

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA Nos. 2999 to 3005/Del/2024
(Assessment Years: 2011-12 to 2017-18)

Sushen Mohan Gupta, 10 hailey Road, New Delhi	Vs.	ACIT, Central Circle-15, Delhi
(Appellant)		(Respondent)
PAN: AFEPG7593R		

Assessee by :	Shri Ajay Wadhwa, Adv Ms. Ragini Handa, Adv Shri Shivam Garg, Adv
Revenue by:	Shri Debesh Panda, Special counsel for the Department Shri Ruchir Joshi, Adv
Date of Hearing	21/02/2025
Date of pronouncement	20/05/2025

O R D E R

PER BENCH

1. The appeals in ITA Nos. 2999 to 3005/Del/2024 for AYs 2011-12 to 2017-18, arise out of the order of the Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] dated 14.06.2024 against the order of assessment passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2021 by the Assessing Officer, ACIT, Central Circle-15, New Delhi (hereinafter referred to as 'ld. AO'). Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

2. Both the parties mutually agreed that the assessment for the Assessment Year 2011-12 be taken as the lead case and the decision

rendered thereon could be applied mutatis mutandis for other Assessment Years , in view of identical facts, except with variance in figures.

3. The assessee has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case and in law, the Assessment Order dated 30.09.2021 passed by the Ld. Assessing Officer under section 153A of the Income Tax Act, 1961 ("the Act") and the appeal order dated 14.06.2024 passed by the Ld. Commissioner of Income Tax (Appeals)-28, New Delhi, ("CIT (A)") confirming the order of the Ld. Assessing Officer are bad in law.

2. That the Ld. Assessing Officer has erred in assessing the total income of the appellant at Rs. 37,52,09,710/- as against the returned income of Rs. 29,11,950/- thereby making addition of Rs. 37,22,97,760/- to the returned income of the appellant under section 68 of the Act based on the contents of the so-called pen-drive received by the Investigation Wing from the Enforcement Directorate.

3. That the Ld. CIT (A) has erred in law by failing to appreciate that the case of the appellant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021), as no incriminating material/evidence was found during the search on the appellant.

3.1 Without prejudice to the aforesaid, mere recording of statements u/s 132(4) of the Act without any corroborating evidence found during the search on the appellant, cannot be deemed as incriminating evidence, as recently held by the Hon'ble High Court of Delhi in the case of PCIT(Central)-3 vs. Pavitra Realcon Pvt. Ltd. (ITA No. 579 of 2018).

4. That the Ld. Assessing Officer and the Ld. CIT (A) have erred in law in not appreciating the fact that no statement can be recorded under section 132(4) of the Act unless and until incriminating evidence are found during the course of search and also that armed with a pendrive, the Investigation Wing went against the taxpayer's charter and Form 45 itself which mandates that nothing can be carried by the Investigation Wing from their office in respect of documents etc. relating to the appellant and therefore, the search to that extent is not valid.

5. That the assessment order passed is not in accordance with the principles of natural justice in as much as, the assessment was made without providing the statements, forensic reports, copy of hard disk, material purportedly used to corroborate the entries in the excel sheet,

statements recorded u/s 50 of PMLA and relied upon and cross-examination of all such person even after the repeated and specific requests of the appellant, which is fatal to the assessment made.

5.1 That the Ld. Assessing Officer as well as Ld. CIT(A) have erred in failing to appreciate the law that the statement recorded under section 50 of PMLA when the appellant is in remand has no evidentiary value and cannot be used as evidence under Income Tax proceedings.

5.2 The Ld. Assessing Officer as well as Ld. CIT(A) have failed to appreciate that confrontation given under the PMLA cannot be equated with cross-examination when the Income Tax Department is relying on the statement recorded under PMLA. He further erred by disregarding the law settled by the Highest Court of the Country, stating that cross-examination is not an absolute right.

6. That the Ld. Assessing Officer as well as the Ld. CIT (A) have erred in not appreciating the fact and the applicable law that the case of the appellant does not fall within the ambit of 4th proviso to section 153A of the Act and therefore, the assessment initiated and the order passed for the impugned assessment year is invalid.

7. That the Ld. CIT(A) has erred in sustaining the order of the Ld. Assessing Officer, which admittedly is based on the findings of the Enforcement Directorate on the so-called pen-drive, statements taken by the Enforcement Directorate under the PMLA and charge sheet filed by them without making any independent enquiries.

8. That the Ld. CIT(A) has erred in not appreciating the fact that the entire case of the Income Tax Department is based on the case of the Enforcement Directorate which has not attained finality and therefore Income Tax Department is pre-judging the issue which is before the Trial Court and relying on the testimony and pen-drive of one Mr. Rajiv Saxena to the Enforcement Directorate who has been removed from his approver-ship status by the Enforcement Directorate on the grounds of being a manipulator and forger.

9. That, the addition made by the Ld. Assessing Officer and sustained by the Ld. CIT (A) based on the so-called pen-drive, which is electronic evidence, without complying with the mandatory requirement of the provisions of section 65B of the Indian Evidence Act, 1872, is grossly incorrect and not in accordance with the law laid down by the Hon'ble Supreme Court.

10. That the Ld. Assessing Officer as well as the Ld. CIT(A) have erred in appreciating the facts and the applicable law that the alleged pen drive is not a book of account of the appellant. This contradicts their finding that

Excel sheets contained financial transactions of different entities and not of the appellant. The Ld CIT (A) has wrongly held that provisions of section 68 have been correctly invoked.

11. That the Ld. Assessing Officer as well as the Ld. CIT(A) has erred in appreciating the fact that based on the so-called pen-drive additions have already been made in the hands of the persons whose names appear in the pen-drive, which shows that the Department has taken the view that the money belongs to those persons and not the appellant. This also tantamounts to double addition, which both the authorities below have ignored.

12. The Ld. CIT(A) has erred in not appreciating that the entries in the IN side of the so-called pen drive are in the names of other persons and, hence, on a bare perusal of the documents, cannot be held to be the income of the appellant. The benefit of the OUT side by reducing the same out of the IN side has also been denied thus militating against the concept of real income.

13. That the grounds of appeal are independent and without prejudice to each other.

14. The appellant craves leave to add, amend, alter, remove, rescind, forgo or withdraw any of the above grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal in the interest of natural justice.”

4. During the course of hearing, the assessee raised additional grounds of appeal vide letter dated 06.12.2024 as under:-

i. That in view of the facts and circumstances of the case and in law, the assessment order passed under section 153A of the Act are barred by limitation as those were made on 01.10.2021 i.e. beyond the statutory time limit prescribed under section 153B of the Act.

ii. That in view of the facts and circumstances of the case and in law, the assessment orders were passed under section 153A without seeking mandatory approval under section 153D of the Act.

iii. Without prejudice to the aforesaid, the approval under section 153D of the Act is mechanical, without any application of mind, without perusing the records of the case and has been passed in a haste therefore the assessment orders passed by the Ld. AO under section 153A are void-ab-initio, jurisdictionally flawed, and deserve to be quashed.

iv. That in view of the facts and circumstances of the case and in law, the approval under section 153D of the Act is a consolidated approval, which is not in accordance with the provisions of section 153D and in violation of mandatory procedure laid down by CBDT in Circular No. 03 of 2008 dated 12.03.2018."

5. We find that the aforesaid additional grounds are purely legal in nature. The Ld. AR also stated that the order of approval u/s 153D of the Act has not been provided by the department inspite of repeated requests. Vide order sheet dated 10.12.2024, we admitted the additional grounds of appeal being jurisdictional in nature and emanating from facts on record. After perusing the application for additional grounds and the contention of the assessee, we considered it fit to direct the revenue to produce the order granting approval u/s 153D of the Act by the competent authority. This was subsequently complied with by the revenue.

6. At the outset, we deem it fit and appropriate to address Original Ground Nos. 3 and 4 raised by the assessee as they are preliminary legal grounds and go to the root of the matter, that no incriminating documents were found during the course of search on the assessee on 02.01.2020 by the Income-tax Department and hence the consequential assessment framed u/s 153A of the Act was bad in law being beyond jurisdiction.

7. A search and seizure action was carried out u/s 132(1) of the Act on the premises of the assessee on 02.01.2020. Cash amounting to Rs. 44,26,310/- (plus foreign currency), jewellery amounting to Rs. 5,27,47,740/- and bullion of Rs. 19,83,103/- was seized. According to the Ld. AR, the Enforcement Directorate searched the assessee on 15.06.2016 on an allegation of his involvement in a defence deal. One Mr. Rajiv Saxena turned approver against the assessee and his son, Mr. Tanmay Saxena brought a pen drive and various other documents from Dubai on 04.03.2019 and handed over the same to the Enforcement Directorate

(hereinafter referred as "ED"). It was contended that Mr. Rajiv Saxena used to offer a 'hold mail facility' in Dubai and the assessee used that facility and kept all his documents and other information in a pen drive which had five excel sheets, containing information relating to undisclosed income earned by him. The assessment is confined to the five excel sheets and no other document seized by the Enforcement Directorate or contained in the pen drive has been used or referred to in the assessment made.

8. During the course of search on the assessee at Cottage No. 28, Taj Exotica Resorts & Spa, Radhanagar Beach no. 7, Havelock Island, Andaman & Nicobar Island, a 32GB pen drive was found which contained fifth supplementary charge sheet along with various annexures which also contained the five excel sheets on the basis of which the Ld. AO has made addition to the income. The Ld. AR contended that this pendrive was also available with the Income Tax Department before the search on the assessee, that this pen drive contained the same information as in the pen drive handed over by the Enforcement Directorate that the charge sheets in the pendrive were only statutory documents and not incriminating.

9. The Ld. AO also relied on the statements of Mr. Nagesh Kumar Azad and Mr. R.P. Kashyap recorded u/s 132(4) of the Act during search on the assessee and statement of Mr. M.N. Khanna recorded u/s 50 of Prevention of Money Laundering Act (PMLA), stating that they confirmed the transactions in the pen drive handed over by the Enforcement Directorate. The Ld. AO further stated that statement of the assessee before the Enforcement Directorate by giving comments on the content of the excel sheets contained in the pen drive and before the Income tax Department refusing to even recognize the pen drive, constitutes incriminating evidence. In other words, the Ld. AO stated that before the ED, the

assessee was able to decode certain transactions in the pen drive but before the Income Tax Department, the assessee denied the contents of the pen drive.

10. In the opinion of the lower authorities and the Ld. Special Counsel for the Revenue (hereinafter referred to as Ld. DR) before us, the contents noted in Paragraphs 7 to 9 above constitute incriminating materials found during the course of search on the assessee by the Income Tax Department and hence the same could be used against the assessee for making addition in respect of an unabated assessment. Accordingly, it was argued by the Ld. DR before us vehemently that the decision of the Hon'ble Supreme Court in the case of *Abhishar Buildwell Pvt Ltd* reported in 454 ITR 212 (SC) is not applicable to the facts of the instant case.

11. The issues that arise for our adjudication qua the aspect of incriminating material found during the course of search on assessee, are as under:-

- i. Whether the pen-drive based on which additions have been made was already available with the Income tax department before the conduct of search u/s 132 of the Act on the assessee on 02.01.2020 and hence did not constitute incriminating evidence found during the course of search?
- ii. Whether the 32GB pen-drive found from search at Taj Exotica, Havelock Island, Andaman & Nicobar Island contained incriminating evidence and whether it was already available with the Income tax department before the conduct of search on the assessee on 02.01.2020?

- iii. Whether the statements relied upon by the Department constitute incriminating material?
- iv. Whether the behavior of the assessee before the ED allegedly by decoding certain contents of the pen drive and completely denying the pen drive before the Income Tax Department, would constitute incriminating material/evidence so as to be used in an unabated assessment?

12. According to the Ld. AR, the Investigation Wing of the Income-tax Department, armed with the pen drive received from the Enforcement Directorate, conducted a search on 02.01.2020 on the assessee u/s 132(1) of the Act and the assessment of income was also based on the contents of the pen drive being the entries in the five excel sheets.

13. The Ld. AR submitted that no incriminating evidence relating to the additions so made was found during the course of the income tax search on the assessee and since the pen drive on the basis of which all additions were made, was already with the Income-tax Department before the conduct of the search, the same could not be said to be incriminating document found during the course of search and, therefore, assessment made as a consequence thereof is not sustainable. The Ld. AR also pointed out that the factum of no incriminating evidence found during the income tax search also comes out from the order of assessment at page 2; page 3, page 38, page 41 and the Remand Report dated 05.12.2023 furnished by the Ld. AO to the Ld. CIT(A) at pages 164, 179-180 and 196-197 of the Paper Book, wherein the Ld. AO has himself conceded that the pen drive was already available with the Investigation Wing before the conduct of search. In this regard, the Ld. AR drew the attention of the Bench to the

following pages of the assessment order and the remand report of the Ld. AO dated 5.12.2023 submitted before the Ld. CIT(A) :-

"Page 2 of assessment order

"2. Sh. Sushen Mohan Gupta has been accused of laundering the proceeds of crime in Defence deal. The role of Sh. Sushen Mohan Gupta in the tainted Defence deal came into prominence after the accused-turned-approver, Rajiv Saxena was deported from Dubai on 31.01.2019 by the Directorate of Enforcement and he handed over crucial documents and evidences belonging to Sh. Sushen Mohan Gupta to the Enforcement Directorate. These crucial documents and evidences were further handed over to the Income Tax Department."

(Emphasis Supplied)

"Page 3 of assessment order

"4. Thereafter, Sh. Rajiv Saxena tendered the diaries and loose sheets in original to the investigating officer in Enforcement Directorate on 02.03.2019 and the pen drive on 04.03.2019. The pen drive was sent for forensic examination by the ED to the lab of Directorate of Forensic Sciences (DFS), Gandhinagar, a lab accredited under section 79A of the Information Technology Act. The forensic report confirmed that the data in the pen drive has been stored over a period of time and relates to dealings of Sh. Sushen Mohan Gupta. The report further established that he is the owner of the pen drive"

(Emphasis Supplied)

"Page 38 of assessment order

"Apropos the admissibility of pen drive as evidence it is re-iterated that there is a difference between criminal and income tax proceedings. In criminal proceedings there may be any issue contested by the assessee, but in income tax proceedings the pen drive was tendered by Sh. Rajiv Saxena to the Enforcement Directorate and, it becomes admissible evidence under the Income Tax Act. The fact that many entries recorded in the said pen-drive tally with the assessee, his family members, business concerns and business associate itself indicates that the pen-drive belonged to the assessee. There is no issue of presumption under Section 292C of the Act since Sh. Rajiv Saxena, being the person who had handed/tendered the pen drive to the Enforcement Directorate on 04/03/2019, in his statement before the directorate of Enforcement has specifically stated in his statement dated 04/03/2019 that the said pen-

drive pertains to Sh. Sushen Mohan Gupta. The relevant images of Sh. Rajiv Saxena's aforesaid statement are as under.."

(Emphasis Supplied)

Page 41 of assessment order

"As seen from the above-mentioned details, the references of GEECL and YKM also found placed in the data found maintained in the pendrive handed over by the ED to the Income Tax Department is in another context wherein certain figures are written in front of their names. However, the figures are found different."

(Emphasis Supplied)

Page 164 of the Paper Book containing the Remand Report dated 5.12.2023 of the Ld. AO

"...Sushen Mohan Gupta was arrayed as one of the accused in the Agusta Westland Defence Deal by the Directorate of Enforcement. He has been accused of laundering the proceeds of crime from the said defence deal. His role in the Agusta Westland Defence deal came into prominence after the accused turned approver, Rajiv Saxena was deported from Dubai and he handed over crucial documents and evidences belonging to Sushen Mohan Gupta which were subsequently shared with the Income Tax Department. Sushen Mohan Gupta is a US national but living and working in India. He has been accused of laundering the proceeds of crime in the said defence deal. He was arrested by the Enforcement Directorate on 25.03.2019. He was released on bail in the said case on 01.06.2019. His role in the Agusta Westland Defence deal came into prominence after Rajiv Saxena was deported from Dubai to India and he handed over crucial documents, information and evidences related to Sushen Mohan Gupta.

.....

Thereafter, Rajiv Saxena tendered the diaries and loose sheets in original to the investigating officer in Enforcement Directorate on 02.03.2019 and the pen drive on 04.03.2019....

....

Based on the various notices issued to the assessee during the assessment proceedings and analysis of the replies filed by him, assessment u/s 153A of the Act was completed in the case of the assessee after making additions in the total income of the assessee based on the amounts of entries as reflected in the above referred excel sheet found in the pen drive received from

the ED. The year-wise details of additions made in the case of the assessee based on the said pen drive is being furnished below..."

(Emphasis Supplied)

Pages 179 to 180 of the Paper Book containing the Remand Report dated 5.12.2023 of the Ld. AO

"Further, he was confronted with the contents of the pen drive (received from the ED) during the course of recording of his statement u/s 132(4) of the IT Act, 1961. He was mostly evasive in his replies and did not provide the details of transactions mentioned in the excel sheets. It is pertinent here to mention the provisions of Section 132(4) of the IT Act, 1961 here:

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

Explanation.-For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act."

The information in the form of Pen Drive handed over by Rajiv Saxena to ED was available with the department before the search action u/s 132 on the assessee and contents of this pen drive along with the contents of pen drive found from his possession during the search action by the Income tax department were confronted to him in statement/s 132(4) of the Act. As per the provisions of Explanation to Section 132 (4) of the Act, examination under that sub-section of any person can be in respect of all matters relevant for the purposes of Investigation connected with any proceeding under this Act. Hence, the statement recorded u/s 132(4) of the IT Act, 1961 in the case of Sh. Sushen Mohan Gupta becomes incriminating in nature based on the provisions of Explanation to Section 132 (4) of the Act".

(Emphasis Supplied)

Pages 196 to 197 of the Paper Book containing the Remand Report dated 5.12.2023 of the Ld. AO

"Assessee in appellate proceedings has completely denied the contents of the pen drive received from ED and contested the additions made in his case based on its contents. Assessee has stated that the said pen drive was not received from him during the search action u/s 132 and cannot be used against him in income tax proceedings as it is not an incriminating material found during the course of search

However, the original pen drive belonging to the assessee was recovered from the possession of the Sh. Rajiv Saxena by the ED.

.....

Further, this information related to handing over of pen drive was available with the department before the date of search in the case of Sushen Mohan Gupta. The information contained in the said pen drive was confronted to the assessee and his family members and connected employees during the course of search itself. In view of the above discussion, it is clear that the requisite incriminating material was well in the possession of the AO and the AD had made the addition on the basis of the same".

(Emphasis Supplied)

14. From the above observations of the Ld. AO, the Ld. AR submitted that it is amply clear that the income tax department has conceded that the pen drive on the basis of which addition was made was already available with them before the income tax search took place. The Ld. CIT(A) also stated this fact and it may be relevant to state that the Department is not in appeal against the order of the Ld. CIT(A) on this finding.

15. The Ld. AR stated that during the course of search on the assessee at Cottage No. 28, Taj Exotica Resorts & Spa, Radhanagar Beach No. 7, Havelock Island, Andaman & Nicobar Island, a 32GB pen drive was found which contained fifth supplementary charge sheet of ED along with various

annexures which also contained the five excel sheets on the basis of which the Ld. AO has made addition to income. The Ld. Counsel of the assessee referred to para 1 of remand report at Page 168 of the Paper Book, rejoinder dated 07.01.2024 at Pages 62 to 99 of the Ld. CIT(A)'s order / Pages 246 to 250 of the Paper Book, letter filed on 07.06.2024 (enclosed at pages 443-446 of the paper book and reproduced at Pages 122 to 124 of the Ld. CIT(A)'s order) to state that the 32GB pen drive only contains supplementary charge sheets number 1, 3, 4 and 5 filed by the ED and all supporting documents and exhibits, and nothing more. The Counsel further contended that this was also stated by the Ld. AO at internal pages 19 and 21 of his remand report which are enclosed at pages 181 and 183 of the Paper Book and also by the Ld. CIT (A) at page 152 in para 8.4 of his Order.

16. The Ld. AR further contended that the supplementary charge sheet filed by the Enforcement Directorate was already available with the Investigation Wing of the Income-tax Department as was the pen drive handed over by the Enforcement Directorate before the conduct of search. The Ld. AR of the assessee contended that the said supplementary charge sheet was filed by the Enforcement Directorate on 22.05.2019 and the search on the assessee u/s 132(1) of the Act took place on 02.01.2020. This contention of the assessee was not controverted by the lower authorities. The Ld. AR further contended that the supplementary charge sheet did not contain any new information other than that already contained in the pen drive handed over by the ED and, therefore, cannot be said to be incriminating evidence found during the course of the income tax search. It was further stated that the supplementary charge sheet is a statutory public document and merely contains allegations by the ED. According to the Ld. AR, even the charges have not been framed till date

and trial is yet to begin and hence cannot constitute incriminating material found during search. The Ld. AR referred to the order of the Ld. CIT(A) in Para 8.4 thereon, wherein he has also held that the supplementary charge sheet is only a statutory document. Accordingly, the Ld. AR submitted that the same does not constitute incriminating evidence.

17. The Ld. AR further contended that Mr. Rajiv Saxena has since been removed from the status of being an approver in the parallel criminal proceedings, since he was found to be unreliable and untrustworthy. The Ld. AR referred to pages 286-352 of the paper book containing the application dated 18.10.2019 u/s 306 of the Cr. P.C Act by the ED who sought revocation of the tender of pardon granted to Mr Rajiv Saxena wherein it was stated that Mr Rajiv Saxena withheld full and true facts; deliberately provided wrong information and made false disclosures; trying to influence certain witnesses; tampered with material provided by him; misled the investigation by providing false information/documents; deliberately hid crucial evidence/documents and playing one agency against the other by using false and fabricated reasons to avoid the investigation. In view of the above, it was contended by the Ld. AR that the document handed over to the ED by Shri Rajiv Saxena cannot be a reliable piece of evidence per se, much less incriminating in nature.

18. The Ld. AR contended that the supplementary charge sheets are merely allegations by a statutory authority and if those allegations are held to be incriminating without there being any adjudication on the same by any authority, then every person against whom any proceeding before any authority is pending, he can potentially be searched by the Income-tax Department and on mere allegations, assessments can be framed u/s 153A of the Act. That can never be the intention of the legislature more

especially in the provisions of the Income Tax Act. The Ld. AR further contended that the contents of the supplementary chargesheet have not been considered by the Ld. AO while making the assessment u/s 153A of the Act and he has solely relied on the five excel sheets finding place in the pen drive received from the ED by the Income Tax Department prior to the income tax search on 2.1.2020 which was even confronted to the assessee during the course of search on 2.1.2020.

19. As far as the statements recorded u/s 132(4) of the Act and u/s 50 of PMLA from the three persons associated with the assessee and the assessee's own statement is concerned, the Ld. AR stated as follows:-

- i. The statement of the assessee recorded before the ED u/s 50 of PMLA cannot be said to be recorded u/s 132(4) of the Act and cannot be held to be incriminating material found during the course of search.
- ii. It was also contended that the statement given by the assessee u/s 132(4) of the Act cannot be said to be incriminating as he merely denied having anything to do with the pen drive in terms of its ownership or its contents. A mere denial by the assessee before the Income-tax Department cannot be said to lead to the inference that whatever is being sought to be used against him is incriminating in nature.
- iii. The observation of the Ld. AO that different stand was taken by the assessee before different law enforcement agencies is itself contrary to the findings of the Ld. AO in the remand report and assessment order wherein he himself has stated that ownership of the pen-drive was denied by the assessee even before the ED. This is so stated in the remand report at para 3 at page 168 of the Paper Book.

- iv. It was further contended that the three persons namely, Mr. M.N. Khanna, Mr. R.P. Kashyap and Mr. Nagesh Kumar Azad were not the employees of the assessee and they were employed with other companies and none of them stated anything relating to the assessee in terms of any material or income or expenditure being incriminating in nature and not recorded in the books of account of the assessee.
- v. It was stated that Mr. Nagesh Kumar Azad did not state anything on the contents of the excel sheets and for that purpose Q. No. 42, referred to on page 434 of the Paper Book can be perused wherein he stated that he has no knowledge of the contents of the excel sheet.
- vi. Mr. R.P Kashyap is the employee of M/s Indian Avitronics and merely stated that he received reimbursement from the company and, therefore, if incriminating evidence at all, it relates to the company. Besides, he never stated that the reimbursement received by him was not from the books of account of M/s Indian Avitronics. Extracts of the statement of Mr. R.P. Kashyap is enclosed at Pages 203 to 207 of the Paper Book.
- vii. That the reimbursement was not incriminating in nature is further established by the fact that in the hands of the company, M/s Indian Avitronics and in the hands of Mr. R.P. Kashyap, no addition has been made. The Ld. AR placed on record the assessment orders framed in the hands of Mr R P Kashyap in this regard.
- viii. As far as the statement of Mr. M.N. Khanna is concerned, it was stated that the statement being relied upon was recorded u/s 50 of PMLA and therefore, cannot be made use of as incriminating

- evidence in the hands of the assessee in an income tax search assessment proceedings.
- ix. It was further contended that Mr. M N Khanna merely stated that the expenditure may be related to the civil work done by him and that he was not sure.
 - x. It was contended that even the request of cross-examination of the person was not acceded to as evidenced from the letter dated 23.09.2021 (enclosed in Pages 137 to 149 of the Paper Book), letters/ submissions filed before the Ld. CIT(A) dated 07.01.2024 and 20.04.2024 and specific request vide letter dated 24.04.2024 which are at Pages 249 to 285, 355 and 358A and 358B of the Paper Book respectively and reproduced at Pages 62 to 99, 100 to 115 and 122 to 124 respectively of Ld. CIT(A)'s order.
 - xi. Besides, a mere statement without any supporting material cannot be said incriminating evidence as held by the Hon'ble Jurisdictional High Court in the case of CIT vs. Harjeev Aggarwal reported in 290 CTR 263 (Del); Best Infrastructure (India) Pvt. Ltd. reported in 397 ITR 82 (Del); PCIT vs. Pavitra Realcon Pvt. Ltd. in ITA No. 579/2018 (Del HC); CIT v. Anand Kumar Jain (HUF) reported in 133 taxmann.com 289 (Del HC) ; and CIT vs. Shri Ramdas Motor Transport reported in 238 ITR 177 (AP), among other Tribunal decisions.
20. Hence, according to the Ld. AR, all the above statements are bereft of any supporting evidence and in any case, do not incriminate the assessee under any stretch of imagination. Besides, none of the three persons have admitted to having incurred any expenditure outside the books of account.

21. The Ld. AR stated that the judgement of the Hon'ble Supreme Court in the case *Abhisar* (supra) is very clear and states that the material found must be incriminating i.e. should be reflective of undisclosed income or income not disclosed in the return of income by the assessee. According to the Ld. AR, the ratio decidendi of the Hon'ble Supreme Court in *Abhisar Buildwell* (supra) is to be followed in its letter and spirit and evidence by way of incriminating documents reflecting undisclosed income is a prime requisite for making assessment u/s 153A of the Act.

22. During the course of hearing and also in the written submissions dated 3.02.2025 filed by the Ld. DR, he started with a legal submission on how the judgment of the Hon'ble Supreme Court in *Abhisar* (supra) is to be read and took us to the texts in the cases of *Commissioner of Customs v. Toyota Kirloskar*, (2007) 5 SCC 371, *Laxmi Devi V. State of Bihar*, (2015) 10 SCC 241 & *Behrens v. Bertram Mills Circus Ltd.*, [1957] 2 QB 1, at page 25. According to the Ld. DR, the decision by the Hon'ble Supreme Court in the case of *Abhisar* (supra) would not help the assessee in as much as it has been established that the pen drive belongs to him and this is an extraordinary situation where the assessee kept the pen drive outside India with Mr. Rajiv Saxena and the ED brought the pen drive through proper channels and the same constitutes evidence against the assessee. He argued that it is not relevant that the pen drive was found during the course of search by the Income-tax Department or handed over by the ED. According to the Ld. DR, the 32 GB pen drive found during the course of search on assessee in Havelock Island, contained fifth supplementary charge sheet along with various annexures which also contained the five excel sheets on the basis of which the Ld. AO has made additions to income and, therefore, the requirement of incriminating material found during the course of search has been fulfilled. The Ld. DR relied on the

decision of *PCIT vs. Abhishar Buildwell (supra)* to state that at the stage of assuming jurisdiction, a detailed exercise is not required to be conducted, and the Ld. AO can proceed on a prima facie footing.

23. The Ld. DR further stated that Mr. Rajiv Saxena's approvership status has been continued and the Hon'ble Supreme Court has sent back this issue and directed the ED to raise this issue before the Trial Court. Hence, Mr. Rajiv Saxena cannot be said to be an unreliable witness.

24. The Ld. DR also relied upon the statement given by Mr. M.N. Khanna, Mr. R.P. Kashyap and Mr. Nagesh Kumar Azad to state that they were familiar with the contents of the pen drive handed over by the ED; that Mr. R.P. Kashyap confirmed that he received reimbursements as mentioned in the pen drive handed over by ED; that Mr. M.N. Khanna in his statement recorded u/s 50 of the PMLA admitted that certain transactions recorded in the said excel files may be related to building materials and some of the entries related to the renovation works at the farmhouse.

25. The Ld. DR contended that the statements corroborate the entries in the excel sheets in the pen drive handed over by the ED and, that it was sufficient to reach a prima facie satisfaction necessary for assuming jurisdiction u/s 153A of the Act. Hence, this constitutes incriminating material and, therefore, the assessment made u/s 153A of the Act is valid. He further contended that Mr. R.P. Kashyap's statement stands corroborated by the spreadsheets in the pen drive that have otherwise been fortified independent material unearthed and seized during the very same search initiated on 02.01.2020.

26. The Ld. DR has relied on the decision of Hon'ble Supreme Court in the case of *Dayawanti v. CIT, 2016 SCC Online Del 5772*, decision of

Hon'ble Delhi High Court in the case of Anil kumar Bhatia [2013] 352 ITR 493 (Del), PCIT v. Nau Nidh Overseas Pvt. Ltd. [2017] 394 ITR 753 (Del), CIT v. Hotel Meriya, (2011) 332 ITR 537, B. Kishore Kumar v. DCIT, Central Circle IV(1), Chennai, [2014] 52 taxmann.com 449, B. Kishore Kumar was upheld in (2015) 62 taxmann.com 215 to support that statement also constitutes as material because it is made in the course of the search .

27. As far as the statement u/s 132(4) of the Act by the assessee and three other persons, Mr. M.N. Khanna, Mr. R.P. Kashyap and Mr. Nagesh Kumar Azad are concerned, the Ld. CIT (Appeals) has at Para 8.4.1 at Pages 152 to 154 of his order held that the contradictory statement given by the assessee before the ED and Income-tax Department as regards the ownership and contents of the pen drive handed over by the ED, the evidence gathered from the pen drive being corroborative of the transaction and with the group concerns constitutes incriminating evidence and, therefore, the ground of the assessee is not tenable and hence liable to be dismissed. The Ld. DR relied on Para 8.4.1. of the order of Ld. CIT(A) as under:-

"8.4.1 Coming to the statements given by the assessee before the Enforcement Directorate and the Income Tax Department, there clearly is a complete contradiction which has not been explained by the assessee. Before the Enforcement Directorate, according to the Assessing Officer at page 7-14 of the Remand Report, the assessee did decode some of the entries in the Excel sheets in terms of the names against which they were appearing.

Hence, there was definitely an attempt to acknowledge the names in the form of codes appearing in the Excel sheets on the basis of which additions have been made. However, before the Income Tax Department, the assessee completely turned turtle. He refused to acknowledge even the existence of the pen drive and consequently the Excel sheets contained therein. He went completely contrary to the stand taken by him before the Enforcement Directorate.

Hence, in my view, the evidence in the form of contradictory statements, read with the pen drive containing the Excel sheets on the basis of which additions have been made, constitutes incriminating evidence found during the course of search. The judgment of the Hon'ble Delhi High Court in the case of Dayawanti vs. CIT, [2016] 390 ITR 496 (Del) and in the case of PCIT (C)- 2 Vs. Nau Nidh Overseas Pvt. Ltd. [2017] 394 ITR 753 (Delhi) squarely applies to the facts of the case insofar as, the contradictory statement becomes incriminating in nature and therefore, in my view, this contention of the Assessing Officer in the remand proceedings is correct insofar as the contradictory stand is incriminating in nature.

Further, in the Para-VI of the assessment order (Pages-38 to 66), the AO has discussed in length about several instances of evidence found which get, corroborated with the business transactions of different business concerns of the appellant. Apart from the numerous business transactions related to the group concerns got corroborated with the details gathered from the pen drive, the statement of Sh. M.N. Khanna, the Contractor was also recorded u/s 50 of the PMLA 2002 on 14.05.2019. In the statement of Sh. M.N. Khanna recorded u/s 50 of the PMLA 2002, he had admitted that the transactions mentioned in the spreadsheets Acc09, Acc011-15, Acc011 pertaining to FH Khanna/ FH Khanna Builders may be related to building material since the period and the entries shown to him related to renovations works at the farmhouse.

During the course of search, statement of key employees of the group Sh. R.P. Kashyap and Sh. Nagesh Kumar Azad was also recorded u/s 132(4) of the Act. In the statement Sh. R. P. Kashyap, director of DMG Finance and Investments Pvt. Ltd., Horizon Aerospace (India) Pvt. Ltd. and Defsys Solutions Pvt. Ltd. admitted to having seen the excel files by the name of Acc.xIs, Acc09.xIs, Acc011 copy.xis, Acc011.xls and Acc011-15.xls which were part of the pendrive. He further stated that the name "RPK Ent" and "RPK hospt" as appearing in these files having the date wise records of the expenses were reimbursed to him which were incurred by him earlier for the meal and other arrangements for official visitors were the actually received by him. Further, in the statements U/s 132(4) of the Act. Shri. Nagesh Kumar Azad a key employee of the SMG Group who was confronted the details pertaining to Actia India mentioned in the spreadsheet "Acc2016", has accepted that the transactions correspond with the books of the company vis a viz with the entries pertaining to Actia in the excel sheet titled "Acc2016" Similarly, the statement of proprietor of BOTPL, Shri. Ramesh Hemrajani was also recorded u/s 50 of PMLA on 20.04.2019 wherein he had accepted the fact that the group has been booking tickets from the firm regularly and the transactions appearing the pendrive were also matching.

In view of the above, it has been concluded that the contradictory statement given by the assessee before the Enforcement Directorate and the Income Tax Department as regards the ownership and the contents of the pen drive read with the pen-drive received from the Enforcement Directorate; the evidences gathered from the pen drive which was found corroborating with the transactions in the group concerns and also confronted with the appellant during search and the statements of the key employees u/s 132(4) of the Act that the certain transactions are the actual business transactions constitutes incriminating evidence. Therefore, the grounds of appeal of the assessee are not found tenable and hence dismissed."

Para 9.4 at page 162 of Ld. CIT(A) order

"..As far as the assessee's contentions regarding statement recorded by the Enforcement Directorate under section 50 of the PMLA that while the assessee was in custody, the statement given cannot be taken as evidence and it would be premature to make additions based on the excel sheets contained in the pen drive is concerned, in my opinion, the appellant has just decoded the names written in the excel sheets before the ED and has denied knowledge about most of the transactions. However, some of the transactions has been accepted to be pertaining to the group concerns. Further, during search the excel sheets found got confronted with the appellant and some key persons of the group has also accepted that certain details mentioned in the excel sheets are corroborating with the actual transactions, With respect to the cross examination, the ED had provided cross examination with Rajiv Saxena and appellant was also provided the copies of statements recorded of key persons of the group. Further, in my view providing cross examination is not an absolute right. It is the prerogative of the AO who, considering the nature and necessity of allowing for cross examination, may decide for providing cross-examination. In my view, these are mere technical and procedural issues which have no bearing on the assessment made by the Assessing Officer. Hence, none of the issues raised by the assessee hold any merit and it is the substance rather than the form which would prevail. Hence, these grounds are also dismissed."

28. The issue of corroboration has been discussed by the Ld. CIT(A) at Para 11, Pages 169 to 192 of his order. The Ld. CIT(A) has stated at first Para at Page 191 of his order that even if the email, etc. and other documents relied upon to corroborate the entries in the five excel sheets are recorded in the books of account or are not incriminating, it does not

make a difference and that the entries in the pen drive will be used for making the assessment. According to the Ld. CIT(A), the Ld. AO had been able to corroborate that the excel sheets in the pen drive pertain to the assessee. The relevant observations are reproduced below:-

"The corroboration exercise has been carried out by the Assessing Officer to establish that the content of the pendrive pertain to the assessee and since they are not recorded in the books of the assessee, the addition to income are warranted. Even if the emails etc. and other documents relied upon to corroborate the entries in the excel sheets are recorded in the books of account or are not incriminating, it does not make a difference, The Assessing Officer has been able to show that the names appearing in the excel sheets are not alien to the assessee and those very names have actually had relations with the assessee in terms of transactions, even though the said transactions are recorded or not recorded in the books of account. Hence, the Assessing Officer has been effectively able to tally all the names in the excel sheets with the names actually appearing in reality. This is only a corroboration exercise to show that the excel sheets in the pen drive pertain to the assessee and, in my view, the Assessing Officer is successful. This fact has been proved forensically by the ED.

It does not matter that the entries in the excel sheets do not appear in the books and it is not expected that all the transactions are corroborated with the books in terms of the amounts and their nature. Since the names of the persons appearing in the excel sheets and those appearing in reality are corroborated in terms of their relation with the assessee and a large number of transactions got corroborated with the books of the group concerns and other evidences found during search and also accepted by the key employees of the group in their statement recorded during search, in my view, the transactions recorded excel sheets do belong to the assessee, and the entries contained therein pertain to him.

From the above discussion and facts of the case, it is evident that in the forensic analysis done by the ED on the contents of the pen drive, it proved its origin as well as ownership of such pen drive to the assessee. Further, the contents of the pendrive were got corroborated and confirmed by key employees of the during search. Reference may be made to the decision of the Hon'ble Delhi High Court in the case of Pr. CIT, (Central)-2 Vs. Avinash Kumar Setia [2017] 81 Taxmann.com 476 (Del) wherein it was upheld that the addition made on the basis of a statement was justified."

29. The Ld. DR relied on the order of the Ld. AO and the Ld. CIT(A) to state that the corroboration exercise also shows that the pen drive belongs to the assessee and, therefore, the additions so made were warranted in law.

30. We have heard the rival submissions and perused the materials available on record containing the written submissions made by both the sides and documents placed on record. We have also perused the judgments relied upon and placed by way of Paper Books by both the Counsels. The entire issue revolves around the five excel sheets contained in the pen drive on the basis of which additions to income have been made. It is very clear from the order of the Ld. CIT(A), that the pen drive containing the five excel sheets on the basis of which addition has been made was already available with the Investigation Wing of the Income-tax Department before the conduct of the search on the assessee on 2.1.2020. This, according to the Ld. CIT(A) has been admitted both in the assessment order at page 2 and Remand Report at page 2.

31. With respect to the 32GB pen drive found from Havelock Island, Andaman & Nicobar Islands, the Ld. CIT(A) held that the same contained only fifth supplementary charge sheet filed by ED which runs into hundreds of pages and the supplementary charge sheet can be said to be statutory documents listing the charges against the assessee in the PMLA proceedings being carried out against the assessee. The Ld. CIT(A) has also stated that the 5 excel sheets were part of the said 5th supplementary chargesheet. It would be relevant to reproduce the findings of the Ld. CIT(A) in Para 8.4 of his order as under:-

"8.4 I have considered the facts on record and contentions of the assessee and the Assessing Officer as regards the existence of incriminating material found during the course of the search. As far as the

pen drive containing the Excel sheets on the basis of which the addition has been made is concerned, the Assessing Officer, both in the Assessment Order at pages 2 and in the Remand Report at page 2, has admitted that the pen drive was already with the Income Tax Department's Investigation Wing when they conducted the search on the assessee. Hence, the pen drive containing the Excel sheets was not found during the course of the search. With respect to the 32 GB pen drive found from Havelock Island, the same contains the 5th supplementary charge sheet filed by the Enforcement Directorate and its annexures which run into hundreds of pages, The five sheets relating to the bank accounts of Interstellar are also a part of the charge sheet. A supplementary charge sheet can be said to be a statutory document listing the charges against the assessee in the PMLA proceedings being carried out against him."

32. Hence, according to the Ld. CIT(A), the pen drive on the basis of which additions have been made were not found during the course of search and the supplementary charge sheet being a statutory document, cannot be said to be incriminating document.

33. In respect of the impugned assessment years, the law relating to search u/s 132(1) of the Act and consequential assessment u/s 153A of the Act being based on incriminating documents found is no longer res-integra in view of the decision of the Hon'ble Supreme Court in the case of Abhishar Buildwell (supra) wherein it was inter alia held that in order to make an assessment u/s 153A of the Act in respect of unabated assessment, some incriminating evidence must be found during the course of search which is directly indicative of undisclosed income in the case of the assessee. The relevant operative portion of the said judgment of the Hon'ble Supreme Court is reproduced hereunder:-

"11. "Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under

sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy.”

14.

(iv) "in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

34. The main contention of the assessee is that the pen drive containing five excel sheets, on the basis of which entire addition to income has been made in the case of the assessee, was not found during the course of search. It was already existing in the form of a pen drive and was in the custody of the Income-tax Department before the conduct of search. It was contended that the said pen drive was handed over by the ED who had received the same from Mr Tanmay Saxena (son of Mr Rajiv Saxena) during investigation being carried out by the ED on Mr Rajiv Saxena. Hence, if the pen drive which constitutes incriminating material according to the Income-tax Department, was already available with the Department before the conduct of the search, it cannot possibly be construed as incriminating material found during the course of income tax search. The fact, that the pen drive containing 5 excel sheets based on which additions have been made was already available with the Income-tax Department before the conduct of search, is conceded by the Ld. AO himself in the

remand report dated 5.12.2023 which are enclosed at Pages 164, 179 to 180 and 196 to 197 of the Paperbook. Even the Ld. CIT(A) had given a categorical finding that the pen drive containing 5 excel sheets was already available with the Income-tax Department before the conduct of income tax search on the assessee at Para 8.4 at Page 152 of his order which is already reproduced supra. Hence it could be safely concluded that the pen drive was available with the Income-tax Department and was not found during the course of the income tax search conducted on 02.01.2020 u/s 132(1) of the Act and, therefore, would not be construed as incriminating evidence found during the course of the search as per the ratio of the judgment of the Hon'ble Supreme Court in the case of *Abhisar* (supra). As far as the existence of 5 excel sheets in the supplementary charge sheet found in the 32 GB pen drive at Havelock Island during the course of the search on the assessee is concerned, the Ld. CIT(Appeals) has dealt with the issue at page 152 para 8.4 of his order, reproduced above, wherein he has said that the supplementary charge sheet constitutes a statutory document. In our considered opinion, a chargesheet is only allegations leveled on a person by a regulatory authority and the same need to be tested in the trial court so as to make them evidence, much less incriminating evidence. Even this supplementary charge sheet was dated 22.5.2019 and the same was found with the assessee at the time of search conducted on 2.1.2020 at Havelock Island. Obviously the assessee had to possess a copy of chargesheet submitted in his case. What is to be seen for the purpose of income tax search assessment for a completed year is as to whether the same would be incriminating in nature. As rightly stated by the Ld. CIT(A), a charge sheet is a statutory document. Hence a statutory document which is there in public domain cannot fall under the ambit of 'incriminating material' found during the course of income tax search.

35. In view of the above, we have no hesitation to hold that both the documents i.e. (i) pen drive received by Income Tax Department from ED and (ii) 5th supplementary chargesheet found with the assessee, were already available with the Income-tax Department and does not construe incriminating evidence found during the course of the income tax search of the assessee.

36. As far as the statement of Mr. M.N. Khanna, Mr. R.P. Kashyap and Mr. Nagesh Kumar Azad are concerned, statement from Mr. M.N. Khanna was taken u/s 50 of PMLA by the ED and not by the Income-tax Department. Besides, there was nothing in the said statements to incriminate the assessee in person. The statement by Mr. R.P. Kashyap also speaks of reimbursement received from the company, M/s Indian Avitronics and not the assessee and even otherwise, the reimbursement was not alleged to be outside the books of account. The statement given by Mr. Nagesh Kumar Azad is also of no help to the revenue. He was also not employed with the assessee and did not state anything on the contents of the excel sheets. Hence, these three statements do not constitute incriminating evidence and are not even backed by the documents found during the course of search.

37. The statement of the assessee recorded u/s 132(4) of the Act cannot be said to be incriminating as he merely denied having to do anything with the pen drive in terms of its ownership. The Hon'ble Supreme Court in the case of Abhishar Buildwell (supra) has approved the judgement in the case of Smt. Dayawanti reported in 390 ITR 496 (Delhi) and as per the contention of the Ld. DR, statement u/s 132(4) of the Act recorded during the course of search constitutes evidence found during the course of the search. In this regard, we find that in the case of Smt. Dayawanti, there

were incriminating evidences found during the course of search , which when confronted to that assessee, a statement was taken and therefore the statement was treated as corroborative evidence. The relevant portion of the judgement in the case of Smt. Dayawanti (supra) is as under:-

"17. The impugned order dealt with this aspect and concluded that the statement made under oath could be acted upon, especially since materials and documents were recovered during the search proceedings:—

"...23. From a perusal of the aforesaid statement on 18.04.2006 it is manifest that it was not a case of mere surrender as claimed by the Id. counsel. On the contrary we find in Pg 60 & 61, Annexure 'A'3 and Pg 1 to 29 of AnnexureA-2 were found and seized from the assessee. Once confronted with the aforesaid seized documents it was admitted by Shri Abhay Gupta that the proprietorship concern of the assessee was engaged in unaccounted cash sales and purchases and therefore there was undisclosed income. Thus the necessary logical fall out of the aforesaid is that there was material found as a result of search on the assessee, showing unaccounted transactions. In our opinion, even the statement obtained whereby, the additional income of Rs. 3.5 crores was offered also constitutes material unearthed during search. The Id. counsel however has submitted that the said statement was not of the assessee, and was that of the son of the assessee. This argument too does not come to the rescue of the assessee, because the assessee also has signed the said statement as no. 2 above; and it has been stated very clearly in the statement of Shri Abhay Gupta to question No. 2 (supra) that he has made the statement on behalf of others u/s. 132(4) of the Act including the assessee. Moreover the aforesaid statement dated 18.04.2006 was followed by another statement on 03.05.2006, where too Shri Abhay Gupta represented himself as the authorized representative of the proprietorship concern of the assessee and sister concern Balajee Perfumes. In the said statement too the surrender was reiterated. The aforesaid surrender no doubt was not acted upon by the assessee, but the said fact cannot lead us from the irresistible conclusion that incriminating material was unearthed during search. No material has been placed before us to negate the aforesaid factual aspect as well as to support the claims of AR that the admission before the Revenue was not valid and hit by duress and coercion. Before we conclude this issue, we consider it appropriate to note that the Id. AR, had also stated that no material Per-se was found pertaining to the year under consideration. However, this argument also does not hold any water because once Section 153A is triggered on account of unearthing of incriminating

material during search, the AO is empowered to compute the total income for six assessment year prior to the year of search. There are no fetters or limitation under the statute, so as to curtail the jurisdiction of the AO. We derive support from the judgment of jurisdictional High court in the case of CIT Vs. Anil Bhatia 352 ITR 493 (Del)."

38. In the case of the assessee, there was nothing found whatsoever on the basis of which statement was taken from the three persons. These were bald statements which did not throw up any allegation of undisclosed income relating to the assessee found during the course of search. Hence, the statements taken from the three persons cannot said to be incriminating in nature.

39. In view of the aforesaid observations, we have no hesitation to hold that there was no incriminating material found during the course of income tax search of the assessee on 2.1.2020. Since the year under consideration is an unabated /completed assessment on the date of search, no additions could be made in the absence of any incriminating material found during the course of search. Hence the ratio decidendi laid down by the Hon'ble Supreme Court in the case of Abhishar Buildwell (supra) would squarely be applicable to the facts of the instant case. Accordingly, the additions made by the Ld. AO are hereby deleted on this legal issue.

40. We find that the assessee had also raised an additional ground challenging the mandatory approval being granted u/s 153D of the Act by the Learned Additional Commissioner of Income Tax (Ld. Addl. CIT in short) in a mechanical manner and without application of mind. The additional grounds raised by the assessee have already been admitted by us as they go to the root of the matter. The approval papers u/s 153D of the Act were also placed on record by the Ld. DR.

41. The Ld. AR assailed the validity of the approval granted by the Ld. Addl. CIT u/s 153D of the Act stating inter alia that the approval was mechanical in nature; granted without any application of mind; without perusing the records of the case, and passed in haste. The Ld. AR argued that the meaning of 'approval' or 'grant of approval' under Income Tax Act has been the subject matter of interpretation before various Hon'ble High Courts and it has been held that the approving authority before granting approval must verify the issues raised by the Ld. AO and also apply its mind to ascertain as to whether required procedure has been followed by the Ld. AO. Referring to expression 'prior approval' used in section 153D of the Act, Ld. AR argued that this expression makes it amply clear that approval by the Ld. Addl. CIT is as important as framing of assessment by the Ld. AO. He submitted that approval cannot mean mere signature on a document without looking into what had been approved. Approval, according to him, cannot be a part approval and means appraisal of entire material relating to assessment so as to examine on factual and legal aspects that it have been considered by the Ld. AO before preparing the draft assessment order. The approving authority has to act in a judicious manner in order to protect the interest of revenue against any omission or negligence by the Ld. AO on the one hand and protect the interest of assessee against arbitrary tax liability on the other. According to Ld. AR, though elaborate reasons for approving orders need not be given by the Ld. Addl. CIT, but there has to be some indication in the approval itself that he examined the draft order together with the assessment records; examine whether replies filed by the assessee had been duly considered in the draft assessment order ; no violation of principles of natural justice on any count and whether proper show cause notice was issued to the assessee before determination of additional income in the hands of the

assessee and find that it meets the requirement of law. An approval given by the approving authority in a routine manner, without perusing the relevant assessment records including seized material has been held to be mechanical and perfunctory in nature resulting in invalidation of assessment orders. In support, Ld. AR referred to the following judgments:-

- a) *PCIT vs. Anuj Bansal reported in 165 taxmann.com 2 (Del HC) – SLP of Department dismissed in 466 ITR 254 (SC).*
- b) *ACIT vs. Serajuddin & Co. reported in 454 ITR 312 (Orissa) - SLP of Department dismissed in 163 taxmann.com 118 (SC).*
- c) *PCIT vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Delhi HC)*
- d) *PCIT v. Subodh Agarwal reported in 149 taxmann.com 373 (Allahabad)*
- e) *PCIT vs. Sapna Gupta reported in 147 taxmann.com 288 (Allahabad)*
- f) *Pr. CIT AND Anr. V. Siddarth Gupta reported in 147 taxmann.com 305 (Allahabad).*
- g) *Delhi Tribunal in the case of Gurvinder Singh Duggal vs. ACIT in ITA No. 860/Del/2021*
- h) *Delhi Tribunal in the case of MDLR Airline (P) Ltd. vs. DCIT; ITA No. 1420/Del/2023*
- i) *Delhi Tribunal in the case of Kavita Jain v. DCIT Central Circle Karnal; ITA No. 3301/Del/2024*

42. The Ld. AR submitted that the approval by the Ld. Addl. CIT was granted in a mechanical and perfunctory manner. To demonstrate this, he drew our attention to the letters dated 27.09.2021 and 29.09.2021, written by the Ld. AO to the Ld. Addl. CIT, seeking approval for the draft assessment orders for AYs 2010-11 to 2013-14 and AYs 2019-20 to 2020-21 vide letter dated 27.09.2021, and AYs 2014-15 to 2018-19 vide letter dated 29.09.2021 which are enclosed in Pages 178 and 179 of Additional

Ground Paper Book 1. He submitted that only the draft assessment orders, and nothing else, were sent to the Addl. CIT for her perusal although at the bottom of the letters it was mentioned that assessment folders were also enclosed. The Ld. AR further drew our attention to the order sheet entries maintained by the Ld. AO enclosed in Pages 185 to 251 of Additional Ground Paper Book 1, specifically the entries on 27.09.2021 and 29.09.2021, wherein the Ld. AO had only stated that "draft assessment order submitted for approval." The Ld. AR submitted that these entries support the fact that only the draft assessment orders were sent for the perusal of the Addl. CIT. Additionally, he pointed that the Ld. AO mentioned in paragraph 5 of his letter that draft orders were being submitted after examination of the seized material and after duly considering all related issues in the appraisal report (as applicable), which further strengthens the conclusion that neither the seized material nor any appraisal report was sent to the Addl. CIT for her perusal.

43. The Ld. AR then drew our attention to the approval granted by the Ld. Addl. CIT u/s 153D of the Act vide F. No. Addl. CIT/C.R.-4/2021-22/742 enclosed in Page 180 of Additional Ground Paper Book 1. He referred to the date mentioned on the approval, which states 29.09.2021 in printed form, with '30' written by hand beneath '29'. The Ld. AR submitted that the approval was actually made on 29.09.2021, and that the date 30.09.2021 was added later, either because it was signed on 30.09.2021 or to create the impression that the approval was made only on 30.09.2021. According to the Ld. AR, this means that the Ld. Addl. CIT had only one day i.e 28.09.2021, to approve the draft assessment orders submitted to her on 27.09.2021, and less than a day for the draft assessment orders submitted on 29.09.2021. The Ld. AR further argued that even the day on which these draft assessment orders were sent to the Ld. Addl. CIT by the Ld. AO

could not be considered available for her review. In the case of the draft assessment orders sent on 27.09.2021, the last date of effective hearing, as per the order sheet, was 27.09.2021. For the draft assessment orders sent on 29.09.2021, the Ld. AO had issued a summon to Blue Ocean Travels Private Ltd. (BOTPL) on 29.09.2021. Therefore, the Ld. AR argued that the draft assessment orders were likely sent to the Ld. Addl. CIT either late at night or the following day, leaving her no time to even peruse the draft assessment orders, which ran into hundreds of pages, let alone the assessment folders running into thousands of pages. The Ld. AR further drew our attention to the 97 assessment orders (including seven orders before us) as is evident from the index of Additional Ground Paper Book 1, which were passed u/s 153A of the Act and approved by the same Ld. Addl. CIT on 28.09.2021, 29.09.2021, and 30.09.2021. The Ld. AR argued that it could not have been humanly possible to go through the draft assessment orders, case records, including assessment folders, seized material, and appraisal reports, etc., of 97 cases pertaining to different assesseees in just two days. The Ld. AR further submitted that, apart from these orders, the Ld. Addl. CIT could have possibly approved several other orders on these dates pertaining to different searches involving different assesseees.

44. The Ld. AR then drew our attention to two other approval letters dated 29.09.2021 and 30.09.2021 enclosed in Pages 182 to 184 of Additional Ground Paper Book 1, whereby the same Ld. Addl. CIT approved 11 orders pertaining to two different assesseees in each letter. Referring to these approvals, the Ld. AR submitted that they are worded exactly the same as the approval granted in the case of the assessee, with the same clerical and language errors, which indicates that these approvals were merely Proforma approvals maintained by the Ld. Addl. CIT, with the

relevant details filled in as required, without actually reviewing the draft orders and case records mentioned in the approvals. The Ld. AR also presented two additional approval letters, dated 29.03.2023 and 30.03.2023, issued by the same office of Ld. Addl. CIT, whereby she approved nine orders passed u/s 153C of the Act for two different assessees i.e. Manish Mohan Motwani and Mohan Lilaram Motwani. Referring to these approvals, the Ld. AR pointed that, even after two years, the language of the approvals remains exactly identical, despite the change in the person holding office. Hence approvals are being given on prepared letter which have not undergone any change even after two years. The Ld. AR further submitted that apart from mentioning that Ld. Addl. CIT had perused the draft assessment orders and case records before granting approval, there is nothing in the approval letter which could demonstrate that the records were actually perused by the Ld. Addl. CIT as alleged. She did not mention the case-records that she had perused. There is not even a whisper about perusing the seized material or appraisal reports by the Ld. Addl. CIT in the approval. Therefore, as per Ld. AR, there is nothing in the approval which could demonstrate that there was any application of mind by the Ld. Addl. CIT before granting approval in the case of the assessee.

45. The Ld. AR further submitted that a consolidated approval for all eleven years in the case of the assessee (seven of which are the subject matter of appeal before us) was granted by the Ld. Addl. CIT, whereas section 153D specifically uses the expression "order of each assessment year." He argued that granting a consolidated approval, rather than granting approval for each assessment year with cogent reasons, and reflecting application of mind to the material on record for each assessment year, is contrary to law. He cited several judgments in which the Hon'ble High Courts, including the Hon'ble Jurisdictional High Court, in respect of

consolidated approvals for all years, wherein it was held that the approval must be granted with respect to “each assessee” and “each assessment year.” Reliance in this regard was placed on the following decisions:-

- a) *PCIT vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Delhi HC)*
- b) *PCIT v. Subodh Agarwal reported in 149 taxmann.com 373 (Allahabad)*
- c) *PCIT vs. Sapna Gupta reported in 147 taxmann.com 288 (Allahabad)*
- d) *Pr. CIT AND Anr. V. Siddarth Gupta reported in 147 taxmann.com 305 (Allahabad).*
- e) *Delhi Tribunal in the case of M/s AKN Developers Pvt. Ltd. v. ACIT in ITA Nos. 8533 to 8537/Del/2019 order dated 31.12.2024;*
- f) *Delhi Tribunal in the case of Sanjay Duggal v. ACIT, Central Circle-4, New Delhi in ITA Nos. 1813 to 1818/Del/2019 dated 19.02.2021.*

46. The Ld. AR drew our attention to Paragraph 9 of Chapter 3 of the Manual of Office Procedure, Vol. II, issued by the CBDT in February 2003 which is enclosed in Page 277 of the Additional Ground Paper Book 1. He submitted that the CBDT way back in the year 2003 had laid down the procedure for obtaining approval, which mandated that the Ld. AO submit the draft orders well in advance, preferably at least one month earlier, to provide the Ld. Addl. CIT with an adequate opportunity to examine the same judiciously before granting approval. He further submitted that it was also mandated to record in the order sheet the submission of the draft order to the Ld. Addl. CIT and its receipt. He stated that although the manual was issued by the CBDT in relation to Chapter XIV-B of the Act, it equally applies to Chapter XIV of the Act, as held by the Hon'ble Orissa High Court in ***Sirajuddin & Co. (supra)***.

47. Per Contra, the Ld. DR, while supporting the approval granted by the Ld. Addl. CIT u/s 153D of the Act contended that there exists a high presumption of law, which is also codified in section 114(e) of the then

Indian Evidence Act, 1872 that all official acts are regularly performed and therefore, the Tribunal has to accept with the presumption that approvals are validly granted. He further stated that merely because the approvals were granted by one letter does not mean that it was not granted for each assessment year. He further contended that the draft assessment orders were sent with respective assessment folders on 27.09.2021 and even if some draft orders were shared on 29.09.2021, the Ld. Addl. CIT would have had approved them in lesser time as the authority would have already been familiar with the substance of assessment shared on 29.09.2021. According to him, the Ld. Addl. CIT had four days to consider the entire record before granting approval. He further stated that the line in approval i.e. *"...records in all above cases are returned herewith..."* makes it clear that records had been shared with the Addl. CIT while seeking approval. He argued that the Ld. Addl. CIT had been involved in the entire search assessment proceedings, and therefore, the approving authority could grant the approval even within a short span of time after the submission of the draft assessment orders. To support this, the Ld. DR drew our attention to a letter dated 31.08.2021, written by the Ld. AO to the Ld. Addl. CIT, whereby the Ld. AO submitted specific questionnaires emanating from the appraisal report for the Ld. Addl. CIT's perusal enclosed at Pages 5 to 25 of the Paper Book Volume I. Referring to this letter and the questionnaires, the Ld. DR submitted that this shows the Ld. Addl. CIT's involvement in the assessment proceedings and her awareness of the issues at hand, and therefore, the approval was granted after due application of mind. He further submitted that the approval granted by the Ld. Addl. CIT need not be elaborate and that the approval, as given, sufficiently complies with the legal requirements.

48. The Ld. DR stated that the burden of establishing the non-application of mind is entirely on the assessee which has not been discharged and merely because there is similarity in language of approval, it could not be relied upon to urge non-application of mind in absence of concrete material. He further argued that in respect of approval in the cases of other assessees granted on the same day, the assessee has not placed any material to show that those assessee have raised similar objection and if the Tribunal is to decide the matter in favour of the assessee, holding that there were lack of application of mind, it would have cascading impact on others.

49. As far as the issue of presumption u/s 114(e) of Indian Evidence Act is concerned, the Ld. AR, vide his submissions dated 21.02.2025, relied on the judgement of the Hon'ble Supreme Court in the case of *Suresh Budharmal Kalani Alias Pappu Kalani v. State of Maharashtra reported in (1998) 7 SCC 337*, wherein it was held that the presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning. Referring to the letter dated 31.08.2021 of the Ld. AO relied upon by the Ld. DR, the Ld. AR argued that same does not demonstrate the application of mind by the Ld. Addl. CIT. According to the Ld. AR, the letter at most shows that some general questionnaires, as well as some specific questionnaires based on the appraisal report, had been issued by the Ld. AO, without mentioning the particular assessee in the assessee's group. He further submitted that the letter does not mention whether the appraisal reports had been seen by the Ld. Addl. CIT. In fact, the supplementary appraisal report had not even been perused by the Ld. AO until 31.08.2021 as per the said letter, let alone by the Ld. Addl. CIT. He argued that none of the questionnaires attached to the letter, except for one on Page No. 25 of Paper Book Volume I, pertains to the assessee, and

even that questionnaire does not involve any questions relating to the addition made in the year to which the questionnaire pertains. The Ld. AR submitted that this letter is not relevant to the assessment proceedings in the case of the assessee, as it mentions questionnaires issued on 23.08.2021, when in fact, no questionnaire was issued on 23.08.2021 in the case of the assessee for any of the years. He also pointed out that the order sheets are completely silent about any correspondence between Ld. AO and Ld. Addl. CIT either during the assessment proceedings or after the submissions of draft assessment orders.

50. The Ld. AR further argued that the co-ordinate benches of this Tribunal did not agree with the argument of Department that since the Ld. Addl. CITs are being involved in the search assessment proceedings from the receipt of appraisal report till the end of the proceedings, they need not to go through the entire case records including seized material and appraisal report again at the time of granting approval to draft orders and can possibly grant such approval within a short span of their submission for approval. The Tribunal in these cases held that involvement of the Ld. Addl.CIT/JCIT during the search assessment proceedings does not dispense with the requirement of application of mind while granting approval to the draft assessment orders. Reliance in this regard was placed on the following decisions:-

- a) *Daze Construction Pvt. Ltd. vs ACIT, Central Circle-13, New Delhi in ITA Nos. 594 to 598/Del/2023*
- b) *M/s Ganesh Builders vs The DCIT Central Circle-1 Chandigarh in ITA No. 452/Chd/2022*
- c) *Shri Krishna Educational Trust vs Dy. CIT Central Circle Dehradun in ITA No.167 to 172/DDN/2019*

- d) *M/s. Maheshwari Coal Benefication & Infrastructure Private Limited. vs Dy. Commissioner of Income Tax in ITA Nos. 113 to 119/Nag./2024*
- e) *Mysore Finlease Pvt Ltd vs ACIT in ITA No. 8821/Del/2019*
- f) *Shiv Kumar Nayyar v. ACIT in ITA No.1078/Del/2021*
- g) *Sanjay Kumar v. DCIT in ITA No.429/Del/2024*

51. The Ld. AR, in his submission dated 21.02.2025, further stated that if such an approval is considered as approval for 'each assessment year,' it would render the requirement of passing an order for 'each assessment year' with prior approval under section 153D nugatory. He further submitted that, regarding the issue of the summon to BOTPL on 29.09.2021 in the case of BOTPL and not the assessee, as contended by the Department, it is immaterial whether the summon was issued in the case of the assessee or BOTPL. The only material fact is that a summons was issued to BOTPL on 29.09.2021, which was mentioned in the orders relating to the assessee submitted for approval on that date. Therefore, this could not have been submitted before the evening or late night of 29.09.2021. In response to the Department's contention that draft orders were already submitted on 27.09.2021, and hence there is no question of issuing summon to BOTPL on 29.09.2021 in the case of the assessee, the Ld. AR submitted that the issue concerning BOTPL was not involved in the assessment orders submitted on 27.09.2021 for approval but was involved in the assessment orders submitted for approval on 29.09.2021.

52. We have considered the rival submissions and perused the materials available on record containing the written submissions made by both the sides and documents placed on record. We have also perused the judgments relied upon and placed by way of Paper Books by both the Counsels with regard to the approval granted by the Ld. Addl. CIT u/s

153D of the Act. The primary issue before us is whether the approval granted by the Ld. Addl. CIT was in accordance with the provisions of the Act, and whether it was done with due application of mind, considering the factual matrix of the case. Section 153D of the Act mandates that no order of assessment under section 153A shall be passed without the 'prior approval' of the Ld. Addl CIT. This requirement is a mandatory requirement of the law. The meaning of the expression "prior approval" used in the Act has been the subject matter of interpretation before the Hon'ble High Courts including the Hon'ble Supreme Court on quite a few occasions. The Hon'ble Higher Courts have unanimously held that the approval must reflect an active and judicious review, demonstrating that the approving authority has applied its mind to the facts of the case, the applicable law, and the draft orders under review. This process ensures that there is no arbitrariness in the framing of assessments and protects both the interests of the revenue and the taxpayer from potential omissions or negligent actions by the Ld. AO. It is not merely a rubber-stamping exercise, but rather a crucial safeguard in the administrative process. The Ld. DR vehemently argued that the role of Ld. Addl CIT, Central Range is totally different from the role of a regular Addl CIT in the normal range. He argued that in a Central Range, the Ld. Addl. CIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires to the assessee. The Ld. Addl. CIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very

easy for the Ld. Addl. CIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the Ld. AR has no force. Further, the Ld. DR vehemently argued that bare reading of provisions of section 153D of the Act talks only about existence of approval from the Ld. Addl. CIT. There is no mention of application of mind on the part of the Ld. Addl. CIT or the approving authority in the said section. The expression 'application of mind' is only provided by the judicial decisions and not provided in the statute. Hence the Ld. DR argued that literal interpretation is to be given to the provisions of section 153D of the Act which does not provide for application of mind of the approving authority and hence any other interpretation contrary to the same would only result in re-writing the law. The Ld. DR also argued that the assessee files details at the last moment and that is why the approval is obtained from Ld. Addl CIT in the last moment. The Ld. DR also argued that the Ld. Addl. CIT does not look into the figures and even if there are mistakes in the figures, the same would not vitiate the assessment proceedings. The Ld. DR also relied on the decision of Hon'ble Karnataka High Court in the case of Rishabchand Bhansali vs DCIT reported in 267 ITR 577 (Kar) and also on the guidelines issued by the Central Board of Direct Taxes (CBDT) dated 22.12.2006 on the subject of Search and Seizure Assessments.

53. At the outset, we find that the decision relied by the Ld. DR of Hon'ble Karnataka High Court referred supra is factually distinguishable as it was dealing with the issue of whether it is mandatory on the part of the Ld. JCIT or Ld. Addl CIT to give opportunity of hearing to the assessee before granting approval of draft assessment orders under the erstwhile block assessment proceedings in terms of section 158BG of the Act . This

is not the issue involved herein in the instant case. The issue here is whether the approval has been granted by the Ld. Addl CIT u/s 153D of the Act after due application of mind and not the question of granting opportunity to the assessee before granting approval. Hence the reliance placed by the revenue on the decision of Hon'ble Karnataka High Court referred supra would not advance the case of the revenue. Further reliance was placed by the Ld. DR on the CBDT guidelines dated 22.12.2006. We have gone through the said guidelines placed on record. On perusal of the said guidelines, we find there is not even a whisper regarding the approval proceedings to be granted u/s 153D of the Act by the competent authority. It only says that Ld. JCIT/ Ld. Addl CIT is also part of the assessment proceedings right from the time of receipt of appraisal report. The said guidelines only reiterate the statutory provisions and the manner in which search assessments are to be framed by the Ld. AO in the manner known to law. It no where even whispers that approval u/s 153D of the Act could be granted by the Ld. JCIT / Ld. Addl CIT without any application of mind. In any event, in our considered opinion, the CBDT guidelines relied upon by the Ld. DR does not have any statutory force. Hence the reliance placed thereon would not advance the case of the revenue.

54. The Ld. Addl CIT is supposed to examine the seized documents, questionnaires raised by the Ld. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Ld. AO and the conclusions drawn by the Ld. AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Ld. Addl CIT in a judicious way after due application of mind. Even though as vehemently argued by the Ld. DR, the Ld. Addl CIT is involved

with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Ld. Addl CIT, while granting the approval u/s 153D of the Act has to independently apply his mind de hors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Ld. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Ld. AO and Ld. Addl CIT are merely guidance to the Ld. AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Ld. AO to frame the assessment after getting prior approval from Ld. Addl CIT u/s 153D of the Act. The Ld. Addl CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions of the Act as nowhere the Act mandates so. The scheme of the Act mandates due application of mind by the Ld. AO to examine the seized documents independently de hors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Ld. AO as well as the Ld. Addl CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Ld. Addl CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Ld. DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Ld. AO and the Ld. Addl CIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. As far as the argument of the Ld. DR that the details were normally filed by the assessee at the last moment is

concerned, the Ld. AO has got every right to reject the said replies if not filed within the stipulated time. It is not the case of the revenue that the details were filed by the assessee in the instant case at the last moment. Even if it is so, as stated above, it is the prerogative of the Ld. AO to accept the said letter containing details or reject the same as it was not filed within the stipulated time. On the contrary, if the Ld. AO himself grants time to the assessee to furnish the details till the last moment, then no fault could be attributed to the assessee. In such circumstances, the only irresistible conclusion that could be drawn is that the Ld. AO is not serious about the statutory deadlines provided in the Act. In our considered opinion, if the arguments of the Ld. DR are to be appreciated that the Ld. Addl CIT need not apply his/her mind while granting approval of the draft assessment orders u/s 153D of the Act as it is not provided in section 153D of the Act, then it would make the entire approval proceedings contemplated u/s 153D of the Act otiose. The law provides only the Ld. AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Ld. Addl CIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Ld. AO.

55. The Hon'ble Supreme Court in the case of *M/S Sahara India (Firm), Lucknow vs CIT reported in 2008 (4) TMI 4 - Supreme Court, in para 6 observed as under:-*

*"Similarly, the requirement of **previous approval** of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on*

the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."

56. It would be relevant to address the provisions of Section 14 of CMJ University Act, 2009 regarding the appointment of the Chancellor of the University and we find that the said provisions are pari material with section 153D of the Income Tax Act as under:-

"Section 14 of CMJ University Act, 2009 – The Chancellor

*(1)The Sponsor shall appoint a person suitable to be appointed as the Chancellor of the University **subject to the approval of the Visitor.***

Section 153D of the Income Tax Act , 1961 – Prior approval necessary for assessment in cases of search or requisition

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

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner of Commissioner under sub-section(12) of section 144BA.

(Emphasis supplied by us)

We find that the Hon'ble Supreme Court in the context of appointment of Chancellor of the University in the case of CMJ Foundation and Others vs State of Meghalaya and Others (2025 INSC 211) had accorded the meaning of the term 'approval' by observing as under:-

"39. It is clearly discernible from the above precedents that 'subject to' means 'conditional upon' in law. Therefore, it can safely be inferred that

the appointment of Chancellor was conditional upon the approval of the Visitor.

40. The term 'approval' has been interpreted by this Court in the case of *Vijay S Sathaye vs Indian Airlines Ltd* in the following manner:-

10. Approval means confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. The very act of approval means, the act of passing judgement, the use of discretion, and determining as an adjudication therefrom unless limited by the context of the Statute.....

41. It is the case of the appellants that despite repeated requests made to the Visitor of the CMJ University seeking approval for the appointment of the Chancellor, no action was forthcoming. Therefore, a letter was sent to the State on 1st April, 2010 stating that 'if the Visitor did not provide approval by 25th April 2010, it would be deemed as approval'. Since no response was received from the Visitor, the appellants acting in a bona fide manner assumed that such inaction/omission on part of the Visitor would tantamount to 'deemed approval' for the appointment of the Chancellor. This contention, in our opinion, lacks merit, has no substance and is thus untenable on the face of the record.

42. It is trite that in the absence of any statutory flavour, a provision cannot be interpreted to create a legal fiction in such eventuality, and creating a fiction through judicial interpretation may amount to legislation, which is exclusively the domain of legislature. In this regard, we are benefited by the judgment of this Court in the case of Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. and Ors. 27, wherein while interpreting Rule 36(3) of the Delhi Co-operative Societies Rules, 1973, it was held that:-

8. Rule 36(3) of the Rules, reads as under:-

36. Procedure for expulsion of members- (1)-(2) (3) When a resolution passed in accordance with sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under sub-rule (1) or (2) give his approval and communicate the same to the society and the member concerned within a period of 6 months. The resolution shall be effective from the date of approval.

9. *It is evident from the aforesaid provision that the legislature desired that every such resolution sent to the Registrar by the Society be considered and decided within a period of 6 months and that the resolution shall be effective from the date of approval. If approval is required, the order which is required to be approved by the statutory authority cannot become effective unless the approval is accorded.*

13. *Therefore, it is evident from the aforesaid settled legal proposition that the resolution passed by the Society cannot be given effect to unless approval is accorded by the Registrar as mandatorily required 1972 Act and the Rules.*

14. *The Legislature in its wisdom has not enacted any deeming provision providing that in case the resolution is not considered and finally decided by the Registrar within a period of six months, the resolution shall become effective and operative. It is the exclusive prerogative of the Legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. Even if a legal fiction is created by the Legislature, the court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect. More so, what can be deemed to exist under legal fiction are merely facts and no legal consequences which do not flow from the law as it stands. It is a settled legal proposition that in absence of any statutory provision, the provision cannot be construed as to provide for fiction in such an eventuality. More so, creating fiction by judicial interpretation may amount to legislation, a field exclusively within the domain of the legislature. (Vide Ajaib Singh v. Sirhind Coop. Marketing-cum-processing Service Society Ltd. (emphasis supplied))*

43. *After minutely going through the scheme of the Act, we do not find any deeming provision creating such legal fiction as was assumed by the appellants. Therefore, the contention of the learned counsel for the appellants that the failure of the Visitor to grant approval for appointment of the Chancellor would lead to a 'deemed approval' is totally misplaced and unsubstantiated by law.*

44. *Under the framework of the Act, it is clear that for the appointment of the Chancellor of the CMJ University, the Sponsor is not the sole authority, and the Visitor also plays a pivotal role. The Visitor is not merely a titular head and the appointment of any person as Chancellor by the Sponsor would attain validity only upon the approval of the Visitor. In the present*

case, it is an undisputed fact that the Visitor's approval was never granted for the appointment of the Chancellor of the University.

45. It is a settled legal proposition that if a statute provides for the approval of the higher Authority, the order cannot be given effect to unless it is approved and the same remains inconsequential and a dead letter in the eyes of law.

(Emphasis supplied by us)

57. To the same effect are the decisions of the Hon'ble Allahabad High Court in the cases of *PCIT vs Sapna Gupta* reported in 147 taxmann.com 288 (Allahabad), *PCIT vs Subodh Agarwal* reported in 149 taxmann.com 373 (Allahabad) & *PCIT and Anr vs Siddhartha Gupta* reported in 450 ITR 534 (All), which dealt with the requirement of prior approval u/s 153D of the Act for passing order under section 153A of the Act. *The relevant observations made by Hon'ble Allahabad High Court in the case of Siddhartha Gupta (supra) are reproduced hereunder:-*

"The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or re-assessment."

58. The above-mentioned judicial pronouncements have settled the proposition of law that for a valid approval u/s 153D of the Act, the Ld. Addl. CIT must apply his mind to the draft assessment orders and appraise the entire record, including the seized material and appraisal reports, so as to assess the factual and legal aspects and ascertain that the entire material has been examined by the Ld. AO before preparing the draft assessment order. The approval proceedings are quasi-judicial in nature and require the Ld. Addl. CIT to apply his mind in a judicious manner. To enable the Ld. Addl. CIT to apply his mind judiciously, it is the bounden duty of the Ld. AO to place before him not only the draft assessment orders but also the entire case records, including the seized material and appraisal reports, well in advance, i.e., much before the time-barring date as prescribed in Paragraph 9 of Chapter 3 of the Manual of Office Procedure, Vol. II, issued by the CBDT in February 2003 which is enclosed in Page 277 of the Additional Ground Paper Book 1. The placing of records before the approving authority well in time has been emphasized by the Hon'ble Orissa High Court in the case of Serajuddin &Co. (supra) against which the SLP of the Department has already been dismissed by the Hon'ble Supreme Court reported in 163 taxmann.com 118 (SC). The relevant observations made by the Hon'ble Orissa High Court in this regard are reproduced hereunder:-

"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."

59. The application of mind by the approving authority, being sine qua non for a valid approval, must be demonstrated in the approval itself. This exercise is necessary to meet the intent of the legislature behind prescribing the requirement of prior approval u/s 153D of the Act, which is to protect the interests of the revenue against any omission or negligence by the Ld. AO, on one hand, and to protect the interests of the assessee against arbitrariness while computing his tax liability. Therefore, if the requirement of obtaining prior approval u/s 153D of the Act is brushed aside, considering it to be an empty formality that can be met by granting approval mechanically without due application of mind, it would defeat the very purpose for which it was inserted by the legislature.

60. We have carefully examined the approval granted by the Ld. Addl CIT u/s 153D of the Act in the present case. Upon reviewing the approval letter, we observe that the Ld. Addl. CIT, in granting approval to the draft assessment orders for the assessee pertaining to the 11 assessment years, i.e., AYs 2010-11 to AY 2020-21, merely states that the approval was accorded after perusing the draft assessment orders and case records, without providing any further details. There is nothing in the approval letter which could demonstrate that the Ld. Addl CIT had actually applied her mind before according approval to the draft assessment orders under section 153D. The bare minimum requirement of specifying what case

records had been perused by the Ld. Addl. CIT before granting approval to the draft assessment orders was not complied with by her, let alone specifying the conclusions and reasons derived by her on the basis of such examination. There is no whisper in the approval about the seized material or the appraisal report having been perused by the Ld. Addl. CIT, despite these documents forming the basis of the search assessment proceedings. Moreover, it is also noticed that the draft assessment orders in the case of assessee for 11 years were submitted to the Ld. Addl. CIT only on 27.09.2021 & 29.09.2021 which were approved by the Ld. Addl. CIT on 30.09.2021 by a common approval. Further, it is also demonstrated by the Ld. AR by placing on record the assessment orders of 86 other cases enclosed in Pages 1 to 177 of the Additional Ground Paper Book 1 that apart from granting the approval in the case of assessee, the same Ld. Addl. CIT approved 86 other orders pertaining to different assessees in these three days. Taking all these facts together, in the light of the requirements of the statute and the decided judicial precedents relied upon hereinabove, it could be safely concluded that it would not have been possible for the Ld. Addl. CIT to apply her mind judiciously before according approval in the case of the assessee.

61. The paucity of time available with the Ld. Addl. CIT to apply her mind before granting approval was also the subject matter of consideration before the Hon'ble Orissa High Court in the case of Serajuddin (supra). In this case, similar to the case of the assessee, the draft assessment orders for seven assessment years were placed for approval on 27.12.2010 and 29.12.2010, and were approved by that Ld. Addl. CIT on 30.12.2010. The Hon'ble Court in these circumstances held that Ld. AO should have submitted the draft assessment orders "well in time" and since the orders were submitted to that Ld. Addl. CIT just two days prior to the deadline, it

put the approving authority under great pressure and did not allow him sufficient time to apply his mind. Further, the approval granted by that Ld. Addl. CIT / Ld JCIT for a number of draft assessment orders within a single day has also weighed with the Hon'ble High Courts in holding that there was no application of mind by the approving authority. In the cases of Shiv Kumar Nayyar (supra), Subodh Agarwal (supra), Sapna Gupta (supra), and Siddartha Gupta (supra), where the Ld. Addl. CIT/Ld. JCIT approved 43, 38, 85, and 123 draft assessment orders respectively in a single day, the Hon'ble High Courts, including the Hon'ble Jurisdictional High Court, held such approvals to be mechanical in nature and without proper application of mind. Accordingly, the decisions of the co-ordinate benches of the Tribunal, which quashed the assessment orders passed pursuant to such approvals, were affirmed.

62. As noted in the instant case, the approval is completely silent on the issues involved and grants an omnibus approval without any discernible thoughtful process. This may be due to the Proforma approval used by the Ld. Addl. CIT to grant approvals, as demonstrated by the Ld. AR. We have carefully perused the approvals dated 29.09.2021 and 30.09.2021, placed before us by the Ld. AR, which were given in the cases of two other assesseees from the same group by the same Addl. CIT's office, as well as the approvals dated 29.03.2023 and 30.03.2023, granted by the same Addl. CIT's office in the cases of two other assesseees. We find that the language of all these approvals is identical. Therefore, we agree with the contentions of the Ld. AR that the approval granted in the case of the assessee is nothing but a Proforma approval, especially considering the fact that the language of the approval remains unchanged even after two years and despite the change in the person holding office. The omissions (in the form of unfound images in the uploaded order in ITBA portal though it was

available in the manual order) and discrepancies in the order sheets of the assessment proceedings in the instant case, as pointed out by the Ld. AR, further demonstrates that assessment records were not perused by the Ld. Addl. CIT before granting approval. Similar issue has been addressed by the Hon'ble Jurisdictional High Court in PCIT v. Anuj Bansal reported in 165 taxmann.com 2 (Delhi), wherein the Hon'ble Court held that where an approval is granted without noticing discrepancy in assessment order or assessment record, such a mechanical approval would be invalid in the eyes of law. The relevant operative part of the said order is reproduced below:-

"12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that *there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580/-*. Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in

*the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. **Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.***

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal."

63. We also noted that in the instant case, the Addl. CIT has granted approval to all draft assessment orders pertaining to eleven assessment years by a common approval. It may be noted that section 153D of the Act for the approval of the order of "each" assessment year. Therefore, the obligation on the approving authority is to verify the draft assessment order of each assessment year to ascertain whether it complies with the law as well as the procedure laid down. The assessee has explained that assessment in the case of the assessee have been framed on the basis of contents of one pen drive handed over to the Income Tax Department by

ED before search and therefore, all material was within the knowledge of Income Tax Authorities prior to the search in the cases of the assesseees. During the assessment proceedings, the assessee disputed the authenticity of the contents of the pen drive, which was handed over to the ED by a third party. The assessee also contended that there was nothing in the hands of the Ld. AO, seized from the premises of the assessee, that could be considered incriminating. Therefore, it became incumbent upon the Ld. Addl. CIT to examine the seized material before granting approval, in order to ascertain the veracity of the assessee's explanation. For granting approval under section 153D of the Act, the approving authority is required to verify and consider each assessment year and shall have to apply independent mind to the material on record to see whether in each assessment year there are un-abated or abated assessments and their effect, if any. But, in the present case, the approving authority i.e. the Ld. Addl. CIT has granted common approval for all the assessment years in respect of the single assessee. Thus, the non- application of mind on the part of Ld. Addl. CIT is writ large while granting common and consolidated approval for all the assessment years instead of granting approval u/s 153D of the Act for each assessment year separately. The Hon'ble Allahabad High Court in the cases of ***Sapna Gupta (supra)***, ***Siddarth Gupta (supra)*** and ***Subodh Agarwal (supra)*** and the Hon'ble Jurisdictional High Court in the case of ***Shiv Kumar Nayyar (supra)***, clearly emphasized upon the approval in case of "each assessment year" and accordingly, held a common approval as invalid. The operative part of the order of Hon'ble jurisdictional High Court in the case of ***Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Delhi HC) (supra)*** is reproduced below:

"11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for "each assessment year"

referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of **Pr. CIT v. Sapna Gupta [2023] 147 taxmann.com 288/[2022 SCC OnLine All 1294]** which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- "each assessment year" used in the language of Section 153D of the Act. The relevant paragraphs of the said decision are reproduced as under:-

"13. It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.

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

12. It is observed that the Court in the case of Sapna Gupta (supra) refused to interdict the order of the ITAT, which had held that the approval under Section 153D of the Act therein was granted without any independent application of mind. The Court took a view that the approving authority had wielded the power to accord approval mechanically, inasmuch as, it was humanly impossible for the said authority to have perused and appraised the records of 85 cases in a single day. **It was explicitly held that the authority granting approval has to apply its mind for "each assessment year" for "each assessee" separately.**

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of **Asst. CIT v. Serajuddin & Co. [2023] 150 taxmann.com 146/292 Taxman 566/454 ITR 312/SCC OnLine Ori 992** to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

14. During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of *Serajuddin & Co. (supra)*, came to be dismissed by the Supreme Court vide order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.

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

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

"10. We have gone through the approval granted by the Id. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states that a letter dated 30.12.2018 was filed by the Id. AO before the Id. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The Id. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the Id. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the Id. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assesseees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like Id. Addl. CIT to grant judicious

*approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. **Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the Id. Addl. CIT has granted a single approval for all assessment years put together.***

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

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration."

64. The Ld. DR by presenting the letter dated 31.08.2021 written by the Ld. AO to the Ld. Addl. CIT, wherein specific questionnaires were submitted for her perusal, attempted to demonstrate that the Ld. Addl. CIT had been involved in the search assessment proceedings from the outset. Accordingly, it was argued that the approval granted by her to the draft assessment orders in the case of the assessee was made with due application of mind. However, we do not agree with the contentions of the Ld. DR, either factually or legally. We find that there is nothing in the letter that demonstrates application of mind by the Ld. Addl. CIT. Furthermore, none of the questionnaires attached to the letter pertain to the assessee, except for one, which also does not address any of the issues involved in the assessment of that year. Therefore, merely presenting a letter demonstrating correspondence between the Ld. AO and the Ld. Addl. CIT during the search assessment proceedings, without showing actual

application of mind by the Ld. Addl. CIT before granting approval u/s 153D of the Act, which is a mandatory requirement under the law, does not assist the case of the revenue. Hence, when from the facts on record it clearly comes out that there was no application of mind by the Ld. Addl. CIT while granting approval in a mechanical manner u/s 153D of the Act, the benefit of presumption under section 114(e) of the Indian Evidence Act that all official acts are regularly performed is not available to the revenue in the instant case.

65. As far as the contention of the Ld DR, that other assesseees may not have raised similar objections to such approval in their cases, and that if the issue is decided in favour of the assessee, it would have a cascading impact on their assessments, is concerned, we wish to state that the issue of approvals granted in a mechanical manner without the application of mind u/s 153D of the Act is no longer res integra. Furthermore, merely because other assesseees may not have objected to the manner in which the approval was granted in their cases does not mean the same should be sustained in the case of the assessee. We also do not agree with the contention of the Ld. DR that since the judgments relied upon by the assessee were delivered in 2023 and 2024, the Tribunal should exercise caution in applying them to the approval granted in 2021. The CBDT manual, which prescribes the manner of obtaining approval in search cases, has been in existence since 2003, and it has been held to be binding upon the Department in the case of Serajuddin (supra). Moreover, the manner in which approval should be granted by the superior officer under the Act has been expounded by the Hon'ble Supreme Court and Hon'ble High Courts for decades, with the requirements of applying one's mind and perusing relevant records before granting approval being indispensable since then. Additionally, even in the judgments relied upon by the

assessee, the Hon'ble High Courts upheld the decisions of co-ordinate benches of this Tribunal, where approvals granted in 2010, 2017, 2018, and 2019, much prior to the approval granted in the case of the assessee in 2021, were held invalid. Lastly, the issue is jurisdictional in nature, and when there is a judgment of the Hon'ble Jurisdictional High Court squarely on the issue which is binding and it cannot be ignored on the ground that following it will have a cascading impact on other cases or that it did not exist when the decision was taken by the concerned officers.

66. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Ld. Addl CIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Jurisdictional High Court (Delhi High Court) referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the additional ground raised with regard to section 153D of the Act. Hence the assessment framed for the Asst Year 2011-12 by the Ld. AO is hereby held as void abinitio and is hereby quashed.

67. Since the entire assessment framed in the hands of the assessee is declared illegal and bad in law for more than one reason as narrated in detail supra, the other legal grounds and grounds on merits raised by the assessee need not be gone into, as adjudication of the same would be merely academic in nature and, hence, they are left open.

68. In the result, the appeal of the assessee for Asst Year 2011-12 is allowed.

69. As stated in the earlier part of this order, the facts and legal submissions are exactly identical for the Asst Years 2012-13 to 2017-18 with those of Asst Year 2011-12. Hence the decision rendered hereinabove for Asst Year 2011-12 shall apply mutatis mutandis for Asst Years 2012-13 to 2017-18 also, except with variance in figures.

70. To sum up, all the appeals of the assessee are allowed.

Order pronounced in the open court on 20/05/2025.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 20/05/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi