

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.198/MUM/2022(A.Y: 2008-09)**

Vrushali Sanjay Shinde 282, Boundary Road Civil Line, Meerut - 250001  <b>PAN: AJNPS5211K</b>	v.	DCIT, Central Circle-1 B-101, Marigold, Prestige Residency G.B. Road, Kavesar, Thane- 400607
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Sankalp Malik</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Shanti Subramanian</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>20.07.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>08.09.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), Pune-11[hereinafter in short "Ld.CIT(A)"] dated 12.01.2022 for the A.Y.2008-09.

2. Brief facts of the case are, in the course of police action it was found that Shri Mukesh Surajprakash Gupta, residing at 101, Shiv Darshan

Apartments, Chandanwadi, Thane(W) was in the possession of huge cash. The information was given to the Income-tax Department. Consequent to this, search action u/s 132 of Income-tax Act, 1961 (in short "Act") was conducted on 22.08.2007 at the residence of Shri Mukesh Gupta. During the course of search, cash to the tune of ₹.4,66,73,200/- was found. When questioned about the source of the said cash, Shri Mukesh Gupta stated that cash lying at his residence had been given to him by Shri Premchand Ashok Kamble. It was stated by Shri Mukesh Gupta that Shri Premchand Ashok Kamble is the Proprietor of 'Unique Finance' and he was an employee of 'Unique Finance. It was also stated by Shri Gupta that Shri Kamble was involved in various business activities but the exact details of the business activity from which the cash had come from where not known to him. It was also stated that the details of transactions/receipts of Unique Finance were being maintained on computers in Tally Package. It was also informed by Shri Mukesh Gupta that the office of the Unique Finance is at 306, Anant Lakshmi Chambers, Opp Waman Hari Pethe, Thane(W). It was stated that Shri Mukesh Gupta that his nature of duties includes looking after the cash and bank transactions of Unique Finance under the instructions of Shri Premchand Kamble.

**3.** Consequent to the information given by Shri Mukesh Gupta as stated above, a survey was immediately initiated at the office of Unique Finance at the above said address and later was converted into search action u/s 132 of the Act. During the course of search Shri Premchand Kamble was not present. None of the employees present at the premises could give any information neither about his residential address, nor about his whereabouts on the day of search. Cash to the tune of ₹.45,15,615/- was found at the office of M/s Unique Finance. None of the employees could satisfactorily explain about the cash and hence an amount of ₹.43,00,000/- was seized.

**4.** During the course of search action at the office of 'Unique Finance' certain documents relating to Smt Vrushali S. Shinde, Proprietor, Unique Finance Services & Trushna Enterprises at E-47, Sant Mira Society, Kopri Colony, Thane (E) were found which had shown that cash to the tune of ₹.10.91 crores was deposited in the bank accounts of these concerns, which are associate concerns of the Unique Group. Hence the case of the assessee had been covered u/s 153C of the Act.

**5.** During the course of search/survey operations incriminating documents, diaries, CDs etc. were found and seized/impounded. Cash of

₹.4.65 crores was seized from the residential premises of Mr. Mukesh Gupta. Consequent to the search and based on the seized material notices u/s.153A and u/s 142(1) were issued but there was no response to such notices. Since there is no compliance and based on the materials found during search which showed that huge deposits and withdrawal were made in the bank accounts. Some of the bank accounts were in the names of trusted employees also. The turnover of the various concerns was running in crores of rupees and no tax audit was carried out for any of the assessment years. As a result, there were multiple transactions of the same entry which led to complexity in the matter to arrive at correct profit. Investments were made by the assessee or his employees and associate concerns of the Unique Group in various assets. From the residential premises of Mr. Mukesh Gupta, a trusted employee of Mr.Premchand Kamble, diaries and other documents were found and seized The entries in these diaries and documents were stated to be related to the business of Mr. Premchand Kamble. The contents of the diaries and materials seized from the various premises need to be co-related with the business activities of each of the associated concerns which involved complexity. Accordingly, a special audit u/s.142(2A) of the Act was proposed in order to arrive at the correct book results and the profit of the assessee.

**6.** It was noticed that Shri Premchand Ashok Kamble has not cooperated with the audit and has not furnished any information sought for by the auditor. Hence the audit in this case was completed on the basis of seized/impounded material containing Books of Accounts, documents, various bank accounts and tally data and M.S. Excel file and CDs.

**7.** As stated above the case of the assessee was covered under 133A of the Act. The return of income filed by the assessee on 09.04.2009 declaring total income of ₹.3,02,100/-. Subsequently, notice u/s 143(2) and 142(1) were issued and served on the assessee. The case of the assessee also covered under the special audit and accordingly the audit report was shared with the assessee on 10.06.2010. Based on the above 142(1) notice was issued on 21.07.2010 to the assessee and to her authorised representative, since there was no response from the assessee, Assessing Officer proceeded to complete the assessment based on the material available on record and special audit report u/s.142(2A) of the Act. Accordingly, Assessing Officer proceeded to make the following additions: -

(figures in Rs )

	Income as per return of income filed	302110
Add	Disallowance of int.on loan (para 18)	55050
	Addition of cash deposits made in the bank(para 19) (protective basis)	109150000
	Disallowance of expenses, not related to business. (Para No.20)	60362
	Income from undisclosed sources (Para No.21)	950000
	Depreciation disallowed(para 22)	67500
	Unexplained cash purchase(para 23)	450000
	Income from (undisclosed commission) (Para No.24)	105212
	Unexplained investment treated as income (Para No.25)	900000
	Income from undisclosed sources (Para No.26)	200000
	Disallowance u/s 40A(3) (Para No.27)	500000
	Income from undisclosed sources (Para No.28)	625000

	Income from undisclosed sources (Para No.29)	900000
	Income from undisclosed sources (Para No.30)	106495163
	Income from undisclosed sources (Para No.31)	1500000
	Undisclosed Income – difference in cash in hand (Para No.32)	32900
	Undisclosed income (Para No.33)	2544000
	Income from unexplained investment (Para No.34)	1400000
	Undisclosed Income (Para No.35)	159183
	Undisclosed Income (Para No.36)	56850000
	GROSS TOTAL INCOME	283246480

8. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions. After considering the submissions of the assessee Ld.CIT(A) deleted the additions made on the protective basis and rest of the additions were confirmed by him with the following observations: -

*"11.8 A perusal of special audit report suggest that the said amount of Rs. 60,362/- pertains to petty expenses relating to eatables, repair maintenance, conveyance, petrol, etc. Considering that the appellant is in the business of providing catering services and has declared a receipt of Rs. 6,16,145/- during the year in her P & L account, the*

*appellant might have incurred expenditure on the items mentioned above. Therefore, the additions merely in the absence of vouchers is not justified. However, the fact remains that the appellant could not produce vouchers to the extent of Rs. 60,362/- therefore, in order to plug the leakage of revenue, the disallowance is restricted to Rs. 25,000/-. Thus the appellant gets a relief of Rs. 35,362/-. Accordingly, the third ground of appeal of the appellant is PARTLY ALLOWED.*

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*14.4. As mentioned above, the appellant herself has accepted that the said amount of Rs. 4,50,000/- was paid in cash and has accepted that the same may be added to assessee's income. It may also be mentioned that this payment of Rs. 4,50,000/- is nothing to do with the loan taken from Tata Motor Finance Limited because as per the documents furnished by Tata Motor Finance, the loan of Rs. 4,00,000/- was sanctioned on 24/04/2007 and a net loan amount of Rs. 3,85,870/- was disbursed on 16/07/2007. Moreover, a perusal of bank account of the appellant maintained with Thane JantaSahkari Bank suggests that the loan amount of Rs. 3,85,870/- was credited on 21/07/2007 and immediately after that from this bank account, a payment of Rs. 4,00,000/- was made on 24/07/2007. However, this cash payment of Rs. 4,50,000/- stated to be made in the month of November, 2007. Thus, this payment is not out of the loan received from M/s Tata Motors Finance Limited. As the appellant has failed to explain the source of this amount, the addition of Rs.4,50,000/- made by the Assessing Officer is hereby upheld. This ground of appeal raised by the appellant is DISMISSED.*

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*15.2 During the appellate proceedings, vide its reply dated 30/10/2012, the appellant submitted that an amount of Rs. 47,210/- was shown as commission in the ROI as per the certificate available to the appellant and that the certificate for Rs. 1,05,212/- was not available to the appellant at the time of filing ROI. Therefore, the commission of Rs. 1,05,212/- was not considered in the ROI. It is claimed that the commission of Rs. 1,05,212/- was received from Reliance Life Insurance Company Ltd. towards Life Insurance and General Insurance Agency which the appellant held with the company. To substantiate the point that the omission of the commission of Rs. 1,05,212/- was not intentional, it is claimed that the TDS on the commission had also not be claimed in the ROI The appellant has also stated that she accept the addition of Rs.1,05,212/- to her income. Vide her rejoinder filed on 16/3/2020, the appellant has further stated that she accept the addition and give consent to add the same in the total income of the assessee.*

15.3 I have perused the assessment order and the submission made on behalf of the appellant. As the addition on account of the omission of the commission of Rs. 1,05,212/- from Reliance Life Insurance Company Ltd. has been accepted, the action of the AO in making an addition of Rs. 1,05,212/- is upheld. The AO is directed accordingly. Ground 7 of the appeal is hereby DISMISSED.

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16.5 I have examined the facts of the case and submissions made by the assessee. An addition of Rs. 9,00,000/- was made on account of unexplained investment in Reliance Life Insurance Company Limited which was not declared in the return of income and balance sheet. No submission was filed by the appellant before the AO in response to the show cause issued by him. During the appellate proceedings, the appellant has accepted that she had made investment of Rs. 9,00,000/- in Reliance Life Insurance Company Limited. However, it is claimed that she received a loan of Rs. 9,00,000/- in last assessment year i.e. A.Y. 2007-08. In the rejoinder, the appellant has stated that since the said amount of Rs. 9,00,000/- has been added in her income, no further addition is required to be made during this year. Before me, the appellant has neither filed any confirmation from Shri Premchand Kamble nor has she filed any evidence suggesting that a loan was raised from Shri Kamble during F.Y. 2006-07 and the said amount was used for making investment in Reliance Life Insurance Limited. In the absence of any documentary evidence, it cannot be accepted that the amount claimed was received in F.Y. 2007-08 and the same amount was used for investment made during F.Y. 2007-08. Accordingly, the submission made by the appellant is rejected and the addition of Rs. 9,00,000/- made by the Assessing Officer is upheld. The ground of the appeal raised by the appellant is DISMISSED.

17.4. I have examined the facts of the case and submission of the appellant. It has been claimed that the said amount of Rs.2,00,000/- was received from Shri Prathmesh P Bhange. However, the confirmation filed by the appellant does not carry complete address of the creditor. Also, no document substantiating the creditworthiness of Shri Bhange has been filed. Even after these shortcomings were pointed out by the Assessing Officer in his remand report, these details have not been furnished in the rejoinder filed by the appellant. It is a well settled law that in order to discharge his onus u/s 68 of the Act, the assessee is required to substantiate the identity of creditor, the creditworthiness of the creditor and the genuineness of the transaction. It is also a well settled law that filing of mere confirmation from the creditor is not sufficient to discharge onus casted on the assessee u/s 68 of the Act. As the appellant has failed to discharge its onus of prima facie substantiating the identity



*of the creditor, and the creditworthiness of the creditor, the addition of Rs.2,00,000/- made by the Assessing Officer u/s 68 of the Act is confirmed. This ground raised by the appellant is hereby DISMISSED.*

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*19.5 I have examined the facts of the case and submissions made by the appellant. Brief facts of the issue are that during the Special Audit proceedings, the auditor vide a questionnaire dated 12/03/2010, asked the assessee to inform whether she has taken or given any cash loan during F.Y. 2007-08. In response to this, the appellant assessee vide her letter dated 27/03/2010, stated that during the year she has not received any loan by cash. However, she has given a loan of Rs. 6,25,000/- to Unique Finance by cash withdrawing from my TJS Bank account. During the assessment proceedings, the Assessing Officer noticed that the said loan is not appearing in the balance sheet filed along with the return of income. Accordingly, the AO asked the assessee to show cause as to why the said amount of Rs.6,25,000/- should not be assessed as income from undisclosed sources. As no response was filed, the Assessing Officer considered this amount of Rs. 6,25,000/- as income of the assessee. During the appellate proceedings also, the assessee has admitted that the said amount was withdrawn from her bank account maintained with Thane Janata Sahakari Bank. However, she has failed to substantiate the source of this amount. The appellant has also not filed any explanation as to why this loan is not appearing in the balance sheet filed along with the income tax return. As the appellant has accepted that a loan was given but failed to furnish the explanation regarding source of Rs. 6,25,000/- during the assessment proceedings as well as during the appellate proceedings, the action of AO of making addition of Rs. 6,25,000/- is hereby upheld. This ground of appeal raised by the appellant is DISMISSED.*

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*21.6 Thus, during the Special Audit proceedings, the appellant has categorically admitted of giving a loan of Rs.10,62,70,163/- to Shri Premchand Kamble. During the appellate proceedings, the assessee has filed an affidavit dated 29/10/2012, which is in complete contradiction to the above submission. The affidavit filed by the assessee is a self-serving document which is filed after more than 30 months of filing reply during the Special Audit. If the correct fact was that the appellant has not given any loan to Shri Premchand Kamble and the reply filed before Special Auditor was under any wrong impression, the appellant had full opportunity of explaining the same to the Assessing Officer during the assessment proceedings, when she was specifically asked to explain this issue. But the assessee conveniently chose to remain silent during the assessment*

*proceedings. Even now, the appellant has not given any reason for which the reply filed before the Special Auditor should be considered as incorrect. Her affidavit is a bald denial of submissions made by her during the Special Audit without giving any reason for retracting the same. It is a well settled law that a bald denial of any statement made by an assessee cannot be accepted. Moreover, the appellant has also not filed any confirmation from Shri Premchand Kamble denying any loan transaction with the appellant. The appellant has taken a flip-flop position at various stages of proceedings and also chose to remain silent at her convenience. In view of these facts, the affidavit now filed by the appellant cannot be relied upon. As the appellant had earlier accepted that she has given loan amounting to Rs. 10,62,70,163/- to Shri Premchand Kamble and has failed to file any explanation regarding the source of this loan, the addition made by the Assessing Officer on account of unexplained loan given to Shri Premchand Kamble is therefore upheld.*

*21.7 Regarding the loan given to Shri Sanjay Shinde, the appellant has stated that confirmation has been filed along with written submission. However, no such confirmation is found enclosed. This fact was confirmed by the Assessing Officer in his remand report. Even after that along with her rejoinder, no such confirmation has been filed. The appellant has accepted that she has given an loan of Rs.2,25,000/- to Shri Sanjay Shinde which is not appearing in the balance sheet filed along with the return of income. No explanation regarding the source of this amount has been explained either during the assessment proceedings or in the appellate proceedings. Therefore, this addition of Rs.2,25,000/- on account of loan given to Shri Sanjay Shinde is upheld. To summarize, the addition of Rs.10,64,95,163/- made by the Assessing Officer on account of loans given to Shri Premchand Kamble and Shri Sanjay Shinde is confirmed. This ground of appeal raised by the appellant is DISMISSED.*

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*22.5 The issue of transactions made by Shri Premchand Kamble through assessee's bank account has been discussed in the appeal order of Shri Premchand Kamble for AY 2008-09, wherein, the deposits made in the assessee's bank account has been held as income of Shri Premchand Kamble. Accordingly, the total deposits of Rs. 10,91,50,000/- in two bank accounts of the appellant has been held as income of Shri Premchand Kamble. However, the issue at hand is somewhat different because here not only during the assessment proceedings but also during the appeal proceedings, the appellant has accepted that she has given a loan of Rs. 15,00,000/- to M/s Unique Finance. Neither before the Assessing Officer nor before the undersigned, the appellant has taken a plea that the said*

*amount of Rs. 15,00,000/- is included in the amount of Rs. 10,91,50,000/-. Also, the appellant has not filed copy of relevant bank account indicating that the said amount of Rs. 15,00,000/- was given to M/s Unique Finance out of the deposits made by Shri Premchand Kamble. In view of these facts, since the appellant has accepted that a loan of Rs. 15,00,000/- was given to M/s Unique Finance and on the other hand she has failed to furnish any explanation regarding the source of this loan coupled with the fact that said loan is not appearing in the balance sheet as noted by the Assessing Officer, the addition made by the Assessing Officer is hereby upheld. The ground raised by the appellant is DISMISSED.*

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*23.2 During the appellate proceedings, the appellant has simply stated that this addition is of undisclosed income (cash in hand) Rs.32,900/-, the same may not be added to the assessee's income. No explanation as to why the said addition should be deleted has been made during the appeal proceedings. In view of this, the addition made by the Assessing Officer is hereby confirmed. The ground raised by the appellant is DISMISSED.*

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*26.4 I have considered the facts of the case and submissions made by the appellant. It is an admitted fact that there is a difference of Rs. 1,59,183/- in the capital account appearing in the balance sheet filed along with return of income and the balance sheet filed with the Special Auditor. The appellant did not furnish any explanation on this discrepancy before the Assessing Officer. In the appellate proceedings, the appellant claims that this amount pertains to profit earned in her proprietorship concerns viz M/s Prime Motors and Prime Holidays in earlier assessment year and accordingly, requested to delete the same. It may however be mentioned that no documentary evidence in support of this claim has been filed before me. Accordingly, the claim of the appellant that this amount corresponds to income earned during the last year cannot be accepted. In view of this, the addition of Rs. 1,59,183/- made by the Assessing Officer is upheld. The ground raised by the appellant is DISMISSED.*

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*27.6 Another part of this ground relates to addition of Rs.9,00,000/- on the basis of deposits made in the bank account of the appellant maintained with Thane Janata Sahakari Bank. This bank account maintained with M/s Janata Sahakari Bank is different than the bank accounts numbering 30099 and 30100 maintained with UBI. The deposits made in these two bank accounts with UBI*

*were held to be belonging to Shri Premchand Kamble. It has never been a claim of the appellant that the account maintained with M/s Janata Sahakari Bank was also being operated by Shri Premchand Kamble. It is also important to note that additions which were discussed in ground no2 raised by the appellant pertain to deposits made with the account no 30099 and 30100 maintained with UBI. Nowhere, in the assessment, the Assessing Officer has added the amount deposited in the bank account maintained with the Thane Janata Sahakari Bank. Accordingly, this addition of Rs. 9,00,000/- is not a double addition as claimed by the appellant. As the appellant has not explained the source of this amount either before the AO or before me therefore, the action of the Assessing Officer for making addition of Rs. 9,00,000/- on account of deposits in Janata Sahakari Bank is hereby upheld.*

*27.7 To sum up the addition of Rs. 5,59,50,000/- made on account of deposits in the bank account maintained with UBI is deleted and the addition of Rs. 9,00,000/- on account of deposits made in the bank account maintained with Thane Janata Sahakari Bank is upheld. The ground of appeal raised by the appellant is PARTLY ALLOWED."*

**9.** And finally he gave a passing comments on the telescopic benefit and general submissions made by the assessee in the following observations: -

*"29. In the written submission dated 30/10/2012, the appellant has taken a general argument that certain additions are made on the basis of diary entries. Except the diary, AO has failed to make any other evidence which shows the transactions actually took place and represent income of the assessee. This general ground of the appellant is not acceptable because the section 292C of the Act provides that contents of the documents seized during the search or survey operation, shall be presumed to be correct. During the assessment proceedings or appellate proceedings, the appellant has not file any submission or explanation as to why the notings made on these papers are incorrect. Since, the appellant has failed to rebut the presumption; the general ground raised by the appellant is hereby REJECTED.*

*30. Before parting with the matter, it is important to mention that some of the additions confirmed by me are on the assets/receipt side of the balance sheet/P&L account and some of the additions are on the liability/payment side. One may argue here that 'telescoping benefit' should be given for arriving at the real income earned by the*

*appellant. However, during the appellate proceedings, the appellant has neither made any claim for such telescoping benefit nor she has filed the date wise cash flow statement in order to correctly arrive at the figure of telescoping benefit. In view of this, it is not possible for me to set off some of the undisclosed income earned by the assessee against the investment made or loan given during the year. Hence, no telescoping benefit is being given to the appellant."*

**10.** Aggrieved with the above order assessee is in appeal before us raising following grounds in its appeal: -

*"1. On facts in circumstances of the case and in law the Ld. ACIT has erred in making addition of Rs. 60,362/- by way of addition of business expenses not related to business and CIT(A) is not justified to confirm the addition upto Rs. 25,000/-.*

*2. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 9,50,000/- towards income from undisclosed sources. The CIT(A) allowed is in error confirm the addition.*

*3. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 4,50,000/- by way of addition as unexplained purchased of motor car for non production of bill and source. The CIT(A) is in error to confirm the addition.*

*4. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 1,05,212/- by way of undisclosed commission received. The CIT(A) is in error to confirm.*

*5. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 9,00,000/- towards undisclosed investment through Reliance Life Insurance Co. and same being not disclosed in Balance Sheet and Books of Account. The CIT(A) is in error to confirm.*

*6. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 2,00,000/- towards received from one Mr. Bhange. The CIT(A) is in error to confirm.*

*7. On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 6,25,000/- towards income from undisclosed source, being loan given to M/s. Unique Finance the same being not appearing in the Balance Sheet. The CIT(A) is in error to confirm.*

8. *On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 10,64,95,163/- + (22,500) i.e., Rs. 10,14,95,163/- and Prem Chand Kambley and 2,25,000/- to Sanjay Sindhey loan given from undisclosed source the same being not reflected in the Balance Sheet. The CIT(A) is in error to confirm.*

9. *On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 15,00,000/- towards loan given to Unique Finace Prop. Premchand Kamble, same being not seen the Balance Sheet of the Appellant. The CIT(A) is in error to confirm.*

10. *On facts and in circumstances of the case and in law the Ld.ACIT has erred in making addition of Rs. 32,900/- towards difference between the cash in the Balance Sheet and cash mentioned in the special audit report. The CIT(A) is in error to confirm.*

11. *On facts and in circumstances of the case and in law the Ld. ACIT has erred in making addition of Rs. 1,59,183/- by way of undisclosed income shown as amounts received from Prime Motors, Prime holidays and CIT(A) has not justified to confirm.*

12. *That the AO in report accept that Rs. 9,00,000/- is double addition even The CIT (A) confirmed the addition is against the facts and law.*

13. *That the assessee has right to add, delete or modify any grounds of appeal during the proceedings."*

**11.** At the time of hearing, Ld. AR of the assessee submitted that assessee is not in a position to argue the case ground wise i.e. ground Nos. 1-13 on merits in absence of requisite and vital documents for which RTI has been filed and rejected. Further, he submitted that against the denial of information, assessee filed an appeal before First Appellate Authority and then second appeal before Central Information Commission which is still pending. With the above information on record assessee has

filed additional ground on the jurisdictional issues of incriminating material which is a legal ground which goes to the root of the matter. After considering the submissions of the Ld. AR we proceed to admit the additional grounds for adjudication.

**12.** Assessee has filed following additional grounds: -

*"14. Because the assumption of jurisdiction u/s 153C is not in accordance with the law and without complying with the various conditions laid down under the law.*

*15. Because the Ld. CIT(A) ought to have quashed the impugned order passed by the Ld. AO u/s 153C and various additions/disallowances made therein as the same have been made only on the basis of the Special Audit Report, without there being any material, much less incriminating material found during the course of search and that too for the year under consideration.*

*16. Because the Ld. CIT(A) ought to have quashed the impugned assessment order passed by the Ld. AO on the ground that the Ld. AO did not take a valid approval u/s 153D in accordance with the law.*

16.1 The Ld. CIT(A) ought to have quashed the impugned assessment order as the same was passed on the basis of a non-speaking, mechanical Approval, which is not sustainable in the eyes of law.

*17. Because the Assessee denies its liability to be assessed an to pay tax, interest or penalty thereon.*

*Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of NTPC Limited 229 ITR 383."*

**13.** With regard to additional ground, Ld. AR of the assessee submitted as under: -

*A. At the very outset, it is submitted that the Appellant is not in a position to argue the case ground-wise, Ground Nos. 1- 13 (merits) in absence of the requisite and vital documents for which RTI had been filed and rejected.*

*B. It is further brought to the attention of this Hon'ble Bench that against the denial of information, the Appellant, filed an Appeal before the First Appellate Authority (FAA), which also came to be denied and currently, the Second Appeal before the Central Information Commission (CIC) is pending (copy of the RTI application, Order u/s 7(1) of the RTI Act, Order of the First Appellate Authority & Appeal before the Hon'ble Central- Information Commission along with its acknowledgement is enclosed herewith).*

*C. Therefore, it is prayed that the Appellant be allowed to argue legal grounds (which go to the root of the matter) raised by way of additional grounds and the matter be decided accordingly, or, that the Ld. DR be directed to provide complete mirror file of the proceedings.*

*D. However, it is prayed that the legal grounds go to the root of the matter be heard and disposed off, in the interest of justice, equity and good-conscience.*

*Without prejudice to the same, ground-wise submission of legal grounds are as under:*

*Ground No. 14 & 15: The Assessment Order is liable to be quashed as all the additions so made by the Ld. AO and the ones sustained by the Ld. CIT(A) are based solely on the Special Audit Report, without any material. let alone any "incriminating material found during the course of search. Therefore, in absence of any incriminating material, the assumption of jurisdiction u/s 153C is wholly illegal and liable to be quashed.*

*1. It is submitted that the instant proceedings have been initiated by assuming jurisdiction u/s 153C of the Act. In this regard, it is submitted that in order to assume valid jurisdiction there is a requirement that there should be incriminating material found during the course of search and only then can any addition be made. However, in the instant case, all the additions in the instant case, are made solely on the basis of the Special Audit Report, without there being any other material, whatsoever. The said fact unequivocally proves that the very*



*assumption of jurisdiction is bad-in-law and the proceedings, thus, are liable to be quashed.*

*For ready reference and the convenience of this Hon'ble bench, a tabular chart is as under:*

<b>SR. NO.</b>	<b>ADDITION</b>	<b>AMOUNT (In Rs.)</b>	<b>AO (Para )</b>	<b>ADDITION SUSTAINED BY CIT(A) Y/N</b>	<b>CIT(A) Para</b>
1	Disallowance of Interest on Loan	55,050/-	18	N	9.1 - 9.4
2	Cash Deposits	10,91,50,0007-	19	N	10.1-10.5
3	Disallowance of Business Expenses	60,362/-	20	Y (to the extent of Rs. 2 5,000)	11.1-11.8
4	Income alleged to be from Undisclosed Sources	9,50,000	21	Y	12.1-12.6
5	Depreciation Disallowed	67,500	22	N	13.1 - 13.4
6	Alleged unexplained Cash Purchase	4,50,000/-	23	Y	14.1 - 14.4
7	Income allegedly from Undisclosed Commission	1,05,212/-	24	Y	15.1-15.3
8	Alleged Undisclosed Investment	9,00,000/-	25	Y	16.1 - 16.5
9	Income allegedly from Undisclosed Sources	2,00,000/-	26	Y	17.1 - 17.4
10	Disallowance u/s 40A(3)	5,00,000/-	27	N	18.1-18.6
11	Income alleged to be from Undisclosed Sources	6,25,000/-	28	Y	19.1 - 19.5
12	Income alleged to be from Undisclosed Sources	9,00,000/-	29	N	20.1-20.5
13	Income alleged to be from Undisclosed Sources	10,64,95,1637-	30	Y	21.1-21.7
14	Income alleged to be from Undisclosed Sources	15,00,0007-	31	Y	22.1-22.5
15	Income alleged to be from Undisclosed Sources	32,900/-	32	Y	23.1-23.2
16	Alleged Undisclosed Income	25,44,0007-	33	N	24.1 - 24.4
17	Alleged Income from Undisclosed Sources	14,00,0007-	34	N	25.1-25.4
18	Alleged Undisclosed Income	1,59,183/-	35	Y	26.1 - 26.4
19	Alleged Undisclosed Income	5,68,50,000/-	36	Y (to the extent of Rs. 9,00,000)	27.1-27.7
	<b>TOTAL ADDITIONS</b>	<b>28,29,44,370/-</b>		<b>12,95,43,07 27-</b>	

*2. That a bare perusal of Para 21, 23, 24, 25, 26, 28, 30, 31, 32, 35 & 36 would show that all the additions (under dispute) are based solely on*

*the audit objections raised by the Special Auditor and not on any material found during search, let alone incriminating, as no material was found during the search.*

*3. It is further submitted that additions in a case u/s 153A or 15C, if made, solely on the basis of Special Tax Audit Report cannot be sustained and are liable to be deleted as a Special Tax Audit Report is not any incriminating material found during search. In this regard, reliance is placed on the following judgments, which are squarely applicable on the case at hand:*

• ***M/S ATS Infrastructure vs. ACIT, ITA 5811-13/Del/2014 (Del ITAT)***

*12. In view of the law laid down by Hon'ble jurisdictional High Court in Kabul Chawla (supra) case, we are of the considered view that when no incriminating material has come on record during the search and seizure operation conducted at the premises of the assessee rather assessment has been based upon special audit report whereas such facts were already brought on record by the assessee by filing original return of income along with computation, the assessment framed u/s 153A read with section 143 (3) is not sustainable in the eyes of law. Hence, the assessments for AYS 2002-03 & 2003-04 are ordered to be quashed.*

• ***PCIT vs. M/s AbhisarBuildwell Pvt. Ltd. ITA No. 239/2018 & ITA No. 240/2019 (Del HC)***

*7. Learned counsel for the Revenue repeated the submission made before the ITAT viz, that the report of Special Audit should be treated as incriminating evidence. Clearly the report of the Special Auditor, having been commissioned subsequent to the search, and during the assessment proceedings against DSL, cannot obviously be treated as incriminating material qua the Assessee, recovered during the course of search, in order to justify the addition made in the assessment under Section 153A of the Act. This is consistent with the legal position explained in both CIT v. Kabul Chawla (supra) (which still holds the field) and Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals (supra). Dr. Rakesh Gupta, learned counsel for the Assessee appearing on advance notice produced before this Court copy of an order dated 2nd July 2018 passed by the Supreme Court dismissing the Revenue's Special Leave Petition against the aforementioned judgment in Pr. CIT v. MeetaGutgutia Proprietor Ferns 'N' Petals (supra) on merits. The said order is reported as Pr CIT v. MeetaGutgutia (2018) 257 Taxman 441 (SC).*

8. This Court, therefore, finds there is no legal infirmity in the impugned order of the ITAT. No substantial question of law arises therefrom.

Thus, from the above, it can be seen that additions made solely on the basis of a Special Audit Report in a search case is not sustainable, as there is ought to be incriminating material found during the course of search. For ready reference, reliance is placed on the following judgments:

- *PCIT vs. R.M. Investment & Trading Co. Pvt. Ltd. (Bom HC)*

"3. Perusal of the above portion of the judgment of the Tribunal would show that, besides the other findings, the Tribunal has come to the conclusion that, there was no incriminating material found during the search on the basis of which the additions for any of the years under consideration could have been sustained. In that view of the matter. Keeping other conclusions of the Tribunal aside, the additions were correctly deleted. This view is taken by Delhi High Court in the case of *Commissioner of Income Tax v. Kabul Chawla* reported in 2015 Vol. 234 *Taxmann* 300 (Delhi)."

- *CIT vs. Deepak Kumar Aggarwal & Ors. (Bom HC)*

*IT: Assessment u/s 153A can be made only on basis of incriminating material found in search u/s 132 and only income related to incriminating documents found during search can be considered in assessment*

31. The Tribunal concluded that the arguments relating to the validity of the notice under section 153A and though that provision could have been invoked in the given facts and circumstances, but the additions made by the Assessing Officer were in the absence of any incriminating material. Therefore, they are not Sustainable and they came to be deleted.

32. We do not think that any view other than the one taken by the Division Bench of this court in the case of *CIT v. SKS Ispat and Power Ltd. (Income Tax Appeal NOS. 1874 of 2014 and 58 of 2015)* dated July 12, 2017 - (2017) 308 ITR 584 (Bom) or the reported judgment in *Continental Warehousing Corporation and All Cargo Global Logistics (supra)* can be taken.

- *Skylark Build vs. ACIT, [2018] 97 taxmann.com 682 (Mumbai)*

*IT: Where in appeal before Tribunal, assessee has raised additional jurisdictional issue/legal issue with respect to issuance of notice under*

*section 153C alleging non-compliance of statutory provisions and procedures prescribed under section 153C, same was to be admitted*

*IT: In absence of any incriminating material found during search that assessee was member of AOP against which bogus purchase was alleged, no addition could be sustained in hands of assessee*

*5. Thus, in the absence of any material found during the course of search, much less being incriminatory in nature cannot be sustained and it is prayed that the same may kindly be held so.*

*Ground No. 14 & 16: The Assessment Order is liable to be quashed as all the assessment order has been passed with an invalid, non-speaking, mechanical approval. Thus, without any valid, proper approval, no addition can be made.*

*6. It is submitted that in the instant case, the Ld. AO sought approval vide letter dated 05.08.2010, against which an approval was granted by the Ld. Assistant Commissioner of Income Tax, Central Circle - 1, Thane, who in his approval letter dated 06.08.2010, has mechanically, without any application of mind affixed the words "Draft Assessment Order is Approved".*

*7. That such an approval in no manner meets the specific objectives of the Act for which the provision of section 153D was enacted by the legislature. There is no discernable rationale as to how and why is the Approval being sanctioned. There is no mention of the factors leading to the grant of approval or whether even any material was seen or not. Copy of the letter of the Approving Authority dated 06.08.2010 is enclosed herewith.*

*That such an action has been consistently held to be illegal in the eyes of law and an invalid approval makes the entire proceedings liable to be quashed. With respect to the same, reliance is placed on the following judicial pronouncements.*

- *Arch Pharamalabs Ltd. vs. ACIT, CC-2, ITA No. 6656/Mum/2017*

*11.4- It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due*

*application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically not even formally but after due application of mind. Thus the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AQ. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.*

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

*11.7 Very recently, the co-ordinate bench in Sanjay Duggal & ors (ITA 1813/Del/2019 & ors order dated 19.01.2021 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assessee against maintainability of hollow approval under S. 153D totally devoid of any application of mind. The approval so granted under the shelter of section 153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence quashed.*

*9. Without prejudice to the above, it is submitted that the Assessment Order has been passed u/s 144 and the assessee was never involved in any of the transactions. The said transactions were undertaken by one*

*Mr. Prem Chand Kamble through my husband. The assessee was unaware as to the transactions being made in between the said persons through her bank account. All these facts require deep verification, therefore, it is prayed that the matter may be remitted to the file of the AO for verification of necessary facts. In this regard, assessee has also filed an affidavit on oath explaining the above-said facts. The said affidavit is enclosed herewith."*

**14.** The bench re-fixed the case for clarification on certain issues, Ld.AR of the assessee, at the time of hearing on 20.07.2023 filed its additional written submissions vide letter dated 20.07.2023, for the sake of clarity it is reproduced below: -

*"1. That the present matter was heard on 28.11.2022, whereby detailed arguments were advanced, synopsis was filed, the case was heard and reserved for orders.*

*2. That vide order dated 24.02.2023, this Hon'ble Bench, fixed the case for clarification with respect to the approval given by the Ld. Addl. CIT to the draft assessment order dated 06.08.2010 (Pg. 28 of the Synopsis filed on 28.11.2022).*

*3. Thereafter, the case was then listed for hearing on 15.03.2023, 11.04.2023, 03.05.2023, 06.06.2023 & 28.06.2023 during which the bench first sought the DR to produce the letter dated 05.08.2010 seeking approval, as sent by the AO to the Ld. Addl. CIT, which was not available in the record, as admitted by the ITO, Ward 3(4). Thane in its letter dated 26.05.2023 placed before the bench on 28.06.2023.*

*4. Thereafter, on the said date of hearing, viz. 28.06.2023, this Hon'ble Bench directed the Ld. Addl. CIT to file an affidavit and fixed the case on 20.07.2023. In compliance to the direction of this Hon'ble Bench, an affidavit dated 14.07.2023 has been filed by the Ld. Joint CIT, whereby it has been contended that:*

- a. The Draft Assessment Order was passed after receipt of the approval (Para 2)
- b. The Appraisal Report dated 19.10.2007 was also marked and forwarded to the Ld. Addl. CIT and as per

department's procedure the same presumably must've been taken into consideration by the Ld. Addl. CIT while giving the Approval (Para 3-4)

5. *It is submitted that the Appellant does not dispute the fact that the Approval was given. However, it is the case of the Appellant that the approval so given was perfunctory, given mechanically and without any application of mind due to which vitiates the sanctity of the Approval and makes it non-est in the eyes of law. The stand of the Appellant emanates from a bare perusal of the Approval Order whereby only the following remarks were given - "Draft Assessment Order is Approved" (See Page 28 of the Synopsis filed on 28.11.2022). This approval does not spell out as to how, why and on basis was the approval given, what was the material taken into consideration. The rationale / reasoning behind the same is absent and if such approvals are held to be valid then the entire purpose of enacting specific provisions qua approvals from senior officers u/s 153D and 151 would stand vitiated.*

6. *Without prejudice to the above, it is trite law, that the approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending and cannot be supplemented. (See Para 11.4 & 11.5 of Arch Pharmalabs Ltd. vs. ACIT, CC-2, ITA No. 6656/Mum/2017; filed on 28.11.2022). Thus, in the absence of anything in approval order showing that the appraisal report was considered, the stand of the Ld. JCIT cannot be upheld.*

7. *It is submitted that the Ld. ICIT in a desperate attempt to validate an illegal approval has presumed that only because the appraisal report was marked to the Ld Addl. CIT on 19.10.2007, the same must've been considered by the Approving Authority. The said stand taken is without any merit. Neither does it make even the slightest of difference to the validity of the non-est approval. Mere marking of the appraisal report to the Ld. Addl. CIT in the year 2007, cannot imply that the same was seen or taken into consideration while giving the non-speaking approval in the year 2010, viz. 3 years after the appraisal report was purportedly sent. Secondly, the said approach of the Ld. ICIT shows that he is merely making such averments on presumptions and his own surmises, which has no place in the eyes of law. The said submission is also corroborated by the fact that the Ld. ICIT who filed the affidavit was not even involved with the Addl. CIT at that time of the assessment, Thus, the Ld. JCIT who was never involved in the present case or in the assessment thereof, cannot be permitted to make a general statement to supplement the Approval 13 years after the impugned approval was granted, that too without any corroboratory material is*

*wholly unjust, unfair and gravely prejudices the rights of the Appellant. Furthermore, the attempt of the department to fuel life into a dead approval cannot be permitted in the eyes of law.*

8. *Furthermore, and without prejudice to the above, presuming (just for the sake of argument) that the approving authority took into account the appraisal report, even then, there was other material which the Approving Authority had to look into and examine, before giving the approval, viz. the material found during the course of search, inquiries and investigation conducted by the AO qua the search material, inquiries made during the assessment proceedings, replies of the Assessee filed during the course of assessment proceedings, inquiries conducted by the Special Auditor, replies filed before the Special Auditor and then the final Draft Assessment Order. However, all of such inquiry/verification was admittedly ignored by the Ld. Addl. CIT while granting approval and is also absent in the order giving approval, which unequivocally proves that the impugned approval was an approval, just in form and not in substance. In this regard, reliance is placed on the order of the ITAT Delhi in Sanjay Duggal and Ors. vs. ACIT (ITA No. 1813/Del/2019 dated 19/01/2021), wherein it was held as under:*

*11.6. Therefore, in the cases of search, assessment orders whether framed under section 153A or 153C, the Joint Commissioner [Approving Authority) is required to see that whether the additions have been made in the hands of assessee are based properly on incriminating material found during the course of search observations/comments in the appraisal report, the seized documents and further enquiries made by the A.O. during the course of assessment proceedings. Therefore, necessarily at the time of grant of approval of the assessment made by the A.O, the Joint Commissioner is required to verify the above issues, apply his mind that whether they have been properly appreciated by the A.O. while framing the assessment orders or not. The JCIT is also required to verify whether the required procedure have been followed by the AO. or not at the time of framing of the assessments Thus, the approval cannot be a mere discretion or formality, but, is mandatory being Quasi Judicial function and it should be based on reasoning. In our view, when the legislature has enacted some provision to be exercised by the higher Revenue Authority enabling the A.O. to pass assessment order or reassessment order in search cases, then, it is the duty of the JCIT to exercise such powers by applying his judicious mind. We are of the view that the obligation of the approval of the Approving Authority is of two folds;*



*on one hand, he has to apply his mind to secure in build for the Department against any omission or negligence by the A.O. in taxing right income in the hands of right person and in right assessment year and on the other hand, JCIT is also responsible and duty bound to do justice with the tax payer [Assessee] by granting protection against arbitrary or unjust or unsustainable exercise and decision by the A.O. creating baseless tax liability on the assessee and thus, the JCIT has to discharge his duty as per Law. Thus, granting approval under section 153D of the L.T. Act is not a mere formality, but, it is a supervisory act which requires proper application of administrative and judicial skill by the JCIT on the application of mind and this exercise should be discernable from the Orders of the approval under section 153D of the I.T. Act.*

*16. In some of the cases the approval was granted on the date the request was made for approval by the A.O. In all those cases merely draft assessment order and the assessment folders were available with the A.O. For example in the case of Shri Sanjay Duggal family, in the case of Ms. Kritika Talwar on the same date the approval was granted and that too merely on the basis of the assessment records and draft assessment order and in most of the cases approval has been granted either on the same day or on the next day. Further, there is no reference that seized material as well as appraisal report have been verified by the JCIT. It is not clarified whether assessment record is also seen by the JCIT. It may also be noted that even in some of the Talwar group of cases approval is granted prior to 30.12.2017 but in main cases of Shri Sanjay Duggal and Rajnish Talwar the approval is granted on 30.12.2017. Therefore, without granting approval in the main cases how the JCIT satisfied himself with the assessment orders in group cases which is also not explained. Therefore, the approval granted by the JCIT in all the cases are merely technical approval just to complete the formality and without application of mind as neither there was an examination of the seized documents and the relevance of various observations made by the Investigation Wing in appraisal report. Thus, we hold the approval under section 153D have been granted without application of mind and is invalid, bad in*

*Law and is liable to be quashed. Since we have held that approval under section 153D is invalid and bad in law, therefore, A.O. cannot pass the assessment orders under section 153A of the IT Act against all the assessees. Therefore, all assessment orders are vitiated for want of valid approval under section 153D of the I.T. Act and as such no addition could be made against all the assessees, In view of the above, we set aside the Orders of the authorities below and quash the assessment orders passed under section 153A of the I.T. Act as well as the impugned appellate Order. Resultantly, all additions are deleted. The additional grounds are allowed."*

9. *Furthermore, is to be noted that the said approval, viz. "Draft Assessment Order is Approved" (See Page 28 of the Synopsis filed on 28.11.2022) reeks of non-application of mind, the same is mechanical and is given on a dotted line, which vitiates the very purpose of the legislature in enacting section 153D itself. In this regard, the reliance is placed on the judgment of the Hon'ble Supreme Court of India in Chuggamal Rajpal vs. S.P. Chahila, (1971) 1 SCC 453 where a similar provision of approval, u/s 151 of the Act was discussed and the Hon'ble Apex Court while adjudicating the importance of the approval held as under:*

*"Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder..... The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance"*

10. *The afore-said, time old judgment which lays down the essence of law qua an approval, has been followed in a catena of*

*judgments, one of which is Anurag Mittal vs. DCIT, ITA 135/Agr/2018, wherein the issue was with respect to an approval u/s 153D and the Hon'ble ITAT was pleased to hold that:*

*There is a statutory duty laid down u/s 153D of the Act, on the Additional Commissioner of Income Tax with a corresponding obligation on him to examine the record and thereafter accord the statutorily required Approval. The reason for granting the Approval may not be subject matter of the challenge but the manner and the material on the basis of which the approval was granted can always be examined by the Tribunal to come to the conclusion whether the Approval was granted in a mechanical manner or after applying mind looking into the record. No evidences required to be appreciated as the approval is self- evident, Le, that it was granted by the Additional Commissioner of Income Tax without application of mind and without looking into the record.*

*11. It is to be noted from the aforesaid orders, that the duty of the Approving Authority is to look and examine the entire record and thus on this count also the averment of the JCIT that appraisal report was forward and presumably must've been taken into consideration, is unsustainable.*

*12. Rather, the blatant non-application of mind of the Ld. Addl. Commissioner is also evident from the fact that despite the assessee partaking in the assessment through her Authorized Representative (See Para 13, Pg 5-6 AO), the order has been passed u/s 144, which has been blindly approved by the Ld. Addl. Commissioner. Such a blatant error shows that the Approval in the instant case was a mere perfunctory exercise, making the approval only in form but not in substance.*

*13. Furthermore, even the additions so made (which remain sustained) are factually and legally unsustainable and contrary. The same is demonstrated as under.*

*14. It is further submitted that at-least 98% of the transactions in the bank account were done by Prem Chand Kamble, who ran a Ponzi scheme and mis-utilised the bank accounts of the Assessee by using a circuitous web of making cash deposits and then transferring the same to one of Prem Chand Kamble's entites. Therefore, the additions are based on notional value, which there being any income of the assessee. The interesting part is that the department had all along known about this. However, still went ahead to make addition*

*in the hands of the Appellant, who was merely used like a pawn and her bank account, as a benami account.*

*15. Furthermore, the and the additions so made pertain to Sh. Prem Chand Kamble. The same is evident from the fact that cash of Rs. 10,91,50,000/- was deposited and sent into the account of M/s Unique Finance, M/s Unique Motors, M/s Unique Fin Corp etc. (proprietary concerns of Sh. Prem Chand Kamble). (See Para 10.1 & 10.2, Pg. 8-9 CIT(A)). The addition of cash deposits have been deleted by the CIT(A) (See Para 10.5, Pg. 12 CIT(A)) by accepting the same to be the income of Prem Chand Kamble. However, the remittance of Rs. 10,64,95,163/- (10.62 Cr to Prem Chand Kamble & 2,25,000 to the husband of the assessee) has been added (Para 30 AO) and remains sustained. (Para 21.7, Page 27 CIT(A)), which is logically flawed for the reason that once cash deposits are accepted to have been made by or on behalf of someone, the transfer thereof or transfer of part thereof to the same person (that too within a span of a day or two) also has to be accepted as the income of that other person.*

*16. Furthermore, Rs. 15,00,000/- sent from the appellant's bank account to M/s Unique Fin. Corp (another proprietorship concern of Prem Chand Kamble) have been added (See Para 31 AO) and sustained (See Para 22.122.5 at Page 27, 28 CIT(A)). However, the said amount was also a part of the cash deposits made by Prem Chand Kamble in the bank account of the assessee and then transferred back to him. Thus, this addition could not have been made in the first place, let alone sustained. Such an addition is arbitrary and without any valid basis, to say the least.*

*17. As mentioned in Para A & B of the Synopsis filed on 28.11.2023, that the Assessee not being in possession of the assessment records and the same not being supplied to the Assessee despite inspection being sought and RTIS being filed, has made the Assessee incapable of addressing the merits in detail. However, the Assessment Order & the CIT(A) Order show that all along the Appellant had stated that the transactions pertained to Sh. Prem Chand Kamble (Searched person) (See Page 11 CIT(A) Order) but despite the same, the additions were made in ignorance of facts, circumstances and logic. Thus, such additions which are fundamentally flawed and bereft of any reasoning were made in the assessment order, which, without any examination, were approved by the Ld. Addl. Commissioner and further even wrongly sustained by the Ld. CIT(A), which makes the addition and its wrongful sustenance liable to be quashed.*

*18. Without prejudice to all of the above, it is also submitted that all the additions in the assessment order are made solely on the basis*

*of the Special Audit Report and not on the basis of any incriminating material whatsoever, which ousts the very assumption of jurisdiction of the entire proceedings u/s 153C and renders the entire proceedings void- ab-intio.*

19. *In such circumstances, it is prayed that the Appellant has already been made to suffer for over 13-14 years and thus, the legal issues, so raised, be decided and the matter may not be remanded back to any of the subordinate authorities as it severely prejudices the Appellant and will cause her to lose her peace of mind. In this regard, reliance is placed on:*

*Rajesh Ladhani, Faizabad vs., DCIT, Central Circle, Agra, ITA.Nos.106, 107 and 108/Agra/2019, Dated 06.11.2019.*

23. *The last submission made by the Ld. DR's was that the matter may be sent back to the AO to pass a fresh assessment order after seeking the approval from the competent authority. In this regard we are of the opinion that the Revenue is not entitled to second inning, for correction of its own mistake. Assessee cannot be made to run again for many more years for contesting the litigation. Hon'ble Supreme Court also in the case of Parashuram Pottery Works Co. Ltd. v. ITO 106 ITR 1 observed that "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity, (emphasis supplied) In view of these peculiarity of the facts we are of the opinion that second inning cannot be granted to the revenue.*

24. *In view of the above, we hold that if the approval is granted by the superior authorities in mechanical manner*

*without application of mind then the very purpose of obtaining approval is defeated. Moreover, where 4 clear days' time was available with the administrative authority, it was a half-hearted approval and as' such held as no approval in the eyes of law. Accordingly, we have no hesitation in declaring that the Approval granted by the Additional CIT, Central, Kanpur on 27.03.2015 is no approval in the eyes of law and therefore, the assessment made by the AO based on such an approval is also declared to be null and void.*

20. *Thus, in light of the same, it is prayed that the approval be held to be bad in law and the assessment be annulled."*

**15.** On the other hand, Ld. DR submitted that provisions of section 153D is continues process and objected to the various submissions made by the Ld. AR. Ld. DR submitted that ACIT is aware of the establishment and the findings, therefore he did not have to give a detailed approval. Ld.DR relied on the order of the Ld.CIT(A) and filed its written submissions vide letter dated 26.07.2023, for the sake of clarity, the submissions are reproduced below: -

*" During the course of search and seizure action u/s 132 of the IT Act 1961 at the o/o Unique group documents relating to Smt Vrushali S Shinde Prop. Trushna Services &Trushna enterprises were found. The documents showed that cash to the tune of Rs 10.91 cr was deposited in bank account of these concerns, which are associate concerns of Unique Group. Thus, Smt Vrushali S Shinde was also covered u/s 153 C of the IT Act 1961.*

*2 During the course of search & survey proceedings incriminating documents, diaries, CDs were found and the same were impounded/seized.*

3. AO has clearly mentioned in the order how highly incriminating material like documents, diaries, CDs and cash was found and seized. Since there were multiple transactions running into crores and no regular books were maintained by assessee, it led to complexity in the matter, because of which it was referred to Special Audit for arriving at correct profit. As mentioned by Assessing officer (AO) in the assessment order either NO COMPLIANCES were made by the assessee or NO EXPLANATIONS were provided during the course of assessment. Further there was NO COOPERATION from assessee during special audit. The Ld. CIT (A) has also passed the order in favour of the department as NO COMPLIANCES were made by the assessee or NO EXPLANATIONS were provided during the appellate proceedings.

4. Before the Hon'ble ITAT, additional grounds were taken by the assessee on 28.11.2022, stating that valid approval u/s 153D not taken. This ground was taken first time in its synopsis filed along with the prayer for admission of additional grounds where in Para 9, Page 8 of the synopsis, she has prayed that matter may be restored to the file of AO for necessary verification of facts. Thus, it was the assessee who had requested for restoration of matter to AO and not the department which has requested for set aside to AO. The assessee has thus tried to twist the facts. Further, after having not cooperated during the assessment proceedings or the appellate stage, the assessee raised the issue of validity of approval u/s 153D on 28.11.2022, an issue which was never raised earlier. On this issue also, as clearly submitted in the affidavit filed by the Range head, approval was given by the Addl CIT after due application of mind.

5. Regarding assessee's claim that the Ld. JCIT is making averments on presumptions and surmises it is stated that the same is totally incorrect. It is submitted that the JCIT has filed the affidavit based on the record available with him. Also, in Para 1 of the affidavit he has clearly admitted that he is fully conversant with the relevant facts as available in the case records. Thus, this statement of assessee is totally incorrect.

6. Further the entire assessment is based on the appraisal report and the seized material as forwarded by the Investigation wing, the special audit report and the replies filed by the assessee during the course of assessment. Moreover, as mentioned in Para 4 of the affidavit, the Range head guides the AO till final approval is granted. This procedure is followed in all the cases which was followed in this case too.

**a. Regarding appraisal report and seized material,** the Range head has clearly stated that the same was in the knowledge of Addl. CIT since day one. Thus, he was aware of the facts of case since starting of the process.

**b. Regarding special audit,** it has been clearly mentioned in the assessment order that the matter was referred for Special audit as no regular books were available, banks showed huge deposits, turnover of concerns ran into crores, there were multiple transactions of same entry etc. The approval of CITO received on 16.12.09. It has been clearly mentioned in the assessment order that there was NO COOPERATION from assessee during special audit and NO details were furnished by the assessee. Special audit completed on the basis of seized/impounded documents.

**c. Regarding assessment proceeding,** it has been mentioned by the AO that since NO COMPLIANCES were being made by the assessee, assessment was completed us/ 144 rws 143(3) rws153C.

A summary of various occasions where assessee showed non-cooperation is as under:

S.No	Issue	Action taken by Assessee
1	Notice u/s 143(2) issued on 18.09.09 and served on 22.09.09	NO RESPONSE
2.	Again 142(1) issued along with questionnaire on 2.11.09 & served on 3.11.09	NO RESPONSE
3		On 10.12.09 letter filed by Tax consultant with response to some queries.
4	Final notice 142(1) on 21.07.10 along with showcause/questionnaire	NO RESPONSE
5	Another copy of notice with show cause served on assessee on 22.07.10	NO RESPONSE
6	Para f of audit report shows receipt of income of Rs 9,50,000 in prop concern Prime Motors but not disclosed in return of income	NO RESPONSE
7	Cash balance in bank accounts	NOT EXPLAINED
8	Income shown from other sources but not reflected in P& L acct.	NOT EXPLAINED
9	Various other queries as per notice u/s 142(1)	NO RESPONSE



*During appellate proceedings also, the assessee has NOT COOPERATED at all. All the additions were challenged before the Ld. CIT (A), however the observations of Ld. CIT(A) in Para 6.4, Page 6 of the order clearly shows the Non cooperative attitude of the assessee. Also as mentioned in Para 6.3 of the order, notices were issued on six (6) dates however either none attended or adjournments were sought.*

*7. Assessee's claim in Para 13-16 of her submission dtd. 20.07.23 that additions made are factually and legally unsustainable is without any basis as the assessee had not made any effort to explain these issues in any manner before the AO or LD CIT(A). In fact, from the records it is amply clear that the assessee has been NON-COOPERATIVE THROUGHOUT the assessment proceedings, at the time of special audit and during appellate proceedings and has now filed incorrect and baseless submissions.*

*8. As is clear from above facts on record, the assessee has NOT DISCHARGED THE PRIMARY ONUS to cooperate and provide details and explanations as called for during the course of assessment or during appellate stage.*


*9. Accordingly, it is prayed that the appeal of the assessee may be dismissed."*

**16.** Considered the rival submissions and material placed on record, we observe from the record that, the case of the assessee is covered based on the search conducted in the case of Shri Premchand Ashok Kamble. Since the assessee and her husband were dealing with the M/s. Unique Finance Group concerns, the case of the assessee was included u/s. 153C of the Act. Accordingly, assessment was completed based on the statement given by the assessee and findings in the special audit conducted u/s. 142(2A) of the Act. Most of the additions were made based on the special audit report and some of the additions with high value were made in the hands of the assessee on protective basis, the

same was deleted by the Ld.CIT(A) and however, he proceeded to sustain the other additions.

**17.** Before us, Ld. AR of the assessee heavily argued on the technical ground, whether the approval obtained by the Assessing Officer u/s. 153D is proper and approval granted by the Addl.CIT is as per provisions of section 153D of the Act. In this regard he made an elaborate submissions and relied on decided case laws in this regard.

**18.** We observe from the record that ACIT has granted the approval mechanically and the relevant approval form is reproduced below: -

  
**INCOME TAX DEPARTMENT**

No. THN/Addl.CIT/CR/Ser.Appr./T-53/2010-11/Office of the  
Commissioner of Income Tax, Addl.  
Estate, Central Range, Thane  
2nd floor, Pawar Industrial  
Edulji Road, Charai, Thane  
Tel: 253936 97  
Fax: 253806 00  
Date : 06.08.2010

The Asstt.Commissioner of Income-tax  
Central Circle-1  
Thane

Sub: Approval u/s 153D to the draft assessment orders  
in the case of Smt. Vrushali Shinde of Unique Group.

Ref: Your letter No.Thn/ACIT/CC-1/Asst-Approval/2010-11  
dated 05.08.2010


Please refer to the above.

The draft assessment order submitted by the A.O. in the case of  
Smt.Vrushali Shinde of Unique Group is approved for the following Asstt.  
Year.

S.NO.	A.Y.	SECTION
1.	2008-09	153C r.w.s. 143(3)

Copy of the assessment order issued in the above referred cases is to  
be forwarded to this office.

Encl: As above.

  
(VATSALYA SAXENA)  
Addl. Commissioner of Income-tax  
Central Range, Thane

**19.** It is fact on record that Assessing Officer has passed draft Assessment Order making huge additions and such huge additions were approved without there being any application of mind. Further, the basis of addition was also not shared with the assessee. The facts in this appeal are squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of Arch Pharmalabs Ltd. v. ACIT in ITA.No. 6656/Mum/2017 and other appeals, dated 07.04.2021. The relevant ratio is reproduced below: -

*"11.4 Based on solitary communication placed before us, it is ostensible that draft assessment orders were placed before the Addl. CIT on 29.12.2010 for the first time. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to 29.12.2010. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.*

11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and cannot be countenanced in law.

11.6 There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in *ShreelekhaDamani vs. DCIT 173 TTJ 332(Mum.)* and approved by jurisdictional High Court subsequently as reported in 307 CTR 218 affirms the plea of the Assessee.

11.7 Very recently, the co-ordinate bench in *Sanjay Duggal &ors (ITA 1813/Del/2019 &ors; order dated 19.01.2021)* has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assessee against maintainability of hollow approval under S. 153D totally devoid of any application of mind. The approval so granted under the shelter of section 153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence quashed."

**20.** Respectfully following the above decision, we are inclined to decide the issue in favour of the assessee that approval granted u/s. 153D is not as per law. Even Ld. DR submitted based on the affidavit filed by the JCIT that the Range Head guides the Assessing Officer till final approval is granted. However, in our view, the approval process should indicate that proper procedure and the officer has applied his mind as per the procedures laid down by the legislature and as per the provisions. The claim made in affidavit is only afterthought. Therefore, the assessment made u/s. 144 r.w.s. 143(3)/153C of the Act is also bad in law. Accordingly, additional grounds filed by the assessee are allowed. The other grounds of appeal are not adjudicated and kept open.

**21.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 08<sup>th</sup> September, 2023

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 08/09/2023  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**