	1,99,82,000/-
19	Fair market value of one equity share = **(A-L)* PV/PE**	435/-	39.34
20	No. of shares at the end of preceding financial year	74,000	19,98,200
21	No. of shares at the end of relevant financial year	4,04,000	19,98,200
22	Total No. of shares bought/purchase during the year	3,30,000	60,000
23	**Difference as per section 56(2)(viia)=(Fair market value – PV)* No. of shares**	**Rs.14,03,84,848/-**	**Rs.17,60,400/-**
24	**Total Difference as per section 56(2)(viia)**	**Rs.14,21,45,248/-**	

11. On the aforesaid analyzations, the AO ultimately made the addition of Rs.14,70,85,848/- (Rs.49,40,600/-+Rs.14,21,45,248/-) u/s 56(2)(viia) of the Act.

12. The Assessee, being aggrieved, challenged the aforesaid addition by filing first appeal before the Ld. Commissioner, on legal ground as well as on merits and reiterated its claim as made before the AO and also submitted the relevant documents including copy of Memorandum of understanding and Article of Association (MOU/AA) to support its contention that the Assessee company is also in the business of trading of shares and the alleged shares have been purchased for the trading purposes only.

13. The Ld. Commissioner, on the documents, such as MOU/AA filed by the Assessee, sought for the remand report from the AO, who vide letter dated 09.07.2021 submitted a report without making any objection and/or doubting the MOU, but supporting the assessment order. Thus, the Assessee in response to the remand report, filed its reply vide letter dated 20.07.2021, challenging the remand report and reiterating its claim again.

14. Thereafter, the case of the Assessee was considered by the Ld. Commissioner but not found acceptable and therefore he ultimately affirmed the aforesaid addition, by observing and holding as under:

> *"10. During the appeal proceedings, it is contended that the appellant company is in the business of investment and trading in shares and securities. To support its contention, the appellant has submitted a copy of memorandum of association. It is submitted that, the alleged shares were purchased for the purpose of trading and not as an investment. In the Balance sheet also, these shares are shown as stock in trade and not as an investment. The provisions of section 56(2)(viia) are applicable for investment in capital assets and not for the regular business/trading activities. The appellant has further submitted that, on the*

similar facts in case of related concerns namely Muktamani Distributors Pvt Ltd and Alishan Distributors Pvt. Ltd, the Ld CIT (A) has allowed the appeal by bolding that, the purchase of shares was for the trading purpose.

I have considered the Assessee order, submission of appellant and report received from the A.O. The appellant contended that the alleged shares have been purchased for trading activity and for the same it has relied on entries made in the balance sheet showing the same as stock in trade This, the sole contention of the appellant is that the shares were purchased as part of regular trading activity of the appellant and hence the provision of section 56(2)(viia) are not applicable. The appellant has also submitted that the Id. OIT(A) or the same fact in the appellant sister concerns namely Muktamani Distributors Pvt. Ltd and Aalishan Distributors Pvt. Ltd has held that the purchase of shares are for trading purpose and hence provision of section 56(2)(viia) are not applicable. The appellant has also furnished the copies of the CIT(A) orders.

11.2 Now it is to be determined from the facts whether the appellant has purchased these alleged shares for the purpose of trading. On verification of the financials for the A.Y 2017-18, It is seen that the appellant has purchased the shares of the various related entities. The details are as under:-

2017-18				
1.	*Navratan Management Pvt. Ltd.*	*3000*	*300000*	*2819100*
2.	*Muktamani Distributors Pvt. Ltd.*	*50000*	*50000*	*2471500*
3.	*Mecons Commotrade Pvt. Ltd.*	*60000*	*600000*	*2360400*
4.	*Aachman Vanijya Pvt. Ltd.*	*330000*	*3300000*	*143684848*

11.3 From the perusal of financials for A.Y 2023-24,it is observed that till 31.03.2023, except the shares of Mecon Commotrade, all these shares are appearing in the balance sheet as a stock in trade. From this, it is evident that appellant has not sold these shares till 31.03.2023. The details are as under: -

1	*Navratartan Management Ltd.*	*30000*	*300000*	*Held as stock till date*
2	*Muktamani Distributors Pvt.*	*50000*	*500000*	*Held as stock till date*

	Ltd.			
3	*Mecons Commotrade Ltd. Pvt.*	*60000*	*600000*	*sold during F.Y. 2021-22 at Rs. 16,40,000/-*
4	*Aachman Pvt. Ltd. Vanijya*	*330000*	*3300000*	*Held as stock till date*

11.4 Further from the perusal of profit and loss account of the appellant from the A.Y 2013-14 onwards it is seen that the turn-over of the appellant is insignificant and does not reflect the trading activity in shares. The details of return income filed are as under: -

Sr. No	*A.Y*	*Returned of Income*
1.	*2013-14*	*Nil*
2.	*2014-15*	*16,550/-*
3.	*2017-18*	*14,087/-*
4.	*2020-21*	NIL
5.	*2022-23*	NIL
6.	*2023-24*	37,150

The revenue from the operation is either NIL or meagre. These facts show that the appellant has not carried out any business activities over the years.

11.5 The details of balance sheet as on 31.03.2023 are as under.-

1. *Share capital Rs. 14,85,000-.*
2. *Reserve & Surplus - Rs 1,10,55,950-.*
3. *Current and non-current liabilities - Rs 79,350.*
4. *Noncurrent investment Rs 69,80,470.*
5. *Inventories 49,23,000.*

It is seen that the reserve and surplus is mainly on account of receipt of security premium. In the profit and loss account the total receipts are shown as Nil. From the above, It can be seen that the appellant itself is a paper company not carrying out any business activity.

11.6 From the perusal of the financials of the alleged four companies i.e. M/s. Muktamani. Distributors Pvt. Ltd, M/s. Navratan Management Pvt. Ltd, M/s. Mecons Commotrade Pvt. Ltd and M/s. Aachman Vanijya Pvt. Ltd, it is seen that these companies are also paper companies not carrying out any actual business activities. The shares of these companies are not listed and hence are not available L for trading on public platform. All

these companies are related concerns of the appellant and are closely held companies.

1.1.7. From the above discussion, it is evident that the appellant and the concerned companies are related entities which are closely held. The shares of these companies are not available for the trading purpose. From the financials of the appellant and these 4 companies it evident that, these are paper companies and not doing any business activities, In the backdrop of these facts, the contention of the appellant that the purchase of the shares of these related entities are for the trading purpose, is contradictory to the facts on record. It is also evident that no such trading activity has been carried out by the appellant. These shares are still held by the appellant.

11.8 Thus the whole facts demonstrate that, the acquisition of shares of these paper companies by the appellant is not for the purpose of business but for the purpose of acquiring stakes in these companies. Thus, the purchase is for investment purpose. and not for the trading purpose. Just because, in the balance sheet the appellant has classified/shown the same as stock in träde, the real intent of the transactions will not alter. Entries in the books of accounts are not determinative or conclusive.

11.8.2 The Honble Supreme Court in case of Kedarnath Jute Mfg com. Vs CIT(82 ITR 363) has held as under-(SC)

"Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might taken of Its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. The assessee who was maintaining accounts on the mercantile system was fully justified in claiming deduction of the amount of sales tax which it was liable under the law to pay during the relevant accounting year. The liability remained intact even after the assessee had taken appeals to higher authorities or courts which failed. The appeal was consequently allowed and the judgment of the High Court was set aside."

11.8.3 The Honble Supreme Court in case of Taparia Tools Ltd Vs JCIT (55 taxmann.com 361) has held as under-

"19.....merely because a different treatment was given in the books of account cannot be a factor which would deprive the Assessee from claiming the entire expenditure as a deduction. It has been held repeatedly by this Court that entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act [See Kedamath Jute Mfg. Co. Ltd. v. CIT (1971) 82 ITR 363 (SC);

Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172/93 Taxman 502 (SC); Sutlej Cotton Mills Ltd. v. CIT [1979] 116 ITR 1 (SC) and United Commercial Bank v. CIT [1999] 240 ITR 355/106 Taxman 601 (SC)."

11.8.4 Hon'ble Supreme Court in the case of Taparia Tools held that merely because a different treatment was given in the books of accounts cannot be a factor which would deprive the Assessee from claiming the entire expenditure as a deduction. It has been held repeatedly by this Court that entries in the books of accounts are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act.

11.9 In view of the above discussion, it is evident that the real intent to purchase the shares is not trading but to acquire the stakes in the related concerns. I have also perused the orders of Ld. CIT(A) submitted by the appellant, however I defer with the decision of my predecessor Ld. CIT(A).

The appellant has not contested the valuation of shares (FMV). Accordingly, the addition made by the A. of Rs.14,70,85,848/- is confirmed. The appeal on this ground no 1 an additional ground is thus DISMISSED."

15. The Assessee, being aggrieved, challenged the decision of the Ld. Commissioner, in affirming the addition under consideration, by raising sole effective original ground of appeal, which read as under:

"On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in law, in not accepting your appellant's plea that section 56(2)(viia) of the Act is not applicable to shares held as stock in trade for trading purpose and not as investment and added Rs.14,70,85,848/-. Looking to the facts and circumstances of the case, your appellant requests your Honour that the Assessing Officer may be directed to delete the said addition in toto".

16. During the course of appellate proceedings, the Assessee also raised additional grounds of appeal, which read as under:

1. The Id. CIT(A) has erred in law and in facts in not appreciating that the assessment order passed u/s 153A r.w.s. 143(3) of the Act is bad and invalid in the eyes of law.

2. The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment order dated 27.12.2019 is issued without quoting mandatory Document Identification Number on the assessment order and hence the assessment order is invalid and nullity in the eyes of law.

3. The Ld. CIT(A) has erred in law and in facts in not appreciating that the approval taken u/s 153D of the Act is invalid and bad in the eyes of law.

4. The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment order is passed in violation of principles of natural justice and hence the same is invalid and bad in the eyes of law."

17. As the additional grounds raised by the Assessee are legal in nature and emanates from the assessment proceedings and even otherwise goes to the route of the case and adjudication of the same does not require any independent material, except already available on record and, thus the same were admitted for adjudication and are being disposed of, before proceeding to the merits of the case.

18. Coming to the additional ground no. 3 raised by the Assessee, we observe that the Assessee has challenged the sanction/approval dated 27.12.2019 u/s 153D of the Act, for initiating the proceedings and/or making the assessment or re-assessment u/s 153A and 153B of the Act. The Assessee has claimed that draft assessment orders of the Assessee for seven assessment years, along with covering letter dated **27.12.2019** were submitted to the office of the Additional Commissioner of Income Tax, Central, range-8, Mumbai (in short "the Ld. Add. Commissioner") for approval u/s 153D of the Act. The Ld. Add. Commissioner approved the same, on the very same day/date i.e. **27.12.2019** and thereafter assessment orders including in the instant case, was made on the very same date i.e. **27.12.2019** itself. The Assessee further

submitted that the Ld. Additional Commissioner on the very same date i.e. **27.12.2019** also granted various approvals u/s 153D of the Act in other cases i.e. M/s. Navratan Management Pvt. Ltd., M/s. Muktamani Distributors Pvt. Ltd. and M/s. Aalishan Distributor Pvt. Ltd.

19. More or less, the Ld. Addl. Commissioner on dated **27-12-2019** has granted the approval u/s 153D of the ACT in almost 13 cases and in all the said **13 cases**, the respective Assessing Officers also passed the assessment orders, on the very same date (**27-12-2019**) of the approval granted. The details of the approvals granted u/s 153D of the Act are as under:

Sr. No.	Name of entity	A.Y.	Date of submission of draft Assessment orders	Date of approval u/s 153D	Designation of Approving authority
1	**M/s. Utility Supply Private Limited,**	2012-13	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
2	M/s. Utility Supply Private Limited,	2013-14	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
3	M/s. Utility Supply Private Limited,	2014-15	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
4	M/s. Utility Supply Private Limited,	2015-16	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
5	M/s. Utility Supply Private Limited,	2016-17	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
6	M/s. Utility Supply Private Limited,	2017-18	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
7	M/s. Utility Supply Private Limited,	2018-19	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
8	**M/s. Navratan Management Pvt. Ltd.**	2013-14	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
9	M/s. Navratan Management Pvt. Ltd.	2017-18	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
10	M/s. Navratan Management Pvt. Ltd.	2018-19	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
11	***Muktamani Distributors P Ltd.***	*2013-14*	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*
12	*Muktamani Distributors P Ltd.*	*2017-18*	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*

13	***Alishan Distributors P Ltd.***	*2017-18*	*27-12-2019*	*27-12-2019*	*Addl. CIT (CR)-8 Mumbai*

20. The Assessee further submitted that the Ld. Addl. Commissioner has given approval in a mechanical manner and without application of mind. Even otherwise the approval granted by the Ld. Commissioner was not substantive or final approval but the same was conditional, as the Ld. Addl. Commissioner in the approval has given certain directions to the AO to follow up and/or accorded the approval in following format and conditions mentioned therein:

OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX, CENTRAL RANGE -8
R.NO.657, 6TH FLOOR, AAYAKAR BHAVAN, M.K.ROAD
MUMBAI – 400 020

No. Addl. CIT/C.R.-8/Approval u/s.153D/2019-20 Date: 27.12.2019

The DCIT, CC-8(4),
Mumbai.

Sub: Approval u/s. 153D of the I.T. Act, 1961 of Assessment order in the case of M/s Utility Supply Private Limited (PAN: AABCU0100B) for A.Y. 2012-13 to A. Y. 2017-18- reg.

Ref.: No. DCIT-CC-8(4)/APPROVAL u/S 153D/2019-20 dt.27.12.2019.

Reference the subject cited above.

2. The draft assessment orders for approval u/s.153D of the Income Tax Act, 1961 submitted vide covering letter dated 27.12.2019 have been perused. The assessed income in the captioned case for the relevant assessment years have been proposed as follows:

A.Y.	Assessed U/s	Return Income(in Rs.)	Assessed income (In Rs.)
2012-13	153A r.w.s. 143(3)	9,77,800/-	22,29,700/-
2013-14	153A r.w.s. 143(3)	NIL	87,29,576/-
2014-15	153A r.w.s. 143(3)	16,550/-	1,11,70,825/-
2015-16	153A r.w.s. 143(3)	10,230/-	10,230/-
2016-17	153A r.w.s. 143(3)	NIL	NIL
2017-18	153A r.w.s. 143(3)	14,090/-	14,70,99,938/-
2018-19	143(3)	NIL	NIL

The draft assessment orders made in these are hereby approved u/s. 153D of the I.T. Act, 1961. Subject to the following conditions:

1. A comprehensive office note under the head "note-not for the assessee" is advised to be kept in the assessment order elaborating the actions and your conclusion on the direction contained in the Appraisal Report and also your findings on the relevant seized documents. The office note should also give your

Office of the Asst./Dy. CIT
Cent. Circle-8(4), Mumbai

findings on the important documents found / seized, Hard Disc data, bank accounts, Demat accounts etc. and the implication there of on the assessment culminating into the proposed assessed income as above.

II. The office note should also elaborate that the earlier assessed income, if any relating to regular assessments has been duly linked up and considered in these assessments. The total income assessed under section 143(1) (a) or 143(3) or 147 / 263 etc. is seen and a copy of the relevant order is placed on file and ensure that the total income assessed under section 153A of the I.T. Act is not less than the total income determined in proceedings prior to the order under section 153A of the Act. The office note should also give finding that identity, creditworthiness and genuineness of the transactions is examined in case of the load creditors or squared up loan creditors and sundry creditors.

III. Wealth Tax implication and penalty proceedings including for violations of section 269SS/269T of the Act if any, may be considered and action initiated, without loss of time.

IV. A copy of assessment order as finally as passed along with the detailed office note shall be sent to this office.

V. You are advised to intimate the Assessing Officer of third party for initiating action u/s.153C of the Act wherever you are satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents, etc. belongs to a person other than person referred to in section 153C of the Act and handover such material earliest possible to the Assessing Officer. The copy of account of loan or squared up creditors any other person, submitted by the assessee or gathered during assessment proceedings is forwarded to the respective Assessing Officer requesting for verifying the entries in account and report back to you in case any discrepancy is noticed.

VI. The office note should also elaborate the following aspects: Reasons for selection have been verified. ITS/AIR/CIB information, TDS claim and income shown are reconciled as per 26AS. Appraisal report issues have been verified, status of Appeal if any to be mentioned, penalty interest charging, carry forward of losses, MAT credit, FDR, KVP any seizure of jewellery, cash taken care of.

Vijay S

(VIJAY KUMAR SONI)
Addl. Commissioner of Income Tax,
Central Range 8, Mumbai.

21. The Assessee thus, has further claimed that such approval is invalid and bad in law, specifically in view of the judgment passed by the Hon'ble Tribunal in the case of **Rishab Build Well Pvt. Ltd. vs. DCIT & ors. (ITA No.2122/Del/2018 decided on 04.07.2019),** wherein the approval granted u/s 153D of the Act, was subjected to fulfillment of similar conditions, like ensuring comments in the approval and final assessment order was required to be sent to the file of the JCIT and therefore the Hon'ble Tribunal held **such approval as conditional and invalid**.

22. The Ld. Counsel Mr. Dhaval Shah, with regard to the approval u/s 153D of the Act, has also raised following various issues:

> *"That in the instant case, the draft assessment order was submitted by the AO, to the Ld. Addl. Commissioner at the fag end of the assessment proceedings, on 27-12-2019 being a Friday, whereas the time barring date was 31.12.2019, which goes to show that 28.12.2019 and 29.12.2019 were Saturday and Sunday and therefore the approving authority was having only two working days in his hand i.e. 27.12.2019 and 30.12.2019 for granting the approval, in order to enable the AO to pass the final assessment order on 31.12.2019 and therefore there was no reasonable or sufficient time was available with the Ld. Additional Commissioner to apply his mind on the issues involved. And therefore the instant case is also covered by the Hon'ble Orissa High Court in the case of* ***ACIT vs. Serajuddin & Co. (150 taxmann.com 146),*** *wherein the Hon'ble High Court by pointing out that there are three mandatory conditions for an approval to be valid and in the absence of any reason in the approval to show that the draft orders are correct and merely using the words "seen" "approved" will not satisfy the condition of law. In that particular case the approval was sought only two days prior to the dead line like in the instant case and therefore the approval involved in the instant case is liable to be declared as invalid and not in accordance with law".*
>
> *Moreover, the Ld. Additional Commissioner on the very same date i.e. 27-12-2019 as mentioned above has also granted approval in the cases of other entities by composite approval, which shows that the approving authority did not have sufficient time to go through and apply his mind to each*

of the draft assessment orders separately, while granting the requisite approvals. Even otherwise the Ld. Addl. Commissioner has granted common approval for seven assessment years, instead of separate approval for each year as mandated in law and as clarified by the Hon'ble High Court of Allahabad in the case of ***PCIT vs. Sapna Gupta 147 taxmann.com 288*** *by holding that the approval for each assessment year is required to be given separately.*

Most importantly, from the approval, it is clear that there is no reference or discussion of any documents found during search, statements recorded of various persons, submissions filed by the Assessee during search and post search proceedings etc. and therefore, in absence of any such discussion, it cannot be said that the approving authority has applied its mind to the facts of the case before according approval. There is not even bare minimum whisper or mentioning of any reasons as to how the draft orders put before him were correct and legally valid. Mere mentioning that the draft orders have been perused and approved without even briefly stating how they are correct, cannot satisfy the conditions of law.

"The Hon'ble Madhya Pradesh High Court as well in the case of CIT Vs. S. Goyanka Lime and Chemicals Ltd. (56 taxmann.com 390) also dealt with the situation, wherein the Ld. Commissioner accorded the approval by using the words "Yes, I am satisfied" without making any records as to how he was satisfied. Thus, the Hon'ble High Court held such approval ***as a mere mechanical approval****. The Ld. Counsel further submitted that such order of the Hon'ble High Court has stands affirmed by the Hon'ble Apex Court in the case of S. Goyanka Lime and Chemical Ltd. 64 taxmann.com 313".*

Further instruction given vide at point no.(1)(2)(vi) in the approval dated 27.12.2019 by the Ld. Additional Commissioner is not even remotely related to the case in hand and nowhere discussing the contents and the quality of the draft assessment order and the correctness of the proposed additions in the assessment order.

"The Hon'ble Pune Tribunal in the case of ***SMW Saspat Pvt. Ltd. Vs. ACIT (163 taxmann.com 119)*** *also dealt with the similar provisional approval, like in the present case giving instructions to prepare proper office note, reference to 153C proceedings, penalty proceedings etc. The Hon'ble Tribunal therefore considering the fact that there was no indication qua examination of the relevant material in that detail while*

granting approval and the approval was given in one day's time in respect of many assessment orders, most importantly in the copy of approval there was no reference whatsoever of the approving authority, which would indicate examination of any evidence, documents, statements of various persons etc. Therefore, the approval was held as mechanical in nature and without application of mind and bad in law".

23. The Ld. Counsel Mr. Shah, further submitted that before making final assessment orders, prior approval u/s 153D of the Act, was introduced by the legislature, so that in search and seizure cases, a higher authority should apply his mind on the facts of the case or additions sought to be made and only thereafter assessment order must be passed. However, in the instant case, such action from the approving authority, is completely missing. Therefore, on the aforesaid facts, it is clearly suggested that the action of granting the approval has only been an empty ritual on mechanical exercise.

24. The Ld. Counsel further submitted that in an identical case titled as **Nilesh Shamji Bharani vs. DCIT, Mumbai ITA No.1786/M/2023 & ors. decided on 06.12.2024**, the AO had sought for approval for many cases, in a single day and the approving authority also approved/accorded approval u/s 153D of the Act in various cases on a single day, by way of single approval letter and therefore the Hon'ble Tribunal quashed the approval, by holding the same **as invalid**.

25. The Ld. Counsel Mr. Dhaval Shah, further submitted that Hon'ble Jurisdictional Bombay High Court in the case of **PCIT vs. Shrilekha Damani** {*ITA no. 668 of 2016, decision dated 27/11/2018*} has also considered the identical situation, wherein the approval was granted on the last date, when there was no enough time left to analyze the issues of draft order on merits and therefore

the Hon'ble High Court has held the approval granted, as a mere mechanical exercise and not valid in the eyes of law.

26. On the contrary, the Ld. D.R. refuted the claim of the Assessee by submitting that approval was duly accorded by the concerned Addl. Commissioner. The procedure normally followed in such cases is that after centralization of the case, periodic discussions are held between the Range Head and the AO, where the appraisal report and the relevant seized material are duly discussed. Submitting of the draft assessment order, is the culmination of the discussion process, not the initiation of the involvement of the Range Head, who is the approving authority. The Ld. D.R. further submitted that the decisions relied upon by the Assessee are distinguishable from the facts of the present case, as summarized below:

> *"(i) Pr. CIT V/s Smt. Shreelekha Damani, ITA no. 668 of 2016, decision dated 27/11/2018*
>
> *In the aforesaid order, the Hon'ble High Court of Bombay dismissed the appeal of the Revenue against the order of the ITAT, wherein the Hon'ble ITAT had held that there was no application of mind on the part of the authority granting approval. In this case, while granting approval u/s 153D, the AddI. CIT had himself noted in the approval letter that ".... However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyze the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted." (Para 6 of the order, page 207 of the Case Law Paper Book No. 2). The Hon'ble Court took cognizance of the remark made by the Addl. CIT that he did not have time to analyze the issues arising out of the draft order and hence the granting of approval was held to be a mechanical exercise. In the present case, no such qualifying remarks have been added by the Approving Authority while granting approval. The draft order was submitted on 27/12/2019 and the time-barring date was 4 days away, unlike in the relied upon case, when the draft order was submitted on the time barring date itself. It is submitted that facts of the relied upon case are different from the facts of the present case.*
>
> *(ii) ACIT v/s Serajuddin & Co., [2023] 150 taxmann.com 146 (Orissa)*

In the above case, the approval granted had been struck down by the Hon'ble Orissa High Court for inter alia the following reasons (Para 22 and 23 of the order, page 217 of the Case Law Paper Book No. 2):

(a) ...there is not even a token mention of the draft orders having been perused by the Additional Commissioner. The letter simply grants an approval.

(b)...it is an admitted position that the assessment orders are totally silent about the Assessing Officer having written to the Additional Commissioner seeking his approval or the Additional Commissioner having granted such approval. Interestingly, the assessment orders were passed on 30-12-2010 without mentioning the above fact.

None of the above deficiencies exist in the present case. The Addl. CIT clearly states that the draft assessment orders have been perused. Further, the assessment order clearly mentions at Para 8 that the order is passed after seeking necessary approval u/s 153D of the IT Act 1961 of the AddI CIT(CR)-8, Mumbai vide letter dated 27.12.2019.

(iii) Pr. CIT v/s Sapna Gupta [2023] 147 taxmann.com 288 (Allahabad)

In the above case, the approval granted was held to be mechanical in nature as the Hon'ble Court held that: "21. In the instant case, the draft assessment order in 85 cases i.e. for 85 assessment years placed before the approving authority on 30-12-2017 was approved on same day i.e. 30-12-2017..... It is humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the Approving Authority. "(Page 228 of the Case Law Paper Book no. 2). In the instant case, approval, though granted on the same day, was granted in 7 cases of one group. There is a massive difference in the number of cases seen and approved in the relied upon case and the present case. The Id. AR also produced a chart showing that approval had been granted by the same Addl. CIT in 12 cases on 27/12/2019. Even if this number, though unverified from records, is treated as correct, 12 is still significantly less than 85, which was the number approved in the case of Sapna Gupta in a single day. Further, the 12 cases comprise of 7 cases of the present group and 3 other assessees. This number cannot be held comparable to the number approved in the Sapna Gupta case.

(iv) Rishabh Buildwell P. Ltd. v/s DCIT ITA No. 2122/Del/2018 & others ITAT Delhi

In the above case, the approval was held to be invalid as the Approving Authority had directed the DCIT to ensure that seized materials and the findings of the appraisal report to be incorporated in the final assessment order. The Hon'ble ITAT concluded that there is no provision to alter, modify, adjust, amend or rework the order once approval has been accorded and the approval granted is a conditional approval, which is not valid. In the present case, though the approval of the draft assessment order is subject to some conditions, none of these conditions relate to any modifications or alterations in the draft assessment order. The conditions relate to a comprehensive office note being prepared, intimation being sent to AOs of third parties, examination of wealth tax implications and violations of sections 269SS/T etc. None of these directions or actions have any effect on the draft assessment order. These are in the nature of housekeeping activities that the AO is being directed to complete so that the file is ready for audit etc. The approval is not conditional as the draft order is not being asked to be modified in any manner. In fact, the directions on issues or aspects to be included in the office note clearly show due application of mind by the Approving Authority as aspects related to seized material, appraisal report, returns filed etc. have all been listed by the Addl. CIT. Even if the list is alleged to be a standard, general list, as alleged by the learned AR, the fact remains that the very existence of a check-list indicates application of mind. Hence the facts of the present case are completely different from that of the relied upon case.

Whether an approval is mechanical depends upon the facts of the case and none of the case laws relied upon have facts similar to the present case. Hence it is submitted that the appellant has not been able to substantiate the allegation of 'mechanical approval' or 'invalid approval' by the Approving Authority".

27. We have heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties on the additional ground no. 3 raised by the Assessee, challenging the approval dated 27.12.2019 accorded by the Ld. Addl. Commissioner. As observed above by us, that on the very same day i.e. 27-12-2019, the draft assessment order was placed/submitted before the Ld. Addl. Commissioner and on the very same day i.e. 27-12-2019, the

approval u/s 153D of the Act was granted and eventually on the very same day of granting the approval on 27.12.2019, the AO passed the assessment order under consideration. It is also a fact that the Addl. Commissioner/Approving Authority, has also granted the same approval u/s 153D of the Act, on the very same day, in other 12 cases. Admittedly, from the approval, it is nowhere appearing that what evidence/document/statement/material/ proposed addition(s) etc. were examined by the Approving Authority before granting the approval. It is also not clear, whether the approving authority has applied its mind and on what basis or material the approval was accorded. The aforesaid facts create the suspicion about the validity of the approval. Therefore, we will test the approval, in view of dictum laid down by various courts.

28. Coming to the first decision by the Hon'ble Orissa High Court in the case of ACIT vs. Serajuddin & Co. (supra), which is paramount for adjudication of the instant issue, as observed above, the Hon'ble High Court has dealt with almost identical situation/issue, wherein the approving authority has granted the approval in many cases but by a single approval and at the fag end of the time period prescribed for completion of the assessment proceedings. The Hon'ble High Court therefore considering the submissions made by the Assessee and the Revenue Department ultimately held that there are three or four requirements that are mandated for seeking the approval u/s 153D of the Act:

> ***First*** *the AO should submit the draft order "well in time";*
> ***Secondly*** *the final approval must be in writing;*
> ***Thirdly*** *the fact that the approval has been obtained should be mentioned in the body of the assessment order.*

For brevity and ready reference, the relevant part of the judgment is reproduced herein below:

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

23.....
.....
.....

24.....
.....
.....

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

29. In Serajuddin & Co. case (supra), the draft assessment orders were produced before the approving authority only on 29.12.2010, with the indication that the cases will be barred by limitation on 31.12.2010 and therefore the approving authority vide consolidated

approval dated 30.12.2010 granted the approval. As in the instant case as well, the approval was sought for by the AO only on 27.12.2019 and the last date for completing the Assessment was 31-12-2019. Admittedly 28.12.2019 and 29.12.2019 were Saturday and Sunday and therefore the approving authority had no sufficient time except two working days {27-12-2019 and 30-12-2019) and thus, inference can be drawn that the approving authority in the constrained circumstances and immense pressure, accorded the approval on the very same day of submitting of draft order or within 12 hours itself, in haste manner and without applying its mind due to paucity of reasonable time and therefore approval would entail as invalid and bad in the eyes of law.

30. Further, coming to the judgment passed by the Hon'ble Jurisdictional High Court in the case of **PCIT vs. Shrilekha Damani in ITA No.668 of 2016 decided on 27.11.2018,** we observe that the Hon'ble High Court has also dealt with the issue, wherein the draft order for approval u/s 153D of the Act was submitted on 31.12.2010 and hence there was no enough time left to analyse the issue of draft order on merit. Thus, the draft order was approved, as it was submitted by granting approval u/s 153D of the Act and without application of mind and therefore the same was declared as invalid approval in the eyes of law by the Tribunal.

30.1 The Hon'ble High Court, thus considering the aforesaid facts and circumstances held that the Addl. CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus a mere mechanical exercise accepting the draft order as it is, without any independent application of mind. The Tribunal is therefore justified in coming to the conclusion that the approval was invalid in the eyes of law.

30.2 The Hon'ble High Court also laid down the following dictum:

"That the approval whenever required under the law must be preceded by application of mind and consideration of relevant factors, before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record".

31. The Ld. D.R. on the contrary has claimed that in the aforesaid case, the approval was sought only on 31.12.2010, whereas in the instant case the draft order was submitted on 27.12.2019 and the time barring date was 4 days away, unlike in the relied upon case, when the draft order was submitted on the time barring date itself, therefore the facts of the relied upon case, are different from the facts of the present case.

32. To answer the contention of the Ld. DR, judgment of **t**he Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax, Jabalpur Vs. S. Goenka Lime and Chemical Ltd. (2015) 56 taxmann.com 390 (MP) is relevant, wherein the Hon'ble High Court, also dealt with an identical situation/issue, wherein exercise for according the approval for reopening of the block assessments and issuing the notice u/s 148 of the Act, was shown to have performed in less than **12** hours of time and in a mechanical manner and therefore such approval was held as invalid in law by observing that the same goes to indicate that the approving authority did not apply its mind at all, while granting sanction. The satisfaction has to be with objectivity, on objective material.

33. Aforesaid judgment passed by the Hon'ble Madhya Pradesh High Court in the aforesaid case, has further got affirmed by the Hon'ble Apex Court in the case of Commissioner of Income Tax, Jabalpur (MP) vs. S. Goyanka Lime and Chemical Ltd. (2015) 64 taxmann.com 313/Special Leave Appeal (c) No.11916 of 2015 decided on 08.06.2015.

34. In the instant case as well, the AO has submitted the draft order for approval u/s 153D of the Act on dated 27-12-2019, however, it is a fact that 31.12.2019 was the last date for making the assessment order and leaving aside 28th & 29th December 2019 being Saturday & Sunday, the approving authority was having just two days only i.e. 27th & 30th December 2019. Somehow, the Approving authority accorded the approval on the very same date or less than 12 hours and therefore the instant case is squarely covered by aforesaid judgment in the case of Commissioner of Income Tax, Jabalpur Vs. S. Goyanka Lime and Chemical Ltd. {supra}, as well.

35. The Hon'ble Tribunal in the case of **Nilesh Shamji Bharani vs. DCIT, Mumbai ITA No.1786/M/2023 & ors. decided on 06.12.2024**, has also dealt with the identical situation/issue, wherein approvals in 21 cases were accorded vide composite approval dated **27.12.2019**, whereas the last date for completing the assessments was **31.12.2019.** Coincidentally, in the instant case as well, the dates i.e. **27-12-2019** and **31-12-2019** are the same. The co-ordinate Bench found that there is no whisper of any seized material sent by the AO i.e. proposal requesting the approval u/s 153D of the Act. Even the approval does not refer to any seized material/assessment records or any other documents, which could suggest that the approving authority has duly applied his mind before granting approval. The Hon'ble Co-ordinate Bench while relying on the judgment in **Serajuddin & Co.** case (supra), ultimately held the approval granted on the very date of seeking approval on dated 27.12.2019, as invalid, being not only mechanical but against the ratio laid down by the Hon'ble High Courts.

36. The provisions of section 153D of the Act are having its own history, as the same were made applicable from 01.06.2007 onwards in order to avoid arbitrary, unwanted and whimsical assessments or reassessment under clauses (a) and (b) of section 153A of the Act. For brevity and ready reference, the provisions of section 153D are reproduced herein below:

Prior approval necessary for assessment in cases of search or requisition.

"**Section 153D of the Act:**

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 section 153A or the assessment year referred to in clause (b) of sub - section (1) of section 153 B, 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 Commissioner under sub- section (12) of section 144BA."

37. The CBDT vide circular no.3 of 2008 dated 12.03.2008, also illustrated the origin of the provisions of section 153D of the Act, which read as under:

50. Assessment of search cases: Orders of assessment and reassessment to be approved by the Joint Commissioner.

50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment.

50.2 A new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. **Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year** relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also

been made applicable to orders of assessment passed **under clause (b) of section 153B** in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

38. From the aforesaid analyzations, it is clear that for making the assessment or reassessment u/s 153 A & B of the Act, the approval/sanction u/s 153D of the Act of the approving authority is mandatory and therefore the approval should not be rubber stamping and mere ritual formality and should not suffer from lack of application of mind but the same has to be reasoned, based on examination of the relevant material available on record and in the approval, there should be some indication of the material examined and the order of approval is not to be mechanically granted but the same should be done, having regard to the material on record. It is the bounden duty of the AO to submit the draft assessment order, well in advance/time, so that approving authority will not face any immense pressure, due to paucity of time. Though the statute has not provided any format for granting an approval but the approval must reflect the basis of the material and reasons, on which the approval is granted.

39. Coming to the instant case, finally we reiterate and order as under:

That in the instant case, the approving authority on the very same date of submitting the draft orders on 27-12-2019, granted the approval in 13 cases simultaneously and it is a fact that 28th & 29th of December 2019 were holidays being Saturday and Sunday and 31st December 2019 was the last date for making the assessment order and therefore the approving authority has left with, only two working days i.e. 27th & 30th December 2019. However, the approving authority accorded the approval on the very same day (27-12-2019) of submitting the draft order and in less than **12** hours, which goes to show that the Approving

Authority has not applied his mind due to paucity time and therefore granted the approval in mechanical and haste manner. It is also a fact that the AO on the very same day of getting the approval, completed the assessment proceedings and passed the assessment order dated **27.12.2019**, which also creates suspicion. As we have observed above that granting of approval is not a technical or mechanical exercise or ritual formality but must demonstrate the examination of the relevant material and finding/reasoning, as to why the approval has been granted.

And therefore the contention of Ld. DR to the effects *"that the procedure normally followed in such cases is that after centralization of the case, periodic discussions are held between the Range Head and the AO, where the appraisal report and the relevant seized material are duly discussed and submitting of the draft assessment order, is the culmination of the discussion process, not the initiation of the involvement of the Range Head, who is the approving authority",* has no essence, because the Assessing Officer is an independent quasi-judicial officer and therefore he is required to act or to pass the assessment order independently and without being influenced by any interference/indulgence of/by higher Authority. May be the higher authority was involved in process of investigation or enquiry etc. but could not have interfered in deciding the issue(s) and/or passing the assessment order by the AO, except granting or rejecting the approval u/s 153D of the Act. The Approving Authority after submitting the draft order and relevant material, is required to assess the proposed assessment order independently in the context of material available on record and to give reasons for granting the approval. Admittedly in this case, approval dated 27.12.2019, does not reflect any relevant material/findings/reasoning, which can substantiate the validity of such approval. Thus, the contention raised by the Ld. DR, is untenable.

Thus, on the aforesaid analyzations, we are of the considered view that in the instant case, the approval dated 27.12.2019 under consideration in not based on examining of any relevant documents and provisions of the Act in the context of the proposed addition and has been accorded in haste and time constrained pressure and therefore lacks application of mind and hence in cumulative effects, the same suffers from perversity and impropriety and consequently un-sustainable. **Thus the approval, is declared as invalid in the eyes of law, which would entail the assessment order dated 27.12.2019 as invalid being void ab-initio.**

40. Coming to the merits of the case, the Assessee has claimed to be, also in the business of investments and trading in shares and securities and during the AY under consideration, had purchased the following shares for trading purposes and shown the same in its balance sheet as "stock in trade" but not as an investment, to be categorised as capital assets:

Sl. No.	Name of the share	Number of shares	Consideration amount
1.	M/s. Navratan Management Pvt. Ltd.	3000	Rs.3,00,000/-
2.	M/s. Muktamani Distributors Pvt. Ltd.	50,000	Rs.50,000/-
3.	M/s. Mecons Pro Comotrade Pvt. Ltd.	60,000	Rs.6,00,000/-
4.	M/s. Aachman Vanijya Pvt. Ltd.	3,30,000	Rs.33,00,000/-

41. On perusal of the financials, the AO observed that fair market value of the shares of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. appears to be more than the face value of which the shares were purchased and therefore the AO

asked the Assessee to furnish the valuation of shares. The Assessee furnished the valuation report of shares of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. On perusing the valuation reports, it was seen by the AO that fair market value per share of M/s. Navratan Management Pvt. Ltd. and M/s. Muktamani Distributors Pvt. Ltd. was more than the purchase value per share. Therefore, he show caused the Assessee *"as to why the provisions of section 56(2)(viia) of the Act should not be invoked for the purchase of shares of said companies and the differential amount (of the fair market value and purchase value) should not be added as income in the hands of the Assessee".*

42. The Assessee in response to show cause filed its reply and claimed that said shares were purchased by the Assessee for the trading purposes only and not as an investment shown to be categorized as capital assets (property). The Assessee further claimed that plain reading of section **56(2)(viia)** of the Act and its provisions and explanation, it is crystal clear that the intent of the Revenue was not to tax the transactions entered into during the normal course of business or treat the profit of which are taxable under specific heads of income. The Assessee before the AO also demonstrated the definition of property as defined in section 56(2)(vii) of the Act and claimed that because the provisions of section 56(2)(viia) of the Act, are an extension of section 56(2)(vii) only and therefore the provisions of such section, have to be read harmoniously with provisions of section 56(2) (vii) of the Act. The Assessee further claimed that capital asset is defined in **section 2(14)** of the Act, which **does not include "(i) any stock in trade** [other than the securities referred to in sub clause (b)], consumable stores or raw materials held for the purposes of his business or profession". From the definition of "**Capital Asset**", it is clear that the securities held for the purposes of business is not a "capital

asset unless" it is for the investment purposes. The Assessee further claimed that it has bought the shares for trading purposes only and therefore has shown the same as "**stock in trade**" under the head "**current asset**" before the date of search itself and therefore the same cannot be treated as investment for the purposes of invocation of provisions of section 56(2)(viia) of the Act, without any valid reason. Since the aforesaid provision, applies only to investment being capital asset and not as trade in stock, and therefore it has no application to the facts of the Assessee's case. As the shares, have been purchased at the prevailing market value and therefore no addition as proposed in the show cause notice be made.

43. The AO though considered the said claim of the Assessee, but not being impressed with same, observed that the provisions of section 56(2)(viia) of the Act were introduced vide Finance Act, 2010 to prevent the practice of transferring of unlisted shares at a price different from the fair market value. The Assessee though contended that it is engaged in the business of investments and trading of shares and securities, however, from the website "https://www.zaubacorp.com" the Assessee is identified being engaged in the business of other wholesale, includes specialized wholesale, not covered in any of the previous categories and wholesale in a variety of goods, without any particular specialization. The AO also rejected the contention of the Assessee that section 56(2)(viia) is an extension of section 56(2)(viia) of the Act by holding that section 56(2)(vii) of the Act is applicable to individual and HUF only, whereas section 56(2)(viia) of the Act is applicable to firms and private company. Beside, this section 56(2)(viia) of the Act is applicable to the disallowance of shares of private companies only but not "any property" as mentioned in the section 56(2)(vii) of the Act. The AO further observed that

explanation applicable to section 56(2)(viia) is only related to "fair market value" as described in the explanation to section 56(2)(vii) of the Act, not the other explanations.

The AO therefore on the aforesaid reasons, ultimately worked out the difference in the purchase value and fair market value of the shares purchased by the Assessee and made the addition u/s 56(2)(viia) of the Act and added the same in the income of the Assessee.

44. The Assessee being aggrieved challenged the addition made by the AO, before the Ld. Commissioner, and raised various issues, including such as the provisions of section 56(2)(viia) of the Act are not applicable to any "stock in trade" as the same is excluded in the definition of "capital asset" as defined in section 2(14) of the Act and therefore the same cannot be doubted.

45. The Assessee further claimed that the provisions of section 56(2)(viia) of the Act are an extension to the provisions of section 56(2)(vii) of the Act and therefore definition of "property" enshrined in section 56(2)(vii) of the Act is required to be applied, while considering the provisions of section 56(2)(viia) of the Act. Further, provisions of section 56(2)(viia) of the Act are applicable to investment in "capital assets" and not for the regular business/trading activities. The Assessee further claimed before the Ld. Commissioner that under the same facts and circumstances in the cases of **M/s. Muktamani Distributors Pvt. Ltd. and M/s. Aalishan Distributors Pvt. Ltd. (sister concerns of the Assessee)**, the then Ld. CIT(A) has held *"that if the purchases of shares are for trading purpose and shown as "stock in trade" then the provisions of section 56(2)(viia) of the Act would not be applicable".*

46. The Ld. Commissioner though considered the claim of the Assessee, however, rejected the same mainly on the following facts that from the perusal of financials for A.Y. 2023-24 it is observed that till 31.03.2023, except the shares of M/s. Mecons Pro Comotrade Pvt. Ltd. all the shares are appearing in the balance sheet as "stock in trade". It is evident that the Assessee has not sold these shares till 31.03.2023. Further, from A.Y. 2013-14, it is seen that the turnover of the Assessee is insignificant and does not reflect trading activity in shares. Further, revenue from the operation is either nil or meager. Further, acquisition of shares of the aforesaid companies is for the purpose of acquiring stakes in those companies and thus the purchase is for the investment purposes and not for the trading purposes itself. Just because in the balance sheet, the Assessee has classified/shown the same as stock in trade, the real intent of the transactions will not alter entries in the books of account and are not determinative or conclusive. The Ld. Commissioner further held that merely because a different treatment was given in the books of account, cannot be a factor which would deprive the Assessee from claiming the entire expenditure as a deduction, as held by Hon'ble Supreme Court in the case of Taparia Tools Ltd. Vs. Jt. CIT [2015] 55 taxmann.com 361. The Ld. Commissioner also observed that on perusing the decisions of the then Ld. CIT(A)/predecessor, he differs with the said decisions.

47. The Assessee, before us, on merit has raised various issues such as: various observations made by the Ld. Commissioner are incorrect and devoid of merits under the facts and circumstances of the case, to the effect that the shares purchased by the Assessee were held as **"stock in trade"** for a long time in order to fetch good price later on. **Whereas** the Assessee got good deal of purchasing the shares at face value, as the said companies

did not perform well and after Covid-19 no buyer was available to give good price and therefore the shares were held by the Assessee. Even otherwise, there is no bar in keeping the shares as stock in trade for a long time.

The Assessee further claimed that the Ld. Commissioner has observed that turnover of the Assessee is insignificant and involved in the investment activity but not day to day purchase and sale transaction and therefore, the Ld. Commissioner doubted the veracity of the Assessee company by terming as a paper company. Whereas it is a fact that search team and the AO have not doubted the genuineness of the Assessee company and therefore the observation of the Ld. Commissioner is contrary and incorrect.

The Ld. Commissioner also observed that the companies from the Assessee had purchased the shares are also paper companies, whereas it is a fact that said companies had high NAV at the time of purchase of shares, which shows that they had good financial standings at the time of purchase. Even otherwise no adverse findings have been given either by the search team during search enquiries as well as post search enquires and also during the assessment proceedings, and therefore the observations of the Ld. Commissioner are contrary to the facts on record.

The Assessee further claimed that no doubt the entries in the books of account, do not define taxability but the same show the intention of the Assessee to keep shares as stock in trade. The Assessee kept some shares as "investment" and some shares as "stock in trade" which shows that the Assessee had clear intention to keep certain stocks as "stock in trade".

The Ld. Commissioner even otherwise has not given any adverse inference with respect to the applicability of section 56(2)(viia) of the Act to shares held as "stock in trade" by the Assessee.

Even otherwise, the Ld. Commissioner without analyzing the order passed by his predecessors in the cases of Assessee's sister concerns namely **M/s. Muktamani Distributors Pvt. Ltd. and M/s. Aalishan Distributors Pvt. Ltd.** for A.Y. 2017-18 vide orders dated 08.09.2021 and 17.09.2021 respectively, wherein the then Ld. CIT(A) has not only analyzed the identical facts and circumstances, except variation in amounts as involved in the instant case , but also analyzed the relevant provisions applicable

thereto and ultimately held that shares held as "stock in trade" cannot be subject matter of the addition u/s 56(2)(viia) of the Act and therefore by following the rule of consistency and parity the Ld. Commissioner should have followed the decisions of his predecessor but still the Ld. Commissioner differed with the view of his predecessor, without assigning any reason, which is against the judicial discipline and parity.

The Assessee further claimed that the provisions of section 56(2)(vii) and section 56(2)(viia) of the Act are anti evasive provisions, to counter tax evasion for laundering of unaccounted money and are not applicable to regular trading transactions, as can be seen from Memorandum explaining the Finance Bill 2009 and Finance Bill 2010. In the instant case, no allegation has been made by any of the authority qua laundering of unaccounted money in the garb of issue of shares by the Assesse.

The Assessee further submitted that the explanation to section 56(2)(vii) of the Act, gives meaning to the word "property" but not the section 56(2)(viia) and therefore the said definition may be applied to the provisions of section 56(2)(viia) of the Act, which are merely an extension of section 56(2)(vii) of the Act, as can be seen from Memorandum explaining the Finance Bill 2010, wherein section 56(2)(viia) of the Act was introduced to widen the scope of section 56(2)(vii) of the Act from individual/HUF to firm/companies and therefore the meaning of property as given in clause vii of section 56(2) of the Act, may be imported and also be taken into consideration, while considering the provisions of section 56(2)(viia) of the Act, as the methodology of taxation and purposes of both the provisions are identical.

The Assessee further claimed that as per the provisions of section 56(2)(viia) of the Act, shares have first to qualify as "property" and the proviso to section 56(2)(viia) of the Act also uses the words "any such property" and the meaning of the word "fair market value" given in clause (viia) also refers to the word "property" in section 56(2)(viia) of the Act. And therefore borrowing such meaning from similar/analogues provisions instead of adopting general meaning of the word "property" is cardinal rules of interpretation. The Hon'ble Tribunal in the cases of Solitaire Diamond Exports vs. ITO 114 taxman 176 (Mumbai) and ACIT vs. Khoday India Ltd. (33 SOT 178) has also clearly held that in absence of any definition or meaning of the words, the meaning of such words in the genesis of such provision or similar provision, has to be adopted.

48. The Assessee, at last reiterated that because section 56(2)(viia) of the Act, is an extension of section 56(2)(vii) and therefore in the absence of any meaning of the word in clause (viia) , the meaning as assigned in clause (vii), ought to be taken for interpretation purposes. Even from A.Y. 2018-19 onwards, the legislature has replaced the provisions of section 56(2)(vii) and section 56(2)(viia) to section 56(2)(x) of the Act, which explicitly exclude "stock in trade" from the meaning of the "property" and therefore the legislative intent was not to include shares held as "stock in trade" for all types of Assessee.

49. On the contrary, the Ld. D.R. submitted that drawing upon the definition of "property" given in section 56(2)(vii) of the Act is not correct as section 56(2)(viia) of the Act clearly states that the provisions would apply to "property" booked in the nature of shares. When the provisions of this specific section, specify the asset to which the section is to apply, then there is no scope for importing the definition for another section. The primary rule of interpretation is to interpret the words as they are, there should not be addition or substitution of words in the construction of statutes and its interpretation. When a definition is not embedded in a particular provision itself, then only meaning can be imported from analogues section. Hence, the claim of the Assessee *"for importing the definition of word "property" from section 56(2)(vii) of the Act, when the definition is contained, within section 56(2)(viia) itself to mean share of a company not being a company in which the public are substantially interested",* is untenable. Vide proviso to section56(2)(viia) of the Act, the legislature in its wisdom has exempted transactions arising from business re-organization, however no exception has been provided, if the shares are purchased as "stock in trade" and in the absence of any such exemption, the exemption cannot be inserted into the provisions of the Act, by drawing parallels with analogues section. From the provisions of clause 13.2 and 13.4 of the Circular

no.5/2010 dated 03.06.2010, it is clear that the intention of the legislature was not to remove the stock in trade from the purview of section 56(2)(viia) of the Act. The legislature was clearly alive to the fact, for exempting "stock in trade" from the purview of section 56(2)(vii) of the Act, the act was amended and section 56(2)(viia) of the Act was brought into existence. Despite exempting stock in trade from section 56(2)(vii) of the Act, the legislature in its wisdom did not make any such exemption while introducing section 56(2)(viia) of the Act, hence there is no reason for not applying the provisions of section 56(2)(viia) of the Act, to the shares purchased as stock in trade.

DECISION

50. We have heard the parties and perused the material available on record and given thoughtful consideration to the findings of the Authorities below on the issue under consideration and rival contentions raised by the parties and observe that the following **question emerge:**

> *"Whether the shares kept as "stock in trade" in regular/normal course of business for trading purposes, can be subjected to the addition, with the aid of the provisions of section 56(2){viia) of the Act ?"*

51. Vide circular no.05/2010 and explanatory notes to the provision of the Finance (No.2) Act, 2009, the new clause i.e. {vii} in section 56(2) of the Act was introduced being an anti-abuse measure, which read, as under:

> *"56(2)(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,-*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand*

rupees, the whole of the aggregate value of such sum;

(b) any immovable property-

(1) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property,

(c) any property, other than immovable property.

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 500 and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:

Provided further that this clause shall not apply to any sum of money or any property received-

a) from any relative; or

b) on the occasion of the manage of the individual; or
c) under a will or by way of inheritance; or
d) in contemplation of death of the payer or donor, as the case may be, or
e) from any local authority as defined in the Explanation to clause (20) of section 10; or

f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

g) from any trust or institution registered under section 12AA; or

h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation. For the purposes of this clause,-

a) "assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 500

b) fair market value of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;

c) "jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2:

d) "property" means the following capital asset of the assessee, namely:

i. immovable property being land or building or both;
ii. shares and securities;
iii. jewellery;
iv. archaeological collections;
v. drawings:
vi. paintings;
vii. sculptures;
vitt. any work of art; or
ix. bullion;

(e) "relative" means,

(i) in case of an individual-

A. spouse of the individual;
B. brother or sister of the individual;
C. brother or sister of the spouse of the individual;

D. brother or sister of either of the parents of the individual;
E. any lineal ascendant or descendant of the individual;

F. any lineal ascendant or descendant of the spouse of the individual;
G. spouse of the person referred to in items (B) to (F); and H.

(ii) in case of a Hindu undivided family, any member thereof,

"stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property."

51-A. Admittedly, the provisions of section 56(2)(vii) of the Act were introduced as a counter evasion mechanism to prevent laundering of unaccounted income and made applicable to the **individual and HUF** and therefore there was lacuna or vacuum for the cases of Firm or Company and thus vide Finance Act 2010 w.e.f. 01-06-2010, the sub clause (viia) in section 56(2) of the act, was introduced, which read as under:

*"**56(2)(viia**)" where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010 but before the 1st day of April, 2017, any property, being shares of a company not being a company in which the public are substantially interested,-*

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation:

For the purposes of this clause, "fair market value of a property. being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii)."

52. Subsequently, Vide Circular **no.1/2011 dated 06.04.2011** which is Explanatory notes to the provisions of Finance Act, 2010, it was clarified that the provisions were intended to extend the tax net to such transactions in kind **but not to tax the transactions entered into the normal course of business or trade, the profits which are taxable under specific head of income.** Therefore, the definition of "property" has been amended to provide that section 56(2)(vii) of the Act which will have application to the "property" which is in the nature of a **capital asset** of the recipient and therefore **would not apply to "stock in trade",** raw material and consumable stores of any business of such recipient. For clarity and better understanding, relevant clauses of said circular are reproduced herein below:

13. Taxation of certain transactions without consideration or for inadequate consideration

****

13.1 Under the previously existing provisions of section 56(2) (vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision. The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

13.2 These are anti-abuse provisions which were applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value was not attracted by the anti-abuse provision In order to prevent the practice of transferring unlisted shares at prices much below their fair market

value, section 56 was amended to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). It is also provided to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.

13.3 Applicability -This amendment has been made effective from 1st June, 2010 and accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

13.4 The provisions of section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore **would not apply** to **stock-in-trade**, raw material and consumable stores of any business of such recipient.

53. As we have observed above that the provisions of section 56(2)(vii) of the Act were not covering the cases of the firm or a company (not being a company in which the public are substantially interested) and therefore new provision i.e. sub section (viia) in section 56(2) of the Act, was introduced to cover up the cases of firm and company as well wherever they have received any property being share of a company (not being a company in which the public are substantially interested) without consideration or for a consideration less than aggregate fair market value of the property. And therefore it can easily be construed that sub section (viia) of section 56(2) of the Act was just an extension of sub section (vii) of section 56(2) of the Act, as claimed by the Assessee as correct.

54. Admittedly, in the provisions of section 56(2)(viia) of the Act there is no definition given to any term/clause/head except explaining the meaning of fair market value, as assigned in the explanation to clause (vii) of section 56(2) and therefore in the absence of any definition or meaning of terms/words, the definitions or meanings given in section 56(2)(vii) of the Act would be relevant and thus can be taken into consideration while considering the provisions of section 56(2) (viia) which are being corollary of the provisions of section 56(2)(vii) of the Act and the meaning of such terms/words/heads in section 56(2)(vii) of the Act, which is the genesis of such provision or similar provision, can be imported and/or considered for interpretation of "property" or adjudication of the issue involved. We found support from the judgment of the Tribunal in the case of Solitaire Diamond Exports Vs. ITO 114 taxman 176 (Mumbai), wherein it was held as under:

> *"6. We have considered the rival submissions and perused the material on record. We have also carefully examined the decisions cited before us. Insofar as the factual aspect of the issue is concerned, there is no dispute that the assessee is importing diamond for re-export after sorting and grading. It is also not disputed that for carrying out such activity, assessee has a registered unit in SEZ, Surat. So it is governed under the SEZ Act. Section 10AA of the Act, which is introduced in the statute by virtue of SEZ Act, provides exemption for a specified period to SEZ units in respect of profits and gains derived from export of articles or things manufactured or produced or from services. It is the claim of the assessee from the very inception that import of diamonds for re-export is in the nature of services.* ***Admittedly, the expression 'services' has not been defined either under Section 2 or Section 10AA of the Act. Therefore, we have to look to the meaning of 'services' as defined under the SEZ Act and the rules framed thereunder since the provision of Section 10AA of the Act was introduced by the SEZ Act. As per the definition of 'services' under the SEZ Rules, 2006, trading also comes within its ambit. Section 51 of the SEZ Act has Solitaire Diamond Exports an overriding effect to the extent that it makes clear that if there is any inconsistency between the SEZ Act and rules framed thereunder and any other law, the***

provisions of SEZ Act and rules framed thereunder would prevail. *In the aforesaid circumstances,* ***in the absence of definition of 'services' under Section 10AA of the Act, 'services' as defined under the SEZ Act and rules framed thereunder would be relevant.*** *As discussed earlier, the definition of 'services' under the SEZ Act and rules framed thereunder encompasses trading activity also. Therefore, import of diamonds for re-export though, may be in the nature of a trading activity, but is certainly in the nature of 'services', hence would qualify for deduction under Section 10AA of the Act. In the case of Goenka Diamonds & Jewellers Ltd. (supra), the Tribunal, after examining the provisions of Section 10AA of the Act vis-à-vis the SEZ Act and rules framed thereunder, had concluded that since the definition of 'services' under the SEZ Act also includes trading activity, the activity relating to import of diamonds for re-export would qualify for deduction under Section 10AA of the Act. The aforesaid decision of the Tribunal was upheld by the Hon'ble Rajasthan High Court while discussing a batch of appeals filed by the Revenue against the decision of the Tribunal. The judgment of the Hon'ble Rajasthan High Court was delivered on 24.08.2017 in Income Tax Appeal no. 222 of 2012 and others. It is relevant to observe, in the aforesaid case also, the assessee had its unit in Surat SEZ. Similar view was again expressed by the Mumbai Bench of the Tribunal in the case of the same assessee in ITA No. 153/JP/2014 and 216/JP/2014 dated 10.01.2018. The other decisions cited by the learned AR also express similar view. Therefore, consistent with the view taken by the different Benches of the Tribunal, we are of the view that assessee is eligible to claim deduction under Section 10AA of the Act, since, the activity of import of Solitaire Diamond Exports diamonds for re-exporting comes within the nature of 'services' as provided under Section Section 10AA of the Act."*

55. As the provisions of section 56(2)(viia) of the Act, also speaks about "any property being share of a company" and therefore subject matter for applying the provisions of section 56(2)(viia) of the Act, first would be "**any property**" secondly **"being share of company"** meaning thereby, if the shares of a company falls in the definition of "property" then the provisions of section 56(2)(viia) of the Act would be triggered.

56. As per the provisions of section 56(2)(vii) of the Act the "property" is defined as under:

*d) "property" means the following **capital asset** of the assessee, namely:*

i. immovable property being land or building or both;
ii. shares and securities;
iii. jewellery;
iv. archaeological collections;
v. drawings:
vi. paintings;
vii. sculptures;
viii. any work of art; or
ix. bullion;

57. Admittedly, vide Finance Act, 2010 w.e.f. 01.06.2010, the provisions of section 56(2)(viia) of the Act were introduced in statute and the definition of "property" has been amended to provide that section 56(2)(vii) of the Act will have application to the "property" which is in the nature of **"capital asset"**.

58. Definition of "capital asset" is defined in section 2(14) of the Act, which read as under.

2(14) *"**capital asset**" means—*

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(c) .....

but does not include—

*(i) **any stock-in-trade** [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession"*

59. From the definition of **"capital asset"** as defined u/s 2(14) of the Act, it is clear that any **"stock in trade"** other than any securities referred to in "clause b" above, consumable stores or raw materials held for the purposes of his business or profession, **is not**

included in the definition of capital asset and the CBDT vide Finance (No.2) Act, 2009, has introduced the provisions of sections 56(2)(vii) as a **counter tax evasion mechanism to prevent laundering of unaccounted income** but **not to transaction made in regular course of business** and made applicable only, if an individual or HUF is the recipient but not to a firm or a company and **therefore introducing new provision i.e. sub clause (viia) in section 56(2) of the Act, vide Finance Act 2010, firm or a company** (not being a company in which the public are substantially interested) were also brought into within its ambit, for making the transactions undertaken, in shares of a company (not being a company in which the public are substantially interested) either for inadequate consideration or without consideration.

The CBDT vide clause 13.4 of Circular **no.1/2011 dated 06.04.2011** which is Explanatory notes to the provisions of Finance Act, 2010, specifically clarified again *"that the provisions of section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore* ***would not apply*** *to* ***stock-in-trade****, raw material and consumable stores of any business of such recipient".* Thus, on the aforesaid analyzations, we are in agreement with Mr. Shah that the **"stock in trade"** would not be subjected to rigour provisions of section 56(2)(viia) of the Act and/or the shares held as "stock in trade" in regular course of business for trading purposes, cannot be subjected to addition with the aid of the provisions of section 56(2)(viia) of the Act.

60. Thus the question posed, is answered accordingly.

61. Coming to other aspect of the case, we observe that the Assessee, before the Ld. Commissioner, in order to support its claim qua investment and trading shares and securities, also submitted the MOU/AA, wherein at serial numbers 9 and 23 under the head **"other objects",** the following objects, are mentioned:

> *"(9) to carry on business of money lending and providing securities on any terms that may be thought fit and particularly to carry on business as financials and investors and to purchase or otherwise acquire, issue, reissue, sale place and deal in shares, stocks, bonds, debentures and securities of all kinds and to give any guarantee or security for payment of dividends or interest thereon or otherwise in relation thereto and to carry out all such operations and transactions as an individual may lawfully undertakes and carry out. Nothing contained herein shall entitle the company to carry on the business of banking as defined in the Banking Regulation Act, 1949.*
>
> *(23) to carry on the business of an investment trust company and to underwrite, subject underwrite to invest in and acquire and hold, sale, buy or otherwise deal in shares, debentures, debenture-stocks, bonds, obligations and securities issued or guarantee by Indian or foreign governments, state, dominions, sovereigns, municipalities or public authorities or bodies and shares, stocks, debentures, debenture-stock, bonds, obligation and securities issued and guarantee by any company, corporation, firm or person whether incorporated or established in India or elsewhere."*

62. The said MOU/AA was forwarded by the Ld. Commissioner, to the AO for filing a remand report, which the AO vide letter dated 09.07.2021 has filed, whereby the AO without making any specific remarks against the MOA/AAA, simply supported the assessment order for making the addition.

63. Admittedly, the Assessee before both the authorities below has also demonstrated the fact that the Assessee is also engaged in the business of investment and trading of shares, as it clearly appears from the other objects (sr. nos. 9 & 23) of the Assessee

company (supra) and its financial statements, wherein details of inventories of Rs.67,13,000/- is mentioned and share wise break up of inventory, has also been made, reflecting the shares of the aforesaid companies, as part of the inventory. Further, at note no.6 of the financial statements, details of shares held as investment, are also reflected, which shows the clear intention of the Assessee to keep part of the shares for trading purpose and balance shares as investment.

64. From the aforesaid facts and documents as demonstrated by the Assessee before the authorities below and us, it goes to show that the Assessee also carried/carrying out the business of trading in share, in regular course of business. May be the Assessee held the shares as "stock in trade" for a long time and the turnover of the Assessee is insignificant, however, it is not the case of the Department and also not established by the search team and the AO that the Assessee company is suspicious and the transactions carried out by the Assessee are based on money laundering. And therefore simply because the Assessee held the shares as "stock in trade" for a long time and the turnover of the Assessee is insignificant, cannot be the foundation for doubting the genuine transactions carried out in regular course of business.

65. We reiterate as observed above that sub provisions i.e. (vii) and (viia) to section 56(2) of the Act, were introduced as anti abuse measures/provisions to prevent laundering of unaccounted income **but not to tax the transactions entered into the normal course of business or trade, the profits of which are taxable under specific head of income,** as it is clear from the relevant extract of circular No.05/2010 dated 03.06.2010 and circular No.01/2011 dated 06.04.2011 (explanatory note to the provision of the Finance Act, 2010) wherein it was specifically clarified that definition of "property" has been amended to provide that section

56(2)(vii) of the Act will have application to the "Property", which is in the nature of capital asset of the recipient and therefore would not apply to **"stock in trade",** raw material and consumable stores of any business of such recipient. As the intention of introducing the provisions i.e. vii & viia to the section 56(2) of the Act, was not to tax the transactions entered into normal course of business or trade, the profits of which are taxable under specific head of income and therefore the co-ordinate Bench of the Tribunal in the case of ITO 13(1)(3) vs. Shri Rajiv Ratanlal Tulshyam in ITA No.5748/M/2017 & CO 118/M/2018 decided on 01.10.2021 has also taken into consideration the aforesaid CBDT circulars and ultimately held *"that the transactions carried out in the normal course of business, would not attract the rigorous of the provisions of section 56(2)(vii) of the Act, which were introduced as counter evasion mechanism to prevent laundering of unaccounted income"*, by observing and holding as under:

> *"4.2 Applying the ratio of above decision, coordinate bench of Mumbai Tribunal in ACIT V/s Subodh Menon (103 Taxmann.com 15), observed that the provisions of Section 56(2)(vii) does not apply to bona-fide business transaction. The CBDT Circular No.1/2011 dated 06/04/2011 explaining the provision of section 56(2)(vii) specifically states that the* ***section was inserted as a counter evasion mechanism to prevent money laundering of unaccounted income.*** *In paragraph 13.4 thereof, it is stated that "****the intention was not to tax transactions carried out in the normal course of business or trade, the profit of which are taxable under the specific head of income".*** *Therefore, the aforesaid transactions, as carried out in normal course of business, would not attract the rigors of provisions of Sec.56(2)(vii).*
>
> *4.3 We also concur with the submissions of Ld. AR* ***that the provision of Section 56(2)(vii) were anti-abuse provision inserted post abolition of Gift Tax Act.*** *The same is evident from CBDT Circular No. 05/2010 dated 03/06/2010 which provided that Section 56 is being introduced as an anti-abuse measure. The same is fortified in CBDT Circular No. 01/2011 dated 06/04/2011 which also provided that* ***these provisions are anti- abuse provisions which were applicable only if an***

individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision*. Further, the provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income...." On the basis of the same, it could be inferred that provisions of section 56(2)(vii) were introduced as an anti-abuse measure and to prevent laundering of unaccounted income under the garb of gifts, after abolition of the Gift Tax Act. Upon perusal of orders of lower authorities, we find that there are no such allegations and no case of tax evasion or tax abuse has been made out against the assessee. In fact, the transactions are ordinary transactions of issue of right shares to existing shareholders in proportion to their existing shareholding and therefore, no case of abuse or tax evasion could be made out against the assessee."*

66. We further observe that co-ordinate Bench of the Tribunal at Jaipur in the case of Shri Satendra koushik vs. ITO, Ward-2 Jhunjhunu {ITA no.392/JP/2019 decided on 23.04.2019} has also considered the provisions of section 56(2)(vii) of the Act and held that provisions of section 56(2)(vii) of the Act were introduced as counter evasion mechanism to prevent laundering of unaccounted income and to extend the tax net to such transactions in kind. **The intent was not to tax the transaction entered into the normal course of business or trade, the profit of which are taxable under the specific head of income.** Therefore, the definition of property has been amended to provide that section 56(2)(vii) of the Act will have application to the "property" which is in the nature of capital asset of the recipient and therefore would not apply to **"stock in trade"** etc.

67. We further observe, as demonstrated by the Ld. Counsel Shri Dhaval Shah that admittedly the then Ld. CIT(A) in the Assessee's sister concern cases namely M/s. Muktamani Distributors Pvt. Ltd.

and M/s. Aalishan Distributors Pvt. Ltd. vide orders dated 08.09.2021 and 17.09.2021 respectively for the A.Y. 2017-18, has also dealt with the identical issues on merit as involved in the instant case and ultimately applied the definition of "**property**" as defined in explanation to section 56(2)(vii) of the Act and the definition of the **"capital asset"** as defined u/s 2(14) of the Act, to the provisions of section 56(2)(viia) of the Act. The then Ld. CIT(A) also dealt with the observation of the then AO that from the website "https://www.zaubacorp.com" the Assessee M/s. Aalishan Distributors Pvt. Ltd. has been identified being engaged in the business of wholesale on a fee or contract basis which includes commission agents, commodity brokers and auctioneers and all other wholesalers, who trade on behalf of and on the account of others. The Ld. Commissioner ultimately deleted the identical addition as made in this case, by holding that the provisions of section 56(2)(viia) of the Act are not applicable to any shares of a company (not being a company in which the public are substantially interested), which were purchased for trading purposes during the normal course of business and held as **"inventory or stock in trade",** hence the AO was not justified in invoking the provisions of section 56(2)(viia) of the Act in respect of shares purchased for trading purposes during the normal course of business and held as "inventory or stock in trade", by observing and holding as under:

> ***"7.4 Decision-***
>
> *7.4.1 I have considered the submissions of the appellant and have perused the materials available on record. The appellant has requested to delete the impugned addition made u/s 56(2) (viia) of the Act at Rs.51,69,985/-. The appellant has made elaborate submissions as above and the same are considered carefully. The main contention of the appellant is that during the year under appeal the shares under consideration were purchased for trading purposes during the normal course of business and the same were held as stock in trade in its books of account and hence the provisions of sec 56(2) (viia) of the Act are not applicable.*

7.4.2 It is an admitted fact that during the course of assessment proceedings, the appellant had submitted before the Ld. AO that the shares under considerations were purchased for trading purposes and held as stock in trade. It was also submitted before the Ld. AO that the appellant is engaged in the business of investments and trading of shares and securities. The appellant had further contended that provisions of sec 56(2)(viia) are applicable to only capital assets. The said fact has been acknowledged by the Ld. AO in Paras 6.2 and 6.2.1 of the impugned assessment order. From perusal of the impugned assessment order, it is observed that the Ld. AO has specifically not rejected the said claim of the appellant or has given any finding that the shares under considerations were investment/Capital asset of the appellant, but in said Para 6.2 of the assessment order has made a passing remark that "...However, from the website "https://www.zaubacorp.com" it was identified that M/s Muktamani Distributors Private Limited is engaged in the business of wholesale on a fee or contract basis which includes commission agents, brokers and auctioneers and all other wholesalers who trade on behalf and on the account of others." Other than the said observations, the Ld. AO has not given any adverse finding on the claim of the appellant that the shares under consideration purchased for trading were purchased for trading purposes and held as stock in trade.

7.4.3 On said observations of the Ld. AO, the appellant has made detailed submissions, as discussed above. During the course of appellate proceedings, the appellant was requested to submit copy of its Memorandum and Article of Association and in pursuance thereto, the appellant has submitted the same. From perusal of said MOA/AA it is observed that under the head "Other Objects" Para 6, Page 8 of MOA/AA, it has been mentioned as under.

"6. To acquire, purchase, sell, transfer, subscribe, invest, hold dispose of and/or deal in share, stocks, debentures, debentures stocks, unique bonds, mutual fund share, unit securities, commercial papers or other financial instruments and/or obligations issued by any company or companies, constituted or carry on business in India or elsewhere or issued or guaranteed by any government state sovereign dominions, municipalities, public authorities or bodies, financial institutions, banks, insurance companies, corporation, public sector undertaking and/or trust whether in India or elsewhere."

From the above, it is evident that through "Other Objects" the appellant is authorized to purchase and sell of shares or deal in shares. A copy of the said MOA/AA was forwarded to the Ld. AO, with a request to go through the same and submit comments thereof. In pursuance to the same, the Ld. AO has reiterated the findings given by the then Ld. AO in the impugned assessment order and submitted that said issue has been examined by the then Ld. AO while completing the assessment proceedings and the same have been elaborately discussed in the assessment order.

7.4.4 From perusal of the Balance sheet of the relevant year it is observed that the appellant has shown shares both as "Investment" under Non-current Investment and as "Inventories". The appellant has

shown the Investment in shares at Rs.86,81,950/-and "Inventories" at Rs.6,15,000/- I am in agreement with the contentions of the appellant that any assessee can have shares both as investment and stock in trade, since legally there is no bar on the same. I am also in agreement with the arguments of the appellant that the entries in books of accounts need to be treated as true until and unless proven that the same is false or otherwise / The Ld. AO has not raised any doubt in respect of entries of inventory of shares made by the appellant in its books of account, except quoting the information available https://www.zaubacorp.com. Further the Ld. AO neither has specifically rejected the contentions on said the Ld. AO neither has rejected the books nor e contentions of the ie appellant that the shares under considerations were purchased for trading purposes during the normal course of business and held as stock in trade. It is also a fact that the Ld. AO has not given any finding that the shares under considerations were investments of the appellant. Even in her report, the Ld. AO has not made any adverse comments on the "other objects" of the appellant as per its MOA/AA. Moreover, while invoking the provisions of sec 56(2)(viia) of the Act, the Ld. AO has not held the shares under considerations as "Capital assets" since, he has not made addition on that ground, but has held that the Explanation applicable to sec 56(2)(viia) of the Act is only related to "Fair Market Value" as defined in the Explanation to sec 56(2)(vii) and the same is not applicable to all the Explanations thereto, i.e. to sec 56(2)(vii) of the Act. In view of the above discussions, the facts and circumstances of the case, the shares under considerations are to be treated as purchased for trading purposes during the normal course of business and held as stock-in-trade.

7.4.5 Now the question arises as to whether the provisions of sec 56(2)(viia) of the Act are applicable to any share purchased for trading purposes during the normal course of business and held as inventory/stock in trade. In this respect the appellant has made elaborate submissions. To understand the issue, it is pertinent to analyze the various provisions of Act, especially the section 56 of the Act. Section 56 of the Act provides that income of every kind which is not to be excluded from total income under the Act shall be chargeable to income tax under the head "Income from other sources", if it is not chargeable to income tax under any of the head specified in sec 14, items A to E. In the present case, it is an admitted fact that the shares under considerations were purchased for trading purposes during normal course of business and the same were held as stock in trade in appellant's books of account. Hence, the income or loss arising thereof needs to computed and taxed under the head "Profits and gains of business or profession". Thus, by virtue of provisions of sec 56(1) of the Act, any income which is chargeable to tax under the head "Profits and gains of business or profession" shall be excluded from the purview of sec 56 of the Act. The said statutory provisions were again reiterated in Memorandum to the Finance Bill 2010, through which the provisions of sec 56(2) (vila) was inserted in the Act, and it was explained therein that The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in

kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of Income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the property which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient."

The above clarifications in the Memorandum to Finance Bill 2010, does not leave any doubt that the transactions which are in the nature of business or profession and income thereof is taxable under the head "Profits and gains of business or profession" is outside the purview of provisions of sec 56 of the Act. It is pertinent to note that the said clarification in respect of "Property" u/s 56(2)(vii) has been given in the Memorandum to Finance Bill 2010 through which the provisions of sec 56(2)(viia) was inserted in the Act.

7.4.6 The Ld. AO has held that the provisions of Explanation to sec 56(2)(viia) of the Act, which stipulates that "For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii) would only borrow the meaning of "Fair market value" from the Explanation to clause (vii) and will not borrow the meaning of "Property" defined therein. In this context it is important to analyze the relevant provision. The sec 56(2)(vila) of the Act deals with item/specie that is 'shares of a company not being a company in which public are substantially interested." Though said sec 56(2)(viia) of the Act is in relation to said item/specie, but said section does not mention "shares of a company not being a company in which public are substantially interested" as such, but before said item/specie the legislature has used the word "any property". Rather the provision of sec 56(2) (viia) provides that "where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010 (but before the 1st day of April, 2017), any property, being shares of a company not being a company in which the public are substantially interested From simple reading of provisions of sec 56(2)(vila) of the Act, it is evident that the item/specie mentioned therein is not "shares of a company not being a company in which public are substantially interested" as such but the item/specie therein should be any property. being shares of a company not being a company in which the public are substantially interested. Hence, to fall under sec 56(2)(vila) of the Act, shares of a company not being a company in which public are substantially interested first has to fall within the definition or category of "Property". The same is further strengthened by the fact that the Proviso to said sec 56(2)(viia) of the Act refers to "any such property" and not to shares of a company not being a company in which public are substantially interested as such.

7.4.7 The Explanation to sec 56(2)(viia) of the Act stipulates that "For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the

Explanation to clause (vii)". From the above it is also evident that the Explanation to sec 56(2)(viia) of the Act also refers to "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested. Hence, before provisions of sec 56(2)(vila) of the Act can be invoked in respect of any shares of a company not being a company in which the public are substantially interested, first it has to be proved that the same falls within the definition of "Property". Further, said Explanation to sec 56(2)(viia) of the Act, does not stipulate that the "fair market value of a property, being shares of a company not being a company in which the public are substantially interested, shall be determined as prescribed in Explanation to clause (vii), but the same provides that "shall have the meaning assigned to it in the Explanation to clause (vii)". So, the Explanation to sec 56(2) (viia) of the Act borrows the meaning of "fair market value" of such shares assigned to it in the Explanation to clause (vii) and it is an admitted fact that Explanation to sec 56(2)(vii) of the Act stipulates that Property means "Capital asset of assessee and therein the same also includes shares and securities. Therefore, when as per Explanation to sec 56(2)(vii), the meaning of "fair market value of any shares can only be in respect of property, being capital assets, so the same meaning has to assigned in sec 56(2)(viia) by virtue of Explanation thereto.

7.4.8 Further, the Explanation to sec 56(2) (vii) of the Act, defines the fair market value as "fair market value of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed. The said definition of "fair market value" in sec 56(2)(vii) of the Act is also with relation to a property, other than an immovable property and hence again one has to go to the definition of "property" given therein which also includes shares & securities. There is no separate definition of "fair market value of a share of a company not being a company in which the public are substantially interested under sec 56(2)(vii) of the Act. Therefore, the provision of sec 56(2) (vii) of the Act prescribes method of determination of "fair market value" of any shares and securities which are capital asset of the assessee and no method or mechanism has been prescribed therein to determine the "fair market value of any shares & securities, which are not capital asset of the company, ie which are held as inventory/stock. The Ld AO's argument that the Explanation to sec 56(2)(villa) would only borrow the meaning of "fair market value" from clause (b) of Explanation to sec 56(2)(vii) and the same will not extend to other clauses of Explanation to sec. 56(2) is not supported by the law, since in Explanation to sec 56(2) (vila) there is no such restriction and rather the Explanation to sec 56(2)(viia) talks of Explanation to sec 56(2)(vii) as such, without specifying any clause/sub-clause therein. In view of above discussions, I am in agreement with the contention of the appellant that if the arguments of the Ld. AO that Explanation to sec 56(2)(viia) of the Act would not borrow the definition of "Property" as per Explanation to sec 56(2)(vii) of the Act is accepted then the entire machinery provision for determining the "fair market value" in sec 56(2)(viia) would fail.

7.4.9 It is also pertinent to note that the Memorandum to the Finance Bill 2010, through which the provisions of sec 56(2) (viia) of the Act

were inserted in the statute also explained that consequential amendment are proposed in section 2(24) to include the value of such shares in the definition of income and section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56(2). The simple logic of bringing said consequential amendment in sec 49 of the Act was that having taxed the fair market value as per provisions of sec 56(2)(viia) of the Act, in order to avoid double taxation such enhanced cost to be allowed to the assessees when they transferred such shares subsequently. It is an admitted fact that provisions of sec 49 of the Act is applicable to capital asset and computation of Capital gain. In this respect, it is important to note that the provisions of sec 49(4) of the Act, which provides that where the capital gain arises from transfer of a property, the value of which has been subject to income tax under clause (vii) or clause (viia) or clause (x) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (vila) or clause (x). No such consequential amendments were brought in the provisions dealing with the computation of income from business and profession and it can never be the intention of the legislature to tax doubly, where such shares were held as inventory/stock in trade, i.e. once under section 56(2)(viia) of the Act and again not allowing enhanced cost while selling such shares held as inventory/stock in trade. This also makes evident that the provisions of sec 56(2)(viia) of the Act are applicable to only such shares which are held as capital asset.

7.4.10 Whenever, the legislature wanted to tax any deeming income on any transactions, specific provisions have been brought on statue in this respect. For example, income on transfer of a capital asset is taxable under the head "Capital Gain" and when the legislature wanted to tax deeming income on transfer of any particular capital asset, brought provisions of sec 500 of the Act by the Finance Act 2002, w.e.f 01.04.2003, which provided to adopt the stamp duty value in certain cases, on transfer by an assessee of a capital asset, being land or building or both. Since, gains on transfer of any capital asset is assessable under the head "Capital Gain", so to tax such deeming income thereof the legislature inserted sec 50C of the Act in chapter IV-E, which deals with the "Capital gains". Similarly, when the legislature wanted to tax such deeming income on transfer of particular assets other than capital assets, i.e. inventory/stock in trade, then provisions of sec 43CA of the Act was inserted by the Finance Act 2013, w.e.f 01.04.2014. It is pertinent to note that sec 43CA was inserted in Chapter IV-D, which deals with "Profits and gains of business or profession.

7.4.11 The "capital asset has been defined u/s 2(14) of the Act and the same stipulates that the capital asset means

1. property of any kind held by an assessee, whether or not connected with his business or profession;

2. any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made

under the Securities and Exchange Board of India Act, 1992 (15 of 1992)

but does not include any stock-in-trade, other than any securities referred in (b) above, consumables stores or raw materials held for the purposes of his business or profession.

From the above, it is evident that the stock-in-trade, other than (b) above, is specifically excluded from the definition of "Capital asset"

7.4.12 In view of the above discussions and the provisions of the Act, I am of the considered opinion that provisions of sec 56(2)(viia) of the Act are not applicable to any shares of a company not being a company in which the public are substantially interested, which was purchased for trading purposes during the normal course of business and held as inventory or stock in trade. Hence, the Ld. AO was AO was not justified in invoking the provisions of sec 56(2)(viia) in respect of shares under consideration, which were purchased for trading purposes during the normal course of business and held as inventory or stock in trade. Therefore, the impugned addition of Rs.51,69,985/- made u/s 56(2)(viia) is DELETED. The Ground/Revised Ground No.1 raised in appeal is ALLOWED."

68. Coming to the another finding of the Ld. Commissioner to the effects that the entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provision explained in the Act as held by the Hon'ble Apex Court in the case of Taparia Tools Ltd. Vs Jt. CIT [2015] 55 taxmann.com 361, however, in our view the entries in the books of account cannot be brushed aside simply on the assumption and presumption and in the absence of substantive material contrary, as done in the instant case. Admittedly the Assessee had shown the shares under consideration as "**stock in trade**". The then Ld. CIT(A) in the sister concerns of the Assessee has accepted similar treatment of the shares as "**stock in trade**" and therefore the Ld. Commissioner in this case was supposed to follow the rule of consistency and would not have deviated from the decision of the then Ld. CIT(A)/his Ld. Predecessor, without analyzing and contradicting the order passed by his Ld. Predecessor. However, the Ld. Commissioner simply in a single line

differed with the decision of his predecessor (*kindly refer para 11.9 of the impugned order*) and acted against the principle of 'stare decisis' (to stand by decided cases) which is as old, as the establishment of the courts. It is derived from legal maxim 'stare decisis et non quieta movere'. It is best to adhere to decisions and not to disturb questions, which have been put at rest. When a point of law has been settled, it forms a precedent which is not to be ordinarily departed afterwards. When the same point comes for consideration again in litigation, the scales of justice must be kept even and steady. A principle of law should not change from case to case. The judgments are not to be altered or changed in accordance with the individual opinions or private sentiments of the judges. The primary duty of the judiciary is to maintain rule of law. The law does not change with the opinion of the judges. In a given case the opinion of the judges may change, the principles of law however must remain on surer foundations until there is any change in legislation, or the society needs such change, as reminded again and again by the Hon'ble Apex Court and High Courts. **And therefore on this aspect as well, the impugned order is liable to be set aside.**

69. From the aforesaid analyzations, we reiterate that in this case, the Assessee has been able to establish that it is also involved in the business of investments and trading of shares and securities and during the year under consideration had purchased the shares under consideration for trading purposes in the normal course of business and held the shares as **"stock in trade"** in its books of account. The objects clauses as appear in MOU/AA of the Assessee also support the claim of the Assessee qua share trading etc.. Further, admittedly, MOU/AA was verified by both the authorities below and was not doubted. Further, definition of any term, except of "fair market value" has not prescribed in the provisions of section

56(2)(viia) of the Act, which was expanded through the provisions of section 56(2)(vii), by Finance Act, 2010 and the circular no.1/2011 dated 06.04.2011 and therefore the definition of "property" as prescribed in the provision of section 56(2)(vii) of the Act, is required to be imported for interpreting the terms mentioned in sub clause (viia) of section 56(2) of the Act. Further, the definition of "property" as prescribed under sub clause (vii) of section 56(2) of the Act, was amended by the CBDT vide Circular no. 1/2011 read with Explanatory Notes thereto and has excluded any **"stock in trade"** other than any securities held by incidental investor, which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1952 (15) of 1992. As the Assessee has treated and disclosed the aforesaid shares of the companies as, "stock in trade" in its financial and it is also a fact that the authorities below neither doubted the financials nor rejected the books of accounts of the Assessee, in any of the provisions of the Act. The Assessee out of three stocks has sold shares of one scrip namely M/s Mecons Commotrade Ltd. Pvt. and therefore this fact also supports the claim of the Assessee qua share trading etc.. It is also a fact that the Assessee has treated some of the shares as investment and some of the shares as "stock in trade" which also goes to show that the Assessee has given reasonable treatment to the respective shares. Further, the provisions of section 56(2)(vii) and 56(2)(viia) of the Act were introduced as tax evasion mechanism to prevent the laundering of unaccounted money but not to tax the transactions entered into, in the normal course of business or treat the profits of which are taxable under specific head of income and it is not the case here, of the Department that the Assessee has made the transactions, as a tax evasion mechanism and laundered unaccounted income.

70. Thus, on the aforesaid consideration and analyzations, the addition on merit as well is unsustainable.

71. Resultantly, the addition on legal aspect, as well as on merit, is deleted.

72. As we have deleted the addition and therefore we are not delving into the other issues/grounds raised by the Assessee including qua non-quoting of document identification number {DIN} in the assessment order dated 27.12.2019, as well as other aspects on merit, as adjudication of the same would prove futile exercise.

73. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 03.04.2025.

s/d	**s/d**
(PADMAVATHY S)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.