IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH MUMBAI

BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.	A.Y	Applicant	Respondent
4147/Mum/2024	2016-17	J Kumar Infraprojects Ltd J Kumar House, CTS No. 448, 448/1, 449, Subhash Road, Vile Parle (E), Mumbai PAN AAACJ9161C	DCIT , CC -5(1) Room No. 426, 4th Floor, Kautilya Bhavan, BKC, Bandra, Mumbai – 400051.
4148/Mum/2024	2017-18		
4149/Mum/2024	2018-19		
4150/Mum/2024	2019-20		
4153/Mum/2024	2020-21		
4152/Mum/2024	2021-22		
4151/Mum/2024	2022-23		
4585/Mum/2024	2016-17	DCIT , CC -5(1) Room No. 426, 4th Floor, Kautilya Bhavan, BKC, Bandra, Mumbai – 400051.	J Kumar Infraprojects Ltd J Kumar House, CTS No. 448, 448/1, 449, Subhash Road, Vile Parle (E), Mumbai PAN AAACJ9161C
4593/Mum/2024	2017-18		
4591/Mum/2024	2018-19		
4590/Mum/2024	2019-20		
4589/Mum/2024	2020-21		
4588/Mum/2024	2021-22		
4587/Mum/2024	2022-23		

Assessee by	Shri K Shivram Sr. Advocate & Shri Shashi Bekal
Revenue by	Ms. Neena Jeph, CIT DR

Date of Hearing	07.05.2025
Date of Pronouncement	03.07.2025

आदेश / ORDER

PER BENCH:

The present appeals have been filed by the assessee as well as revenue challenging the impugned order

24.06.2024 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, (NFAC) Delhi / CIT(A), Mumbai for the assessment years 2016-17 to 2022-23.

The above titled cross appeals have been preferred against the order dated 24.06.2024 of the Commissioner of Income Tax (Appeals) – 53, Mumbai [hereinafter referred to as CIT(A)] relevant to assessment years **2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23.**

First of all we take up assessee's appeal No. 4147/Mum/2024 and revenues appeal No. 4585/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2016-17 and are against the order of Ld. CIT(A) dt. 24.06.2024.

1. For this year, the Assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.25,79,334/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in confirming addition of Rs.2,20,791/- @. 8.56% of Rs.25,79,334/- on estimate basis without correct appreciation of the facts of the case and law on the In view the facts & circumstances of the case and law on the subject, the same be deleted.

2. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs. 77,48,409/- as cash income from piling business u/s 69A and the learned CIT(A) erred in confirming the addition of Rs.6,63,264/- @ 8.56% of Rs.77,48,409/- against action of ld. AO without correct appreciation of the

facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

3. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

2. The Department has raised the following grounds of appeal:

"1. Whether the Ld.CIT(A) erred in restricting addition made by the AO for Rs.25,79,334/- u/s 69A of the Act to Rs. 2,20,791/- as business income of the assessee on the issue of cash income from scrap sale and considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether the Ld.CIT(A) erred in restricting/deleting addition made by the AO for Rs.77,48,409/- u/s 69A of the Act to Rs.6,63,264/- as business income of the assessee on the issue of cash income from piling business and considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

3. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

6. Whether the Ld.CITA) erred in presiding relief on the issue of unaccounted income from scrap sale and piling business as business income by relying on the fact that there is evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters as unexplained investment.

7. Whether the Ld.CIT(A) erred in deleting the addition made by the AD for Ra. 6,42,71,657/- u/s 69C of the Act holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) and considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

8. Whether the Ld.CIT(A) erred in stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

9. Whether the Ld.CIT(A) erred in estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

10. Whether the Ld.CIT(A) erred in observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made.

11. Whether the Ld.CIT(A) erred in observing that AO has also referred a loose paper, page -1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise evidences of exact amount in trial balance are present, then there is no need estimation.
12. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

3. The Assessee has raised the following additional grounds of appeal vide letter dated 25.11.2024 filed with registry on 29.11.2024:

> *"1. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining a properly signed approval under section 151 of the Act.*
>
> *2. The Ld. AO erred in issuing a Notice u/s.148 of the Act in violation of section 151A of the Act read with CBDT Notification 18 of 2022 dated March 29, 2022 as the same has to be issued by Faceless Assessing Officer.*
>
> *The Appellant craves to leave to add, amend, alter or delete any or all the above grounds of appeal."*

4. In respect of the additional grounds of appeal raised by the Assessee, the Ld. Department Representative (Ld. DR in short) did not objected to the admissibility of the same. The additional grounds of appeal being legal grounds for which no new facts were required and hence, the same were admitted for adjudication following the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. v. CIT 229 ITR 383 (SC)*** wherein it is held that where question of law is concerned, additional grounds on legal issued can be raised at any time.

5. First of all we deal with the additional grounds of appeal raised by the Assessee. During the course of hearing, both the Assessee as well as the Department has filed their written submission in respect of the additional grounds of appeal the Assessee has also filed rejoinders against the written submission filed by the Department.

Since the additional grounds of appeal goes to the root of the matter, we deem fit first to adjudicate the legal issues raised by the Assessee.

6. The ***first legal issue*** raised in the additional grounds of appeal of the Assessee relates to issue of notice u/s.148 of the Act by taking approval as prescribed u/s.151 of the Act whereby the approval granted is not signed by the *'appropriate authority'*. The Assessee in its paper book filed for AY 2016-17 has enclosed the copy of notice issued u/s.148 of the Act dated 05.12.2023 which is at (pages 112 – 113 of the paper book) and copy of approval accorded u/s.151 of the Act dated 16.11.2023 at (pages 114 to 115) alongwith Annexure giving reasons recorded for reopening of the assessment at (pages 116 to 131) and seeking approval of appropriate authority for issue of notice u/s.148 of the Act.

7. In respect of this additional ground of appeal, the basic contention of the Assessee is that the approval granted by the appropriate authority u/s.151 of the Act is not signed either manually or digitally and therefore, in absence of valid signature, the notice issued u/s.148 of the Act and the reassessment proceedings carried out is bad in law and liable to be quashed. The Assessee filed written submission in respect of this ground of appeal and the same is reproduced as under:

> *"The alleged sanction obtained under section 151 of the Act does not bear a manual or digital signature.*
>
> ***(Page 114 to 131 of Paper Book – I)***
>
> *The Hon'ble Allahabad High Court in the case of* ***Vikas Gupta v. UOI 2022] 448 ITR 1 (All)(HC)*** *held that the expression "shall be signed" used in section 282A(1) of the Act makes the signing of the notice or other document by that authority a mandatory*

requirement. It is not a ministerial act or an empty formality which can be dispensed with. "Signed" means to sign one's name; to signify assent or adhesion to by signing one's name; to attest by signing or when a person is unable to write his name then affixation of "mark" by such person. The document must be signed or the mark must be affixed in such a way as to make it appear that the person signing it or affixing his mark is the author of it. Therefore, a notice or other document, as referred to in section 282A (1) of the Act will take legal effect only after it is signed by that Income-tax Authority, whether physically or digitally. The usage of the word "shall" makes it a mandatory requirement.

(Page 1 to 14 of Paper Book – II; Relevant para 25-29 on page 12-14)

Reliance is placed on the decision of the Hon'ble Jurisdictional High Court in the case of ***CIT v.Smt. Godavaridevi Saraf [1978] 113 ITR 589 (Bom)(HC)*** *wherein it was held that when section 140A(3) of the Act has already been declared ultra vires by competent High Court in country, authority like Tribunal acting anywhere in country has to respect law laid down by High Court, though of different State, so long as there is no contrary decision of any other High Court on that point.*

(Page 15 to 16 of Paper Book – II; Relevant para __ on page 16)

Therefore, the reassessment proceedings are bad in law."

8. The Ld. DR contended that the approval u/s.151 of the Act is correctly granted and the approval is not granted in paper form and thus, there is no requirement of signature on the same once the notice bears name and designation of the authority and the same is printed,

written or stamped thereon. In this regard Ld. DR placed reliance on the provisions of sec.282A of the Act in support of the contention as also relied upon certain judicial pronouncements. The Ld. DR filed detailed submission rebutting the contentions of the Assessee. The relevant part of the submission of the Ld. DR on this issue is reproduced as under:

> *"4. Before addressing the arguments on this ground, it is essential to first examine the relevant statutory provision. Accordingly, Section282A of the Income-taxAct, which governs the authenticationof notices and other documents, is reproduced below for ready reference:*
>
> *"Authentication of notices and other documents. 282A. (1) Where this Act requires a notice or other document to be issued by any income-taxauthority, such notice or other document shall be signed **and** issued in paper form **or** communicated inelectronic form by that authority inaccordance with such procedure as may be prescribed*
>
> *(2) Everynoticeorotherdocument to be issued, served or given for the purposes of this Act by any income-tax authority, shallbe deemed tobeauthenticated ifthe name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.*
>
> *(3) For th epurposes of this section, a designated income-taxauthorityshallmeanany income-tax authority authorised bythe Board toissue, se111e or give suchnotice or otherdocument*

afterauthentication inthe manner as provided insub-section (2)."

Abare readingof sub section1 reveals the following,the word "shall" as harpedupon by the assesseeis followedby the following words, "be signed ***and*** *issued in paper form* ***or*** *communicated in electronic form by that authority inaccordance with such procedure as may be prescribed"*

5. Aplain reading ofsub-section (1) reveals that the term" shall, "as emphasized by the assessee, is immediately followed by the phrase: "besigned ***and*** *issued in paper form* ***or*** *communicated in electronic form by that authority in accordance with such procedure asmaybe prescribed "In this regard, it is respectfully submitted thatthe assessee's interpretation does not align withthe principle of* ***No scitur a Sociis,*** *which dictatesthatthemeaning ofawordorphrase mustbeunderstoodinthecontextofthe surrounding words. Furthermore, the interpretation advanced by the assessee is inconsistent with theliteral ruleofstatutory interpretation, asitdis regards the distinct meaning of the conjunctions "and" and "or" within the provision. It is a well- established principle that the language chosen by the legislature must be given full effect, and any construction that renders statutory language redundant or imputes an unstated legislative intent is legally untenable*

6. In support of this submission, reference

isinvited tothe observation of ***Lord Halsbury*** *in* ***Leader*** *v.* ***Duffey (1888)*** *L.R.13 App.Cas.294****,*** *wherein, while expounding upon the rules ofconstruction, itwas stated:*

"Allthese refinements andnice distinctions of word appear to me to be inconsistent withthe modernview-whichis I think in accordance with reason and common sense-that. whatever the instrument. it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, in as much as there may be in accuracy and in consistency, you must, if you can, ascertain what is them eaning of the instrument taken as awhole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing ina vicious circle to begin by assuming an intention apart from the language of the instrument itself. and having made that fall acious assumption to be end the language in favour of the assumption somade."

The above principle of statutory interpretation is directly applicable to the presentcase. The assessee's approach, seeking to inferanun stated intention apart from the language of the statute, leads to a fallacious reading of Section 282A(i). Thestatutory language must be given its plain and ordinary meaning, and any attempt todistort itsconstruction by misreading words such as "and "and" or" ought to be deemed legally impermissible.

7. In further once of the above submission, reference is also placed on the decision of the Hon'ble Supreme Court in ***The Commissioner of Income Tax, Madhya Pradesh and Bhopal vs.Sodra Devi*** *1957INSC50****,*** *wherein the Court laid dount he principles governing statutory interpretation:*

"Speaking generally, the expression 'construction' includes two things: first. The meaning of the words: and. secondly, their legal effect or the effect which is to be given to them by the courts. As in the case of documents, so in the case of statutes also, they should be construed in a manner which carries out the intention of the Legislature. It may be reasonably asked-how is the in tention of the Legislature to be discovered? The answeristhatthe intentionmust firstbe gathered fromthewordsofthe statute itself.

"All the words are unambiguous or plain. they will indicate the intention with which thestatutewas passedand the obiect to be attained by it; in otherwords, theintention isbest declaredbythe words themselves,and thewords ofastatuteare to be interpreted as bearing their ordinary, natural meaning unless the context requiresa different meaning to be given to them"

The foregoing observation unequivocally establishes that the interpretation of a statutory provision must be guided first and foremost by the language employed in the tatute. The words chosen by the legislature are them ostreliable indicators of its intent, and where the language

isclear and unambiguous, it must be accorded its plain and ordinary meaning. Applying this principle to Section 282A{l), it is evident that the terms"and"and "or" possessed instinct statutory significance. A proper construction of the provision necessitates giving full effect to the sewords in accordance with settled principles of interpretation. Incontrast, the assessee's contentio nattempts to disregard the explicit use of "and" and "or" and advancesan interpretation that is inconsistent with the express language of the provision. Such an approach is legally untenable, asit contravenes the fundamental rule that statutory provisions must be construed in a manner that upholds their plain and natural meaning

To further reinforce the submission that the plain and unambiguous terms of a statute must be given effect when interpreting a statutoryprovision,relianceis placed on para 52 to 54 of the judgment of the Hon'ble Supreme Court in ***New Noble Educational*** *Society vs.* ***The Chief Commissioner of Income Tax 1 and Ors.****2022INSC1111****,*** *wherein the Court observed:*

"51. It is therefore, cleare ducation. Having regard to the plain and unambiguous terms of the statute andthe substantive provisions which deal withexemption, there cannot be any other interpretation."

52. The view ofthisCourt isfortified bythe previous judgments in Commissioner ofCustoms (Import), Mumbai v. Dilip Kumar and Co. And Ors. where aconstitution bench held thattaxing

statutesare tobe construed interms oftheir plainlanguage:

> *"21. The well-settled principle isthat when the words ina statute are clear,plainand unambiguousand only onemeaning can be inferredthe courtsare bound to give effect tothe said meaning irrespective of consequences. If the words in the statuteare plain and unambiguous, it becomes necessary to expound those words intheir natural and ordinary sense. The words useddeclare the intention of the legislature".*

The Court, while noting the nuances between' strict' and' literal' interpretation, held as follows:

"29....Wemay reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholllybythe language ofthe notification. Equity hasno place in interpretation of a tax statute. Strictly one hastolook tothe languageused; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing hastobe read intonor should anything be implied other

than essential inferences while considering ataxation statute."

If the language is unambiguous and capable of one meaning. that alone should beapplied and not any other, based under surmise that the Parliament or the legislature intended it to beso.In other words,it is only in cases of ambiguitythat the court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislationhas to begiven effectin its own terms.

In A.V Fernandez v.State o{Kerala, a constitution bench discussed how tax laws should ordinarily be construed:

> *"29.It is no doubt, true that in construing fiscal statutes and in determining the liability of a subiect to tax one must have regard to the strict letter {the law and not merely to the spirit of the statute or the substance of the law.If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxedIf, on the other hand, the case isnot covered withinthe four corners ofthe provisions of the taxing statute, no taxcan be imposed by inference or byanalogy or by trying to probeintotheintentionsofthelegislaturean dbyconsideringwhatwasthe substance of the matter."*

53. It is only when the application of literal interpretation gives rise to an absurdity, should the interpretation be expansive. Thiswas

reiterated in Mangalore Chemicalsand Fertilisers Ltdv. Deputy Commissioner of Commercial Taxesand Ors:

> *"24 The choice between a strict and a liberal construction arises only in case of doubt inregard to the intention ofthe legislature manifest on the statutorylanguage. Indeed, the need to resort to any interpretative processarises only where the meaning is not manifest on the plain words of thestatute. Ifthe wordsare plainandclear and directly conveythe meaning.there isno needfor any interpretation.""*

It is humbly submitted that the principles ofstatutory interpretation,as laid down by the Hon'ble Supreme Court in the aforementioned cases, clearly establish the following:

a. *Taxing statutes must be construed giving effect to their plain and unambiguous language.*
b. *There is no scope for presumption or intendment in tax laws--onlythe language of the provision governs eligibility.*
c. *Literali nterpretation should be departed from only in cases of absurdity, which does not arise in the present case.*

8. In light of the established principles of statutory interpretation as canvassed above,the department respectfully submits that the correct interpretation of the provision must be derived from the plain and unambiguous language employed by the legislature. The assessee's construction of the provision deviates from this fundamental rule, asitfails togivedue regard to the express wording of the statute, by

disregarding themeaning of"and"and"or".Accordingly, it is imperative to first examine the precise meaning of the conjunctions "and" and "or" toascertain their correct application within the statutory framework.

9. The term "and" isdefined by the Oxford Dictionary as meaning "also; inaddition to" while theCambridge Dictionary describes itas "used tojointwowords, phrases, parts of sentences, or related statements together." Similarly, "or" is defined by Webster's Dictionary as "used as a function word to indicate an alternative" and by the Cambridge Dictionary as "used to connect different possibilities."These definitions highlight the distinct functions of these conjunctions in statutory interpretation, emphasizing that "and" serves to conjoin related elements, whereas"or"introduces an alternative or separate possibility.

10. Applying these definitions to Section 282A(l) of the Act, it becomes evident that the ambit of the phrase "such notice or other document shall be signed" applies specifically to documents that are "issued in paperform". This is because the phrase"andissued in paper form" follows the word "shall be signed", establishing a conjunctive requirement. However, thepresence of "or" before "communicated inelectronic form" signifies an alternative mode of issuance, distinct from the paper form. Consequently, for notices or documents communicated electronically, their authentication is governed by the applicable statutory rules, particularly Rule 127A of the

Income Tax Rules, rather than the mandatory signature requirement applicable to paper-based notices/documents.

11. Therefore it is humbly submitted that, the document in question was issued in electronic form and duly complied with the statutory requirements prescribed under Rule127A of the Income Tax Rules, the assessee's contention regarding the absence of a physical signature is devoid of merit. Neither Section 282A(l) of the Act nor Rule 127A mandates a physical signature for electronically communicated documents or notices.

In light ofthisclear statutoryposition, the assessee's objectionis unsustainable, and the ground ofappeal raised on this basisought to bedismissed.

12. The assessee hasalso placed reliance onthedecision ofthe Hon'ble Allahabad High Court in ***VikasGupta*** *v.* ***Union of lndia*** *Supra Note 1 to contend that the phrase "shall be signed" in Section 282A(l) of the Act imposes a mandatory requirement for notices and other documents to be physically signed by the designated income-tax authority. Additionally, to emphasize the binding nature of this non-jurisdictional High court's decision on the Hon'ble ITAT, the assessee has relied upon the judgment of the Hon'ble Bombay HighCourt in CIT v.* ***Smt. Godavaridevi Saraf*** *[l978) 113 ITR 589 (Born)****,*** *wherein itwas held that in the absence of any contrary ruling from an other High Court, the Tribunal, irrespective ofitsjurisdiction, must respectand follow thelaw laiddown bya High Court.*

In this regard, the department humbly submits that there exists a contrary decision on thisprecise issue, rendered by the Hon'ble Chhattisgarh HighCourt in ***Bharat Krishi Kendra*** *v.* ***Union of lndia*** *(2022) 444 ITR 584****,*** *wherein the Hon'ble Court specifically dealt with the question of an unsigned approval under Section 151 of the Act. In para 14 of the judgment, itwas unequivocally held thatanapproval bearing thename, designation, and office of the authority, would be deemed valid under Section 282A, even in the absence of a physical or digital signature. Given that the Hon'ble ITAT is bound by the rulingsof its own jurisdictional High Court,and in light of the principle laid down in CIT v. Smt. Godavari devi Saraf Supra Note 6, the decision of the Hon'ble Allahabad HighCourtin* ***Vikas Gupta*** *Supra Note 1 cannot be regarded as binding on the Hon'ble Tribunal, especiallywhen a contrary ruling exists on the same legal point from the Hon'ble Chhattisgarh High Court Supra note 7. Therefore, there lianceplaced by the assessee on* ***Vikas Gupta*** *ibid is notbinding, and any contention raised on reliance onthecase lawoftheHon'ble Allahabad High court does not hold any meriteither, per thearguments made in para 7&****8.”***

9. In response to the submission of the Ld. DR, the Assessee also filed rejoinders to rebut the contentions of the Ld. DR. The rejoinders filed by the Assessee are reproduced as under:

“Section 282A(1) of the Act is usefully extracted as under:

“Authentication of notices and other documents.
*282A. (1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be [signed****and*** *issued in paper form* ***or***

communicated in electronic form by that authority in accordance with such procedure as may be prescribed].”

(Emphasis supplied)

It is abundantly clear that a signature is a mandatory condition and only the mode of communication is optional i.e., paper or electronic form. The interpretation of the Revenue is incorrect.

Reliance is also placed on the decision of the Hon’ble Allahabad High Court in the case of ***Vikas Gupta (Supra)*** *wherein para 27 is usefully extracted as under:*

> ***27. The first and foremost condition under sub-section (1) of section 282A is that notice or other document to be issued by any Income-tax Authority shall be signed by that authority. The word "and" has been used in sub-section (1), in conjunctive sense, meaning thereby that such notice or other document has first to be signed by the authority and thereafter it may be issued either in paper form or may be communicated in electronic form by that authority.*** *In the present set of facts, it is the admitted case of the respondents that the PCIT has not recorded satisfaction under his signature prior to the issuance of notice by the Assessing Officer under section 148 of the Act, 1961.*
>
> *(Emphasis supplied)*

Secondly, the decision in the case of ***Bharat Krishi Kendra (Supra)*** *is a single judge bench and the decision of* ***Vikas Gupta (Supra)*** *is a division judge bench.*

Therefore, the decision of a division bench has binding precedent than a decision of a single-judge bench.

*Thirdly, the single bench decision in the case of **Bharat Krishi Kendra (Supra)** is dated March 15, 2022 whereas the division bench decision in the case of **Vikas Gupta (Supra)** is dated September 08, 2022. Hence the later decision will prevail over the earlier decision.*

Fourthly, without prejudice to the above, when there are two views of a non-jurisdictional high Court the view favourable to the assessee must be taken.

*Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC)** wherein it was held that If court finds that language to be ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty.*

*Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of **K. Subramanian v. Siemens India Ltd. [1985] 156 ITR 11 (Bom)(HC)** wherein it was held that Where there is a conflict between different High Courts, the Ld AO must follow the decision of the High Court within whose jurisdiction he is, but if the conflict is between decisions of other High Courts, the Ld. AO must take the view which is in favour of the assessee and not against him.*

Hence it is prayed that the reassessment is bad in law."

2nd Rejoinder of Assessee:

"Hence in furtherance to the earlier rejoinder, The Asessee submits how the case laws relied (which are not dealt in the rejoinder) on by the Department are not applicable to the present facts of the case:

1. ***Leader v. Duffey (1888) LR 13 App Cas 294***
2. ***CIT v. Sodra Devi 1957 INSC 50***

3. New Nobel Education Society v. CCIT 2022 INSC 1111

Comments: *The Department has relied on the above case laws to interpret the statue. It is not doubted that the words "and" and "or" have separate significance. The Department's interpretation of section 282A of the Act is misplaced.*

According to the Department only a Notice in a physical form needs to be signed and in an electronic form does not require to be signed.

A direct judgement of the Hon'ble Allahabad High Court on the correct interpretation of section 282A of the Act is relied on by the Assessee in the case of ***Vikas Gupa v. UOI (2022) 448 ITR 1 (All)(HC)***

Hence the case laws relied on by the Department are not applicable in the present facts of the case."

10. We have heard the counsels for both the parties, perused the material placed on record and have gone through the submission filed by the Assessee and the Ld. DR. It is an undisputed fact that the approval accorded u/s.151 of the Act by the appropriate authority is not signed and the said approval is not in paper form but in electronic form. The Approval as per sec.151 of the Act is enclosed in the paper book of the Assessee at pages 114 and 115 and the same is reproduced as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CCIT (CENTRAL), MUMBAI-2

Approval u/s 151 of the IT Act, 1961

PAN: AAACJ9161C	Assessment Year: 2016-17	Date: 16/11/2023	DIN: ITBA/AST/S/118/2023-24/1057979542(1)

1.	Name of the assesse	J KUMAR INFRAPROJECTS LIMITED
2.	Address and e-mail of the assessee	16-A ,ANDHERI INDUSTRIAL ESTATE,VEERA DESAI RD, ANDHERI (WEST),Azad Nagar S.O (Mumbai),Mumbai,MUMBAI / kejal.shah@jkumar.com
3.	PAN	AAACJ9161C
4.	Status	Company
5.	Circle/ Ward/ Range/ CIT Charge	CENTRAL CIRCLE 5(1), MUMBAI / CENTRAL RANGE 5, MUMBAI / PCIT (Central), Mumbai-3
6.	Assessment year	2016-17
7.	The quantum of income which has escaped assessment	10328343
8.	Approval needed for	Issue of notice u/s 148 where there is no requirement for passing order u/s 148A(d)
9.	Time limit for current proceedings covered under	u/s 149(1)(b) - for more than 3 years but not more than 10 years
10.	Limitation date for issuance of notice u/s 148	31/03/2027
11.	Whether the show cause notice u/s 148A(b) contains the details of the information, as per explanation-1 of Section 148.	No
12.	(i) Enquiry conducted (if any), u/s 148A(a)	N/A
	(ii) Whether the show cause notice u/s 148A (b) contains the details of results of enquiry conducted 148A (a).	N/A
13.	Date of issue of show cause notice to assessee u/s 148A(b)	
14.	Date by which assessee was required to submit reply to show cause notice u/s 148A(b) or the final extended date	N/A
15.	Whether any reply received from assessee u/s 148A(b)?	N/A
16.	Whether personal hearing requested by assessee	N/A
17.	Whether the provision of Sec, 150(1) are applicable.	No
18.	Reasons for the belief that income has escaped assessment.	Refer Annexure for reasons
19.	Recommendations of the Additional/ Joint CIT	Remarks: In view of the facts mentiioned in the proposal, I agree with the same. The proposal is

		recommended. Name: VIVEK UPADHYAY Designation: CENTRAL RANGE 5, MUMBAI Date: 25/10/2023
20.	Recommendations of the CIT/PCIT (where CCIT/PCCIT is the specified authority)	Remarks: Perused the proposal of the AO, remarks of the Addl.CIT and examined the relevant records. this is a fit case for issue of notice u/s 148 of the act as a search has been initiated in the case of the M/s.J Kumar Infraprojects Ltd. on 11.10.2022 vide warrant S.No. : MUM/U-2/22-23/18 dated 10.10.2022 Accordingly approval in terms of proviso to section 148 of the Act r.w.s. 151 of the Act may be granted for issue of notice u/s 148 in this case. Name: YAGYA DUTT SHARMA Designation: PCIT (Central), Mumbai-3 Date: 31/10/2023
21.	Recommendations of the CCIT (where PCCIT is the specified authority)	Remarks: N/A Name: N/A Designation: N/A Date:
22.	Reasons for according approval/ rejection by the specified authority for issuance of notice under section 148 of the Income Tax Act, 1961?	Remarks: I have perused the reasons recorded by the Assessing Officer and accompanying forwarding note by the Addl.CIT, Central Range-5, Mumbai and PCIT(Cent.)-3, Mumbai. Based on the reasons recorded and the facts narrated, I am satisfied that it is a fit case for issue of Notice u/s.148 of the Act for the A.Yr. 2016-17. Approval is hereby granted to issue the same. Name: VIMALENDU VERMA Designation: CCIT (CENTRAL), MUMBAI-2 Date: 16/11/2023

11. It is important to evaluate the provisions of sec.281A of the Income-tax Act, which deals with authentication of notices and other documents issued by the department. The relevant provisions of sec.281A of the Act is reproduced as under:

> ***"Authentication of notices and other documents.***
> ***282A.*** *(1) Where this Act requires a notice or other document to be issued by any income-tax authority, suchnotice or other document shall be signed and issued in paper form or communicated in electronic form by thatauthority in accordance with such procedure as may be prescribed.*
>
> *(2) Every notice or other document to be issued, served or given for the purposes of this Act by any income-taxauthority,*

shall be deemed to be authenticated if the name and office of a designated income-tax authorityis printed, stamped or otherwise written thereon.

(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authorityauthorised by the Board to issue, serve or give such notice or other document after authentication in themanner as provided in sub-section (2).”

12. From the bare reading of the above provisions of sec.282A of the Act, it is clear that sub-section (1) to Sec.282A of the Act uses word ‘shall’ before the words ‘be signed’ and after the word ‘signed’ conjunction word ‘and’ is used to differentiate between the mode in which the notice or document is issued i.e. either the notice or document is issued in paper form ‘OR’ communicated in electronic form. Thus, to this extent, the interpretation of the Ld. DR is not correct that the requirement of signature in the notice or document issued is only when the same is issued in paper form.

13. The requirement of signature on the notice or document issued is not merely formality but is a mandatory requirement and if such notice or document is issued in paper form, the signature shall be done manually and if the notice or document is issued / communicated electronically, the same shall bear signature of the designated income-tax authority via Digital Signature Certificate (DSC) i.e. signed digitally. The DSC Policy of 2018 mandates that every letter, notice, order, etc. issued to Assessee or other addresses within the Department or outside the Department will have to be issued by using digital signature. The reason for the same is that when notice or document is communicated in electronic form bears valid digital signature, the recipient of the same would believe that the notice or document is issued by known sender, which authenticates i.e. proves the genuineness of the notice or document issued and

most importantly, neither the sender can deny having issued such notice or document nor such notice or document can be altered by any person.

14. Sec.282A(1) of the Act prior to its substitution by the Finance Act, 2016 w.e.f. 1-6-2016 also required the notice or document issued to be signed. The pre-amended provision of sec.282A(1) of the Act read as under:

> ***"282A.*** *(1) Where this Act requires a notice or other document to be issued by any income-tax authority, suchnotice or other document shall be signed in manuscript by that authority."*

15. Therefore, in our view the signing the notice or document before issuing the same is pre-requisite and after evolution of E-proceedings and issuing notices / documents / order, etc. in electronic form, the Legislature amended the provisions of Sec.282A(1) of the Act so that such notice or document can be issued in paper form OR communicated in electronic form, however, the requirement of signature is '*not dispensed*' but remains and therefore, if such notice or document is issued in paper form, the same shall require manual signature and if such notice or document is communicated in electronic form, the same shall require to be signed digitally so as to make the notice or document authenticated. In this regard reliance is being placed upon the decision of the ***Hon'ble Allahabad High Court in the case of Daujee Abhushan Bhandar Pvt. Ltd. v. UOI, Writ Tax No.78 of 2022, order dated 10.03.2022*** wherein it has held that prior to communicate the notice or document, the same shall be digitally signed before complying with the procedural requirements as per Rule 127A of the Income tax Rules, 1962. The relevant part of the decision is reproduced as under:

> *"16. Sub Section (1) of Section 149 starts with a prohibitory words that***"no notice** *under Section 148 shall be issued for the relevant AssessmentYear after expiry of the period as*

provided in sub Clauses (a) (b) and (c)".There is no dispute that the notice must be issued by the AssessingAuthority within the period of limitation as provided in Section 149 of theAct, 1961. Section 282 of the Act, 1961 provides for mode of service ofnotices. Section 282 A provides for authentication of notices and otherdocuments by signing it. Sub- Section 1 of Section 282 A uses the word ""Signed" and "issued in paper form" "or "communicated in electronicform by that authority in accordance with such procedure as may beprescribed". ***Thus, signing of notice and issuance or communicationthereof have been recognised as different acts.***

17. Rule 127 A(1) of the Rules 1962 provides that every notice or otherdocument communicated in electronic form by an authority under the Actshall be deemed to be authenticated in case of electronic mail or electronicmail message (e-mail) if the name and office of such income tax authorityis printed on the e-mail body, if the notice or other document is in the e-mail body itself, or is printed on the attachment to the e-mail, if the noticeor other document is in the attachment and the e-mail, is issued from thedesignated e-mail address of such income tax authority. ***Thus, theissuance of notice and other document would take place when the emailis issued from the designated e-mail address of the concernedincome tax authority.***

18. Since Section 149 of the Act 1961 requires notice to be issued byIncome Tax Authority, therefore, in terms of sub Section (1) of Section282 A it has to be signed by that authority and to be issued in paper formor communicated in electronic form by that authority in accordance withprocedure prescribed.

19. The ***communication in electronic form*** *has been prescribed inRule 127 A of the Rules 1962 which provides a*

procedure for issuance ofevery notice or other document and the e-mail in electronicform/electronic mail which has to be issued from the designated e-mailaddress of such income tax authority.

20. Thus, after digitally signing the notice the income tax authority hasto issue it to the assessee either in paper form or through electronic mail.Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of anelectronic record occurs when it enters a computer resource outside thecontrol of the originator. The aforesaid sub Section (1) of Section 13indicates the point of time of issuance of notice. ***Therefore, after a noticeis digitally signed and when it is entered by the income tax authorityin computer resource outside his control i.e. the control of theoriginator then that point of time would be the time of issuance ofnotice."***

16. The above decision of the Allahabad High Court in the case ***of Daujee Abhushan Bhandar (supra)*** clearly makes distinction between signing of notice and issuance or communication thereof. It is also held that as per the provision of sec.282A(1) of the Act, if the notice or document is issued / communicated in electronic form, digital signature of the same *is must* and pre-requisite before issuing such notice or document. Similarly, in the case of ***Vikas Gupta v. UOI [2022] 448 ITR 1 (All) (HC)***, it has been held that unsigned approval u/s.151 of the Act is not an authenticated document and is invalid and therefore, there was no jurisdiction with the Assessing Officer to issue notice u/s.148 of the Act. The relevant part of the order is reproduced as under:

"16. Sub-section (1) of Section 282A contains the following necessaryconditions:

(i) such notice or other document shall be signed by that Authority

and

(ii) issued in paper form or communicated in electronic form by thatauthority

(iii) in accordance with such procedure as may be prescribed.

17. The procedure for communication in electronic form has beenprescribed under Rule 127A of the Rules 1962.

18. The first and foremost condition under Section (1) of Section 282A isthat notice or other document to be issued by any Income Tax Authority shallbe signed by that authority. The word "and" has been used in sub-Section (1),in conjunctive sense meaning thereby that such ***notice or other document hasfirst to be signed by the authority and thereafter it may be issued either inpaper form or may be communicated in electronic form by that authority. Inthe present set of facts, it is the admitted case of the respondents that the PCIThas not recorded satisfaction under his signature prior to the issuance of noticeby the Assessing Officer under Section 148 of the Act, 1961.***

……

25. Thus the expression ***"shall be signed"*** *used in Section 282A(1) of theAct 1961 makes the signing of the notice or other document by that authority amandatory requirement. It is not a ministerial act or an empty formality whichcan be dispensed with. "Signed" means to sign one's name; to signify assentor adhesion to by signing one's name; to attest by signing or when a person isunable to write his name then affixation of "mark" by such person. Thedocument must be signed or mark must be affixed in such a way as to make itappear that the person signing it or affixing his mark is the author of it.Therefore, a notice or other document as referred in Section 282A (1) of theAct, 1961 will take legal effect only*

after it is signed by that Income TaxAuthority, whether physically or digitally. The usage of the word "shall"make it a mandatory requirement.

……..

28. Section 282A (1) of the Act, 1961 specifically provides that a notice orother documents issued by any Income Tax Authority shall be signed by thatauthority in accordance with such procedure as may be prescribed. Section151 of the Act, 1961 specifically provides recording of satisfaction by thePrescribed Authority, on the reasons recorded by the Assessing Officer that itis a fit case for the issue of notice under section 148 of the Act, 1961. Unlesssuch satisfaction is recorded, the Assessing Officer could not get jurisdictionto issue notice under section 148. A satisfaction, to be a valid satisfactionunder section 151 of the Act, 1961, has to be recorded by the PrescribedAuthority under his signature on application mind and not mechanically, asalso held by the Hon'ble Supreme Court in the case of Chhugamal Rajpal(supra). Unless the Prescribed Authority under section 151 of the Act, 1961records his satisfaction on application of mind and under his signature, therecannot be a valid satisfaction empowering the Assessing Officer to assumejurisdiction to issue notice under section 148 of the Act, 1961. In other words,an Assessing Officer may issue jurisdictional notice under Section 148 onlyafter the Prescribed Authority under section 151 of the Act records hissatisfaction that it is fit case for issue of notice under section 148.

29. In the present set of facts there was no valid satisfaction recorded by theby the Prescribed Authority under section 151 of the Act, 1961 when theAssessing Officer issued notice to the assessees under section 148 of the Act,1961. At the time when the notice under section 148 of the Act, 1961wasissued by the Assessing Officer to the petitioner there was no valid

satisfactionrecorded by the Prescribed Authority i.e. the Principal Chief Commissioner orChief Commissioner or Principal Commissioner or Commissioner.Subsequent to issuance of the notice under section 148 of the Act, 1961 by theAssessing Officer, the satisfaction under section 151 was digitally signed bythe Prescribed Authority. Therefore, the point of time when the AssessingOfficer issued notices under section 148, he was having no jurisdiction toissue the impugned notices under section 148 of the Act, 1961. Consequentlythe impugned notices issued by the Assessing Officer under section 148 of theAct, 1961 were without jurisdiction. The questions no. (a) and (b) areanswered accordingly."

17. In the case of ***Reuters Asia Pacific Ltd. v. Dy. CIT, ITA No.587/Mum/2021, AY 2015-16, Bench 'I', order dated 26.12.2023***, in the context of validity of unsigned assessment order served on the assesse in that case, the provisions of sec.282A of the Act read with Rule 127A of Income tax Rules, 1962 was also dealt with and it was held that before issue of notice or order communicated to the assesse, the same has to be signed. The relevant part of the ITAT order is reproduced hereunder:

"9. Section 282A of the Act deals with authentication of notices and other documents. The section mandates that where the Act requires the notice or other documents to be issued by any Income Tax Authority, ***such notice or other document signed and issued*** *in paper form or communicated in electronic form by the Authority in accordance with procedure as may be prescribed. Section 282 of the Act specifies the mode of service of notice or summon or requisition or order or any other communication under this Act. A conjoint reading of the above two sections would make it clear that other documents referred to u/s.282A of the Act would include summon or requisition or*

order or any other communication. ***Thus, the requirement of section 282A of the Act is that before any notice or order is communicated to the assessee it should be signed in accordance with the prescribed procedure****.*

10. The assessee has also placed on record Instruction no.1/2018 dated 12/2/2018 with respect to conduct of Assessment proceedings in scrutiny cases through 'E-proceedings'. Therein apart from other procedural aspects, the Board once again specifically mentioned the requirement of digital signatures by the Assessing Officer on orders/notices/communications before they are issued to the assessee.

.....

16. The ld. Departmental Representative referred to the provisions of Rule 127A i.e. the Rule framed in pursuance to the provisions of section 282(2) of the Act for service of notice, summons, requisition order and other communications. The ld. Departmental Representative has pointed that since the assessment order communicated to the assessee originated from the designated E-mail ID of the Assessing Officer, therefore, in terms of Rule 127A, the said document shall be deemed to be authenticated. The said argument is desultory and not in unison with the provisions of section 282A of the Act. The relevant provisions of section 282A of the Act are reproduced herein below:

"282A: Authentication of notices and other documents:

(1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by thatauthority in accordance with such procedure as may be prescribed.

(2) Every notice or other document to be issued, served or given for the purposes of this Act by any income-taxauthority, shall be deemed to be authenticated if the name and office of a designated income-tax authorityis printed, stamped or otherwise written thereon.

(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authorityauthorised by the Board to issue, serve or give such notice or other document after authentication in themanner as provided in sub-section (2).”

The aforesaid section is with respect to authentication of notices and other documents i.e. orders/summons/requisitions/communications etc. Sub-section (1) makes it obligatory that where any notice or other document is required to be issued under the provisions of the Act, the same shall be signed and issued by the competent authority in accordance with the procedure prescribed. The section is unambiguous, specifies signing of notice or other documents mandatory and the manner of signing procedural. Therefore, the Board has issued instructions from time to time laying down the procedures inter alia for signing of the notices and the assessment orders. Sub-section (2) of section 282A of the Act explains the connotation of expression “authentication”. ***Thus, signing of document and authentication of document carry different meaning. Signing of document denotes committing to the document, whereas, authentication of document relates to genuineness of origin of document. If signing and authentication would mean the same, then there was no need for the Legislature to lay down the requirement of signing the documents viz, notices, orders etc in sub-section (1) and explain the purpose of authentication in sub-section (2) of section 282A of the Act. If argument of the Revenue is accepted, then the***

provisions of sub-section (1) to section 282A would become redundant.

…….

19. Ergo, in facts of the case and documents on record, we hold the unsigned impugned assessment order served on the assessee invalid and quash the same."

[Emphasis supplied]

18. On the contrary Ld. DR has placed reliance on the decision of Chattisgarh High Court in the case of **Bharat Krishi Kendra v. UOI [2022] 444 ITR 584**wherein it is held that in para 14 of the order that unsigned approval granted u/s.151 of the Act could not treated as invalid considering the provision of sec.282A of the Act which provides that notice or other documents to be issued for the purpose of the Act of 1961 by any income-tax authority shall be deemed to be authenticated if name and designation is provided. In approval under Section 151 of the Act of 1961, name, designation and office is printed. Hence, submission of learned counsel for petitioner that approval is not digitally signed is also not sustainable, more so when it bears DIN & Document Number.

19. However, the decision in ***Bharat Krishi Kendra, supra***, does not refer to the provisions of section 282A(1) of the Act which clearly mandates signing the notice or document prior to issue of the same. In fact, sub-section (2) to section 282A of the Act merely authenticates the notice or document issued after the same is signed and both these provisions of sub-section (1) and sub-section (2) of section 282A of the Act has to be read ***conjointly*** and not independent of each other else sub-section (1) to section 282A of the Act would become redundant. Further, this decision of Chattisgarh High Court in ***Bharat Krishi Kendra, supra***, is rendered by single judge bench whereas the decisions of Allahabad High Court in the case of ***Daujee Abhushan Bhandar, supra***, and ***Vikas Gupta, supra,*** are rendered by

division judge bench. Therefore as per judicial discipline the decisions of Division bench has binding precedent as compared to single –judge bench.

20. Even otherwise, there is no decision of jurisdictional High Court on the issue at hand and thus, if there are divergent views of non-jurisdictional High Courts on the subject, the view that favour the Assessee needs to be adopted as held by the Hon'ble Supreme Court in ***CIT v. Vegetable Products Ltd.[1973] 88 ITR 192 (SC)***wherein it is held that if the language is capable of more than one meaning, the Court needs to adopt the interpretation that favours the Assessee needs to be adopted.

21. In view of the above, it is held that the sanction granted u/s.151 of the Act without signing the same is invalid and therefore the Assessing Officer did not assumed jurisdiction to issue notice u/s.148 of the Act. Hence, the notice issued u/s.148 of the Act is held to be bad in law for want of valid assumption of jurisdiction and is hereby quashed. Consequently, the order passed u/s.143(3) r.w.s. 147 of the Act dated 31.03.2024 for AY 2016-17 is bad in law and quashed.

22. The additional ground of appeal of the Assessee on the issue of validity of unsigned sanction issued u/s.151 of the Act is allowed.

23. The *second* additional ground of appeal raised by the Assessee is challenging the validity of notice issued u/s.148 of the Act by jurisdictional Assessing Officer (JAO in short) instead of Faceless Assessing Officer (FAO in short) as per the provisions of section 151A of the Act read with CBDT notification 18 of 2022 dated March 29, 2022.

24. In respect of this issue, the Assessee has contended that notice u/s.148 of the Act is issued by JAO, which instead ought to have been issued by FAO relying upon the CBDT notification

no.18 of 29.03.2022 as also various decisions rendered. The relevant part of the submission of the Assessee on this issue is reproduced as under:

> *"Reliance is placed on the decision of the Hon'ble Jurisdictional High Court in the case of* ***Hexaware Technologies Ltd. v. ACIT [2024] 162 taxmann.com 225 (Bom.)(HC) / [2024] 464 ITR 430 (Bom.)(HC)*** *and* ***Ganesh Nivrutti Jagtap v. ACIT [2024] 166 taxmann.com 168 (Bom.)(HC).***
>
> ***(Page 108 to 152 of Paper Book – II; Relevant para 32-39 on page 143-147)***
>
> ***(Page 153 to 156 of Paper Book – II; Relevant para 6-7 on page 155)***
>
> *It is submitted that there is no stay on the operations of the decision of the Hon'ble Bombay High Court in the above two matters by the Hon'ble Supreme Court. Even if a stay was granted the same would be only applicable to the parties before the Hon'ble Supreme Court. Hence, the decision the Hon'ble Bombay High Court is binding on the Hon'ble ITAT, Mumbai bench.*
>
> *Reliance place on the decision of the Hon'ble Telangana and Andhra Pradesh High Court in the case of* ***Palaniswamy and Ors. v. State of AP, Revenue (Land Acquisition) Department and others (2018) 3 ALD 181****. Wherein it was held that a decision would not cease to be a binding precedent on its operation being stayed by the Hon'ble Supreme Court.*
>
> ***(Page 183 to 202 of Paper Book – II; Relevant para 11-16 on page 188-190)***
>
> *Hence, the decision in the case of* ***Hexaware Technologies (supra) and Ganesh Nivrutti Jagtap (supra)*** *may be followed."*

25. On the contrary Ld. DR has on the other hand pleaded that the notice u/s.148 of the Act is correctly issued by JAO and it is only the JAO who had jurisdiction to issue notice u/s.148 of the Act. The Ld. DR argued that in the present case, search and seizure action u/s.132 of the Act was conducted on 11.10.2022 and the case of the Assessee was centralised u/s.127 of the Act. The Ld. DR contended that in cases where search and seizure is carried out u/s.132 of the Act or survey action is conducted u/s.133A of the Act, the jurisdiction for making assessment lies with the JAO and not FAO. In support of the same, the Ld. DR has relied upon various judicial pronouncements as also filed detailed submission on the same. It is further contended that the Hon'ble Supreme Court has stayed the proceedings on this issue and hence, the decisions relied upon by the Assessee could not be applied and followed. The relevant part of the submission filed by the Ld. DR on this issue is reproduced as under:

> *"16. In response to the assessee's contention, the department respectfully submits that the ground raised is untenable on two counts.* ***First,*** *from a procedural standpoint, the issuance of notice under Section 148 has been carried out in compliance with the applicable framework as prescribed by the* ***order F No. 187/3/2020-ITA-1*** Attached here with and marked as Annexure10*of the respected CBDT* ***dated*** *06.09.2021. This circular, issued for administrative clarity, delineates the process to be followedin cases where faceless assessmentmechanisms are involved, ensuring that the notices are issued in accordance with statutory and procedural requirements. The assessee's argument overlooks the fact that procedural prescriptionsunderthe facelessregime are subject to administrative guidance,and in the present case, the issuance of notice aligns with theprescribed procedural safeguards.*

17. From a procedural standpoint, the department respectfully submits that the issuance of notice under Section 148 of the Act in the present case is in full compliance with the applicable legal framework. As per the facts of the case, a search action under Section 132 was conducted on the J. Kumar Group and its related entities on 11.10.2022, pursuantto whichthe case of M/s J. Kumar Infra project Limitedwas centralized with the Central Assessing Officer vide order ***No. CCIT(C-2/Centralization/J Kumar Grp/2022-23) dated 27.12.2022.*** *Consequently, all assessment-related matters, including the issuance of notices and adjudication ofappeals, were dealt with by the Central Charge. The assessee's reliance on the faceless assessment framework is misplaced as the governing framework itself carves out a clear exception for cases assigned to the Central Charge.*

18. In this regard reliance is placed on ***CBDT Order F. No. 187/3/2020-ITA-1***SupraNote15***dated 06.09.2021,*** *as per which the respected Central Board of Direct Taxes has explicitly and clearly excluded cases assigned to Central Charges from the ambit of faceless assessment scheme under Section 144B of the Act. Given that the present case was centralized with the Central Charge post-search, the requirement for issuance of notice by a Faceless Assessing Officer does not arise.*

19. ***Second,*** *from a judicial stand point, thereliance placed by the assessee on* ***Hexaware Technologies Ltd.*** *v.* ***ACIT*** Supra Note 13 *and* ***Ganesh Nivrutti Jagtap*** *v.* ***ACIT*** Supra Note14 *does not conclusively settlethe legalposition, as the Hon'ble Bombay High Court itself, in* ***JD Printers Pvt. Ltd.*** *v.* ***ITO*** (2024) 468 ITR 178***,*** *has deviated from the position taken in* ***Hexaware Technologies Ltd.*** Supra Note 12 *The Hon'ble Court, recognizing the pendency of achallenge by the Revenue*

before the Hon'ble Supreme Court, has taken a morenuanced view of the applicability of Section 15lA.

20. Furthermore, variousotherHighCourts Hon'ble Gujarat High Court in Talati and Talati LLP vs. Assistant Commissioner of Income-tax, [2024] 469 ITR643(Gujarat), Hon'bleDelhi HighCourtinT.K.S. Builders(P.)Ltd.vs.Income-tax Officer,[2024]469ITR 657(Delhi)andtheHon'bleMadras High court in Mark Studio India*(P.)*Ltd.vs.Income-tax Officer,[2024]169 taxmann.com542 (Madras) *have adjudicated onsimilar issues and have not endorsed the assessee's position or the observations made in* ***Hexaware Technologies Ltd.*** Supra Note13 *the Hon'ble Delhi High Court in* ***T.K.S. Builders (P.) Ltd.*** *v.* ***Income-tax Officer*** [2024) 469 ITR 657 (Delhi)**,** *and the Hon'ble Madras High Court in* ***Mark Studio India (P.)*** *Ltd. v. Income-tax Officer* [2024] 169 taxmann.com 542 (Madras)*, after taking into consideration the ruling Hexaware* ***Technologies Ltd*** SupraNote13**.,** *have decided the issue in the Revenue's favor. This is evident from* ***para 93*** *of* ***T.K.S. Builders (P.J Ltd.*** Supra Note 23**,** *which is reproduced below for ready reference:*

"93. In Hexaware Technologies, the Bombay High Court ultimately came to conclude that there could be no question ofaconcurrent jurisdiction ofthe JAO and the FAO for issuanceof noticeunder Section 148.From a reading of the record,it is unclear whether the notifications conferring jurisdiction on authorities of the NFAC for the purposes of conducting faceless assessment was placed before the High Court. At least the decision makes no reference to the notification of I3 August 2020 which has been producedin these proceeding sand whichin clear and unambiguous terms declares that the officers empowered to conduct faceless assessment were being conferred concurrent powers and fanctions ofthe AO.We. with

respect. Also find ourselves unableto concur with Hexaware Technologies bearing in mind the various sources of information and material which may assist a JAO in forming an opinion as to whether income had escaped assessment and have been noticed herein above. Those aspects clearly do not appear to havebeen either taken into considerationor engaged with by the High Court in Hexaware Technologies. The view expressed ***in*** *HexawareTechnologies then came to be reiterated by the Bombay High Court in KairosProperties. This decision toofails to advert or allude to the notifications in terms ofwhich authoritiesformingpart o(the various assessing units o(NFAC were conferredconcurrent jurisdiction."*

21. Similarly, in ***Mark Studio India (P.J Ltd.*** *v.* ***Income-tax Ofjicer*** SupraNote 24**,** *the* ***Hon'ble Madras High Court,*** *in* ***para 51 and 52*** *of the judgment, critically examined the correctness (or lack thereof) ofthe Hexawareruling, stating:*

"52. In the above case, the Hon'bleBombay High Court has also held that for making assessment, reassessment,orre-computationunderSectionI47ofthe IT Act, the notice under SectionI48 of the IT Act shall be issued in a faceless manner. Further, in the abovecase,itcametotheconclusionthattheSection148notice wasnotsentbytherespondents inafaceless manner. Onthe other hand, asstated above, inthe present case, thisCourt has already elaborately discussed asto how the Section 148notice was sentinafacelessmannerinduecomplianceoftheprovisions oftheScheme.However.the Bombay HighCourt had no occasion to deal withthe aforesaid aspect since thesamewasnotbroughtbeforetheHon'bleDivisionBench oftheBombayHighCourt."

22. In addition to the decisions of the Hon'ble Delhi and

Madras High Courts, the observations made by the Hon'ble Gujarat High Court in ***Talall and Talati LLP****v.* ***Office of Assistant Commissioner of Income Tax*** [2024) 469 ITR 643 (Gujarat)) *are of paramount importance in clarifying the* ***scope and applicability of the ruling in Hexaware Technologies Ltd..*** *The Hon'ble Gujarat High Court, after carefully considering thejudgment in Hexaware, hasspecifically observedin* ***para 27*** *asfollows:*

"27. The decision of the Division Bench of the Bombay High Court in the case of Hexaware Technologies Ltd. (supra) has been rendered inacase, which fallswithin the arena of Explanation 1 to Section 148 and not where Explanation 2 to Section 148 of the Income Tax Act, 1961, would be attracted."

23. This observation holds particular relevance in the present case, asa search action under Section132 was conductedon the J. Kumar Group andits related entities on 11.10.2022, and the reassessment proceedings initiated under Section 148 were in furtheranceof the same. Consequently,the present case falls squarely withinthe ambit of ***Explanation 2 to Section 148,*** *thereby rendering the ruling in* ***Hexaware*** *Technologies Ltd.* Supra Note13*in applicable to the current factual scenario. The Hon'ble Gujarat High Court's distinction between cases governed by Explanation* ***1*** *and those falling under Explanation 2 serves as a crucial clarification, demonstrating that the principles laid downin* ***Hexaware***ibid *do not extend to cases such as thepresent one.*

24. Furthermore,the ***Hon'bleGujarat High Court'srulingin Talati and TalatiLLp***SupraNote28*also directly addresses the precise groundraisedby theassessee, as seen in* ***para 28***

of the judgment, which states:

"28. From the above, by reading all the relevant provisions of the Income-tax Act, 1961, as also the notification dated 29.03.2022 issued by the Central Government framing the scheme for 'E-Assessment of Income Escaping Assessment' under sub- sections(]) and (2)of Section 151A ofthe Act, 1961, we reach anirresistible conclusion thatthechallenge to the notice under Section 148 dated 22.03.2024 for A.Y.2021-2022 on the sole premise that the said notice could have been issued only through automated allocationin a faceless manner and not by the Jurisdictional Assessing Officer (JAO), cannot be sustained "

25. This ruling unequivocally establishes that the assessees' contention regarding the alleged procedural defect in the issuance of notice by the Jurisdictional Assessing Officer, rather than through automated faceless allocation, is without merit. Giventhat the present reassessment proceedings pertain toa post-search scenario falling under Explanation 2 to Section 148, the Hon'ble Gujarat High Court's findings reinforce the departments position that the assessee's reliance on ***Hexaware Technologies Ltd.*** Supra Note13 *is misplaced, and theground raised intheappeal is legally unsustainable.*

Therefore, given the evolving judicial landscape and the divergence in High Court rulings on this issue and thefact thatan appeal is pending DiaryNo.-37843/2024 *before the Hon'ble Supreme Court against* ***Hexaware Technologies Ltd*** Supra Note13**,** *the assessee's reliance on* ***Hexaware Technologies Ltd.*** *ibid cannot be considered binding or conclusive for the present proceedings. Accordingly, thesecond ground raised*

bytheassessee does not hold merit and ought to be rejected."

26. In response to the submission of the Ld. DR, the Assessee filed rejoinders and the relevant part of the same is reproduced as under:

"Firstly, the decision of the Hon'ble Bombay High Court in the case of ***JD Printers (Supra)*** *does not stay the operations of the decision in the case of* ***Hexaware Technologies (supra).*** *It only grants a stay for the party before the High Court in that particular proceeding.*
Secondly, the Ld. AO is in Mumbai, the decision of the Hon'ble Bombay High Court in the case of ***Hexaware Technologies (supra)andGanesh Nivrutti Jagtap (supra)*** *is binding not the decisions of the non-jurisdictional High Court.*
The Hon'ble Jurisdictional tribunal in the case of ***DCIT v. Gujarat Ambuja Cements Ltd. (2011) 57 DTR 179 (Mum)(Trib)*** *it was held that has to follow the decision of the jurisdictional High Court without making any comment upon the said decision, it is not permissible for the Tribunal to sidetrack and/or ignore the decision of the jurisdictional High Court on the ground that it did not take into consideration a particular provision of law."*

Second rejoinder:
Talati and Talati LLP v. ACIT (2024) 469 ITR 643 (Guj) (HC)

Comments: *Reiteratingas mentioned in the Rejoinder, the view of the Jurisdictional High Court is that Central charge is also covered by section 151A of the Act and hence the decision of the jurisdictional High Court i.e. in the case of* ***Ganesh Jagtap*** *may be followed."*

27. We have heard the counsels for both the parties, perused the material placed on record, considered the rival contentions and also considered the submission filed by the Assessee and Ld. DR as also the rejoinders filed by the Assessee. The contention of the Assessee that notice u/s.148 of the Act should be issued by FAO and not by JAO is not acceptable for more than one reason. Firstly, there was search and seizure action carried out u/s.132 of the Act in the case of Assessee on 11.10.2022 and in pursuance to the same, the case of the Assessee was centralised vide order no. CCIT (C-2/Centralisation/J Kumar Grp/2022-23) dated 27.12.2022 and there is no dispute in respect of the same. The CBDT has issued instruction i.e. CBDT Order F. No. 187/3/2020-ITA-1 dated 06.09.2021 (copy of which is placed on record) clearly and explicitly excludes cases assigned to Central Charge from the ambit of faceless assessment u/s.144B of the Act.

28. The decisions relied upon by the Assessee of the Hon'ble Bombay High Court in the case of Hexaware and others, *supra*, were not relating to search and seizure cases being centralised and being outside the ambit of faceless assessment u/s.144B of the Act. Moreover, the later decision of the Hon'ble Bombay High Court in the case of J D Printers Pvt. Ltd. v. ITO (2024) 468 ITR 178 (Bom) has not followed the decision in the case of Hexaware, *supra*, in view of the subject matter as to whether the notice u/s.148 of the Act to be issued by JAO or FAO being stayed by Hon'ble Supreme Court in the case of Hexaware, supra, and thus stayed the proceedings arising from notice issued u/s.148 of the Act instead of quashing the same. Thus, the decision of the Hon'ble Bombay High Court in the case of Hexaware, *supra*, being stayed by Hon'ble Supreme Court,the notice issued by JAO in the present case is held to be valid and not quashed. The Ld. DR has also placed reliance on various other High Court decisions wherein after considering the decision in the case of Hexaware, *supra*, the Courts have taken the view that notice

issued u/s.148 of the Act by JAO and sent to faceless regime was in due compliance of the provisions of the scheme.

29. Another reason for not following the decision of Hexaware, *supra*, is that in the present case, search and seizure action was carried out u/s.132 of the Act and the cases were centralised. The case of the Assessee falls in Explanation 2 to section 148 of the Act whereas the case of Hexaware, *supra*, falls in Explanation 1 to section 148 of the Act. In respect of this, decision relied by the Ld. DR of Hon'ble Gujarat High Court in the case of Talati and Talati LLP v. ACIT [2024] 469 ITR 643 (Guj) applies wherein in para 27 of the said order, distinction is drawn between notice u/s.148 of the Act issued under Explanation 1 and Explanation 2 to section 148 of the Act.

30. In the light of the above, we hold that the notice u/s.148 of the Act issued by JAO could not be treated as invalid and the said notice is correctly issued by JAO considering the entire gamut of the case and the provisions of the Act and the faceless regime. This additional ground of the Assessee is thus *dismissed*.

31. Now we take up the grounds of appeal filed by the Assessee and Department on merits. The Assessee as well as Department is in appeal against the part relief given by Ld. CIT(A) in respect of issue of sale of scrap and income from sale of scrap from piling work whereas the Department has raised further grounds in appeal in respect of the issue of out of books expenses (murrum expenses) on which the Ld. CIT(A) has given full relief to the Assessee in the impugned AY.

32. First of all we take up cross appeals of Assessee and Department on the issue of sale of scrapand sale of scrap from piling work whereby the AO made addition of Rs.25,79,334/- and Rs.77,48,409/- respectively u/s.69A of the Act and the Ld. CIT(A) gave partial relief by estimating income on gross value of scrap sale taking average net profit before tax (PBT) shown in regular

books of account and also treating the same as business income and thereby confirming addition to the extent of Rs.2,20,791/- and Rs.6,63,264/- respectively adopting average PBT of 8.56%. The Assessee has filed appeal (grounds 1 & 2) challenging the addition sustained of Rs.2,20,791/- and Rs.6,63,264/- and the department has filed appeal (grounds 1 to 6) against relief given to Assessee.

33. The brief facts of the case is that the Assessee is engaged in the business of civil construction i.e. infrastructure projects on turnkey basis such as construction of flyovers, bridges, irrigation projects, metro work (both elevated and underground), roads and highways, etc. received from Government and Semi-Government authorities in various parts of India.

34. A search and seizure action u/s.132 of the Act was carried out u/s.132 of the Act on 11.10.2022 at the business premises of Assessee Company, various site offices of Assessee Company, residences of promoters and Directors as also residences of few key employees of the Assessee Company. During the course of search and seized action u/s.132 of the Act, various incriminating evidences were found in the form of loose papers, diary, whatsapp chats in mobile phones of promoter, director, employees as also digital data in the form of excel sheets, trial balances, etc. maintained in MIS server, email exchanges between employees and promoters, etc. All these evidences found were confronted to promoters, directors and various employees and their statements were recorded during the course of search action u/s.132(4) of the Act.

35. In the statements recorded of various personnel including that of promoters and directors, upon confronting of various evidences found, both loose papers, diary, digital evidences in the form of excel sheets, etc., all of these people have accepted there has been sale of scrap in cash and details of such sale of scrap is intimated to the promoters and directors on regular basis by

sending excel sheets of the same via internal webmail and these excel sheets contain details of name of vendor to whom the scrap is sold alongwith other details such as vehicle number, challan number, nature of scrap, its weight / quantity and the amount. There are also instances where the cash on sale of scrap at sites remaining / left over after incurring expenses are sent to the head office and noting in respect of the same was found in the Diary seized from the residence of Shri Nalin Gupta and Diary maintained by the Promoter Shri Jagdish Kumar Gupta and in the statement recorded of Shri Jagdishkumar Gupta, he has accepted the noting of scrap in the diary relating to the scrap sold at various sites.

36. The AO in the assessment order has dealt with this issue in para 2 to 9 at pages 2 to 37 wherein various evidences found are discussed and even screenshots of some of the evidences found are reproduced in the order. The Ld. CIT(A) in the order passed in para 4.1 to 4.14 at pages 4 to 10 of the order has elaborated in detail the various evidences found relating to sale of scrap in cash and duly accepted by various personnel in their statements recorded in the course of search action u/s.132(4) of the Act.These evidences and statements recorded are also discussed in detail by the Assessing Officer in the detailed order passed and the AO has quantified the amount of sale of scrap for each year starting from AY 2016-17 on the basis of various evidences found afterculminating any scope of double additions on the basis of various evidences seized both digital and otherwise. The year-wise quantification of the gross amount of sale of scrap is then tabulated site-wise and addition in each year is quantified. The said table is on page 36 of the assessment order for the impugned year and is also reproduced by the Ld. CIT(A) in his order at page 11.

37. Similarly, in respect of sale of scrap on piling work, the AO has discussed the issue at pages 105 to 110 of the assessment order for the impugned year and various evidences found are

relied upon alongwith screenshot of few such evidences whereas the Ld. CIT(A) has discussed this issue in para 10 to 10.3 at pages 57 and 58 of the order passed.

38. After considering the detailed submission filed by the Assessee in respect of the issue of sale of scrap as also in respect of sale of scrap from piling work, the Ld. CIT(A) has given finding whereby part relief was given to the Assessee holding that gross value of sale of scrap cannot be added and thereby applied PBT of 8.56% of the gross amount of sale of scrap and also holding that the addition of this issue is business income and not unexplained money u/s.69A of the Act. The relevant part of the finding of the CIT(A) on both these issues is reproduced herein below:

> ***"6.*** *I have considered the facts of the case. The appellant has not disputed thatthere is unaccounted sale of scrap. The primary contention of the appellant is that thecash earned from such sale of scrap is utilized for various business related expenseswhich are not recorded in the books of account. To this extent, the findings of the AOare validated. Hence, this aspect needs no further discussion.*
>
> ***6.1.*** *The appellant has stated that it has incurred cash payments for variouspurposes such as payment to local people, local suppliers, avoiding nuisance, etc. Ithas been contended that these expenses are essential for the smooth conduct ofbusiness. The appellant has requested that the gross receipts should not be taxed butonly the net profit on sale of scrap should be brought to tax.*
>
> ***6.2.*** *A question does arise as to whether the appellant's contention of it havingincurred expenses out of the same is correct or not. Only if the same is proved to betrue does the question of assessment of net profit arise. Otherwise, the entire grossreceipts are liable to be taxed.*

6.3. *In the assessment order, the AO has made reference to various evidences andfindings. In para 2.1.3 of the assessment order, it has been noted that the sheetsprepared by Shri Puneet Srivastava and his team contain the details of scrap that hasbeen sold in cash and the same is reduced from the cost of material as per the abovebalance sheets. Another finding has been given in page 10 of the assessment orderof AY 2016-17 wherein a reference is drawn to page No. 193 of the loose paperbundle. It states that expenses mentioned are also in cash. The code word "murum"(discussed in a separate ground) is also found referred and linked to therein. The AOhas also noted that page No. 212 of loose paper bundle is also of similar nature andthat the excess cash is being sent back to "HO" which is the abbreivation of HeadOffice so that the same may be utilised for making cash expenses for other projects.In page 19 of the assessment order for AY 2016-17, the AO has referred to statementof Shri Jagdish Gupta, who has confirmed that cash expenses have been incurred. Inpage 20 of the assessment order for AY 2016-17, the AO has referred to statement ofShri Nalin Gupta, who in response to question No. 64 has stated that cash sales areused for various purposes. The AO has noted in para 8.1 of the assessment order forAY 2016-17 that the appellant submitted that cash generated from scrap sale isutilised in business but that it could not offer any details of the same.*

6.4. *From a cogent reading of the above, it is clear that the appellant has incurredcash expenses out of scrap sale notwithstanding that it has not been able to accountfor each and every expense or how it was utilised. There is also merit in the claim ofthe appellant that no evidence of such cash sales of scrap being invested inimmovable or other assets has been found, meaning thereby that such cash receiptshave been spent in the course of business.*

6.5. *In view of the above discussion, I am of the view that the appellant is right inclaiming that only the net profit of such receipts should be brought to tax and not theentire gross receipts. In the case of CIT vs Poona Electric Supply Co. Ltd., 49 ITR913 (Bom), the Hon'ble HC held that it is the real income which has to be taxed. Itwas also cited as follows:*

> *"The following principle laid down by Lord Chancellor Halsbury has also been cited with approvalas equally applicable to the Indian Income-tax Act:*
>
> > *"The thing to be taxed ... is the amount of profits or gains. The word 'profits' I think is to beunderstood in its natural and proper sense—in a sense which no commercial man wouldmisunderstand. But when once an individual or a company has in that proper senseascertained what are the profits of his business or his trade, the destination of those profits orthe charge which has been made on those profits by previous agreement or otherwise isperfectly immaterial. The tax is payable upon the profits realized and the meaning to my mindis rendered plain by the words 'payable out of profits'."*"

6.6. *Similarly, in Poona Electric Supply Co. Ltd vs CIT in 57 ITR 721 (SC), theHon'ble Apex Court held that "Income-tax is a tax on the real income, i.e. the profitsarrived at on commercial principles subject to the provisions of the Income-tax Act.The real profit can be ascertained only by making the permissible deductions.".*

6.7. *Hence, it is held that only the net profit can be taxed, and not the gross receiptsper se.*

6.8. *Now the question that arises is, what is the percentage of profit that needs to beapplied. In I.T.T.A. No. 21 of 2013 dated 23.07.2013 in the case of CIT vs SriKamlekar Shankar*

Lal, the Hon'ble AP HC held that "The rate of estimation of profit isalways discretionary. On consideration of the fact, sometimes the profit is estimatedat 5% and sometimes it is estimated at 3%. It depends upon the appreciation of eachand every fact of every individual case." It was further held that Court should notinterfere with such discretion, unless the exercise of discretion was absolutelyarbitrary. Thus, the estimation of profits depends on facts and circumstances of eachof the case.

6.9. *In the present case, the appellant has sought that it should be restricted toProfit Before Tax % (PBT %) of the respective year. A perusal of the PBT % overvarious years of search assessment shows a fluctuating trend. The same issummarised as follows:-*

Asst. Year	*PBT %*
2016-17	*10.92*
2017-18	*9.96*
2018-19	*10.08*
2019-20	*9.63*
2020-21	*7.85*
2021-22	*3.45*
2022-23	*8.01*

6.10. *In my view, it would be unwise to adopt the PBT % of respective year. Rather,an average of all the above 7 years gives a secular trend and a better estimate of theamount that is liable to be taxed. My view draws support from the case of KachwalaGems vs JCIT (SC), 288 ITR 10, wherein the Hon'ble Apex Court ruled as under:-*

> *"11. It is well-settled that in a best judgment assessment, there is always acertain degree of guess work. No doubt the authorities concerned should try tomake an honest and fair estimate of the income even in a best judgmentassessment, and should not act*

totally arbitrarily, but there is ***necessarilysome amount of guess work involved in a best judgment assessment,****and* ***it is the assessee himself who is to blame as he did not submitproper accounts****. In our opinion, there was no arbitrariness in the presentcase on the part of the income-tax authorities"*

6.11. *Similarly, in the case of Commissioner of Sales-tax vs H.M. Esufali H.M.Abdulali, 90 ITR 271, the Hon'ble Apex Court has held as under:-*

*"The task of the assessing authority in finding out the escaped turnover was byno means easy. In estimating any escaped turnover, it is inevitable that thereis some guess-work. The assessing authority while making the "bestjudgment" assessment, no doubt, should arrive at its conclusion without anybias and on rational basis. That authority should not be vindictive or capricious****.If the estimate made by the assessing authority is a bona fide estimateand is based on a rational basis, the fact that there is no good proof insupport of that estimate is immaterial.*** *Prima facie, the assessing authorityis the best judge of the situation. It is his "best judgment" and not of anyoneelse.* ***The High Court could not substitute its "best judgment" for that ofthe assessing authority.*** *In the case of "best judgment" assessments, thecourts will have to first see whether the accounts maintained by the assesseewere rightly rejected as unreliable. If they come to the conclusion that theywere rightly rejected, the next question that arises for consideration is whetherthe basis adopted in estimating the turnover has reasonable nexus with theestimate made.* ***If the basis adopted is held to be a relevant basis eventhough the courts may think that it is not the most appropriate basis, theestimate made by the assessing authority cannot be disturbed. In***

thepresent case, there is no dispute that the assessee's accounts wererightly discarded. We do not agree with the High Court that it is the dutyof the assessing authority to adduce proof in support of its estimate. *Thebasis adopted by the Sales Tax Officer was a relevant one whether it was themost appropriate or not. Hence the High Court was not justified in interferingwith the same."*

6.12. *The average PBT % for all 7 years works out to 8.56%. On a fair and overallconsideration of facts, I am of the view that adoption of net income @ 8.56% wouldbe appropriate. Accordingly, the income of the appellant for each of the years isdirected to be computed as under:-*

Asst. Year	***Addition Made by the AO***	***Addition restricted to8.56% of gross receipts***	***Relief Granted by CIT(A)***
2016-17	*25,79,334*	*2,20,791*	*23,58,543*
2017-18	*1,28,74,124*	*11,02,025*	*1,17,72,099*
2018-19	*6,33,75,794*	*54,24,968*	*5,79,50,826*
2019-20	*18,39,33,091*	*1,57,44,673*	*16,81,88,418*
2020-21	*11,35,93,619*	*97,23,614*	*10,38,70,005*
2021-22	*14,66,43,171*	*1,25,52,655*	*13,40,90,516*
2022-23	*45,36,39,801*	*3,88,31,567*	*41,48,08,234*

6.13. *It is to be noted that the AO had made the entire addition u/s 69A r.w.s.115BBE of the Act. No doubt, the provisions of S.69A are deeming provisions andhave to be construed very strictly. However, the application of such section dependson the factual aspects of each case. In the instant case, there is overwhelmingevidence that the appellant has conducted an organized business activity, albeitoutside the tax net. S.69A speaks of "Where in any financial year the assessee is found tobe the owner of any money, bullion, jewellery or other valuable article and such money,bullion, jewellery or valuable article is not recorded in the books of account". Here, theappellant is found to have indulged in cash transactions but it cannot be conclusivelystated that he was the owner of such cash as the same has already been spent.Hence, in my view, what is required to be taxed is the gains made therefrom(business profits).*

6.14. *My view is also supported by the decision of the Hon'ble Tribunal in the case ofACIT v. Devendra Rao Gourkanti in ITA No. 439/Hyd./2022 dt. 31.05.2023 for AY2021-22. Similar view has been taken by the Hon'ble Tribunal in the case of ShriBhuwan Goyal vs. DCIT in ITA No. 1385/Chd./2019 dt. 28.09.2020 for AY 2017-18.Thus, the AO is directed to bring 8.56% of gross receipts to tax as business incomeand not as income u/s 69A of the Act.*

6.15. *Accordingly for AY 2016-17, the addition of Rs. 25,79,334/- is restricted to Rs.2,20,791/-. In view of the above detailed discussion,* ***Ground No. 1*** *stands* ***PARTLYALLOWED****.*

……

12. *I have considered the facts of the case. The appellant has denied that cashwasreceived from piling*

division. It has contended that the WhatsApp chat in theassessment order is not clearly visible. The appellant has alternatively submitted thatdeeming provisions should not be applied as such income is taxable as business.

12.1. *The appellant's contention that WhatsApp chat is not clearly visible is nothingbut a lame excuse. The chat is as per the mobile phone of Shri Nalin Gupta,Managing Director of the appellant. Moreover, it is the standard practice of thedepartment to give a copy of entire seized material to the appellant. Thus, thisargument is not accepted.*

12.2. *The chat of Shri Nalin Gupta with Shri Dharmendra Tiwari have been cited bythe AO in the assessment order. The sequence of events has been explained by ShriNalin Gupta in reply to Question No. 27 to 29 of statement u/s 132(4) where he hasstated that cash is collected for some of the piling projects and the same is notaccounted in the books of account. He has also qualified such instances of cashcollection as very rare and exceptional, denoting that his statement was recorded asdeposed by him. In response to Question No. 83, a series of such cash receipts hasbeen confirmed as having been received and handed over to Deven Bhai. He hasearlier been identified as Devendra Rajput, Accountant of the appellant company. Besides various other evidences have also been cited by the AO which have notbeen effectively rebutted by the appellant.*

12.3. *The appellant has stated that statement of Shri Nalin Gupta was retracted andthat the same could not be relied upon. I have perused the affidavit cum declarationof Shri Nalin Gupta dt. 19.10.2022 notarised*

on 20.10.2022. There is no referencewhatsoever to piling income. Moreover, the appellant's statement as regards scrapincome and that it has not been accounted for has been found to be correct and notdisputed by the appellant. Thus, it would be unwise to hold some parts of thestatement as unreliable even while the other parts stand accepted. The statementduring the course of search action is recorded in the presence of two independentwitnesses and is admissible evidence. The sequence of recording and the nature ofreplies clearly show an application of mind.

12.4. *It is also noted that although the retraction affidavits have been prepared inOctober 2022, they have been filed with the AO along with the reply on 12.03.2024.Thus, there is inordinate delay in filing of retraction. As rightly stated by the AO, noevidence of force, threat, coercion or undue influence has been brought out. Thestatements also indicate that the deponent has seen the same and signed it afterverification. Besides a perusal of the statements as a whole shows that severalevidences have been interwoven and incorporated as part of the statement. Thereplies also have been wide ranging from explanation to expressing ignorance or acombination of them.*

12.5. *At this stage, the following judicial precedences are very relevant:-*

a. *The decision of Hon'ble Apex Court in the case of Surjeet Singh ChhabraAIR 1197 SC 2560 (DOJ: 25.10.1996), wherein it was held as follows: "Since the dispute concerns the confiscation of the jewellery, whether atconveyor belt or at the green channel, perhaps the witnesses wererequired to be called. But in view of confession made by him, it*

binds himand, therefore, in the facts and circumstances of this case the failure togive him the opportunity to cross-examine the witnesses is not violative ofprinciple of natural justice. It is contended that the petitioner had retractedwithin six days from the confession. Therefore, he is entitled to crossexaminethe panch witnesses before the authority takes a decision onproof of the offence. We find no force in this contention. The Customsofficials are not police officers. The confession, though retracted, is anadmission and binds the petitioner." ***In this case, the retraction filedwithin 6 days was rejected by the Hon'ble Apex Court.***

b. *234 Taxman 771 (SC), B Kishore Kumar vs DCIT [2015] (doj: 02.07.2015)– It was held by the Hon'ble Apex Court that since assessee himself hadstated in sworn statement during search and seizure about hisundisclosed income, tax was to be levied on the basis of admissionwithout scrutinizing documents.*

c. *351 ITR 143 (Delhi HC); Bhagirath Aggarwal vs CIT (doj: 22.01.2013): Itwas held that addition in assessee's income relying on statements recorded during search operations cannot be deleted without provingstatements to be incorrect. SLP was dismissed by Hon'ble SC vide CANo.16170/2013 thereby affirming the proposition that AO could rely on thesame.*

d. *[2019] 106 taxmann.com 128 (SC) / [2019] 264 Taxman 5 (SC), BannalalJat Constructions (P.) Ltd. vs ACIT - Burden lay on assessee to show thatadmission made by director in his statement*

*was wrong and suchretraction had to be supported by a strong evidence showing that earlierstatement was recorded under duress and coercion. It was held that "**Thestatement recorded during the course of search action which was inpresence of independent witnesses has overriding effect over thesubsequent retraction.**"*

***12.6.** The AO has pointed out numerous pieces of evidences, specific entries whichshow that cash receipts from piling division have been received by the appellant.None of these factual evidences have been controverted by the appellant accept byway of a generic explanation.*

***12.7.** In view of the above I am unable to accept the contentions of the appellant inthis regard. The situation before us is similar to the cash sale of scrap discussedearlier. For the sake of brevity, the same is not discussed again. Accordingly, theincome of the appellant is directed to be computed as business Income for therespective years as under:-*

Asst. Year	***Addition Made by theAO***	***Addition restricted to8.56% of gross receipts***	***Relief Granted***
2016-17	*77,48,409*	*6,63,264*	*70,85,145*
2017-18	*3,55,858*	*30,461*	*3,25,397*
2018-19	*12,75,928*	*1,09,219*	*11,66,709*
2019-20	*33,36,676*	*2,85,619*	*30,51,057*
2020-21	-	-	-
2021-22	-	-	-

2022-23	*76,50,000*	*6,54,840*	*69,95,160*

12.8. *Accordingly for AY 2016-17, the addition of Rs. 77,48,409/- is restricted to Rs.6,63,264/-. In view of the above detailed discussion,* ***Ground No. 3*** *stands* ***PARTLYALLOWED****."*

39. Before us, the Ld. Authorised Representative (AR) of the Assesseecontended that the addition made by the AO and confirmed by Ld. CIT(A) is not justified as the same is made relying upon the digital evidences without appreciating that the digital evidences cannot be relied upon and does not have any evidentiary value without following the procedure and obtaining certificate u/s.65B of the Indian Evidence Act. It is further contended that the addition is made without rejection of books of account and merely placing reliance on the statements recorded u/s.132(4) of the Act without appreciating that the statements recorded were retracted by filing Affidavit and relied upon instruction issued by CBDT that no confession / disclosure be taken in statement recorded and reliance to be placed on the evidences gathered in course of search and survey action. In this regard, the Assessee has filed submission during the course of hearing before us and the relevant part of the submission of the Assessee is reproduced herein below:

"The addition of the sale of scrap in cash under section 69A of the Act is bad in law.

It is submitted that estimate addition cannot be made without rejecting the books of accounts:

The Hon'ble Bombay High Court in the case of ***CIT v. Teletronics Dealing Systems (P.) Ltd. [2015] 53 taxmann.com 20 (Bom)(HC)*** *held that without recording requisite satisfaction in terms of section 145(3) to reject*

books of account, the Assessing Officer was not justified in making additions on an estimate basis.

(Page 17 to 18 of Paper Book – II; Relevant para 5 on page 18)

The Hon'ble Delhi High Court in the case of ***PCIT v.Forum Sales (P.) Ltd.[2024] 160 taxmann.com 93 (Delhi)(HC)*** *held that AO could not make additions on account of bogus or inflated expenses on an estimate basis without rejecting books of account.*

(Page 21 to 28 of Paper Book – II; Relevant para 14-29 on page 25-28)

Without prejudice to the above, the statements, of Mr. Jagdish Kumar Gupta and Ms. Nalin Gupta are retracted.

(Page 302 to 314 of Paper Book – II)

Further, CBDT vide ***Instruction No. F. No 286/2/2003-IT (Inv.) dated March 10, 2003*** *and* ***Letter: F NO. 286 /98 /2013 -IT (Inv-II] dated December 18, 2014,*** *wherein CBDT has noticed that during search proceedings there is an attempt to procure confession on unexplained money by coercive means.*

(Page 29 to 30 of Paper Book – II)
(Page 31 to 32 of Paper Book – II)

Further, the Hon'ble Jurisdictional High Court in the case of ***CIT v. Rakesh Ramani [2018] 94 taxmann.com 461 (Bom.)(HC)*** *held that where in the course of block assessment, the assessee brought on record various documents to establish that jewellery seized from him actually belonged to his employer, impugned addition made in respect thereof merely on the ground that assessee in the course of the statement made under section 132 of the Act,*

had admitted that said jewellery belonged to him, could not be sustained.

(Page 33 to 37 of Paper Book – II; Relevant para 11 on page 36)

Therefore, no addition can be made merely on the basis of the statements recorded.

Further, with respect to the alleged digital evidence, Excel sheets are not admissible as evidence unless they comply with the provisions of the Information Technology Act, 2000.

The Supreme Court in the case of ***Anwar P. V. v. P. K. Basheer, reported in (2014) 10 SCC 473 (SC)*** *has held and observed that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.*

(Page 38 to 52 of Paper Book – II; Relevant para 12-17 on page 43-45)

The Hon'ble Madras High Court in the case of ***Saravana Selvarathnam Retails (P.) Ltd. v. CIT [2024] 463 ITR 523 / 298 Taxman 319/ 339 CTR 10 (Mad.)(HC)*** *held that it is mandatory to follow the Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.*

(Page 53 to 73 of Paper Book – II; Relevant para 67-70 on page 70-71)

As per the ***Digital Evidence Investigation Manual*** *issued by at para 2.7.3 on page 13 it is mentioned that, special provisions as to evidence relating to electronic record have been inserted in the Indian Evidence Act, 1872 in the form of section 65A & 65B, after section 65. These provisions are very important.* ***They govern the integrity of the electronic record as evidence, as well as, the process for creating electronic record. Importantly, they impart faithful output of computer the same evidentiary value as original without further proof or production of original****. Accordingly, while handling any digital evidence, the procedure has to be in consonance of these provisions.*

(Page 74 to 76 of Paper Book – II; on page 76)

Without prejudice to the above, the Assessee's books of accounts are not rejected."

40. Apart from the above submission made, the Assessee has also filed chart in respect of each of the issues before us wherein in respect of issue of sale of scrap in cash and sale of scrap in cash from piling work, the Assessee has reiterated the arguments taken before the CIT(A) and referred to detailed submission filed before AO and CIT(A), the relevant part of which is reproduced in the order passed by the CIT(A) and hence, the same is not once again repeated here.

41. On the other hand Ld. DR took us through the grounds of appeal and various para of the order of the Assessing Officer, and contended that the Ld. CIT(A) was not correct in estimating the income in respect of sale of scrap and sale of scrap from piling work and argued that the substantial relief given by the Ld. CIT(A) is not correct. The Ld. DR contended that in the course of search action, voluminous evidences are found in the form of loose papers, diary and digital data, which proves that the

Assessee has sold scrap in cash. The digital data evidences clearly gives elaborate data of the scrap sold giving party-wise details with name, invoice no., challan no., description of goods sold, its weight, quantity, vehicle number, amount, etc. and such evidence is found for all the years involved in search action and not limited to one of instance. The Ld. DR countered the contentions of the Assessee pleading that the retraction of the statement is after thought and that there was no coercion or undue influence while recording the statement of various personnel during the course of search action and no such thing is proved by the Assessee. The Ld. DR contended that there is no requirement to reject the books of account since the additions made are based upon the incriminating material found in the course of search action and transactions outside the books of account. The Ld. DR further argued that scrap generated is out of the material purchased and the entire amount of material purchased is claimed as expenses in the profit and loss account and thus, the gross value of sale of scrap in cash is income of the Assessee and therefore gross value of the same needs to be confirmed as against the estimated addition made by the CIT(A).

42. We have gone heard the counsels for both the parties, perused the material placed on record and judgments cited before us and also the submission and chart filed by the Assessee. We have also gone through the Assessment order and the CIT(A) order and considered the entire facts of the case. Besides reiterating the contentions raised before the AO and CIT(A), the Assessee has made further contentions, which are dealt with hereunder:

a. The first contention of the Assessee is that the statements of various personnel relied upon for making the addition is not justified as the same have been retracted by filing Affidavit and therefore addition cannot be made on the basis of confession made in the statement, which were taken by coercion and in support of the same, reliance is

placed on instruction issued by CBDT in F. No 286/2/2003-IT (Inv.) dated March 10, 2003 and Letter: F NO. 286 /98 /2013 -IT (Inv-II] dated December 18, 2014. This contention of the Assessee is not acceptable and we are inclined to reject the same. It is undisputed fact that in the case of Assessee, during the course of search and seizure action at various places, various evidences are found both digital and otherwise. It is obvious for the search officers to record the statements of the concerned personnel and seek explanation in respect of the contents of the material seized. We have gone through the statements recorded and it is seen that there is no confession or disclosure taken / extracted from any personnel whose statements are recorded and the questions asked relates to the evidences found and explanation sought for in respect of the same. The Ld. AR of the Assessee could not point out in any of the statements recorded as to disclosure extracted or use of coercion. Thus, the statements recorded during the course of search action u/s.132(4) of the Act only sought explanation in respect of evidences found and the addition made by the AO in the assessment order are based upon various incriminating material and evidences seized and are not simply based upon the statements recorded of various personnel during the course of search action. Thus, the retraction of the statement recorded by filing Affidavit of all the personnel whose statements were recorded and that too after more than 6 months cannot be taken cognisance of. The decisions relied upon by the Assessee in the submission filed are clearly distinguishable on facts and cannot be applied to the facts of the present case of the Assessee. In this regard, the Ld. CIT(A) has rightly rejected the same in para 12.4 and 12.5 of the order and we uphold the reasoning and finding of Ld. CIT(A) as given in para 12.4 at page 62-63

of the order and thus, reject this contention of the Assessee;

b. The next contention of the Assessee is in respect of reliance placed on the digital evidences such as excel sheets found in MIS server, whatsapp chat in mobile phones, etc. is not correct since the same are not admissible evidence as the provisions of Information Technology Act, 2000 is not complied with. The Assessee also relied on the decision of Supreme Court in Anwar P. V. v. P. K. Basheer, reported in (2014) 10 SCC 473 (SC) and Madras High Court in Saravana Selvarathnam Retails (P.) Ltd. v. CIT [2024] 463 ITR 523 / 298 Taxman 319/ 339 CTR 10 (Mad.)(HC) to contend that requirements of sec.65B of Indian Evidence Act and digital evidence investigation manual are not complied with. It is thus contended that digital evidences have to be ignored while making the impugned addition. We are not inclined to accept this contention of the Assessee and out rightly reject the same. In the case of the Assessee, voluminous evidences are found, both digital and otherwise, as detailed by the AO in the assessment order and these evidences are interwoven on many occasion for which the AO has given the benefit and not made double addition. One such example is that of the noting made in respect of scrap amount received in the Blue Colour Luxor Diary found and seized during the course of search action from the residence of Shri Nalin Gupta and maintained by Shri Jagdishkumar Gupta and the Assessee has himself related the amount noted in the Diary relating to sale of scrap with the digital evidences found so as to avoid double addition and this benefit is duly given by the AO while making the addition on account of noting in the Diary. Further, the Assessee has not disputed before the lower authorities that there is no sale of scrap outside the books of account. The digital

data evidences in the form of excel sheets and other data clearly show detailed record of the sale of scrap alongwith name of the party to whom it is sold with other details as to date, vehicle number, challan no., invoice no., description of scrap sold, its quantity, amount, etc. and on such incriminating material found, explanation sought from various personnel in their statements recorded during the course of search action u/s.132(4) of the Act, there is no denial by any of them that there is no sale of scrap in cash. The Ld. CIT(A) has summarised the statements recorded of various personnel including promoter and directors in respect of the evidences found and explanation sought thereof and all of them have explained the contents of the evidence found and seized and accepted and admitted sale of scrap in cash. These evidences are maintained and kept in record of the Assessee, albeit outside the regular books of account, and found for each of the year under search. It is also undisputed fact that in civil construction and that too of large scale as that carried out by the Assessee, scrap is bound to be generated and thus, sold, which however is not found to be recorded in the regular books of account baring meagre amount and that too in some of the years. The reliance placed by the Assessee is therefore not applicable to the facts of the present case in the light of voluminous incriminating material found in course of search action and detailed in the assessment order as also cognisance taken by CIT(A) in the order passed. Thus, in our considered view, considering the peculiar facts of Assessee case, whereby the digital data evidences are also corroborated with other evidences found otherwise, the same are held to be admissible evidences more particularly when the Assessee has also not disputed sale of scrap in cash and accepted that out of books expenses were incurred from cash generated on account of sale of scrap;

c. The next contention of the Assessee is that the estimated addition cannot be made without rejecting the books of account u/s.145(3) of the Act and relied upon the decision in CIT v. Teletronics Dealing Systems (P.) Ltd. [2015] 53 taxmann.com 20 (Bom)(HC) in support of the same. This contention of the Assessee also cannot be accepted for the reason that the issue at hand is in respect of addition made outside the books of account and the book results are not disturbed at all. The estimated addition made by the CIT(A) is in respect of the transactions outside the books of account and thus, provisions of sec.145(3) of the Act does not apply to out of books addition.

43. Now we proceed to deal with the contentions of the Ld. DR. The main contention of the Ld. DR is that the scrap generated and sold is to be added on gross basis as the expenses in respect of the same are already recorded in the regular books of account when the purchase of goods was made and debited to the profit and loss account and allowed as such. This contention of the Ld. DR is not acceptable as the Ld. CIT(A) in the order has given the finding that during the course of search action, out of books expenses incurred were also found and one of the sources of the same was cash generated via sale of scrap. Thus, it is not the case where incidental expenses or material purchase expenses are claimed as deduction in the regular books of account and therefore no further expenses are incurred out of cash generated from sale of scrap. Apart from this, the Ld. DR has relied upon the findings given in the assessment order and no other additional arguments were raised before us.

44. Having dealt with the additional contentions of the Assessee and Ld. DR and having not accepted the same, we are of the view that sale of scrap outside the books of account cannot be denied in the facts of the Assessee case. The quantification made by the

AO year-wise and site-wise in respect of sale of scrap is also not under dispute.

45. We now first deal with the department contention that provisions of sec.69A of the Act are attracted in respect of the addition made on account of sale of scrap in cash and not as business income. In the facts of the present case, the scrap is generated at various sites from civil construction infrastructure projects undertaken by the Assessee and this fact is not in dispute since the AO has also quantified the scrap sale outside books of account site-wise on the basis of evidences found. Thus, the scrap generated is incidental to the business carried out by the Assessee. The nature and source is thus established from the seized evidences itself. Provision of sec.69A of the Act is not applicable to the facts of the Assessee case as in the course of search action, no such huge unexplained cash or other assets are found in the hands of the Assessee Company and this facts is also not in dispute. In grounds of appeal no.6 of the department, it is alleged that unexplained investment in immovable or other assets are found in the hands of the promoters and addition made in their hands. We are afraid as to how this ground of appeal has any bearing on the issue at hand. In fact, by raising this ground, the department has affirmed the fact that no unaccounted money or unexplained investment in any asset, is found in the hands of the Assessee Company. The Ld. DR was also unable to point out any unexplained money or investment found in the hands of the Assessee Company. It is also not stated as to the exact nature of unexplained investment addition made in the hands of the promoter, if any, and the amount of such addition and what is the is the relevance of the same in the present case of the Assessee. In fact, we find that neither in the assessment proceedings nor during the first appellate proceedings as also in the orders passed by lower authorities, the Assessee has claimed telescoping of such huge amount against any unexplained investment of the promoter. It is also undisputed fact that the sale of scrap recorded in the books of

account is claimed as part of the business income and this is accepted by the department and not taxed as income from other sources. Thus, the sale of scrap is inextricably linked to the business carried on by the Assessee and therefore to be assessed as part and parcel of business income of the Assessee. **The finding given by the Ld. CIT(A) in this regard in para 6.13 of the order at page 22 of the order is hereby upheld.**

46. The next contention of the Assessee and Department is in respect of estimated addition made by the Ld. CIT(A). The department has contended that 100% addition on account of sale of scrap to be confirmed as made by the AO, whereas the Assessee has contended that the estimated addition is not justified and entire addition to be deleted or in the alternative, the estimated addition may be further reduced as no unaccounted cash or unexplained investment is found in the course of search action.Having gone through the assessment order and CIT(A) order, we find that during the course of search action, out of books expenses are also found to be incurred and this fact is not disputed by the AO and in fact, the AO has separately made addition in respect of out of books expenses (murrum) and has also recorded at various placed in the assessment order that cash generated on sale of scrap have been expended. The Assessee has also contended before the AO during the assessment proceedings as also before the Appellate proceedings that it is required to incur various expenses in cash such as for payments to local people, local supplier, avoiding nuisance, medical aid, festive celebrations, etc. at various sites for which no proper supporting are available and thus, cash generated from scrap sale is utilised for various such purposes. This fact is also recorded by the Ld. CIT(A) in the order passed and this facts are not disputed by the department that out of books cash expenses are incurred.Once it is found that out of books cash expenses are incurred, there is no requirement to corroborate each and every receipt with expenses so as to allow the same more particularly in cases of search and seizure where

voluminous records of evidences are found. In such situation the best course of action left is to estimate the income and thus, gross receipts cannot be taxed adopting principles of real income theory. **The findings of the Ld. CIT(A) in the order passed in para 6.3 to 6.7 at pages 18 and 19 are hereby confirmed.**

47. The next question is the adoption of appropriate percentage to estimate the income from sale of scrap. The Ld. CIT(A) in the order passed has estimated income by adopting average percentage of profit before tax as per the regular books of account. The Ld. CIT(A) has held in para 6.9 and 6.10 of the order at page 20 that PBT % of 7 years average instead of adopting PBT % of each year in view of fluctuating trend. The table of PBT % drawn in the CIT(A) order at page 20 show that the Assessee has been earning PBT % in the range of about 8 to 10% (except for the assessment year 2021-22) and thus, it cannot be said that there is huge fluctuating trend in PBT % in the case of the Assessee. For AY 2021-22, the PBT % is 3.45% and the reason for the same is that this year was impacted due to global pandemic covid-19 and there was complete lockdown in India for part of the year and many parts continued to be in lockdown or partial opening for the entire year and thus, it is obvious that the Assessee being constructing infrastructure projects, the projects remained standstill for many months and due to pandemic, the workers were also not available even after partial relief from lockdown. Thus, we are of the considered view that it is best to estimate the income from sale of scrap outside books of account by adopting the PBT % of the Assessee Company as per regular books of account offered in each year rather than taking average of the same. To this extent, the order of the CIT(A) gets modified and the appeals of both the Assessee and Department is partly allowed on this ground as per the following table:

Asst. Year	***Addition Made by theAO***	***PBT %***	***Addition restricted toPBT % of***	***Relief Granted***

	(gross receipts)		***grossreceipts***	
2016-17	*25,79,334*	*10.92*	*2,81,663*	*22,97,671*
2017-18	*1,28,74,124*	*9.96*	*12,82,263*	*1,15,91,862*
2018-19	*6,33,75,794*	*10.08*	*63,88,280*	*5,69,87,514*
2019-20	*18,39,33,091*	*9.63*	*1,77,12,757*	*16,62,20,334*
2020-21	*11,35,93,619*	*7.85*	*89,17,099*	*10,46,76,520*
2021-22	*14,66,43,171*	*3.45*	*50,59,189*	*14,15,83,982*
2022-23	*45,36,39,801*	*8.01*	*3,63,36,548*	*41,73,03,253*

48. Similarly, in respect of sale of scrap from piling work, the findings given hereinabove in respect of sale of scrap issue *pari passu* applies to this issue also. In view of the same, the order of the CIT(A) gets modified and the appeals of both the Assessee and Department is partly allowed on this ground as per the following table:

Asst. Year	***Addition Made by theAO (gross receipts)***	***PBT %***	***Addition restricted to PBT % of grossreceipts***	***Relief Granted***
2016-17	*77,48,409*	*10.92*	*8,46,126*	*69,02,283*
2017-18	*3,55,858*	*9.96*	*35,443*	*3,20,415*
2018-19	*12,75,928*	*10.08*	*1,28,614*	*11,47,314*
2019-20	*33,36,676*	*9.63*	*3,21,322*	*30,15,354*
2020-	*-*	*7.85*	*-*	*-*

21				
2021-22	*-*	*3.45*	*-*	*-*
2022-23	*76,50,000*	*8.01*	*6,12,765*	*70,37,235*

49. In view of the above, the appeal of the assessee is partly allowed and that of the department is dismissed on this issue of sale of scrap and sale of scrap from piling work in terms of above decision.

50. The only other issue remain in this year is regarding out of books expenses (murrum expenses) addition made by AO u/s.69C of the Act in term of grounds of appeal 7 to 11 of the departmental grounds of appeal.The Assessee is not in appeal on this issue in the AY 2016-17 and AY 2017-18 for the reason that the AO made addition in these two years on estimate basis and the Ld. CIT(A) has deleted the estimated addition made. However, for all the other years before us i.e. from AY 2018-19 to AY 2022-23, both the Assessee and Department is in appeal on this issue since the Ld. CIT(A) has given part relief by confirming addition on estimated basis i.e. 5% of the total amount of addition made by the AO. Since the issue is common in all the years, the decision on this issue is taken accordingly considering the entire facts of the case and the arguments made by both the sides and will thus apply for all the years under appeal.

51. The AO in the assessment order has dealt with this issue at pages 37 to 105 and relied upon various evidences found during the course of search action and screenshots of few evidences are also reproduced. The AO has giving finding that out of books expenses in cash are incurred and shown under the head 'Murrum' expenses for which various incriminating evidences were found including digital data trial balance. After considering the various evidences found in the course of search action, more particularly the month-wise and site-wise trial balance found in

the digital data MIS server and webmail of some employees, and considering the submission of the Assessee, the AO has held that out of books expenses are noted under the heading 'murrum' and thus, quantified and tabulated the out of books expenses (murrum expenses) [on the basis of month-wise and site-wise trial balance digital data found] at pages 65 to 96 of the assessment order. The AO has then quantified the amount that can be allowed as telescoping benefit to the Assessee to avoid double addition and the telescoping benefit tabulation is made at pages 100 to 104 of the assessment order. However, these trial balance digital data showing out of books expenses (murrum expenses) was found only from the month Oct 2017, the AO has estimated out of books expenses for earlier period applying 2% of the turnover of 4 projects of the Assessee namely Jogeshwari (South) ROB, ESIC Medical College Alwar (Raj), Delhi Metro Rail Project – CC 02 and Delhi Metro Rail Project – CC 09, – since for these 4 projects, the amount of murrum found in the first trial balance of Oct 2017 is held to be opening balance and these projects were awarded in the earlier years and projects had also commenced in the earlier years prior to March 2012 and thus, estimated additions in respect of these 4 projects are made for AY 2016-17, AY 2017-18 and partly for AY 2018-19. The quantification of the estimated addition is made by the AO as per para 4.1 of show cause notice issued for this year and the quantification of estimated addition is tabulated as under:

F.Y.	Jogeshwari (South) ROB	ESIC Medical College Alwar (Raj)	Delhi Metro Rail Projects – CC 02	Delhi Metro Rail Projects – CC 09		
	Turnover (in cr.)	Turnover (in cr.)	Turnover (in cr.)	Turnover (in cr.)	Total (in cr.)	Murrum (in cr.) @2%
2015-16	40.79	263.60	57.12	11.27	372.78	7.46

2016-17	19.28	58.45	-	-	77.73	1.56
2017-18	3.52	-	-	-	3.52	0.07

52. The AO has thus estimated out of books (murrum) expenses on the basis of above tabulated chart and for rest of the assessment years (including AY 2018-19) on the basis of expenses noted under the head 'murrum' in the month-wise and site-wise trial balances digital data for and from Oct 2017 onwards. The AO has also held that for the above 4 projects, the out of books (murrum) expenses found in the first trial balance digital data of Oct 2017, the same is opening balance and not for the particular month of Oct 2017 and the figures of out of books expenses (murrum expenses) are noted cumulative in the trial balance digital data and thus, estimated for the earlier period as per chart tabulated hereinabove.

53. The AO in the assessment order has also considered the submission of the Assessee that both source and application cannot be added and thus, to avoid double addition, the AO allowed telescoping benefit by considering only the source of sale of scrap and scrap from piling work that can be allowed against the out of books expenses. Therefore, the AO allowed telescoping benefit for all the years as per chart tabulated in the assessment order at pages 100 to 104. Thus, for this year, after allowing the telescoping benefit, the estimated addition of Rs.7,46,00,000/- was reduced to Rs.6,42,71,657/- and similarly the AO has reduced the out of books addition by giving telescoping benefit in all the other years.

54. The Ld. CIT(A) has extensively dealt with the issue of out of books expenses in his order from para 7 at page 23 to para 9.20 at page 57. The Ld. CIT(A) has in para 7 to 7.33 at pages 23 to 39 of the order discussed the various evidences found in the course of search action as dealt with by the AO in his order and thus,

the Ld. CIT(A) has taken into consideration all the evidences found during the course of search action showing out of books expenses incurred. Since the Ld. CIT(A) has extensively dealt with the evidences found in the course of search action in respect of the issue of out of books expenses, we deem fit to reproduce the same hereinbelow:

> *"**7.** During the course of search proceedings under section 132 of the Income tax Act at the office of the assessee company and residential premises of the promoters of the company as well as the residential premises of the employees of the group, it was gathered that the assessee group is in the practice of using code word "murrum" for out of books cash expenses. Before delving into the detail analysis of evidences associated with this code word, it is worth mentioning that the assessee group has accepted that their nature of business is such that the assessee company is required to make out of books cash expenses. "Murrum" literally means a type of soil and is used as construction material. However the assessee group has devised this code word for out of books cash expenses. For any out of books cash payments permission is sought from the promoters and such expenses are properly documented. Month wise trial balances were also found by the search team at the MIS server of the assessee group. It is also noticed that there were certain variations in the spelling of "murrum" such as "murum", "moorun", "M. cash", "Murrum cash". In the MIS database, in official email conversations and in Trial Balances maintained by the assessee group the spelling "murrum" and "murum" has been used interchangeably for out of books cash expenses. The evidences of out of books cash expenses found during the course of search proceedings have been confronted to employees and the promoters of the group wherein they have accepted making such out of books cash expenses in their statements recorded under section 132(4) of the Income-tax Act, 1961. During the post search*

proceedings more such evidences were found from the forensic backup of the servers and digital devices of the group. During the post search proceedings evidences have been found which indicate that the assessee group is in practice of using the code word "murrum" for out of books cash expenses.

7.1. *During the course of search proceedings, it was seen that the employees of the assessee group were regularly sending certain documents and WhatsApp chats to the promoters of the group seeking approval for making "murrum" expenses. When the details of the expenses were seen it was found that these were in form of monthly payments. The findings which emerged have been discussed employee wise.*

7.2. *During the course of search proceedings at the at the residential premise of Shri Rajan Sharma working as Additional Vice President with J. Kumar group certain pdf files were found from the mobile phone [Samsung Galary Note20 Ultra 5G, Serial Number RZCNTOO2ZGZI, and he was asked to provide comments on the same in his statement recorded on oath u/s 132(4). Sample Pdf file with the name "nurun Rs.698000 of BC-01 Site of Dec-2021 for approval.pdf" sent by Rajan Sharma to Nalin Gupta through WhatsApp chat dated 11.01.2022 has been reproduced in the assessment order. It can be seen from page 1 Mandalji with the particulars 06-BC-01. of the above pdf that it is a petty cash voucher of Rs. 698,000 paid to one Mr. Pravin "Being amount paid towards murun charges for the month of Dec. 2021" for MML-06-BC01. Page 3 of PDF file:Page 2 of the same pdf is a detailed breakup of the "Monthly Munim MML-06-BC01" of the payments made for the month of November 2021 and December 2021. The monthly payment for the month of December 2021 is matching with the amount mentioned on the voucher (page 1 of pdf Le. Rs. 6,98<000). Therefore, page 2 of the pdf is clearly the breakup of amount*

paid through petty cash voucher (page 1 of pdf). Page 3 of PDF file:Page 3 of the pdf is "Monthly Murum-MML-06-BC-01" paid for the month of Nov 2021 along with the details of murum of the preceding month October 2021. Mr. Rajan Sharma when confronted with the above pdf in his statement recorded on oath has stated that the files pertain to cash amounts being paid to be on monthly basis to ensure hassle free work at the sites. These payments are made by the respective site heads. He also accepted use of code word "murum" for making out of books cash payments. The practice of out of books cash expenses has been prevalent and various other pdf files similar to the one discussed above were also found and confronted to Rajan Sharma and he has accepted that these pdf files also pertain to practice of out of books cash expenses for different sites. In the post search proceedings forensic images of the mobile phone of Nalin Gupta (iphone 13 pro max) was analysed. It is seen that Shri Rajan Sharma has regularly sent pdf files of nature similar to the one discussed in foregoing paras for seeking approval of Shri Nalin Gupta. For the sake of brevity Sample files found in the WhatsApp chats between Nalin Gupta and Rajan Sharma taken from the forensic images of phone of Shri Nalin Gupta is placed in the assessment order.

7.3. *From the above pdf file it is seen that it contains the details of out of books cash*
expenses "Monthly Murum" i.e. monthly cash is required to be paid for the site MM-06 BC-03 for the month of October 2020. It is seen that the total approved amount for making out of books cash payment for this site is Rs. 6.6. lakhs for the month of October 2020 and it is proposed to be revised to Rs. 7.45 lakhs per month for the month of October 2020. From the above pdf file it is also seen that it contains the details of out of books cash expenses "Monthly Murum" i.e. monthly cash is required to be paid for the site MM-06- BC-01 for the month of October 2020. It is seen that the total approved

amount for making out of books cash payment for this site is Rs.6.05 lakhs for the month of October 2020 and it is proposed to be revised to Rs.6.25 lakhs per month for the month of October 2020. Similar files were sent through WhatsApp chats on various dates which have same details as discussed above on monthly basis. From the discussion in foregoing paras following facts emerge:

i. That the assessee group is making out of books cash expenses and is using the code word "murrum"/"murum" for the same as can be seen from the file names of the pdf files sent over WhatsApp.

ii. Approval of top management is being taken for making out of books cash expenses. This indicates the promoters are completely aware of the fact that such out of books cash expenses are being made.

7.3.1. *The statement of Rajan Sharma was confronted with Shri Nalin Gupta in his statement recorded on oath u/s 132(4) of the Act. In his statement Shri Nalin Gupta has accepted that the nature of their business is such that they have to incur out of books cash expenses in order to keep the business working. He has further stated that the source of making such out of books expenses is cash sale of scrap and the same has been in practice for facilitating business. He has also accepted that he oversees such transactions in order to keep a check on the total out of books cash expenses. He has also accepted in principle about existence of such expenses.*

7.4. *It is evident from the above that the assessee group is making out of books cash expenses and has been using the code word "murum" / "murrum" for the same. Similar findings are at the residence of Shri Rajesh Chapariya, Ifekhar Ahmad and Rajendra Patil.*

7.5. *The site office of the assessee group at G Block BKC, Mumbai was covered under search action u/s 132(4) of the Act. At the premise various incriminating evidences in form of loose papers were found and the same were seized. On going through the same it is seen that page 1 and 2 of Annexure A2 to Panchnama contain details of out of books cash expenses. The above sheets contain details of the site/project, RA bill number, the amount that is claimed by assessee group. From the above sheets it is seen that out of books cash expenses for the project MML. 07 CA- 02, 0.1% of the Running Account Bill is being paid on R.A. bill. It is also seen that for such expense head "Moorum" expense is used. "moonam" is another alternative used for the code word "murum"/ "murrum" which is being used for out of books cash payments made by the assessee group. It is further seen that approval for the above expense has given by Shri. Nalin Gupta as his initials along with the date are found on the above sheet. Similarly page 85 of the Annexure A-3 contains the detailed working of percentages of RA bills that are to be paid for the 17 RA bill of MML 07 CA 91. The sheet contains the working of amount required to be paid as "moorum" expense. During post search proceedings an Excel workbook named BOQ final.xlsx was found from the forensic backup of email of Shri Suraj Sail suraj.sail@jkumar.com from the following path: WX12A421KOP6/backup mail/surai sail@jkumar.com.pst(2)/9435/BOO Final.xlsx. From this sheet it seen that in the Overheads there is a particular expense with the head "Murrun Charges" which is given as 5% of the contract value and immediately next to it the breakup of the same is given as 0.75%, standing com 1.25 and "politic" at 3.5% coming to a total of 5%. In this excel sheet the code word "murrum" is used. Therefore, it is clear that "murrum"/ "murum" "moorum" have been used interchangeably for out of books cash expenses made by the assessee group.*

7.5. *From the forensic backup of mobile phone of Shri Nalin Gupta various incriminating chats have been found related to out of books cash payments and the use of code word murrum/murum from the same. The chats indicate that the assessee group is indeed using the code word murrum/murum for out of books cash payments made. A sample chat with Shri. Sai Prakash has been placed in the assessment order.*

7.6. *During the course of search proceedings at the corporate office of the assessee group at Corporate Office CTS No. 448, 44811,449 Vile Parle (East), Subhash Road, Mumbai-400057, statement of Shri Shashank Shekhar who is working in the MIS department was recorded an oath u/s 132(4) of the Act. In his statement recorded on oath he has stated that the MIS reports are communicated through emails and physical copies. He further submitted the copies of MIS reports for the head "Overheads" for the month of August 2022 as Annexure-2 of his statement.*

7.7. *From the sheets, it was seen that there is an expense named "Murrum Expenses" under the head "Overhead Expenses" Shri Shashank Shekhar was further asked to explain the entries appearing in the MIS sheets for the Overheads. In reply to the same Shri Shashank Shekhar has explained the entries appearing in the sheet on "Overheads". He has stated that "murrum expenses" made in cash and recorded under the code name "murum/murrum". He was further aske to prove project wise summary of out of books cash expenses under the head "murum" for project under Shri Kamal Gupta for chich he submitted site wise expenses under the head "murum" for Kamal Gupta's projects. Her asked to explain the source for making cash expenses under the head "murum" for which he gave an evasive reply that he was not aware of source of generation of cash.*

7.8. *During the course of search proceedings at the corporate office of the assessee group at Corporate Office CTS No. 448, 44811,449 Vile Parle (East), Subhash Road, Mumbai-400057, "Murrum charges" which comprise of out of books cash expenses, which have been tabulated project wise, from the data obtained from the MIS server were confronted to Mr. Nalin Gupta. This folder has an excel workbook namely Expenses Apr-22. Summary of these murrum expenses was confronted to Shri Nalin Gupta Sample screenshot of the workbook showing details of "murrum" expenses for the site Mumbai Metro Line 2B is given in the assessment order. The same was confronted to Mr. Nalin Gupta and Mr. Kamal Gupta in their statement recorded on oath u/s 132(4) of the Act. They have accepted the fact they have to make out of books cash expenses. However, they had sought time to revert back on the quantification. Till date no explanation for the same has been provided by the assessee group.*

7.9. *During the post search proceedings, the data backup of the MIS server of the assessee group was analysed and it was seen that the MIS data has 51 sub folders that contained trial balances and expense sheets starting from October 2017. Ongoing through the same, it was seen that this folder contained the trial balances and expense sheets of various projects of the assessee company maintained on a monthly basis and the subfolders were named month wise. There were 51 subfolders corresponding to 51 months starting from October 2017 to April 2022. The relevant screenshot of the Excel workbook found in the Subfolder October 20 showing the details of Murrum Charges for the site CIDCO Stn-10 is also given in the assessment order for reference. It is seen that the Murrum Charges are preceded by number 10 in the Trial Balances found from the above path. Further for the project CIDCO Stm- 10 the Murrum charges upto October '2020 is Rs. 55,82,600/-. The relevant*

screenshot is placed in the assessment order. It is seen that it contains the ledger account for the head "10 Murrum charges" for the site CIDCO Station 10. The entries in the all ledgers are from 9.02.2019 to 31.10.2020. The total of "Murrum Charges" in the all pdf files is Rs. 55,82,600 which is exactly the same amount as mentioned in the excel sheet CIDCO Stn-10 of the Excel Workbook TrialBal Oct 20 containing Trial Balances of all the projects for the month October 2020. Further on perusal of the entries in the pdf files containing ledger of "Murrum Charges" it is seen that such payments are being made in cash. This establishes the fact that the entries of Murrum Charges found in the Trial Balances at the pathi. MIS data has the folder 2. Sakshi, having sub folder of 3.MIS report, having sub folder 7.Trial balance (Reddy) F:\WXC2DB140J90\EXTRACTION\DMS_MAIN_SERVER_MIS _DATA12. SAKSHI 3. MIS Reports17. Trial Balance (Reddy)) are indeed entries of out of books cash payments made by the assessee group. The use of code word "murrum" for out of books cash expenses is once again established beyond doubt.

7.10. *Similarly From the following path from the forensic backup of mail server of the assessee company taken at the corporate office of the assessee company,media/sata/8tb/workspace_WX22A12FK022/backup_mail/My Outlook Data File (1).pst(11)/7425/Airoli Creek.pdf, a pdf file named Airoli Creek.pdf was found and it was compared with the Excel workbook found in the Subfolder October 20 from the path 1.MIS DATA12. Sakshi/3.MIS report 7 Trial balance (Reddy) showing the details of Murrum Charges for the site Airoli Creek Bridge. From the ledger for "Murrum Charges" it is seen from the description that payments in cash has been made to various officials in form of cash. The descriptions are self-explanatory and clearly substantiate that the expenses under the head "Murrum charges" are out of books cash payments.*

7.11. *From the above ledger out of books cash expenses ie. expenses under the head "Murrum Charges is Rs.2,65,65,901/- till 14 October 2020. The Excel sheets found from the MIS server the amount mentioned in the the month October 2020 from the excel sheet AiroliCreek of the Excel Workbook Trial Bal Oct 20 containing Trial Balances of all the projects for path FAWXC2DB140J90\EXTRACTION\DMS_MAIN_SERVER MIS DATA SAKSHI3 MIS Reports/?. Trial Balance (Reddy), the figure of "Murrum Charges" is Rs.2,65,72,281/- which is only Rs.6380 more than the figure of Murrum Charges of Rs.2,65,65,901/- which is till 14 October 2020 in the ledger sheet 10 showing details of is record of "Murrum Charges". This slight difference of Rs.6380 is on account of excel sheet found in MIS server expense till 31" October 2020 while the ledger contains the entries till 14° October 2020. The excel sheet Airoli Creek of the Excel Workbook TrialBal Oct 20 is placed in the assessment order. This establishes the fact that the entries of Murrum Charges found in the Trial Balances at the path1. MIS data base the folder 2. Sakshi, having sub folder of 3.MIS report, having sub folder 7.Trial balance (Reddy)[FAWXC2DB140J90 EXTRACTION\DMS_MAIN_SERVER MIS_DATA12. SAKSHI3. MIS Reports 7. Trial Balance (Reddy)) are indeed entries of out of books cash payments made by the assessee group. The use of code word "murrum" for out of books cash expenses is once again established beyond doubt.*

7.12. *Similar excel sheets containing site wise Trial Balances were also found at the following paths in the backup of the MIS server taken:*

F:AWXC2DB140J90\EXTRACTION\DMS_MAIN_SERVER_MI S_DATA\2. SAKSHI3. MIS Reports/2. Labour Charges Vs Revenue\Old\KD\FTM Bills Trial Bal.xlsx

FAWXC2DB140J90 EXTRACTION\DMS_MAIN_SERVER_MIS_DATAW.BUDGET

FAWXC2DB140J90 EXTRACTION\DMS_MAIN_SERVER_MIS_DATA.SS\Trial Bal.xlsx

7.12.1. *Similar excel sheets containing site wise trial balances and expenses were found in multiple places in the email backup and the desktop backup of the employees of the assessee company and some of them have also been discussed in subsequent paras.*

7.12.2. *During the course of search proceedings at the corporate office of the assessee group at Corporate Office CTS No. 448, 44811,449 Vile Parle (East), Subhash Road, Mumbai 400057, various loose paper sheets were found and seized. Loose paper bundle 10 page 42 and 44 containing Trial balance for the site MML-03 PKG 05 and page 46 containing Trial Balance for MML-06. The same has been discussed in detail in the show cause notice dated 27.03.2024 from page no.97 to 141. During the course of search proceedings the promoters in their statement recorded on oath were asked about the role of Shri Kumarasamy Reddy in the organisation. In his statement on oath u/s 132(4) Shri Nalin Gupta stated that Mr. Kumarasamy Reddy is an accountant who looks after the income and expenses of the company.*

7.13. *Some of the important emails sent to Mr. Kumarasamy Reddy and the promoters by various employees of the assessee group and the emails sent by Kumarasamy Reddy are discussed in detail in show cause notice dated 27.03.2024 vide relevant para at page no 97 to 141.*

7.14. *There were total 51 sub Folders found from the path F:AWXC2DB140790\EXTRACTION\DMS_MAIN_SERVER MIS DATAQ. SAKSHI13. MIS Reports/7. Trial Balance (Reddy) and the same were arranged month wise starting from October 2017 till April 2022. Each of these subfolders contained excel workbooks containing details of site wise expenses and Trial balances. On perusal of the same it is noticed that these are site wise parallel Trial balances. The expenses appearing under the head "Murrum charges" in the excel workbooks found from the above path are out of books cash payments. However, during post search proceedings, when the assessee was specifically asked vide summon dated to furnish site wise/ project wise Trial Balances, assessee gave an evasive reply and did not furnish the site wise Trial Balances. Therefore, the backup of the ERP software Farvision of the assessee group was used to extract the site wise Trial Balances that are being maintained by the assessee company in their ERP software. The Trial Balances of all the sites were extracted for a period from 01.04.2021 to 31.03.2022. On perusal of the same it is seen that there is no head "Murrum Charges" appearing in the Trial balances of the sites maintained in the ERP software. The trial balances extracted from ERP system are placed on record. This further reiterates the findings that the Trial Balances that are maintained and circulated over emails and found in the MIS server from the path FAWXC2DB140J90\EXTRACTION\DMS_MAIN_SERVER MIS DATA12. SAKSHI3. MIS Reports 7. Trial Balance (Reddy) are parallel accounts that the assessee maintains and the murrum (murum) charges/ expenses recorded therein are out of books cash expenses done by the assessee.*

7.15. *On analysing the forensic backup of the email server of the assessee group, the AO found the following emails:-*

(i) The email dated 9ª November 2020 that was sent by an employee of the J. Kumar group Shri Milind Patil from his email id Milind.patil@jkumar.com to Shri Manohar Kamble at his email id manohar.kamble@jkumar.com was forwarded by Shri Manohar Kamble from his organisation based email id manohar.kamble@jkumar.com to the email id of Kunal Dhonde at his email address kunaldhonde@jkumar.com. The above email contained an attachment Expenses xlsx, Sample pasis, the relevant extract of the email communication and the attachment is placed in the assessment order. The excel workbook contains details of expenses from various sites of J. Kumar Group. On comparing the above excel workbook with the excel workbook found at the path WXC2DB140J90 EXTRACTION\DMS_MAIN_SERVER_MIS_DATA12. SAKSHI3. MIS Reports/7. Trial Balance (Reddy) 28.Mar-20\expenses.xlsx.

(ii) The email placed at pg. 54 of the assessment order was originally sent by Shri Milind Patil (Milind.patil@jkumar.com) to Shri Shashank Shekhar (Shashank.ahckhar@jkumar.com) on 6 August 2020. It was then forwarded by Shri Shashank Shekhar to an email address mis@jkumar.com and this was in turn forwarded by Manohar Kamble(Manohar.kamble@jkumar.com) to an email id jejaswini jogdbanka: @jkumar.com). The above email contains an attachment GrpSum.xlsx which is reproduced in the assessment order.

7.16. *The above excel workbook contained parallel trial balances for various sites of JKIL. On comparing the above excel workbook with the excel found the path AWXC2DB 140/90\ EXTRACTION \DMS MAIN SERVER MIS DATA2 SAKSHI3. MIS Reports Trial Balance (Reddy) 29. April May June 2020\GrpSum. xlsx, it is seen that the content of the two workbooks is exactly the same.*

7.17. *Through the above email communications, it is seen that employees viz. Shashank Shekhar. Kunal Dhonde and Sakshi Bawkar from the MIS team, Milind Patil, Kumarasamy Reddy, Sourabh Bansal from the accounts team, employee named Nilesh Parulekar and Manohar Kamble were maintaining out of books cash expenses named as "murrum/rmurum". The above excel workbooks were circulated to all the key employees including the promoters of the group as well over internal webmail of the assessee company. The quantification of out of books cash expenses under the head "murrum charges" is running in tens of crores for each site every year but no such head of expense was appearing the Trial balances extracted from the ERP software of the assessee company. It is also seen that the use of code word "murrum/murum" for out of books cash expenses has been accepted univocally by the employees and promoters of the group.*

7.18. *A word file "Points for Pune sites.docx" was found from the forensic backup of desktop of Shri Saurabh Bansal from the path DAWXC2DB140J90\EXTRACTION\PC&LAPTOP SAURABH_BANSAL_MANAGER_ACCOUNTS_DELL_SS D&HDD/HDD/PARTITION 2 Desktop 28.10\Points for Puce sites.docx. On going through it is seen that in the point number 2 of the word file it is mentioned that there were cash-books being maintained at Pune site for "Murum/Scrap receipts". This clearly indicates that the cash receipts and expenses from the Pune sites were maintained for expenses and receipts that were not shown in the formal books of account and which comprise of cash receipts from sale of scrap and cash expenses in form of "murum" expanses which is out of books expenses is maintained. Further an Excel sheet named "Murum details.xlsx" was found from from the forensic backup of destop of Shri Saurabh Bansal. The sample of relevant excel sheet is reproduced in the assessment order. The above excel sheet is found from the*

folder named Pune Site BS. As per the above excel sheet it is seen that the Cash generated from sale of scrap from November 2018 to March 2020 is Rs. 1,36,94,335 and the "Murum Expense" is Rs. 1,21,65,456/-. The above excel sheet is a record of out of books cash received and cash expenses. Another excel workbook named Reddy TB Pune Metro.xlsx was found from the forensic backup of desktop of Shri Saurabh Bansal from the path D:AWXC2DB140J90\ EXTRACTION\ PC&L APTOP SAURABH BANSAL MANAGER ACCOUNTS DELL SS D&HDD/HDD/PARTITION 2 Desktop 28.10 Pune Site BS Reddy TB Pune Metro.xlsx containing the sheets named Pune Metro Elevated and Mahametro UG-01. It contained the Trial balance for the sites Pune Metro Elevated P1C-05 (Wagholi) and Sheet name: Pune Elevated.

7.19. *When the above excel sheets were compared with the excel sheets found at the path 2.Sakshi>3.MIS reports>7.Trial Balance> 28. Mar 20 in the forensic backup of MIS server, it is seen that the contents of the sheet Pune elevated and Maha Metro UG-01 in the excel workbook Copy of Trial Balance 30.03.2020 are matching exactly for the sites Pune elevated and Maha Metro UG-01.*

7.20. *Various pdf files and subfolders were found from the following path in the forensic backup of desktop of Shri - Saurabh Bansal: DAWXC2DB140J90\EXTRACTION\PC&LAPTOP SAURABH_BANSAL_MANAGER ACCOUNTS_DELL_SS D&HDD HDD PARTITION 2\Desktop\Ahmedabad site_17072020 Fund requirement incriminating files found from the path D:AWXC2DB140J90\EXTRACTION\PC&LAPTOP\SAURABH_ BANSAL &HDD HDD\PARTITION 2\Desktop\Ahmedabad site_17072020 Fund requirement 15-16 are discussed below: MANAGER_ACCOUNTS_DELL SS (i). file name Aug'15.pdf- This file contained details of funds requirement for the site*

Ahmedabad mega for the month of August 2015. In one of the sheets in the above pdf file, requirement for "murum expense" has been mentioned. On perusal of the same it is seen that murum expense is for paying cash paid for Ahmedabad Mega Project, (i) file name April 16.pdf incriminating files found from the path DAWXC2DB140190\EXTRACTION\PC&LAPTOP SAURABH BANSAL MANAGER_ACCOUNTS_DELL_SSD&HDD/HDD PARTITION 2\Desktop\Ahmedabad site_17072020 Fund requirement 17-181 Fund requirement april 17fund april 17.pdf which shows out of books expenses. From the above screenshots of the files found in desktop of Shri Saurabh Bansal it is clearly evident that monthly out of books cash paid for the project Ahmedabad Mega and the above out of books payments.

7.21. *An excel file named JNPT.xlsx was found in the forensic backup of the emails taken at the Corporate office from the following path: media / asrock-two/ 4tb/ workspace backup mail/iftekhar.ahmed@jkumar.com.pst/3515/JNPT Expenses.xlsx. The relevant screenshot of the above excel file is placed in the assessment order. From the above sheets it is seen that it contains details of expenses at the site JNPT Package-1 and JNPT Package-3. It also contains the details of murrum charges upto the month of July 2022. As already mentioned in foregoing paras, the assessee company is in the practice of maintaining trial balances and expense sheets which also contain the details of out of books cash expenses that have been camouflaged under the code word "Murrum Charges". The format of this excel sheet is similar to the excel sheets that have been found from the path F:\WXC2DB140J90 EXTRACTION\DMS_MAIN_SERVER_MIS_DATA2. SAKSHI3, MIS Reports 7. Trial Balance (Reddy) Another Excel workbook named "Murrum (JNPT)-Copy.xlsx was found in the forensic backup of the email server of the company from the path: media/asrocktwo/4th/workspace_WX72AB1DD158/backup*

_mail/Outlook.pst(15)/2 3/Murrum (JNPT)-Copy.xlsx. The above excel file shows the ledger entries for the bead 10 Murrum Charges for NHAI JNPT Pkg 3 for a period from 06.07.2015 to 13.10.2016. On going through the above entries it is seen that the expenses under the head Murrum Charges comprise of out of books unaccounted cash payments. From the above file it is evident that the expenses appearing under the head "10 Murrum Charges" found in parallel trial balances and expense sheets of the company are actually out of books cash payments. Another pdf file named pending cash requirement INPT_0001.pdf was found from the following path in the forensic backup media/asrock-two / WXJ2A71AZ4C3 /backup_mail/Outlook.pst(19)/68174/Pending Cash requirement INPT_0001.pdf.

7.22. *A pdf file named BC-03 Profit Loss Statement (Upto June-21).pdf was found from the path media /sata /8tb /workspace_WX22A12FK022/backup_mail/My Outlook Data File(1).pst(11)/10511/BC-03 Profit Loss Statement (Upto June-21).pdf. The above pdf file contains the actual profit and loss account for the site Mumbai Metro Line 06 BC 03 as it can be seen that there are entries related to sale of scrap amounting to Rs.2,38,37,180 from the above site which is not appearing in the audited financials of the company. It is also seen in the same pdf file that under the head Indirect cost, there is a head "Morrum" with the figure of Rs. 7,42,87,700 and remark mentioned "as per Trial balance". Now when the actual trial balances for the above site were extracted for the assessee company from the forensic backup of ERP server, it was seen that there was no such head of expense as "Murrum". The figures under the head "murrum expenses" till June 2021 is Rs.7,42,87,700/-. Further as per the excel sheet Metro-06 BC-03 of the Excel workbook named Trial Bal June-21.xlsx found in the Sübfolder 41. June 21 at the path F:AWXC2DB140J90 EXTRACTION\DMS MAIN_SERVER MIS*

DATA2 SAKSHIG. MIS Reports17. Trial Balance (Reddy) 41. June 21 the expense under the head Murnan charges is Rs.7,42,61,700 upto 30 June 2021. The difference being of merely 26000 on a figure of 7.42 crores.

7.23. *A pdf file named MML 02%C3%80C 02 AUG. MURUM.pdf was found from the forensic backup of mobile phone of Shri Sudarshan Patil an employee of JKIL taken during the course of search proceedings from the path: /media/asrocktwo/ WXT2EA12C1YT/NACN387Q/Extract/Sudarshan Patil oppo Reno5 pro 5g/Sudarshan patil oppo mobile/OPPO CPH2201 22h12m02s)/phone/raw3/Android/media/com.whatsapp/ WhatsApp/Media/WhatsApp (2022-10-11 Documents/MML. 02%C3%80C 02 AUG, MURUM.pdf. From the pdf file it is seen that it is in nature of cash vouchers that contain the details of out of books cash payments for various sites such as MML-02AC-02, MML -06, Telli Galli Separator. From the above vouchers it is seen that the description is written as Murum Expense and as per the approval sheet attached in the above pdf file such "murrum expenses" are cash to be paid. It is seen that the file TrialBal.xlsx found in the folder 9. which contains the trial balances of all the sites for the period upto 31 July 2018 contains sheets named Metro-02 Ac-01 with exactly the same entries as in the workbook Metro02 Line-7 Exps as per tally.xlsx. Thus, it is amply clear that parallel trial balances were maintained by assessee group in tally software for all the sites which contain the details of out of books expenses under the head "Murrum Charges".*

7.24. *A pdf file named SITE WISE POSITION AS ON FEB 2016.pdf was found from the forensic backup of laptop of Shri Rajan Sharma found at the path- RECOVERY/RAJAN_SHARMA DELL LAPTOP/PARTITION 1/Recovered data 2022- 11-16-12-5-16/Users/Rajan/Desktop/arbtration*

14.1.2021/ARBITRATION/SCAN 15- 09-20/SITE WISE POSITION AS ON FEB 2016.pdf. The file contains the Balance Sheets for 4 sites of Delhi Metro ie. CC 02, CC 09, CC 20 and CC 24. From the above file name clear the expenses under the head Murum are recorded in the above excel sheet and on-going through the contents of the same it is seen that these are out of books cash expenses that are being paid in cash for the month of June 2014. Therefore, once again it is evident that the assessee company is in the practice of making out of books cash expenses and this practice of use of code word "murum/murrum" is continuing from long.

7.25. *From the discussion in the foregoing paras, the following facts emerge:*

i. Assessee group has made large amounts of out of books cash payments.

ii. The out of books cash expenses have been paid in form of monthly basis.

iii. From the plethora of evidences related to the code word "murrum" being used for out of books cash expenses that have been found from multiple premises including residential premises of promoters and employees, site offices, corporate office, from multiple employees and from multiple sources including loose paper sheets, WhatsApp chats, devices of employees, MIS server, email backup, and as already discussed in foregoing paras that the evidences from different premises and different employees and different digital devices are linked and correlated to each other clearly indicate that the assessee group has used the code word "Murrum" to camouflage its out of books expenses. This evidently shows that "murrum" was only a code word for denoting specific expense of unaccounted cash payments that are made on a regular basis by the assessee company to pay cash payment. Summary of evidences related to out of books expenses is given below:

Premise	Name of person	Nature of Evidence
Flat 102, Tower B. Oberoi Park View, Thakur Village, Kandivali East, Mumbai, 400101	Rajan Sharma	WhatsApp Chats with Nalin Gupta. Files found in Laptop of Rajan Sharma, Statement recorded under section 132(4)
A6/504, Swarganga Complex, Vallabhnagar, Pune	Rajesh Chhapariya	Loose paper sheets, Statement recorded under section 132(4)
B-18, New Gulmohar Society Sector 16A Vashi, 400703	Iftekhar Ahmed	WhatsApp chats with Ashok Deshpande, Statement recorded on oath u/s 132(4)
4/37. Artist Village, near Arenja Complex Sector 88, CBD Belapur 400614	Rajendra Patil	Loose paper sheet, statement recorded on oath u/s 132(4)
J. Kumar site office at G Block BKC, Mumbai	-	Loose paper sheets
1001/1101, Agarwal House, NS Road No.3, Vile Parle, Mumbai	Nalin Gupta	WhatsApp chats of Nalin Gupta with contacts saved as Rajan Sharma, Ravi J Kumar, Sunil Jadiwal, Sai Prakash, Saurabh Bansal; Cash diary

		seized: Statement recorded on oath u/s 132(4)
Corporate Office	-	*Digital evidence in form of forensic backup of MIS server, emails of promoters, emails of employees Saurabh Bansal, Sakshi Bawkar, Kumarasamy Reddy. Prashant Joshi, Shashank Shekhar, Milind Patil, RMKulkarni, Iftekhar Ahmed, Manohar Kamble, Kunal Dhonde, Desktop of Saurabh Bansal; Statements of Promoters and employees.*

iv. The assessee company has maintained trial balances and expense sheets for each of its site and have recorded the out of books cash expenses under the head "Murrum Charges". Evidences of taking approvals for out of books cash payments directly from the promoters through WhatsApp communication has also been found, v. The evidences run in large volumes. However, it is seen that all the files containing trial balances are also present systematically in the month wise files found in the backup of MIS server from the path F:\WXC2DB140J90\EXTRACTION\DMS_MAIN_SERVER_MIS _DATA. SAKSHI3. MIS Reports/7.Trial Balance (Reddy).

Therefore, for the purpose of arriving at quantification of such out of books cash expenses made by the assessee group, all the Excel files found above were analysed and accordingly Project wise and year wise quantification has been arrived."

55. The Ld. CIT(A) has thus extensively considered the various evidence found during the course of search action and more particularly the tally data found in the MIS server as also emails of various personnel of the Assessee Company, loose paper, whatsapp chats, etc. Hence, it cannot be disputed that there is no out of books expenses incurred and in fact, the Assessee has also accepted and admitted the fact of incurring out of books expenses for which the source is argued to be from sale of scrap and scrap sale from piling work and on this, even the AO has conceded and given telescoping benefit as per the assessment order.

56. Before us, the Assessee has raised additional contentions, which we deem fit to address first. The Assessee has filed submission in respect of the additional contention raised and the same are reproduced hereinbelow-

"The addition of alleged out-of-book expenses is bad in law.

It is once again reiterated that the said additions are allegedly based on electronic extracts and statements recorded during search action.

Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Anwar P. V. (Supra),*** *Hon'ble Madras High Court in the case of* ***Saravana Selvarathnam Retails (Supra)*** *and* ***Digital Evidence Investigation Manual.***

Further, it is submitted that the statements are retracted and in light of the decision the Hon'ble Jurisdictional High Court in the case of ***Rakesh Ramani (Supra)*** *addition made in respect thereof*

merely on the ground that assessee in the course of the statement made under section 132 of the Act, had admitted that said jewellery belonged to him, could not be sustained.

Further, it is submitted that the addition is made without rejecting the books of accounts. Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of ***Teletronics Dealing Systems (Supra)*** *and the Hon'ble Delhi High Court in the case of* ***Forum Sales (Supra).***

Hence it is prayed that the addition may be deleted."

57. The aforesaid contentions of the Assessee are duly dealt with while addressing the issue of sale of scrap hereinabove and thus, the finding given therein applies here on equal footing and thus, on the same reasoning, these additional contentions are hereby ***rejected***.

58. The Assessee has also filed separate issue-wise chart wherein it has reiterated the contentions raised before the AO and CIT(A). The main contention of the Assessee is that the month-wise site-wise trial balance digital evidence relied upon for making the huge addition towards out of books expenses does not show any out of books source of cash i.e. these trial balance do not show any receipt from sale of scrap outside books of account barring few instances and the total sale of scrap in the trial balance is about Rs.5.07 cr. even though the total gross amount of sale of scrap for all the years under appeal together aggregate to about Rs.99.70 cr. (including sale of scrap from piling work) and therefore, it was argued that the murrum expenses referred in the trial balance are not out of books expenses but actual material expenses and in local language the word 'murrum' means civil construction material. The Assessee stressed on the physical copy of trial balance found at the residence of Shri Nalin Gupta and marked as Annexure 3 to the statement recorded of Shri Nalin Gupta u/s.132(4) of the Act and

the same is for period 01.04.2016 to 30.04.2022 and does not contain any heading / sub-heading as 'murrum expenses' and thus, contended that there is no out of books cash expenses specified as murrum expenses. It was further submitted that no such trial balances, either digital or physical, is found after April 2022, even though search action was carried out on 11.10.2022 and also no evidence of out of books expenses is found for the period after April 2022, which proves that there is no out of books expenses incurred and that too under the code name 'murrum' as alleged by the department. The Assessee further contended that many trial balances found in digital data, the starting date is different from that of the actual project commenced construction and cited example of site JKJMJV – JNPT – PKG – 1 and 3 – both these projects were allotted to the Appellant only on 14.10.2015 and 06.08.2015 respectively, however, the trial balance in digital data reflects the period of trial balance from 1-Apr-2000 to 31-Oct-2017 and therefore, it was pleaded that these month-wise site-wise trial balance cannot be relied upon and the same does not have any authenticity. The AO has not verified any other figures of the trial balance with actual annual reports of the Assessee to prove that the figures in the trial balance are correct so as to rely upon only single figure under the heading 'murrum' as depicting out of books expenses. It is not the case of the department that the entire trial balance is out of books transaction but the AO chose to rely on only one item of the trial balance i.e. expenses under the head murrum for making huge additions.

59. The Assessee has further contended that it is the assumption and presumption of the AO to treat the figures reflected in month-wise site-wise trial balance under the head 'murrum' expenses as out of books expenses when no other corroborating material or evidence is found. The AO without proving out of books source in the trial balance could not have assumed figures reflected against the heading 'murrum' as out of books expenses so as to make huge additions. The Assessee,

without prejudice, argued that in any case, estimated addition for AY 2016-17, AY 2017-18 and partly for AY 2018-19 cannot be made for want of evidence and this being case of search and seizure, the AO ought not to have extrapolated such alleged out of books expenses on estimation basis in the earlier years and that too on presumption basis and thus, contended that such estimated additions are not justified and rightly deleted by CIT(A).

60. In respect of the order of the CIT(A) confirming addition for other years including AY 2018-19 by estimating 5% of the gross amount of out of books expenses quantified by the AO, the Assessee submits that figures quantified by the AO are merely by relying upon the month-wise site-wise trial balance found in digital data MIS server and thus, the quantification done by the AO is not correct. Even otherwise, it was argued that if scrap sale profit is estimated, the same takes care of the out of books expenses, if any, and thus, no further estimation is required in case of out of books expenses and the entire addition made by the AO in respect of out of books expenses u/s.69C of the Act may be deleted. The Assessee submitted that it is executing the infrastructure projects allotted by Government / Semi-Government authorities, there is no scope whatsoever to earn any income therefrom in cash and no such evidence is also found in this regard. Thus, it was argued that out of books cash expenses, if any, could have been sourced only from sale of scrap and once profit is estimated thereon, no separate addition is warranted.

61. The Ld. DR, on the other hand, apart from relying upon the order of the AO, contended that relief given by the CIT(A) as per his order is not correct in the light of overwhelming evidences found in the course of search action proving out of books cash expenses incurred by the Assessee, which are discussed in detail in the body of assessment order and also discussed by the CIT(A) in his order. There are evidences found to show that murrum is code word used for incurring out of books cash expenses and this is admitted in statements recorded of various personnel as

discussed by the AO in his order. In respect of the trial balance digital data found, the Ld. DR argued that once it is proved from various seized material that Assessee has used code word 'murrum' for recording out of books expenses, the figures mentioned against the heading 'murrum' in these trial balances are rightly treated and considered as out of books expenses and it is not for the department to prove as to how and from where such out of books expenses are sourced. On the estimated addition made in the AY 2016-17, AY 2017-18 and partly in AY 2018-19, the Ld. DR submitted that the AO has passed reasoned order and supported as to why such estimation and extrapolation is necessary in the facts of Assessee case as 4 projects started in earlier years, but opening balance of murrum expenses were found in the first trial balance of Oct 2017 and therefore, the estimate made by the AO is correct and reasonable and the AO order may be confirmed. In respect of estimated addition made by CIT(A) at 5% on the gross value quantified as out of books expenses, the Ld. DR argued that firstly, the addition is made u/s.69C of the Act as unexplained expenditure and it is not correct to hold that provisions of sec.69C of the Act does not apply. Secondly, when out of books expenses are proved to be incurred, there cannot be any addition out of the same on estimation basis. The Ld. CIT(A) failed to consider that such out of books expenses are not on the basis of running bill and failed to place reliance on one of evidence showing out of books expenses computed on the basis of running bill @0.1%. Thus, the Ld. DR pleaded that the addition quantified in the assessment order be upheld and that the AO is generous and reasonable in granting telescoping benefit to the Assessee thereby avoiding double addition.

62. We have heard both the parties and gone through the assessment order and the order passed by the Ld. CIT(A) as also considered the various arguments made by both the parties before us. We have already referred hereinabove and reproduced the relevant part of the Ld. CIT(A) order wherein the seized

material is extensively discussed. It is clear from the evidences found in the course of search action as also admitted by the Assessee during search action and thereafter that out of books expenses are incurred in cash and for this reason, the gross value of sale of scrap including from piling work is not added and only profit is estimated thereon. Thus, the first part of the argument of the Assessee that there is no out of books cash expenses incurred is ***rejected***.

63. In the course of search action, various instances are found including in the statements recorded of various personnel as discussed by the AO in the assessment order also, that the word 'murrum' is used to depict out of books expenses. In this regard, the Ld. CIT(A) has also given certain references in this regard in para 9.2 and 9.3 at page 50 of this order, which is reproduced as under:

> *"**9.2.** In the mobile of Shri Rajan Sharma working as Additional VP with the appellant,certain PDF files were found. One such file has been reproduced in the assessmentorder which shows the particulars as "Being amount paid towards murun charges forthe month of Dec. 2021". The sum involved in this petty cash voucher is Rs.6,98,000/-.The important point to note is that it talks of 'amount paid'. It may also benoted that Shri Rajan Sharma is responsible for execution, monitoring, planning of 4metro railway projects being executed by the Group and is the team leader for thesame. In response to Question No. 27 & 30 recorded on 11.10.2012, he hasconfirmed that the code word murrum was used and cash payments had been madeto various officials for smooth conduct of business of the appellant. Similar replieshave been given in response to Question No. 32 to 36. When the statement of ShriRajan Sharma was confronted to Shri Nalin Gupta, he has also confirmed thatmurrum represents cash. In response to Question No. 22 dt. 11.10.2022 at theresidence, he stated as*

follows, 'Sir, Murrum is actually type of soil. However, wealso use the word as codename for cash as well. In this chat "Murrum" is cash. Thisexpense was done in cash. I am not able to recollect exact details.' Several of thecash payments have been mentioned in the images of WhatsApp chat placed inQuestion No. 23. For instance, the image in page 10 refers to murrum payable of Rs.85,000/- and when read in conjunction with other messages placed therein, it isobvious that murrum represents cash payments. In the statement recorded on15.10.2022 at the corporate office, in response to Question No. 14, Shri Nalin Guptaeven while not fully agreeing with the statement of Shri Rajan Sharma did say thatenough autonomy had been given to him for conduct of business smoothly.

9.3. *The AO has also referred to a loose paper, page 1 & 2 of Annexure-A2 at thesite office at G Block, BKC, Mumbai. The document is titled as 'fund requirement(moorum expenses)'. The AO has stated that this amounts to 0.1% of the runningaccount bill. Shri Shashank Shekhar, who works in the MIS Department has deposedthat the MIS Reports are communicated through e-mails and physical copies. In onesuch sheet, there is an expense named 'Murrum Expenses' under the head'Overhead expenses'. He has also stated that 'murrum expenses' were made in cashand recorded under the code name 'murum/ murrum'."*

64. The Assessee has contended that word 'murrum' is used in local language to depict civil construction material and thus, the reference to the same in various seized material relating to civil construction material procurement cannot be accepted in totality. It is true that in local language the word 'murrum' depicts civil construction material and more often used for 'soil', however the extensive evidences found clearly show that the Assessee has used the word 'murrum' for incurring out of books expenses. The Assessee in the chart filed as also in the submissions filed before

the CIT(A) has argued that besides the trial balance digital data figures quantified by the AO as alleged out of books expenses under the head 'murrum', there is hardly any other evidence found substantiating and corroborating such huge amount of out of books expenses (murrum) addition made by the AO. In the chart filed, the Assessee has summarised various evidences referred to by AO in the assessment order and has rebutted the same, which is reproduced herein below:

> *"6. on page 38 of the assessment order, petty cash voucher is reproduced of the amount of Rs.6,98,000/- and AO has alleged that since the word 'murrum' is used*
> *i. on reading the said voucher, nowhere it is stated that the amount is actually paid and there is NO signature of receiver on the said voucher as also there is no date on the voucher and this is merely whatsapp chat photo and no actual voucher is found during the course of search action;*
> *ii. even otherwise, though the voucher appears to be petty cash voucher, however, there is no evidence that any payment is made in cash out of books, and in any case, the payment, if made, the same is for the purpose of business of the Appellant;*
> *iii. as explained hereinabove in respect to grounds of appeal related to scrap sale, the expenses are required to be incurred at sites towards any damages at local residents places, etc. and needs to be reimbursed to them and thus, internal voucher is prepared since cash is handed over to concerned employee for making the payment, however, on this voucher, signature of recipient is not there and thus it cannot be assumed and presumed that any actual payment is made out of books in cash;*
> *iv. Shri Nalin Gupta in his statement has stated that the source for out of books business expenses is cash generated out of scrap sales and even the AO has allowed telescoping against the source being scrap sales in cash;*

7. On page 40 of the assessment order, image from mobile phone of Shri Nalin Gupta is analysed in respect of file sent by Shri Rajan Sharma. In this regard, the Appellant submits that-
i. in the image of mobile phone, there is nothing to show that any amount is paid or incurred in cash out of books;
ii. reference is merely made to murum for Oct 20 and the murum expenses will be handled by him henceforth;
iii. this chat does not state anywhere that murum word is used for any out of books payment in cash and thus, the allegation of the AO is baseless.

8. AO has referred in assessment order at page 42 in para 3 & 3.1 to loose papers seized at site G block, BKC marked as page 1 & 2 of Annexure A2 of panchanama. The appellant submits that the said loose paper does not contain any noting regarding any out of books cash payment. The loose papers only refers to requirements of funds at site. The AO has merely assumed and presumed the loose papers as out of books cash expenses and further presumed the same to be payment made in cash whereas the loose papers does not contain any payments made in cash

9. On page 42 para 2.2 of the assessment order (SCN Page no. 100 to 104), reference is made to statement of Mr. Rajesh Chhapariya in the context of voucher wherein certain working is given in respect of cash availability of Rs.10 lakhs with employee Mr. Rajesh Chhapariya. In this voucher there is no word 'murrum' referred to and the voucher only show certain expenses related to business carried out in cash and as per the statement of Mr. Rajesh Chhapariya, the source of out of books expenses in cash is scrap sale;

10. On page 42 para 2.2 of the assessment order (SCN Page no. 100 to 104), AO has given reference to certain whatsapp chat found in mobile of Shri Iftekar Ahmed. The Appellant

submits that nowhere in the chat it is stated any cash payment is made. The chat is with another employee Shri Ashok Deshpande for the requirements of cash at site for business related expenses

11. On pages 44 to 46 in para 3.5 of the assessment order, the AO has referred to statement of Mr. Shashank Shekhar and certain MIS reports giving details of overhead expenses. In this regards the appellant submits that these MIS reports nowhere contains any notings regarding cash expenses and it is assumption and presumption of the AO that wherever Murrum expenses are noted are out of books cash expenses."

65. Even though the Assessee has tried to rebut evidences found other than trial balance digital data, it is seen that the other evidences, though reveals that murrum word is also used for out of books expenses incurred, however, at the same time, apart from the trial balance digital data, there are no other extensive and corroborative evidences found to show that out of books expenses are incurred of huge magnitude. It is for this reason that the AO has primarily relied upon these evidence to prove that word 'murrum' is used for out of books expenses and then merely quantified the same on the basis of figures stated against the heading 'murrum' in the trial balance digital data found. Now, in respect of the trial balance digital data, it is also true that:

a. these trial balances found in digital data are in tally accounting software, however, the Assessee does not use tally accounting software but uses Far Vision Accounting Software for maintaining the regular books of account and it is not the case of the AO that the trial balance found in digital data is parallel books of account of the Assessee for accounting cash transactions. At the same time, no such back-up of tally data or tally accounting software was found from the MIS server;

b. these month-wise and site-wise trial balance digital data is found from October 2017 till January 2022 and thereafter **for April 2022, digital data trial balance and physical copy of trial balance was also found from the residence of Shri Nalin Gupta for the month of April 2022 and it is undisputed fact, that in the trial balance of April 2022, there is no heading or sub-heading in the name of 'Murrum'** and on this aspect, the AO has also remained silent as to how suddenly there is no expenses shown under the head 'murrum' in April 2022 trial balance found both in digital form and physical copy. In this regard, the Assessee has contended in its submission that due to various flaws and mistakes in the trial balances, the same must have been corrected while preparing such trial balance for April 2022 and the figures might have been restated or re-characterised against the exact nature of expenses incurred and in any case, not being any fruitful for MIS purposes, the same could have been stopped;

c. **After April 2022, there are no such trial balances found in the digital data as also no other evidences are found to show any out of books expenses are incurred under the heading 'murrum' and this is also undisputed fact**;

d. If these trial balance found in digital data were to refer out of books cash transactions, the AO has only chosen expenses reflected against the heading 'murrum' as depicting out of books cash expenses, however, assuming that the out of books cash expenses were noted in the trial balances under heading 'murrum' expenses then it is also logical that the same trial balance should also account for out of books receipts on account of sale of scrap including from piling work, however, the facts

remains that these trial balances account for sale of scrap of Rs.5.07 cr. in all these years towards sale of scrap as against the total sale of scrap including from piling work quantified for all these years under appeal aggregate to Rs.99.70 cr. and thus, this proves the fact that figures represented in the trial balance as 'murrum' expenses does not reflect out of books expenses in its entirety;

e. It is also true that the AO has relied upon the digital data trial balance only for one item i.e. expenses reflected against the word 'murrum' and the AO is completely silent as to other items of the trial balance;

f. If the entire amount of out of books expenses were reflected in the trial balance, then again it is logical that the source of such out of books expenses should also form part of such trial balance else the data will not tally and if the entire receipts of the trial balance (apart from sale of scrap receipt of Rs.5.07 cr.) is not doubted or not found to be unaccounted, it is not known as to how and from where the out of books expenses are sourced in the trial balance and the AO is completely silent on the same and even the Ld. DR has not thrown any light in respect of the same;

g. The AO has made overall addition on of Rs.353 cr. for the years under appeal (after giving telescoping benefit against sale of scrap to the extent allowed by AO as per the assessment order) on account of out of books expenses on the basis of trial balance digital data by assuming the entire amounts reflected against the word 'murrum' depicts out of books expenses incurred in cash, however, there are no other corroborative evidences found in the course of search action showing such huge amount of expenses incurred in cash;

h. This being search and seizure case, it is obvious that if such large scale of out of books expenses are incurred, in that case, proper corroborative evidences ought to have been found. However, as discussed above, apart from the trial balance digital data, evidence found in respect of out of books expenses are not of such huge magnitude so as to warrant such huge additions only on the basis of trial balance by assuming that the entire amount reflected against the heading 'murrum' is out of books cash expenses;

66. The Ld. CIT(A) has also accepted in para 9.8 and 9.10 at pages 52 and 53 of the order that entire expenses stated and reflected in the trial balance digital data against the heading murrum are not out of books expenses. The relevant part of the order of Ld. CIT(A) is reproduced hereunder:

> *"**9.8.** However, the facts of the case have to be considered in its entirety. Theappellant has also made several arguments against considering the entire murrumexpenses as out of book cash expenses. Although all of them have been considered,few of them are specifically brought out. One of the contentions of the appellant isthat the trial balance is prepared by assuming various material expenses andcategorising / re-grouping the same under murrum expenses. The appellant has alsopointed out that there is no separate cash receipts recorded in the trial balance andthus it would imply that entire murrum expenses cannot be taken as out of bookexpenses. The appellant has also stated that "the murum expenses considered andtreated as entirely relating to out of books cash expenses is NOT correct and murumword is also used for referring the actual material expenses and not necessarily to beassumed and presumed as depicting cash expenses incurred out of books."*

> ***9.10.*** *I am of the view that there is truth in the claims of both AO and the appellant,albeit with different degrees. There is merit in the claim of the appellant that only onthe basis of murrum expenses in trial balance, the entire such murrum expensescannot be taxed. Hence, a nuanced and judicious view is called for as regardstaxability of murrum expenses which is discussed further."*

67. The Ld. CIT(A) also accepted the fact that the Assessee being Government Contractor, there are no business receipts that can be inferred to have been sourced for out of books expenses. We agree with this finding of the Ld. CIT(A) and the relevant para 9.11 at page 53 of the CIT(A) order is reproduced hereunder-

> *"**9.11.** In the case of a Government Contractor it would not be appropriate to hold anyother business receipts unless there are specific evidences to the same. This hasbeen the crux of decisions of Hon'ble Courts including that of Hon'ble Bombay HighCourt in the case of Ram Builders cited elsewhere. Thus, a reasonable inference canbe drawn that there can be no other source of income from which such unexplainedexpenditure could have been incurred. Since such sums have already been taxed,taxing the expenditure out of such receipts again would amount to double taxation ofthe very same sums involved and also against the principles laid down by Hon'bleCourts that only the real income ought to be taxed. Hence, after giving a thoughtfulconsideration to the facts of the case, I am of the view that addition u/s 69C of the Actcannot be sustained."*

68. The Ld. CIT(A) has thereafter in para 9.12 at page 53 of the order held that certain elements of out of books expenses (murrum) may not entirely satisfy the test of provisions of sec.37(1) of the Act and even though profit is estimated from other out of books business receipts in the form of sale of scrap including from piling work, additional disallowance is called for to

take care of such expenditure, which may not be fully allowable. The Ld. CIT(A) has thus made estimated addition @5% of the out of books cash expenses (murrum) quantified by the AO and this quantification is based upon the trial balance digital data figures.

69. We are not in agreement with this finding of the Ld. CIT(A) to make estimated addition on the basis of amounts quantified as per the trial balance digital data. Firstly, nowhere in the assessment order, the AO has held that the out of books expenses are in violation of Explanation 1 to sec.37 of the Act and even if they are, the AO has failed to specify and quantify the same. Secondly, having held in the earlier part of the order that figures reflected in the trial balance digital data against the heading 'murrum' cannot be considered as depicting out of books cash expenses in its entirety, which finding is also given by Ld. CIT(A) and therefore to estimate addition based on such quantification amounts to taken contradictory view.

70. We have also considered evidences apart from the trial balance digital data depicting out of books cash expenses and they are not of huge magnitude as quantified by the AO on the basis of the trial balance digital data. It is also undisputed fact that source for out of books cash expenses is sale of scrap including from piling work since there is no other business receipt found in the course of search action showing any unaccounted receipt. Hence, considering the overall facts and circumstances of the case, we are of the considerate view that out of books expenses are sourced from sale of scrap including from piling work and we have already confirmed estimated profit on the same to be taxed as business income of the Assessee. In view of the same, no separate addition is warranted in respect of the out of books cash expenses.

71. In view of the finding given hereinabove, the entire addition made in respect of out of books expenses gets deleted in all the years. We also hold that this being a search case, there is no

justification for making any estimated addition towards out of books cash expenses more so when the figures in the trial balance digital data against the heading murrum could not be assumed and presumed to be wholly and fully depicting out of books expenses in cash for the detailed reasons stated hereinabove. Thus, the estimated addition made for the AY 2016-17, AY 2017-18 and partly in AY 2018-19 is hereby deleted and the Ld. CIT(A) order in this regard is upheld. For all the other years including AY 2018-19, other than estimated addition made by the AO, the out of books expenses are directed to be deleted in its entirety and to this extent, the order passed by the Ld. CIT(A) and the addition made on estimated basis is hereby deleted.

72. In view of the above, the appeals of the Assessee are ***allowed*** on this issue and that of department is ***dismissed***.

73. For AY 2016-17, the appeal of the Assessee is partly allowed and that of the Department is dismissed.

Now we take up assessee's appeal No. 4148/Mum/2024 and revenues appeal No. 4593/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2017-18 and are against the order of Ld. CIT(A) dt. 24.06.2024

74. For this year, the Assessee has raised the following grounds of appeal:

> *"1. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.59,53,706/- as Bogus claim of salary and Professional Fees. The learned CIT(A) erred in confirming the addition of Rs.17,86,112/- @ 30% of 59,53,706/- on estimate basis without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted*

2. On the facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.1,28,74,125/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in confirming addition of Rs.11,02,025/- @. 8.56% of Rs.1,28,74,125/- on estimate basis without correct appreciation of the facts of the case and law on the In view the facts & circumstances of the case and law on the subject, the same be deleted.

3. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.3,55,858/- as cash income from piling business u/s 69A and the learned CIT(A) erred in confirming the addition of Rs.30,461/- @ 8.56% of Rs.3,55,858/- against action of ld. AO without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

4. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

75. The Department has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs. 12874125/- u/s 69A of the Act to Rs.1102025/- as business income of the assessee on the issue of cash income from scrap sale and considering that appropriate profit percentage as average PBT% at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting addition made by the AO for Rs. 355858/- u/s 69A of the Act to Rs. 30461/ as business income of the assessee on the issue of cash income from piling business and considering that appropriate

profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

3. Whether the Ld. CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

4. Whether the Ld. CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

6. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted Income from scrap sale and piling business as business Income by relying on the fact that there is no evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters us unexplained investment

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs.2370017/- u/s 69C of the Act holding them as business expenditure of the assessee on the issue of out of books cash expenditures/murrum expenses and considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

8. Whether the Ld.CIT(A) erred in stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

9. Whether the Ld. CITIA) erred in estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

10. Whether the Ld.CIT(A) erred in observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made.

11. Whether the Ld.CIT(A) erred in observing that AO has also referred a loose paper, page 1& 2 of Annexure A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise

evidences of exact amount in trial balance are present, then there is need estimation.

12. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act by disallowance of bogus professional Fee/Salary to Rs.17,86,112/- being @30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

13. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

76. The Assessee has raised the following grounds of appeal vide letter dated 25.11.2024 filed with registry on 29.11.2024:

"1. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining a properly signed approval under section 151 of the Act.

2. The Ld. AO erred in issuing a Notice u/s.148 of the Act in violation of section 151A of the Act read with CBDT Notification 18 of 2022 dated March 29, 2022 as the same has to be issued by Faceless Assessing Officer.

The Appellant craves to leave to add, amend, alter or delete any or all the above grounds of appeal."

77. In respect of the additional grounds of appeal of the Assessee, the Ld. Department Representative (Ld. DR in short) did not objected to the admissibility of the same. The additional grounds of appeal being legal grounds for which no new facts were required and hence, the same were admitted for adjudication following the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. v. CIT 229 ITR 383 (SC)*** wherein it is held that where question of law is

concerned, additional grounds on legal issued can be raised at any time.

78. The first legal issue raised in the additional grounds of appeal of the Assessee relates to issue of notice u/s.148 of the Act by taking approval as prescribed u/s.151 of the Act whereby the approval granted is not signed by the appropriate authority.

79. In respect of this ground of appeal, we have already dealt with the same in detail in the order passed for AY 2016-17 and since the facts and the legal issue is same as that of AY 2016-17, the decision rendered therein applies to this year also. In view of the same and following the decision given in AY 2016-17, this additional grounds of appeal of the Assessee is allowed and the notice issued u/s.148 of the Act is held to be bad in law for want of valid jurisdiction and is hereby quashed. Consequently, the order passed u/s.143(3) r.w.s. 147 of the Act dated 31.03.2024 for AY 2017-18 is bad in law and quashed.

80. The second additional ground of appeal raised by the Assessee is challenging the validity of notice issued u/s.148 of the Act by jurisdictional Assessing Officer (JAO in short) instead of Faceless Assessing Officer (FAO in short) as per the provisions of section 151A of the Act read with CBDT notification 18 of 2022 dated March 29, 2022.

81. This additional ground of appeal of the Assessee is decided against the Assessee in the order passed for AY 2016-17. As the facts and legal issue remain the same for this year, this grounds of appeal of the Assessee is hereby dismissed on the same reasoning as given in the order for AY 2016-17.

82. Now we take up the grounds of appeal filed by the Assessee and Department on merits. The Assessee as well as Department is in appeal against the part relief given by Ld. CIT(A) in respect of various issues as per grounds takeni.e. sale of scrap, income

from sale of scrap from piling work and bogus salary and professional fees whereas the Department has raised further grounds in appeal in respect of the issue of out of books expenses (murrum expenses) on which the Ld. CIT(A) has given full relief to the Assessee in the impugned AY.

83. First we take up cross appeals of Assessee and Department on the issue of sale of scrap and sale of scrap from piling work whereby the AO made addition of Rs.1,28,74,125/- and Rs.3,55,858/- respectively u/s.69A of the Act and the Ld. CIT(A) gave partial relief by estimating income on gross value of scrap sale taking average net profit before tax (PBT) shown in regular books of account and also treating the same as business income and thereby confirming addition to the extent of Rs.11,02,025/- and Rs.30,461/- respectively adopting average PBT of 8.56%. The Assessee has filed appeal (grounds 2 & 3) challenging the addition sustained of Rs.11,02,025/- and Rs.30,461/- and the department has filed appeal (grounds 1 to 6) against relief given to Assessee.

84. We have already dealt with this issue in the appeals filed by Assessee and Department for AY 2016-17 and the facts of the case being identical to that of AY 2017-18, the decision rendered in the order for AY 2016-17 shall apply for this year also. Accordingly, this grounds of appeal of Assessee is partly allowed and that of the Department is dismissed as per the findings and conclusion given for AY 2016-17. These grounds of appeal are decided accordingly.

85. The next cross appeal of the Assessee and Department is in respect of part relief given by the Ld. CIT(A) in the order passed in respect of alleged bogus salary and professional fees debited in the books of account and claimed as expenses in the return of income filed. Grounds of appeal no.1 of Assessee and Grounds of appeal no.12 of the department challenges this issue.

86. This issue is discussed by the AO in para B at pages 37 to 43 and in the order of Ld. CIT(A) in para 21 to 23.3 at pages 71 to 77. The facts of the case in respect of this issue is that during the course of search action at the residence of Shri Rajan Sharma, statement of Shri Rajan Sharma and his wife Swati Sharma was recorded u/s.132(4) of the Act and in the statement of Swati Sharma, it was stated by her that she was working in the Assessee Company, however, subsequently confirmed that she does not report to office, does not have company email id, and no work is assigned to her and as per the arrangement proposed by Assessee Company, part of the salary of her husband is received by her and she is filing income tax return and has disclosed salary income and paid appropriate tax. The relevant part of the statement of Swati Sharma is reproduced in the assessment order at 38. Similarly, in the statement recorded u/s.132(4) of the Act of Shri Rajesh Goyal at the Corporate office of Assessee, he stated that his wife Anjana Goyal is home maker, however as per data provided by the HR department of list of employees, name of Anjana Goyal appears and it was accepted by Shri Rajesh Goyal that as per arrangement, his salary is split with his wife in order to save tax. Statement of Shri Pravin Garg, Deputy General Manager HR was recorded at Corporate office of the Assessee u/s.132(4) of the Act and he explained the procedure and process of disbursement of salary, which is based on attendance maintained as per the biometric attendance system and/or manual attendance sheets and on that basis, payment slip is generated and salary disbursed. However, when list of employees was shown who has not attended single day in office and still salary was disbursed, he confirmed that the employees in the list do not give any service to the Assessee Company and their salary is disbursed on the basis of attendance of their husbands. The list of such employees is tabulated at page 40 of the assessment order.

87. On the basis of the above, the AO tabulated the total amount of salary and professional fees paid to wife of the

employees from F.Y. 2016-17 to F.Y. 2022-23 and concluded that payment of salary and professional fees is paid to wives of employees without any service in return and thus, disallowed the same u/s.37 of the Act.

88. The Ld. CIT(A) in his order in para 22 at pages 73 to 76 reproduced the submission of the Assessee and held that in case of few of the employees of the Assessee Company, though service are rendered by them, their salary is split with their spouse. Due to progressive rates of taxation in cases of individual, element of tax evasion cannot be ruled out and thus, taking base of sec.40(a)(ia) of the Act where 30% disallowance is made for non-deduction of TDS, estimated that the disallowance be restricted to 30% of the total amount of salary and professional fees paid to the spouse of the employees. The relevant part of the finding given by the CIT(A) in the order is reproduced herein below:

> *"**23.** I have considered the facts of the case. The AO has held that the genuinenessof the expenses did not stand explained. The AO has cited the statement of ShriRajan Sharma and Shri Rajesh Goyal who have stated that their wives arehomemakers but that salary split between the husband and wife. The AO has alsobrought out that such employees do not have company based e-mail id and there isno specific work allocation.*
>
> ***23.1.** The appellant has not denied that the salary was split between the husbandand wife although the husband was doing the entire work. Rather the appellant hascontended that it is a part of secret strategy to retain the key employee by keepingthe wife on the payroll.*
>
> ***23.2.** To my mind, the truth lies somewhere in between. It is apparent that theservices have been rendered by few employees but salaries have been split betweensuch employee and their spouses. It is to be noted that these*

recipients offer incomefor taxation using progressive rates and not based on flat rates. Thus, there is anelement of tax evasion involved in the form of reduced tax outgo, which stands aidedby the appellant. Under these circumstances, it would be appropriate to apply theprinciple of proportionality. A reasonable anology can be drawn with Section 40(a)(ia)whereby 30% disallowance is made for non-deduction of TDS and enabling therecipient of payment to evade taxes. The splitting of payments in the name ofdifferent entities even when services are rendered by only one entity can be stated tobe something similar. On an overall consideration of facts, it would be fair to restrictsuch disallowance to 30% of payments. Accordingly, the addition of Rs. 59,53,706/-is restricted to Rs. 17,86,112/- (i.e. 30% of 59,53,706). The disallowance for each ofthe year is as under:-

Asst. Year	*Addition Made by theAO*	*Addition restricted to 30% of gross receipts*	*Relief Granted by CIT(A)*
2017-18	*59,53,706*	*17,86,112*	*41,67,594*
2018-19	*82,33,728*	*24,70,118*	*57,63,610*
2019-20	*98,01,222*	*29,40,367*	*68,60,855*
2020-21	*1,57,23,098*	*47,16,929*	*1,10,06,169*
2021-22	*1,49,63,889*	*44,89,167*	*1,04,74,722*
2022-23	*1,96,89,131*	*59,06,739*	*1,37,82,392*

23.3. *Accordingly for AY 2017-18, the addition of Rs. 59,53,706/- is restricted to Rs.17,86,112/-. In view of the above detailed discussion,* ***Ground No. 1*** *stands* ***PARTLY ALLOWED****."*

89. Before us, the Assessee has reiterated the contentions made before the AO and the CIT(A) and has filed chart on this issue alongwith the contentions that were raised before the CIT(A). The

Assessee has also filed additional submission on this issue, which is reproduced as under:

> *"The payment is made to incentivize and retain employees. Further, the payment is corresponding to the work done by the employee and professional.*

It is a well-settled position in law that in order to constitute an expenditure falling under section 37(1) of the Act the five conditions, viz.,

(i) It should have been incurred in the accounting year,
(ii) It should be in respect of a business which was carried on by the assessee and the profits of which are to be computed and assessed,
(iii) It should not be in the nature of personal expenses of the assessee,
(iv) It should have been laid out or expended wholly and exclusively for the purpose of such business and
(v) It should not be in the nature of capital expenditure.

Therefore, all the conditions of section 37(1) are satisfied and the same may be allowed as an expense.

The Hon'ble High Court in the case of ***Hemraj Nebhomal Sons v. CIT [2005] 146 Taxman 345 (MP)*** *held that once the conditions laid down in section 37(1) of the Act are found satisfied, it is not proper on the part of the taxing authorities to probe into the question as to whether the expenditure is legitimate or necessary, etc. This type of inquiry is neither contemplated nor called for. It is only when the Assessing Officer finds that the claim made is bogus or false or not incurred as a fact, it can be disallowed, otherwise not.*

(Page 77 to 78 of Paper Book – II; Relevant para 8-11 on page 78)

Therefore, no disallowance can be made under section 37 of the Act

Without prejudice to the above:

It is submitted that estimate addition cannot be made without rejecting the books of accounts:

Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of ***Teletronics Dealing Systems (Supra)*** *and the Hon'ble Delhi High Court in the case of* ***Forum Sales (Supra).***

Hence it is prayed that the revenue appeal may be dismissed and the assessee's appeal may be allowed."

90. The Ld. DR on the other hands has contended that the CIT(A) was not correct in restricting the disallowance @30% estimated basis and since the entire payments made to spouse of the employees are without rendering of any services, the same are bogus and thus, the AO has rightly disallowed the entire payments of salary and professional fees paid to spouse of employees and the order of the AO may be restored.

91. We have gone through the findings given by the AO in the assessment order as well as that of the CIT(A) order as also the arguments made before us by both the parties to the appeal. The facts of the case are clear that the salaries of few of the employees are split between the employee and his spouse. The reason given for this arrangement is to retain the key employees of the Assessee Company since there is high competition in the industry and if the key employees are retained, the growth prospects of the Assessee Company are not hindered and the business can be run smoothly. In fact, in the statement recorded of Swati Sharma, wife of Shri Rajan Sharma, as reproduced by the AO in the assessment order at page 38 of the order, in the

answer given in response to Q.34, Swati Sharma has given the background as to how his husband joined the Assessee Company. The relevant part of the statement is reproduced as under:

> *"To give some background, my husband Rajan Sharma quit his earlier job with Glazetech Industries Private Limited in FY 2010-11. Immediately thereafter, he was approached by Nalin Gupta who was his client in Glazatech and impressed with his work. At that time to reduce tax liability, my husband was offered an arrangement by J. Kumar Infraprojects Limited with the approval of Nalin Gupta.*
>
> *……*
>
> *I would also like to state that, notwithstanding the above, I have duly disclosed the salary income received every year and paid the applicable taxes."*

92. Thus, it is clear from the statement of Swati Sharma as to how his husband Shri Rajan Sharma was employed by Assessee Company and he agreed to join the Assessee Company only upon receiving incentive in the form of arrangement by splitting his salary with that of his wife. Further, Swati Sharma has also clearly stated that she has been filing return of income and paying applicable tax and that her salary is approximately Rs.15 lakhs (mentioned in Q.no. 34).

93. Be that as it may, it is clear from the records that Assessee has neither claimed any excess salary in the books of account nor debited any bogus amount of salary in the books of account and this is undisputed fact that only certain key employees salary were split with their spouse in order to retain them in the Assessee Company. However, the employee cost in the hands of the Assessee Company remains same irrespective of salary being split with spouse of the employee. The Assessee Company has not availed any tax benefit and there is no evasion of tax in the hands of the Assessee.

94. The AO has applied provisions of sec.37(1) of the Act in order to disallow the salary / professional fees payments made to spouse of the employee. However, as per the provisions of sec.37(1) of the Act, once the expenses is found to be wholly and exclusively incurred for the purposes of the business of the Assessee and the same is neither personal or capital in nature, disallowance u/s.37(1) of the Act is not warranted. The decision in the case of ***Hemraj Nebhomal Sons v. CIT [2005] 146 Taxman 345 (MP)*** as relied by the Assessee supports the case of the Assessee. In respect of the argument of the Ld. DR that no services are rendered by spouse of the Assessee, the facts are that the services are rendered by the employees only and the salary is paid towards the services rendered by the employees. As stated earlier, neither the Assessee has paid any excess salary / professional fees nor is any bogus salary / professional fees paid.

95. The arrangement carried out by the Assessee can be said to be out of commercial expediency and such arrangement is made only with few key employees and not all the employees of the Assessee Company since it is only the Assessee who knows the benefits accrued to it by retaining the key employees. As held by various decisions including that of Hon'ble Supreme Court in ***CIT v. Walchand & Co. P. Ltd. [1967] 65 ITR 381 (SC); S. A. Builders v. CIT [2007] 288 ITR 1 (SC); Udaiput Distillery Co. Ltd. 224 CTR 32 (SC); J.K. Woollen Manufacturing v. CIT (1969) 72 ITR 612 (SC)*** have held that the expenditure incurred have to be adjudged from the point of view of businessmen and not the revenue. The revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. The authorities must not look at the matter from their own view point but that of a prudent businessman. It is well settled principle that Commercial expediency cannot be judged by the Revenue from its point of view.

96. In view of the above, we are of the considered view that the Assessee has neither claimed excess salary / professional fees nor is any bogus salary / professional fees claimed and thus, no part of the salary / professional fees claimed can be disallowed u/s.37(1) of the Act. The disallowance made by the AO is directed to be deleted in totality and the order of the Ld. CIT(A) is reversed. The Assessee ***succeeds*** on this issue and the ground of the Assessee is allowed and that of the department is ***dismissed***.

97. The only other grounds remaining in this year relates to department appeal i.e. grounds of appeal nos.7 to 11 relating to out of books expenses (murrum expenses) deleted by Ld. CIT(A) for this year. We have already dealt with this issue in the order passed for AY 2016-17 and facts being same for this year, on the same reasoning, the department appeal on this issue is dismissed.

98. In view of the above, for AY 2017-18the appeal of the Assessee is party allowed and that of the Department is dismissed.

Now we take up assessee's appeal No. 4149/Mum/2024 and revenues appeal No. 4591/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2018-19 and are against the order of Ld. CIT(A) .....

99. For this year, the Assessee has raised the following grounds of appeal:

> *"1. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs. 14,59,735/- on account of bogus purchase. The learned CIT(A) erred in upholding the action of the ld. AO without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted.*

2. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.82,33,728/- as Bogus claim of salary and Professional Fees. The learned CIT(A) erred in confirming the disallowance of Rs.24,70,118/- @ 30% of 82,33,728/- without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

3. On the facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.6,33,75,794/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in confirming addition of Rs.54,24,968/- @. 8.56% of Rs. 6,33,75,794/- on estimate basis without correct appreciation of the facts of the case and law on the In view the facts & circumstances of the case and law on the subject, the same be deleted.

4. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.111,86,06,284/- to the total Income of assessee on account of out of book cash expenses u/s 69C of the Act. The learned CIT(A) erred in confirming disallowance of Rs.56,04,449/- on estimate basis, @5% of 11,20,88,973/- without correct appreciation facts of the case & law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

5. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.12,75,928/- as cash income from piling business u/s 69A and the learned CIT(A) has erred in estimating & confirming addition of Rs 1,09,220/- @ 8.56% of

Rs.12,75,928/-.In view of the facts and circumstances of the case and law on the subject, the same be deleted.

6. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

100. The Department has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs.6,33,75,794/- u/s 69A of the Act to Rs.5424968/- as business income of the assessee on the issue of cash income from scrap sale and considering that appropriate profit percentage as average PBT % at 8.56% ignoring, the facts and circumstances of the case established by the Assessing Officer.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting addition made by the AO for Rs. 12,75,928/- u/s 69A of the Act to Rs.1,09,219/- as business income of the assessee on the issue of cash income from piling business and considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

3. Whether the Ld. CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scrap sale already booked in books of accounts.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted Income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

6. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted Income from scrap sale and piling business as business income by relying on the fact that there is no evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters as unexplained investment.

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs. 111,86,06,284/- u/s 69C of the Act holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) and considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

8. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

9. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as "murrum', there is no scope of estimation of out of books cash expenses.

10. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made. Thus it is clear that the assessee do have accepted to receipts from non-recognising business sources.

11. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that AO has also referred a loose paper, page -1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where

project-wise evidences of exact amount in trial balance are present, then there is no need estimation.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum by observing that the figure for October 2017 was taken as Rs.107,04,69,033/- and these projects were allotted and were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that the AO has already excluded an amount in respect of 4 projects where earlier period was established & the same entry is available in trial balance for F.Y.2017-18 and for the projects where the assessee did not prove that these expenses related earlier years and also did not provide breakup of the same as the onus is lies on the assesses to prove the same.

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that projects were started prior to FV 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that unaccounted expenses are incurred even after the starting of projects also and onus is lies on the assessee to prove that these expenses related to earlier years.

14. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act by disallowance of bogus professional Fee/Salary to Rs.24,70,118/- being 30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

15. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

101. The Assessee has raised the following grounds of appeal vide letter dated 25.11.2024 filed with registry on 29.11.2024:

> *"1. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining incorrect sanction under section 151 of the Act.*
>
> *2. The Ld. AO erred in issuing a Notice u/s.148 of the Act in violation of section 151A of the Act read with CBDT Notification 18 of 2022 dated March 29, 2022 as the same has to be issued by Faceless Assessing Officer.*
>
> *The Appellant craves to leave to add, amend, alter or delete any or all the above grounds of appeal."*

102. In respect of the additional grounds of appeal of the Assessee, the Ld. Department Representative (Ld. DR in short) did not objected to the admissibility of the same. The additional grounds of appeal being legal grounds for which no new facts were required and hence, the same were admitted for adjudication following the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. v. CIT 229 ITR 383 (SC)*** wherein it is held that where question of law is concerned, additional grounds on legal issued can be raised at any time.

103. We first deal with the additional grounds of appeal raised by the Assessee. During the course of hearing, both the Assessee as well as the Department has filed written submission in respect of the additional grounds of appeal raised by the Assessee and the Assessee has also filed rejoinder against the written submission filed by the Department. Since the additional grounds of appeal goes to the root of the matter, we deem fit first to adjudicate the legal issues raised by the Assessee.

104. The Assessee in the first additional ground of appeal has contested that for the AY 2018-19, the notice for reopening of the assessment u/s.148 of the Act was issued on 06.04.2022 vide DINITBA/AST/F/148A/2022-23/1042556787(1) and the prior approval for issuing the notice was taken of PCIT (Central), Mumbai-3 dated 05.04.2022 vide reference no.100000029384564 as stated in para 3 of the notice u/s.148 of the Act (notice filed in paper book on page 148) whereas as per the provisions of sec.151 clause (ii) of the Act, the prescribed authority for granting approval was Principal Chief Commissioner or Principal Director General or Chief Commission or Director General for the reason that the notice u/s.148 of the Act was issued beyond the expiry of three years from the end of the assessment year.

105. In respect of this additional ground of appeal, the contention of the Assessee is that while issuing notice u/s.148 of the Act, the approval u/s.151 of the Act was taken of PCIT, who was not the appropriate authority for granting sanction to issue the notice u/s.148 of the Act as the notice u/s.148 of the Act was issued beyond the period of three years from the end of the assessment year. Sanction given by incorrect authority goes to the root of the matter and therefore the notice issued u/s.148 of the Act is bad in law and liable to be quashed.

106. Apart from oral arguments made during the course of hearing, the Assessee also filed brief submission in respect of this additional ground of appeal, which is reproduced hereunder-

> *"It is pertinent to note that the proviso to section 151 of the Act was introduced vide Finance Act, 2023, prospectively. Therefore, there was a lacuna in the law prevailing in the Notices issued during March 2022 for Assessment Year 2018-19, where the Order under section 148A of the Act and Notice under section 148 was issued in April 2022. Provisos to Section 149 of the Act extending the period of limitation*

could apply to Section 151 of the Act. Therefore, the time period for a sanction for section 151 of the Act was counted in absolute sense.

The Hon'ble bombay High Court in the case of ***Vodafone India Limited v. DCIT WP 2766 of 2022 dated February 06, 2024 (Bom)(HC), for AY 2018-19*** *where Notice under section 148Aof the Act was issued in March 2022 and the Order under section 148A of the Act and the Notice under section 148 of the Act was issued in April 2022. It was held that where the Assessing Officer passed an order under section 148A after the expiry of three years from the end of the relevant assessment year without taking approval from PCCIT as contemplated by section 151(ii) of the Act same would invalidate reassessment proceedings. The prospective nature of the amendment in section 151 of the Act vide Finance Act, 2023 has also been considered."*

107. On the other hand, the Ld. DR submitted that the approval accorded by PCIT (Central), Mumbai-3 is correct and he was the appropriate authority to grant sanction for issue of notice u/s.148 of the Act for AY 2018-19. The Ld. DR contended that the proviso to sec.151 of the Act inserted by the Finance Act, 2023 w.e.f 1-4-2023 is retrospective in effect and by virtue of which, the limitation period for issue of notice u/s.148 of the Act was extended in terms of fifth and sixth proviso to sec.149(1) of the Act thereby granting additional seven days and since the approval is taken of PCIT (Central), Mumbai-3 on 05.04.2022 and the notice u/s.148 of the Act being issued dated 06.04.2022, the same is within the extended period of limitation of 7 days from year ending on 31.03.2022 and therefore the appropriate authority u/s.151 of the Act was PCIT-3 and hence, the sanction is accorded by appropriate authority and the notice issued u/s.148 of the Act is valid and not bad in law.

108. The Ld. DR also filed written submission countering the arguments advanced by the Assessee and placing reliance on certain decisions. The relevant part of the submission filed by Ld. DR is reproduced as under-

> *"28.* ***Additional Legal Ground No.3:****The assessee has challenged the validity of the reassessment proceedings on the ground that the proviso to Section 151 of the Act, introduced by the Finance Act, 2023, applies prospectively and that, prior to this amendment, there wasanalleged lacuna in the law regarding sanction under Section 151 for notices issued in March 2022 for Assessment Year 2018-19. The assessee contendsthattheperiodforobtainingsanctionunder Section151shouldbecountedin anabsolutesenseandthattheextended limitation periodundertheprovisostoSection 149 does not apply to Section 151. Reliance has been placed on the decision of the Hon'bleBombay HighCourtin* ***Vodafone India Limited****v.* ***DCIT*** *2024:BHC-OS:2099-DB dated February06, 2024, wherein the Hon'ble Court held that where an order under Section 148A was passed beyond three years from the end of the relevant assessment year without obtaining approval from the Principal Chie fCommissioner of lncomeTax (PCCIT),as required under Section 151(ii), the reassessment proceedings would be rendered invalid. Inresponse to these contentions and in furtherance of the arguments advanced during thecourse ofthehearing, thiswritten submission isrespectfully placed before the Hon'ble Tribunal.*
>
> *29. The department respectfully submits that the assessee's contention regarding thetime limit for obtaining approval under Section 151 of the Act is misconceived. A plain reading of the* ***proviso to Section 151,*** *whenre a dinconjunction witht he* ***sixth proviso to***

Section 149(1), *establishes that the prescribed three-year period for obtaining approval from the Principal Commissioner of Income Tax (PCIT)* ***stands extended by sevendays*** *where the available time for passing an order under Section 148A(d) isless than sevendays. This is evident from the* ***sixth proviso to Section 149(1),*** *which states:*

> *"Providedalso that whereimmediatelyafter the exclusion of the periodreferred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause(d) of section 148A does not exceed seven days, such remaining period shall be extended toseven days andthe period oflimitation under this sub-sectionshall be deemed to be extendedaccordingly."*

Further, the ***proviso toSection 151,*** *asintroduced by the Finance Act, 2023, explicitly clarifies that:*

> *"Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos orextended bythe sixth proviso to sub-section (1)of section 149."*

Thus, it is evident that the extension grantedunder the ***sixth proviso to Section 149(1)*** *applies when computing the three-year periodunder Section 151. In the present case, thisextended time period expired on 07.04.2022, and theorder under Section 148A was duly passé don 06.04.2022, well with in the permissible time line. To furtherbuttress this*

submission it is humbly submitted that, the Memorandum Explaining the Finance Bill, 2023 makes it unequivocally clear that the proviso introduced to Section 151 was designed purely toclarify the existing legal framework regarding the approvalprocess. Specifically,it soughtto removethe confusionarising fromclause (ii) of Section151 by affirming that, when computing the three-year period for obtaining approval, the periodexcludedor extendedundertheprovisosto Section149-includingthe seven- day extensionunderits sixthproviso-mustbe taken into account. Relevant extracts of the MemorandumExplaining the Provisions of Finance Bill, 2023 at Pg. 44 have been reproduced hereunder for the sake of brevity,

> *"9. At the same time, to givefurther clarity with regards to the specified authority g_ provisoisproposedto be insertedin thesection 151toprovidethat whilecomputing the period of three yearsfor the purposes of determining the specified authority theperiodwhich has been excludedor extendedas per theprovisosin section149 of theAct from the time limit for issuance ofnotice under section 148 ofthe Act shall be taken into account"*

Itis clearfromaperusalof the abovementionedthat, this clarificatorymeasure does not create any new substantive requirement but merely reaffirms the legislative intent that the extended tirneline was always applicable.

30. M oreover, in ***Ghanashyam Mishra &Sons Pvt. Ltd.*** *v.* ***Edelweiss Asset ReconstructionCompany Ltd.*** *[2021] 13S.C.R.737,the Hon'ble Supreme Court, in paragraphs 78 to 94, unambiguouslyheld that any amendment whichis clarificatoryin nature must be applied retrospectively. The Court emphasized that when an amendment serves only to elucidate andrestate the pre-existinglegal position without altering the substantive rights or obligations of the parties, it is to be given retrospective effect. This judicial pronouncement reinforces the view that the extension under the sixth proviso to Section 149 was an integral part of the laweven before the amendment to Section 151, which introduced the proviso clarifying the position, and thustheclarification provided by the Finance Act, 2023 is inherently retrospective. Therelevant observations of the Hon'ble Supreme Court as made via Para 78-94 have been reproduced hereunder forthesake of ready reference,*

"78.In Justice G.P. Singhtreatise on "The principles of Statutory Interpretation",14th Edition, Revised by Justice A.K. Patnaik, former Judge of this Court, it is observed thus:

(i)DeclaratoryStatutes

The presumption against retrospective operation is not applicable to declaratory statutes. Asstatedin CRAIES andapproved by the Supreme Court: "For modern purposes a declaratory Act may be defined

asan Act to removed oubts existing astothe common law, or the meaning oreffect ofany statute. Such Actsare usually held tobe retrospective. The usual reason for passinga declaratory Actistosetaside what Parliament deemstohave been a judicial error, whether inthe statement of the common law or inthe interpretation of statutes. Usually, if not in variably, such an Act contains apreamble, andalso theword 'declared' as well as the word 'enacted'." But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be usedtointroduce new rulesoflaw andthe Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance ratherthantothe form. If an Act is 'to explain' an earlier Act, it would be without obiectunless construed retrospective .An explanatory Act is generally passed to sue ply an obviousomission or to clear up doubts as to the meaning of the previous Act. It is well settled that i(astatute is curative ormerely declaratory of the previous law retrospective operation is generally ntended The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended

provision was clear and unambiguous. Ana mending Act may be purely clarificatory to cleara meaning of a provision of the principal Act which was already implicit. Aclarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law

The above statement ofthe law relating tothe nature and effect of ade claratory statute has been quoted with approval by the Supreme Court from earlier editions of this book in a number of cases.

"In Mithilesh Kumari v. Prem Bihari Khare, Even without the amendment of the proviso, the court in all probability would have read and interpreted the section as corrected by the amendment. "

In the case of Zile Singh vs. State of Haryana and others this Court had...

The faulty drafting in the provision.....

ThisoCurt while observing, that the amendment was clarificatory in nature,held thus:

"14. The presumption against retrospective operation is not applicable to declaratory statutes In determining, therefore, the nature of the Act, regard Must be had to the substance rather than to the form If a new

Act is "to explain" an earlier Act, it would be without to biect unless construed retrospectively. Anexplanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is wel lsettled that if a statute scurative or merely declaratory of the previous law retrospective operationis generally intended.... An amending Act may bepurely declaratory toclear ameaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid.,pp. 468-69).

15. T hough retrospectivity is not to bepresumed and rather there ispresumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact law shaving retrospective operation. This can be achieved byexpress enactment or by necessary implicationfromthe language employed. If it is a necessary implicationfrom the languageemployed that the legislature intended a particular section tohave aretrospectiveoperation. thecourtswill giveitsuchanoperation.Intheabsenceof a retrospective operation having been expressly given, the courts may becalled upon to construe theprovisions and answer the question whether thelegislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested asrelevant: (i)general scope and purview of the statute: (ii) the remedy sought to

be applied: (iii) the former state of the law:and (iv)what it was the legislature contemplated (p.388) Therule against retrospectivity does not extend to protect fromthe effect ofarepeal, a privilege which did notamount toaccrued right. (p. 392)

Whereas statute is passed for the purpose of supplying an obvious omission in a former statute or to"explain" aformerstatute,thesubsequent statute hasrelation back to the time when the prior Act was passedTherule againstretrospectivity is inapplicable to such legislations as are explanatory anddeclaratory innature. Aclassic illustration isthe case ofAttorney General v. Pougett[(1816)2Price381:146ER130](Price atp.392). ByaCustomsAct of 1873 (53Geo. 3,c.33)a dutywasimposed upon hides of9s 4d, butthe Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in givingjudgment for the Attorney General, said:(ERp.134)

> *"The duty in this instance was, infact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent*

> *Act:but that had reference to the former statute assoonas it passed, and theymustbe takentogether as ifthey were one and the same Act;" (Price at p. 392)*

> *Maxwellstatesinhi.... no hesitation to say, that the word "other stakeholders"would squarely cover the Central Government, any State Government or any local authorities. Thelegislature,noticingthatonaccountofobviousomission,certaintaxauthoritieswerenot abiding by the mandate o(I&B Code and continuing with the proceedings, hasbrought out the 2019 amendment soastocure the saidmischiefWe therefore hold,that the 2019 amendment is declaratory and clarificatory in nature and thereforeretrospectivein operation.*

94.Therefore, in our considered view, the aforesaid provisions leave no manner f o r

> *Doubt to hold that the 2019 amendment is declaratory and clarificatory in nature. We also hold. That even if 2019 amendment was not effected. Still in light of the view taken by us, the Central Government, any State Government or any local authority would be bound by the resolution plan.once itisapproved bythe Adjudicating Authority (i.e. NCLT)."*

in view of the above, it is evident that the amendment to Section 151,which clarifies that the extended time limit under Section 149 applies for obtaining the requisite approval, must be applied retrospectively. The Finance

Act, 2023 did not introduce a new obligation but merely confirmed what was already operative, as underscored by the clarificatory nature of the amendment in the Memorandum and by the authoritative guidance of the Supreme Court in paragraphs 78 to 94 of ***Ghanashyam Mishra*** *&* ***Sons*** *Ibid.Consequently, the order in the present case, passed within the extended statutory timeline, complies fully with the law, and the assessee's contention thatthe amendment applies only prospectively islegally unsustainable.*

Further, It is respectfully submitted that the decision in ***Vodafone India Limited*** *v.* ***DCIT [****SupraNote36] is rendered* ***perincuriam,*** *asitproceeds on the erroneous assumption that "the proviso to Section 151 has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand " This assumption was made without considering the well-settled legal principle that an amendment introduced to* ***clarify*** *an existing provision is deemed to be* ***retrospective in nature.*** *The* ***Memorandum Explaining the Finance Bill, 2023 [****Attached herewith and Marked as Annexure17] explicitly states that the amendment to Section 151 was introduced to* ***give further clarify*** *that the time limit under Section 151 must becomputed after accounting for the exclusions and extensions under Section 149. Moreover, the Hon'ble Supreme Courtin* ***Ghanashyam Mishra*** *&* ***Sons Pvt. Ltd.*** *v.* ***Edelweiss Asset Reconstruction Company Ltd.*** *(Supra Note37) (paras78-94) has reaffirmed that when anamendment merely clarifies the*

law without introducing any new substantive requirement, it ***must be applied retrospectively.***

By failing to consider the retrospective nature of the amendment and the guiding principle laid down by the Hon'ble Supreme Courtin Ghanashyam Mishra & Sons ***Pvt. Ltd.*** *v.* ***Edelweiss Asset ReconstructionCompany Ltd.*** *Ibid****,****thedecision in* ***Vodafone India Limited*** *v.****DCIT*** *(SupraNote36)suffers from being* ***per incuriam,*** *as it ignores binding legal principles that govern the interpretation of clarificatory amendments. A judgment that does not take into account a settledpropositionof law laid down by the Hon'ble Supreme Court cannot be regardedas havingprecedentialvalue, as it is rendered without taking into account an authoritative and binding decision. Accordingly, the reliance placed by the assessee on* ***Vodafone India Limited*** *v.* ***DCIT*** *ibidto argue that benefit of the proviso to section 151 would not be available to the department for the concerned assessment year is misplaced.*

Further, the judgment in ***Vodafone India Limited*** *v.* ***DCIT*** *ibidheavily relies on the decision of the Hon'ble Bombay High Court in* ***Siemens Financial Services Private Limited*** *v.* ***DCIT*** *[(2023)457ITR647.(Born.)]****.****However, it is crucial to note that the* ***Siemens*** *ibiddecision is* ***sub silentio*** *with respect to the following key aspect i.e the statutory extension of time provided by the sixth proviso to Section 149. A judgmentis considered* ***sub silentio*** *when itdoesnotexpressly decide upon amaterial issue, even ifthat issue istangentially involved in the case. Since the*

***Siemens** ibidjudgment does not explicitly analyze or adjudicate upon the **specific question of time limit for obtaining approval under Section 151** as mandated by the proviso, its findings cannot be treated as binding precedent on these points.*

*Additionally,it is pertinent to highlightthat in **Siemens** Ibid**,** the mootquestion of law aroseconcerning the applicability of TOLA (Taxation and Other Laws - Relaxation and Amendment of Certain Provisions Act, 2020), and the Hon'ble Court's decision was influencedby the impact of TOLA on the reassessment proceedings. Since TOLA has no applicability in the present case, any argument made in furtherance of reliance on **Siemens** Ibidin the current factual scenario is untenable. Given that **Siemens** Ibiddoes not decisively address these key issues, it cannot be treated as binding precedent. Since **Vodafone** (SupraNote36) heavily relies on a subsilenti judgment that was also decided in the context of TOLA, the department submitsthat the ruling lacks conclusive authority and cannot be relied upon in the present case.*

*The present case is fundamentally distinguishable as it revolves around the **correct interpretation and application of the proviso to Section 151,**which wasneither examined nor discussed inSiemens Financial ServicesPrivate Limited v.DCIT Supra Note 46. Consequently, there lianceplaced by the assesse on **Vodafone India Limited** v. **DCIT** Supra Note 36 which intum hasrelied onthe **Siemens** SupraNote 46ruling, toargue thatthe provisos to Section 149 of the Act extending the*

period of limitation could not apply to Section 151 of the Act is ***misplaced,*** *as the latter does not provide any authoritative guidance on the central issue at hand. A sperestablished principles of* ***binding precedent,*** *a ruling thatis* ***sub silentio*** *on a crucial issue lacks precedential weight on that issue. Therefore, any argument premised on* ***Vodafone India Limited v. DCJT*** *Supra Note36****,*** *which intumrestsona* ***sub silentio*** *decision is legally untenable.*

In this regard, the department respectfully submits that reliance may be placed on the judgment of the Hon'ble Calcutta High Court in ***Gemini Overseas Limitedv. Union of India &Ors.*** *WPO/1207/2023****,****wherein the Court, while deciding on asimilar issue, has unequivocally held that even if more than three years have elapsed since the end of the relevant assessmentyear,thedesignatedauthorityforgrantin gsanctionwouldstillbethe* ***Principal Commissioner of lncome Tax (PCIT) under Section 151(i)*** *rather than the* ***Principal Chief Commissioner of lncome Tax (PCCIT) under Section 151(ii)*** *if the additional period beyond three years is* ***amenable to the proviso to Section 151.*** *The Hon'ble Court recognized that the legislative scheme, as clarified by the Finance Act, 2023, allows for an extendedtime limitunder the sixthproviso toSection149, and when such an extension is applicable, the approval requirements must be determined accordingly, the relevant observation reiterating the same has been reproducedhereunder,*

"It also appears on a plain reading of the sixth proviso under Section 149(1) of the Act that in addition to the time available to the assessing officer forthe purpose oflimitation as perthe aforesaid fifth proviso furthertime ofseven days isavailable tohimwhile computingthelimitation period forthe purpose of passing order under Section l48A(d) of the Act.
Considering the facts andcircumstances ofthiscase it isanadmitted position that after taking into consideration the period allowed to the Assessing Officer under the aforesaid fifth and sixth proviso to Section 149(1) of the Act, the impugned order under Section l48A(d) of the Act by excluding the time granted to the petitioner to file response to the notice under Section 148A (b) of the Act and a further period ofseven days from the date of expiry of normal period of three years for the purpose of assessment, the impugned or derpassed under Section l48A (d) of the Act is very much within thre eye arsin this case and as such for passing the aforesaid impugned order Principal CIT and not the Principal Chief CIT is "Specified Authority" for approval of the same."

The Hon'ble Calcutta High Court's interpretation aligns with the well-established principle that statutoryprovisionsmust be read harmoniouslyto avoid rendering any part of the law redundant. The reasoning in ***Gemini Overseas*** *SupraNote57Limited directly contradicts the view taken in* ***Vodafone India Limited*** *v.* ***DCIT*** *SupraNote36,which failed to consider the* ***applicabilityof the extended timeline to Section 151 approvals.*** *Since the Hon'ble ITAT*

is bound to consider the correct position of law in light of judicial pronouncements from different High Courts, the ruling in ***Gemini Overseas Limited*** *SupraNote57provides a more comprehensive and legally sound interpretation of the approval mechanism under Section 151.Given thedirect applicabilityofthisrulingtothe present case, the department submits that the approval under section151 (i) has been obtained infull compliance with the statutory provisions, andthe assessee's argument, relying on* ***VodafoneIndia Limited*** *v.* ***DCIT*** *Supre Note 36****,*** *is legally unsustainable."*

110. In reply to the submission of the Ld. Dr, the Assessee filed rejoinders from time to time and the relevant part of the same in respect of this issue is reproduced hereunder-

"Reiterating as mentioned above, proviso to section 151 of the Act was introduced vide Finance Act, 2023, prospectively. Therefore, there was a lacuna in the law prevailing in the Notices issued during March 2022 for Assessment Year 2018-19, where the Order under section 148A of the Act and Notice under section 148 was issued in April 2022. Provisos to Section 149 of the Act extending the period of limitation could apply to Section 151 of the Act. Therefore, the time period for a sanction for section 151 of the Act was counted in absolute sense.

The proviso to section 149 of the Act cannot be extended to interpret section 151 of the Act. This is the view taken by the Jurisdictional High Court in the case of ***Vodafone India Limited (Supra).***

Further, the decision in the case of ***Gemini Overseas Limited (Supra)*** *pertains to Notices under section 148*

of the Act issued in April 2023 and not April 2022 i.e. after the Finance Act, 2023.

Furthermore, similarities in the case of the assessee and ***Vodafone India Limited (Supra).***

Sr. N	***Particulars***	***Assessee***	***Vodafone India Limi (Supra).***
1.	*Assessment Yea*	*2018-19*	*2018-19*
2.	*Issuance of Noti Under section 14 The Act*	*April 2022*	*April 2022*
3.	*For the purpose Section 151 of Act*	*Beyond years*	*Beyond 3 years*

Hence it is submitted that the decision of the Hon'ble Jurisdictional High Court is binding."

2nd Rejoinder – rebutting case laws relied by Ld. DR:

Ghanshyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company (2021) 13 SCR 737

Comments: *The said decision deals with Insolvency proceedings and has no bearing on the case and facts in hand. Further, the Department has relied on this decision to state that the amendment in section 151 of the Act vide Finance Act 2023 is clarificatory in nature and hence should be interpreted retrospectively.*

However, the jurisdictional High Court has interpreted amendment in section 151 of the Act vide Finance Act 2023, prospectively. Hence is absence of proviso to section 151 of the Act at the time of issuance of Notice, the sanction obtained under section 151 of the Act for

AY 2018-19 should have been under section 151(ii) of the Act and not section 151(i) of the Act.

Hence it is prayed that the decisions relied on by the Department are not applicable to the facts of the case and hence the Department's Appeals may be dismissed and the Assessee's appeals may be allowed."

111. We have considered the legal issue raised by the Assessee in terms of additional grounds of appeal and the contentions raised by both the parties, orally as well as written submissions. The undisputed fact is that for AY 2018-19, notice u/s.148 of the Act is issued dated 06.04.2022 and as per para 3 of the said notice, the same is approved by PCIT (Central), Mumbai-3. The relevant part of the notice issued is reproduced as under-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 5(1), MUMBAI

To, **J KUMAR INFRAPROJECTS LIMITED** **16-A ANDHERI INDUSTRIAL ESTATE ,** **VEERA DESAI ROAD ANDHERI WEST** **MUMBAI 400058 , Maharashtra** **India**	

PAN: **AAACJ9161C**	**A.Y:** **2018-19**	**Dated:** **06/04/2022**	**DIN & Notice No:** **ITBA/AST/S/148_1/2022-23/1042562145(1)**

Notice under section 148 of the Income-tax Act,1961

Sir/Madam/ M/s.

- I have the following information in your case or in the case of the person in respect of which you are assessable under the Income tax Act, 1961(here in after referred to as "the Act") for Assessment Year **2018-19**
  - information flagged by the risk management strategy formulated in this regard

  suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN **ITBA/AST/F/148A/2022-23/1042556787(1)** dated **06/04/2022** and annexed herewith for reference,

2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other, allowance or deduction for the Assessment Year **2018-19** and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year **2018-19**.

3. This notice is being issued after obtaining the prior approval of the **PCIT (Central), Mumbai-3** accorded on date **05/04/2022** vide Reference No. **100000029384564**.

ASHISH KUMAR SHUKLA
CENTRAL CIRCLE 5(1), MUMBAI

112. The dispute revolves around the issue as to who is the appropriate authority to sanction the notice u/s.148 of the Act. The sanction for issue of notice is dealt by the provisions of sec.151 of the Act. Sec. 151 of the Act existing as on the date of issue of notice u/s.148 of the Act read as under-

"Sanction for issue of notice.

151. Specified authority for the purposes of section 148 and section 148A shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year"

113. On reading of the above provision, it is very clear that in order to issue notice u/s.148 of the Act, sanction is required to be taken of appropriate authority depending upon the period that has elapsed from the end of the assessment year. In the present case of the Assessee, for AY 2018-19, three years period expired on 31.03.2022 and the notice u/s.148 of the Act is issued on 06.04.2022 after obtaining sanction from PCIT (Central), Mumbai-3 dated 05.04.2022. Since the notice u/s.148 of the Act is issued after period of 3 years has elapsed, the appropriate authority to sanction the notice fell under clause (ii) of section 151 of the Act according to which, the notice ought to have been sanctioned by Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General whereas the sanction to issue notice u/s.148 of the Act is given by Principal Commissioner of Income Tax (PCIT) and thus, the PCIT sanctioning the issue of notice is not the appropriate authority.

114. The reliance placed on the decision of Bombay High Court in the case of ***Vodafone India Limited v. DCIT WP 2766 of 2022 dated February 06, 2024 (Bom)(HC)*** [copy given in paper book at pages 79 to 81] covers the issue at hand wherein in para 3 of the said order, it is held as under-

"3. In the impugned order dated 5th April 2022 and the impugned notice dated 6th April 2022, both state that the

Authority that has accorded the sanction is the PCIT, Mumbai 5. The matter pertains to Assessment Year ("AY") 2018-19 and since the impugned order as well as the notice are issued on 5th April 2022 and 6th April 2022, respectively, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151 (ii) of the Act. ***The provisio to Section 151 has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand****."*

[Emphasis supplied]

115. The Hon'ble Supreme Court in the case of ***UOI v. Rajiv Bansal [2024] 167 taxmann.com 70 (SC)*** order dated 03.10.2024 has held in para 76 of the order as under:

> *"76. Grant of sanction by the appropriate authority is a precondition for theassessing officer to assume jurisdiction under Section 148 to issue areassessment notice. Section 151 of the new regime does not prescribe atime limit within which a specified authority has to grant sanction. Rather, itlinks up the time limits with the jurisdiction of the authority to grant sanction.Section 151(ii) of the new regime prescribes a higher level of authority if morethan three years have elapsed from the end of the relevant assessment year.Thus, non-compliance by the assessing officer with the strict time limitsprescribed under Section 151 affects their jurisdiction to issue a notice underSection 148."*

116. In the context of the issue at hand, i.e. the appropriate authority for issuing the notice u/s.148 of the Act, decision identical to the facts of the Assessee case is rendered by Hon'ble Bombay High Court in the case of ***Holiday Developers (P.) Ltd. v. ITO [2024] 159 taxmann.com 178 (Bom)*** dated 29.01.2024 wherein it is held as under-

"1. Petitioner is impugning a order under section 148A(d)and the notice, both dated 7th April 2022 passed under section 148of the Income Tax Act, 1961 ("Act"). Of-course Petitioner has alsoimpugned the notice dated 17th March 2022 issued under section148A(b) of the Act. Various grounds have been raised but one of theprimary grounds for challenging the notice under section 148A(d)and the notice under section 148 of the Act both dated 7th April 2022is that order as well as the notice both mention the authority that hasgranted approval, is the Principal Commissioner of Income Tax("PCIT"), Mumbai 5 and the approval has been granted on 7th April2022.

2. Mr. Gandhi is correct in saying that the Assessment Year ("AY") is2018-19 and, therefore, since more than three years have expiredfrom the end of the assessment year, Sanctioning Authority undersection 151(ii) of the Act should be the Principal ChiefCommissioner of Income Tax ("PCCIT") and not the PCIT. Mr.Gandhi says, as held in Siemens Financial Services (P.) Ltd. v. Dy.CIT [2023] 154 taxmann.com 159/457 ITR 647 (Bom.),the sanctionis invalid and consequently, the order and the consequent noticeunder section 148A(d) and section 148, respectively, of the Actshould be quashed and set aside.

3. In view of these facts and circumstances, we do not see any reasonto just grant Rule and keep the matter pending.

4. As held in Siemens (Supra), the order passed under section148A(d) and notice issued under section 148 of the Act both arequashed and set aside."

117. Following the ruling given by Hon'ble Bombay High Court in the case of Holiday Developers, *supra*, the Pune ITAT in the case of ***M/s. Arthbharti Nagari Sahakari Patsanstha Maryadit v. ITO, ITA No.1848/PUN/2024, Bench 'SMC', AY 2018-19, order dated 10.02.2025*** held as under:

> *"4.3 Thus, as per section 151 of the Act, approval of PrincipalChief Commissioner or Principal Director General, ChiefCommissioner or Director General is required for an order undersection 148A(d) of the Act, when the order is passed beyond threeyears from the end of assessment year. In this case, the orderunder section 148A(d) of the Act, was passed 06.04.2022 forA.Y.2018-19 which is beyond a period of three years from theend of the Assessment Year, with the approval of PrincipalCommissioner of Income Tax. The Hon'ble Jurisdictional HighCourt in the decision of Holiday Developers (P.) Ltd, Vs. ITO[2024] 159 taxmann.com 178 (Bombay) dated 29.01.2024 hasheld as under :*
>
> > *Quote "1. Petitioner is impugning a order under section 148A(d)and the notice, both dated 7th April 2022 passed under section 148of the Income Tax Act, 1961 ("Act"). Of-course Petitioner has alsoimpugned the notice dated 17th March 2022 issued under section148A(b) of the Act. Various grounds have been raised but one of theprimary grounds for challenging the notice under section 148A(d)and the notice under section 148 of the Act both dated 7th April 2022is that order as well as the notice both mention the authority that hasgranted approval, is the Principal Commissioner of Income Tax("PCIT"), Mumbai 5 and the approval has been granted on 7th April2022.*
> >
> > *2. Mr. Gandhi is correct in saying that the Assessment Year ("AY") is2018-19 and, therefore,*

since more than three years have expiredfrom the end of the assessment year, Sanctioning Authority undersection 151(ii) of the Act should be the Principal ChiefCommissioner of Income Tax ("PCCIT") and not the PCIT. Mr.Gandhi says, as held in Siemens Financial Services (P.) Ltd. v. Dy.CIT [2023] 154 taxmann.com 159/457 ITR 647 (Bom.),the sanctionis invalid and consequently, the order and the consequent noticeunder section 148A(d) and section 148, respectively, of the Actshould be quashed and set aside.

3. In view of these facts and circumstances, we do not see any reasonto just grant Rule and keep the matter pending.

4. As held in Siemens (Supra), the order passed under section148A(d) and notice issued under section 148 of the Act both arequashed and set aside." Unquote.

4.4 In the above referred decision of Hon'ble Bombay HighCourt, the assessment year involved is A.Y.2018-19 and orderudder section 148A(d) of the Act, was passed on 07.04.2022. Inthe case of the assessee, Arthbharti Nagari Sahakari PatsansthaMaryadit, the assessment year is A.Y.2018-19 and order undersection 148A(d) of the Act, is dated 06.04.2022. Therefore, thefacts are absolutely identical. Hence, respectfully following thedecision of Hon'ble Bombay High Court(supra), the order underSection 148A(d) of the Act, and notice under section 148 arequashed. Accordingly, the legal ground i.e.Ground No.2 raisedby the assessee is allowed."

118. Similarly, in the case of ***Manish Financial v. ACIT, ITA No.5050/Mum/2024, Bench 'D', AY 2016-17, order dated 02.12.2024*** after considering the decision of the Hon'ble

Supreme Court in the case of UOI v. Ashish Agarwal [2022] 444 ITR 1 (SC) and held as under-

> *"14. We heard the parties and perused the material on record. In assessee's casefor AY 2016-17 pursuant to the directions of the Hon'ble Supreme Court in thecase of Ashish Agrawal, the AO passed an order under section 148(d) of the Actand issued a notice under section 148 on 30.07.2022. From the above observationsof the Hon'ble Supreme Court it is clear that the though the prior approval undersection 148A(b) and 148(d) were waived in terms of the decision of AshishAgarwal (supra), for issue of notice under section 148A(a) and under section 148on or after 1 April 2021, the prior approval should be obtained from theappropriate authorities specified under Section 151 of the new regime. Theprovisions of section 151 of the Act under the new regime read as under:*
>
> *Sanction for issue of notice.*
>
> *151. Specified authority for the purposes of section 148 and section 148A shallbe,—*
>
> *(i) Principal Commissioner or Principal Director or Commissioner or Director,if three years or less than three years have elapsed from the end of therelevant assessment year;*
>
> *(ii) Principal Chief Commissioner or Principal Director General or where thereis no Principal Chief Commissioner or Principal Director General, ChiefCommissioner or Director General, if more than three years have elapsedfrom the end of the relevant assessment year.*
>
> *15. In assessee's case from the perusal of para 3 of the notice issued undersection 148 for AY 2016-17 we notice that the same is issued with the priorapproval of Pr.CIT-19 Mumbai accorded on 29.07.2022 vide*

reference No.Pr.Cit-19/148/2022-23 and this fact is not contravened by the ld DR. For AY 2016-17, theperiod of three years have elapsed as of 31.03.2020 and the notice is issued beyondthree years on 30.07.2022. Therefore as per the decision of the Hon'ble SupremeCourt, the approval should have been obtained under the amended provisions ofsection 151(ii) of the Act i.e. the approval should have been obtained from thePrincipal Chief Commissioner whereas the approval has been obtained fromPr.CIT as stated in the notice under section 148 itself. Therefore we see merit inthe contention of the assessee that the notice under section 148 for AY 2016-17 isissued without obtaining the prior approval from the appropriate authority.Accordingly we hold that the notice under section 148 is invalid and theconsequent assessment under section 147 is liable to be quashed."

119. Following the above decision in the case of Manish Financials, supra, the Hon'ble Mumbai ITAT in the case of ***Mr. Ramlal G Suthar v. ITO, ITA No.3224/Mum/2024, Bench 'D', AY 2017-18, order dated 27.01.2025*** held as under-

"5. As per the provisions of Section 151(ii) under the new procedural regime, for assessment year where the notice under Section 148 is issued after more than three years from the end of the relevant assessment year, the sanction must be obtained from the Principal Chief Commissioner or Principal Director General. The ITAT's ruling in Manish Financials clarified that while the Hon'ble Supreme Court in Ashish Agarwal (supra) allowed certain procedural relaxations for notices issued during the transition period, post-01/04/2021, the amended provisions under Section 151 must be strictly adhered to. Specifically, for cases where more than three years have elapsed, the required sanction must

come from the higher authorities mentioned under Section 151(ii) of the Act.

6. The Ld.DR vehemently argued and stated that as the reopening s for three years and the concealed amount is below Rs.50 lakhs, so the approval form PCIT-2, Mumbai is correct and not violated the provisions of the Act.

7. In Manish Financials, for AY 2017–18, the Bench found that the notice issued under Section 148 of the Act was approved by the Principal Commissioner of Income Tax (Pr.CIT) instead of the Principal Chief Commissioner, as mandated. Consequently, the notice and the subsequent assessment order were deemed invalid.

Applying the same rationale here, it is evident that for alleged assessment year, the sanctioning authority failed to comply with the specific requirements of Section 151(ii) of the Act. Since the notices were issued under the new regime but lacked the necessary approval from the appropriate authority, the sanction process stands invalid. As a result, the notices under Section 148 are deemed to have no legal foundation.

In light of this, the assessment orders passed by the Ld. AO under Sections 147 r.w.s. 144B of the Act are quashed. This decision reinforces the principle that procedural compliance, particularly regarding approval from the correct authority, is a fundamental requirement under the Act."

120. The Hon'ble Raipur ITAT in the case of ***Keshri Rice Industries v. Dy. CIT, ITA No. 410/RPR/2024, AY 2016-17, order dated 23.12.2014*** has, after relying upon the decisions of

the Hon'ble Supreme Court in UOI v. Ashish Agarwal [2022] 444 ITR 1 (SC) and UOI v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC) and various other decisions, held as under:

> *"19. We have considered the rival submissions, perused the materialavailable on record and the judicial pronouncements placed before us insupport of the contentions. As per facts of the present case, the first notice u/s148 (under old regime) was issued on the assessee on 30.06.2021.Subsequently, following the directions of Hon'ble Apex Court in the case ofAshish Agrawal (supra), the proceedings of reopening are reinstated undernew regime by issuing a notice u/s 148A(b) on 23.05.2022. In furtherance, anotice u/s 148A(d) along with order was issued on 01.07.2022 and notice u/s148 (under new regime) was issued on 02.07.2022. As the present casepertains to AY 2016-17 and the notice u/s 148 for initiation of reopeningassessment proceedings was issued on 02.07.2022, beyond the period of 3years, which were elapsed on 31.03.2020. Accordingly, as per provisions ofsection 151(ii) the sanctioning authority under the new regime are PrincipalChief Commissioner or Principal Director General or Where there is noPrincipal Chief Commissioner or Principal Director General, ChiefCommissioner or Director General, whereas in present case, the approval wasgranted by Ld. PCIT-1, Raipur, vide his approval letter F.No. Pr. CIT-1/RPR/Tech/2022-23 dated 28.06.2022. The aforesaid facts are on recordsand are not disputed by the revenue. Since, the issue of sanctioning authorityis no more res integra, as has been specifically deliberated upon and guidedby the Hon'ble Apex Court in the case of Rajeev Bansal (supra), analyzing theorder of Hon'ble Apex Court in the case of Ashish Agrawal (supra), whereinit is categorically held that, as per the*

provisions of new regime the sanctioningauthority shall be decided as prescribed amended section 151(new regime). Inthe present case because the reopening has been initiated after 3 yearstherefore, clause(ii) of section 151 shall apply. We, thus, find substance in thecontention of the Ld. AR that the approval granted u/s 151(ii) (new regime) wasnot by the Ld. PCIT, who do not have jurisdiction to do so in a case wherein theprocess of reopening has been triggered beyond 3 years from the end of therelevant assessment year. The contention of the revenue, placing reliance onthe judgment in the case of Ashish Agrawal (supra), that in present case theprescribed authority is Principal CIT-1, Raipur found to be misplaced ormisconstrued, as the directions by the Hon'ble Apex Court are clear, which arefurther clarified that the provisions of amended section 151 shall be applied inthe cases in which the revenue has availed the benefit of extended life limitunder TOLA and had proceeded for reopening assessment under theprovisions of new regime. We, thus, are unable to persuade and concur withthe response of the Ld. AO as per their report dated 12.12.2024.

20. Under such facts and circumstances, we are of the considered viewthat the impugned assessment order framed u/s 147 r.w.s. 144 r.w.s. 144B ofthe Act dated 24.03.2023 passed by the Ld. AO is liable to be struck down,being invalid for the want of valid assumption of jurisdiction on account ofsanction u/s 151 by an authority, who is not vested with jurisdiction to grantsuch approval or other than the specified authority under clause (ii) of section151(new regime). Consequently, the assessment u/s 147 r.w.s. 144 r.w.s. 144Bof the Act dated 24.03.2023, stands quashed."

121. The Ld. DR relied upon the proviso to sec.151 of the Act, which is inserted w.e.f. 01.04.2023 as also the fifth and sixth proviso to sec.149 of the Act, with the contention that the proviso to sec.151 of the Act be applied retrospectively by relying upon the memorandum explaining the Finance Bill of 2023. The proviso to sec.151 and 149 of the Act as also the memorandum to Finance Bill are reproduced hereunder:

Proviso to sec.151:

"Provided that the period of three years for the purposes of clause (i) shall be computed after takinginto account the period of limitation as excluded by the third or fourth or fifth provisos or extendedby the sixth proviso to sub-section (1) of section 149."

Fifth and sixth proviso to sec.149:

"Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly."

Memorandum Explaining Finance Bill 2023:

"9. At the same time, to givefurther clarity with regards to the specified authority provisoisproposedto be insertedin thesection 151toprovidethat whilecomputing

> *the period of three yearsfor the purposes of determining the specified authority the periodwhich has been excludedor extendedas per theprovisosin section149 of the Act from the time limit for issuance ofnotice under section 148 ofthe Act shall be taken into account"*

122. The submission of the Ld. DR on this issue as well as reliance placed on the proviso to sec.151 and 149 of the Act, memorandum explaining Finance Bill, 2023 as also various decisions have been considered, however we are not inclined to accept the same. The Hon'ble Bombay High Court in the case of ***Vodafone India Limited****v.****DCIT***, supra, has clearly taken into consideration the proviso inserted in sec.151 of the Act w.e.f. 01.04.2023 and held the same to be prospective in effect and not retrospective. Had the Legislature wanted to give retrospective effect to the proviso, the insertion of the proviso to sec.151 of the Act would have been given retrospective effect and not made effective from 01.04.2023. It is also well settled principle that law existing as on the date of issue of notice / sanction / approval shall prevail unless otherwise specified. Therefore, following the jurisdictional High Court decision, it is held that the proviso inserted in sec.151 of the Act is prospective and cannot be considered retrospectively. The decision relied upon by Ld. DR in the case of Ghanshyam Mishra & Sons P. Ltd. v. Edelweiss Asset Reconstruction Company (2021) 13 SCR 737 does not deal with the provisions of sec.151 of the Act and its proviso thereto but the decision deals with insolvency proceedings and therefore has no bearing on the present case of Assessee more particularly when the jurisdictional High Court has given its ruling on the issue at hand and the Tribunal is bound to follow the decision rendered by the jurisdictional High Court. Further, the decision of Hon'ble Calcutta High Court relied upon by the Ld. DR in the case of Gemini Overseas Ltd. v. UOI, WPO/1207/2023 (copy of which is placed on record) deals with the notice issued u/s.148 of the Act in April 2023 and not in April 2022 and therefore the facts of the said case differs from the present case. The proviso is

inserted effective from 01.04.2023 and thus, the decision of Calcutta High Court in the case of Gemini Overseas, *supra*, does not come to the rescue of the department.

123. In the light of the above and following various decisions referred above of the Hon'ble Supreme Court, Hon'ble Bombay High Court and other ITAT decisions, we are of the considered view that the sanction given by PCIT (Central), Mumbai-3 vide reference no.100000029384564 dated 05.04.2022 for issue of notice u/s.148 of the Act is beyond the period of 3 years from the end of AY 2018-19 i.e. 3 years ended on 31.03.2022 and thus, the sanction taken of PCIT (Central), Mumbai-3 as per sec.151(i) of the Act is not correct and the appropriate authority for granting sanction and approval to the issue of notice u/s.148 of the Act was the authorities prescribed u/s.151(ii) of the Act and hence, the notice issued u/s.148 of the Act for AY 2018-19 is invalid for want of valid assumption of jurisdiction and is therefore struck down and quashed. Thus, the consequent assessment proceedings undertaken on the basis of such invalid notice issued u/s.148 of the Act and the order passed u/s.143(3) r.w.s 147 of the Act dated 31.03.2024 is declared bad in law and is hereby quashed.

124. The Assessee succeeds on this legal ground and the additional ground of appeal in terms of validity of notice u/s.148 of the Act by obtaining incorrect sanction u/s.151 of the Act is allowed.

125. The second additional ground of appeal raised by the Assessee is challenging the validity of notice issued u/s.148 of the Act by jurisdictional Assessing Officer (JAO in short) instead of Faceless Assessing Officer (FAO in short) as per the provisions of section 151A of the Act read with CBDT notification 18 of 2022 dated March 29, 2022.

126. This additional ground of appeal of the Assessee is decided against the Assessee in the order passed for AY 2016-17. As the facts and legal issue remain the same for this year, this grounds of appeal of the Assessee is hereby dismissed on the same reasoning as given in the order for AY 2016-17.

127. Now we take up the grounds of appeal filed by the Assessee and Department on merits as per Form 36 filed.

128. Grounds of appeal no.1 of the Assessee appeal is in respect of addition made by the AO of Rs.14,59,735/- u/s.37(1) of the Act by adopting 12.50% of alleged bogus purchase made from party named M/s. Divya Enterprises of the aggregate amount of Rs.1,16,77,881/- (exclusive of GST). The AO has elaborately discussed the issue of bogus purchases in the assessment order and has held that during the course of search action u/s.132 of the Act in the case of the Assessee it was found that standard operating procedure (SOP) in respect of purchases made from various parties were not followed; statements of various personnel recorded affirmed that actual delivery of goods were not affected in certain cases where instructions were directly given by the head office as also various incriminating evidences were found during the course of search action proving purchases made from various parties were bogus. The AO issued show cause notice (SCN) to the Assessee and in response to the same, the submission of the Assessee was considered and after taking the documentary evidences submitted and verifying the same, the AO concluded in para 10 of the order for AY 2018-19 that there is element of doubt regarding genuineness of the party and doubt regarding actual movement of goods and possibility of overbilling cannot be ruled out. Considering the same, the AO made estimated disallowance @12.50% of the total amount of purchases shown from the party M/s. Divya Enterprises and disallowed the same u/s.37(1) of the Act.

129. The CIT(A) after considering the order of the AO as well as the detailed submission of the Assessee in respect of the disallowance made by the AO applying 12.50% of total purchase amount, held that the estimated disallowance made by the AO @12.50% is adequate considering the totality of the facts and circumstances of the case.

130. We have gone through the assessment order as also the finding given by the CIT(A) after exhaustively dealing with the issue. The Assessee reiterated the contentions put forth before the AO and CIT(A) that it has filed all the relevant documentary evidences in support of the purchase made and substantiated the purchases made from this party and this fact is also acknowledged by the AO in the assessment order and therefore no disallowance be made. The Assessee also placed reliance on the decision of the ITAT order passed in its own case in respect of the earlier search period i.e. in ITA Nos.3449 to 3453/Mum/2019, Bench 'F', order dated 22.02.2021 wherein the AO had made 100% disallowance alleging bogus purchases on ground that SOP was not followed and bills of purchase were received by head office directly and CIT(A) restricted the disallowance @15%, however, the ITAT deleted the entire addition.

131. The Ld. DR pleaded that the estimated disallowance made by the AO applying rate of 12.50% was reasonable in the light of the evidences found and discussed in the body of the assessment order and relied on the findings of the assessment order.

132. In this year, the purchases made from M/s. Divya Enterprises was treated as bogus purchase based on various evidences found in the course of search action, however, in response to the show cause notice of the AO, the finding given by the AO in the order that on the basis of evidences found, the purchase made from this party cannot be accepted as genuine and possibility of over invoicing cannot be ruled out and made

disallowance by estimating the same @12.50%. Having considered the overall facts of the case and in the light of the order of the AO and Ld. CIT(A), we do not find any merit in the contentions of the Assessee in respect of purchase made from M/s. Divya Enterprises. The Ld. CIT(A) has also distinguished the ITAT decision in the Assessee own case passed in reference to issue of bogus purchase addition made pursuance to earlier search action in the case of the Assessee carried out on 30.08.2016 wherein the ITAT gave complete relief to the Assessee. However, we have given due consideration to the ITAT order in the case of the Assessee and although we agree with the finding given in the decision of the ITAT order in Assessee own case to the effect that claim of the Assessee cannot be rejected primarily on the ground that SOPs have not been followed and that the Assessee being fairly big company having various sites and therefore the contentions of the AO that it has not followed SOPs in the matter of purchase of materials without bringing any concrete/substantive evidences to corroborate bogus purchases on record and thus, the same cannot be sustained. However, the facts in the present case and the addition is not made solely on the basis of not following SOPs. Thus, the Ld. CIT(A) has correctly brought out the distinction in the order passed in para 36.7 at page 96 of the order and we agree with the same. The facts in that year before the ITAT were entirely different than in the present year. Hence, we are inclined to agree with the findings of the Ld. CIT(A) and confirm the estimated disallowance made @12.50% in respect of purchase made from M/s. Divya Enterprises. Thus, the disallowance made of Rs.14,59,735/- by the AO u/s.37(1) of the Act and confirmed by the Ld. CIT(A) is hereby sustained.

133. The grounds of appeal no.1 of the Assessee appeal is hereby ***dismissed***.

134. Grounds of appeal no.2 of the Assessee appeal and grounds of appeal no.14 of the department appeal is in respect of part

relief given by CIT(A) on the issue of alleged bogus claim of salary and professional fees. We have dealt with this issue in detail in the order passed for AY 2017-18. Facts for this year are identical to that of AY 2017-18. Hence, in view of the order passed for AY 2017-18, the appeal of the Assessee on this issue is allowed and that of the Department is dismissed.

135. Grounds of appeal nos. 3 & 5 of the Assessee appeal and grounds of appeal nos. 1 to 6 of the department appeal is against the part relief given by CIT(A) in respect of the issue of sale of scrap and sale of scrap from piling work.

136. We have already dealt with this issue in the appeals filed by Assessee and Department for AY 2016-17 and the facts of the case in this year is identical to that of AY 2016-17, and thus, the decision rendered in the order for AY 2016-17 shall apply for this year also. Accordingly, on this issue, appeal of Assessee is partly allowed and that of the Department is dismissed as per the findings and conclusion given for AY 2016-17.

137. Grounds of appeal no.4 of the Assessee appeal and grounds of appeal nos.7 to 13 of the department appeal is against part relief given by the CIT(A) in respect of out of books cash expenses (murrum expenses). We have dealt with this issue in detail in the order passed for AY 2016-17 on merits of the case even though in that year estimated addition was made. The facts of the case for this year are the same as that of the year AY 2016-17 and following the decision rendered in AY 2016-17, the appeal of the Assessee on this issue is allowed and that of the Department is dismissed.

138. In view of the above, for AY 2018-19, the Appeal of the Assessee is partly allowed and that of the Department is dismissed.

Now we take up assessee's appeal No. 4153/Mum/2024 and revenues appeal No. 4589/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2019-20 and are against the order of Ld. CIT(A).

139. For this year, the Assessee has raised the following grounds of appeal:

1. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of cash diary of Rs. 24,84,55,000/- considering unexplained money u/s 69A of the Income Tax Act. The learned CIT (A) erred in confirming the addition of Rs.30,00,000/- against Rs. 24,84,55,000/-without correct appreciation of the facts of the case and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same be deleted.

2. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.44,99,64,137/- on account of bogus purchase. The learned CIT(A) erred in confirming the disallowance of Rs. 12,44,88,360/- against Rs. 44,99,64,137/- on account of bogus purchase, without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted.

3. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs. 98,01,222/- on account of Bogus claim of salary and Professional Fees. The learned CIT(A) has erred in confirming the disallowance of Rs.29,40,367/- @ 30% of Rs.98,01,222/- on estimate basis without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be

deleted.

4. On the facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.18,39,33,091/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in confirming addition of Rs. 1,57,44,673/- @. 8.56% of Rs.18,39,33,091/- on estimate basis without correct appreciation of the facts of the case and law on the In view the facts & circumstances of the case and law on the subject, the same be deleted.

5. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition amounting to Rs.29,02,08,641/- to the total Income of assessee on account of out of book cash expenses u/s 69C of the Act. The learned CIT(A) erred in confirming disallowance of Rs.2,38,62,261/- on estimate basis, against addition of Rs. 29,02,08,641/- on account of out of book cash expenses without correct appreciation of law and facts of the case on the subject. In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

6. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.33,36,676/- as cash income from piling business u/s 69A and the learned CIT(A) erred in confirming the addition of Rs.2,85,619/- @ 8.56% of Rs.33,36,676/- against action of ld. AO without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

7. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

140. The Department has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs. 18,39,33,091/- u/s 69A of the Act to Rs. 1,57,44,673/-as business income of the assessee on the issue of cash income from scrap sale by considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting addition made by the AO for Rs.3336676/- u/s 69A of the Act to Rs. 2,85,619/ as business income of the assessee on the issue of cash income from piling business by considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

3. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences

unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by considering the unaccounted income from scrap sale and piling business as business Income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

6. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted Income from scrap sale and piling business as business income by relying on the fact that there is no evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters as unexplained investment.

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs.29,02,08,641/- u/s 69C of the Act to Rs.2,38,62,261/- holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) by considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

8. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

9. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

10. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made. Thus, it is clear that the assessee do have accepted to receipts from non-recognising business sources.

11. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that AO has also referred a loose paper, page-1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring

the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise evidences of exact amount in trial balance are present, then there is no need estimation.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that the figure for October 2017 was taken as Rs.2,55,84,420/-and these projects were allotted and were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that the AO has already excluded an amount in respect of 4 projects where earlier period was established & the same entry is available in trial balance for F.Y.2017-18 and for the projects where the assessee did not prove that these expenses related earlier years and also did not provide breakup of the same as the onus is lies on the assessee to prove the same

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that projects were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that unaccounted expenses are incurred even after the starting of projects also and onus is lies on the assessee to prove that these expenses related to earlier years.

14. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act, by disallowance of bogus professional Fee/Salary, to Rs.29,40,367/- being@ 30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

15. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting the addition/disallowance of Rs.44,99,64,137/- in respect of bogus purchase made by the AO to Rs. 12,44,88,360/- by restricting 100% disallowance made by the AO to 12.5%, ignoring the facts and circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the ration laid down by the Hon'ble apex court in the case of N.K Protein [2017] 84 taxmann.com 195 (SC)/[2017] 250 Taxman 22 (SC), 2017-TIOL-23-SC-IT while finalizing the order in the case of assessee wherein 100% of the bogus purchases were held liable to be added in the hands of the assessee.

17. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of Rs. 24,84,55,000/-, in respect of unexplained money as per the Cash Diary, made by the AO u/s 69A of the Act to Rs.30,00,000/- ignoring the facts and circumstances of the case established by the Assessing Officer.

18. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that AO has not proved otherwise and the amounts written against such code words cannot be brought to tax ignoring the facts and circumstances of the case established by the Assessing Officer that the diary maintained by the assessee is for unaccounted cash generation and out of books expenses and the AO has given the telescoping benefits to the assessee to the extent of generation of scrap sale and bogus purchase entries mentioned in the diary. Therefore, it was established the entries mentioned in the diary were not brought to tax.

19. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that entries relating to HO, NG, KG, 3 No, etc. relate to movement of cash between the head office and residence of Shri Nalin Gupta, Shri Kamal Gupta ignoring the facts and circumstances of the case established by the Assessing Officer that the assessee did not submit reconciliation of cash diary and correlation with cash in hand and entries corresponding to HO and there is no evidence of bringing and sending back cash to HO.

20. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that once 'O' and 'N' are accepted as opening balance figures and cannot be brought to tax a cash receipt ignoring the facts and circumstances of the case established by the

Assessing Officer that whenever working established that 'O' and 'N' are carry forward entries, relief already been given to assessee in assessment and where page wise working does not established 'O' and 'N' are carry forward, the same should be treated as fresh receipts and brought to tax as if working does establish 'O' and 'N' as carry forward, the same cannot be treated as carry forward.

21. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by ignoring the facts and circumstances of the case established by the Assessing Officer that various corroborate evidences found w.r.t bogus purchase, scrap sale in cash and out of books murrum expenses and mentioned in dairy.

22. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

141. The Assessee has raised the following grounds of appeal vide letter dated 25.11.2024 filed with registry on 29.11.2024:

"1. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining incorrect sanction under section 151 of the Act which does not contain a valid Document Indexation Number (DIN) and this is in violation of ***CBDT Circular 19 of 2019 dated August 14, 2019***

2. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining incorrect sanction under

section 151 of the Act wherein the income escaping assessment is not mentioned.

3. The Ld. AO erred in issuing a Notice u/s.148 of the Act, wherein the sanction is obtained mechanically without application of mind.

4. The Ld. AO erred in issuing a Notice u/s.148 of the Act in violation of section 151A of the Act read with ***CBDT Notification 18 of 2022 dated March 29, 2022*** *as the same has to be issued by Faceless Assessing Officer.*

The Appellant craves to leave to add, amend, alter or delete any or all the above grounds of appeal."

142. In respect of the additional grounds of appeal of the Assessee, the Ld. Department Representative (Ld. DR in short) did not objected to the admissibility of the same. The additional grounds of appeal being legal grounds for which no new facts were required and hence, the same were admitted for adjudication following the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. v. CIT 229 ITR 383 (SC)*** wherein it is held that where question of law is concerned, additional grounds on legal issue can be raised at any time.

143. We first deal with the additional grounds of appeal raised by the Assessee. During the course of hearing, both the Assessee as well as the Department has filed written submission in respect of the additional grounds of appeal raised by the Assessee and the Assessee has also filed rejoinders against the written submission filed by the Department. Since the additional grounds of appeal goes

to the root of the matter, we deem fit first to adjudicate the legal issues raised by the Assessee.

144. The first legal issue raised in the additional grounds of appeal of the Assessee relates to issue of notice u/s.148 of the Act by taking incorrect sanction u/s.151 of the Act which does not contain a valid Document Indexation Number (DIN), which is in violation of CBDT circular no.19 of 2019 dated 14.08.2019. The Assessee in the paper book filed for AY 2019-20 has enclosed the copy of notice issued u/s.148 of the Act dated 31.03.2023 (page 158 of the paper book) and copy of approval accorded u/s.151 of the Act dated 31.03.2023 (pages 159 to 162) seeking approval of appropriate authority for issue of notice u/s.148 of the Act.

145. In respect of this additional ground of appeal, the contention of the Assessee is that the approval granted by the appropriate authority u/s.151 of the Act is not valid since no DIN is mentioned on the approval sanctioned and therefore, in absence of DIN on the approval sanction u/s.151 of the Act, the notice issued u/s.148 of the Act and the reassessment proceedings carried out is bad in law and liable to be quashed. The Assessee filed written submission in respect of this ground of appeal and the same is reproduced as under:

> *"**CBDT Circular 19 of 2019 dated August 14, 2019 (2019) 416 ITR 140 (St)** mandates quoting of DIN in any Notice / Order / Summons/letter/correspondence issued by the Income-tax Department to maintain a proper audit trail. There are certain exceptions mentioned where the communication may be issued manually but only after recording reasons in writing in the tile and with*

prior written approval of the Chief Commissioner / Director General of income-tax.

(Pages 106 to 107 of Paper Book – II)

The Hon'ble Bombay High Court in the case of ***Ashok Commercial Enterprises v. ACIT [2023] 154 taxmann.com 144 / 459 ITR 100 (Bom) (HC),*** *inter alia, held that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in file and with prior written approval of Chief Commissioner/Director General of Income Tax.* ***(Pages 157 to 182 of Paper Book – II; Relevant para 18 on page 171)***

Further, the Hon'ble Bombay High Court in the case of ***Hexaware Technologies Ltd. v. ACIT [2024] 464 ITR 430 (Bom)(HC)*** *inter alia, held that where an Assessing Officer issued a reopening notice under section 148 of the Act, which was without a DIN, same was invalid and bad in law.* ***(Pages 108 to 152 of Paper Book – II; Relevant para 31 on page 140)***

The Hon'ble ITAT in the case of ***BVG India v. DCIT ITA No. 10 to 16, 516/PUN/2023 vide Order dated October 19, 2023 (Pune)(Trib.)****, allowed the appeals of the querist on technical considerations. The Tribunal held that there was no proper Documentation Identification Number (****DIN****) on the approval obtained under section 153D of the Act. The issue was passed in favour of the Assessee in light of the* ***CBDT Circular 19 of 2019 dated August 14, 2019 [2019] 416 ITR (Stat) 140*** *and in light of a catena of judicial pronouncements including a decision of the Hon'ble Jurisdictional High Court.*

(Pages 203 to 241 of Paper Book – II; Relevant para 24-25 on page 216-217)

Therefore, the reassessment is bad in law."

146. The Ld. DR contended that the approval u/s.151 of the Act is internal communication for which DIN is not required and that the Circular no.19 of 2019 dated 14.08.2019 and also referred to sec.282A(1) of the Act contending that there is no requirement of DIN if the document issued is in paper form which is signed and thereby authenticated. DIN generation is necessary only when the document is issued electronically. The Ld. DR filed detailed submission rebutting the contentions of the Assessee. The relevant part of the submission of the Ld. DR on this issue is reproduced as under:

> *"42. The assessee has sought to rely on* ***CBDT Circular No. 19 of 2019 (****Attached herewith and marked as Annexure 20) toargue that a DIN is mandatory forall departmental communications. However, In this regard itis humbly submitted that the said circular does not govern documents meant for* ***internal circulation*** *within the department. This position has been explicitly clarified by the Hon'ble Kerala High Court in South Coast Spices Exports Pvt. Ltd. v. PCIT, WP (C)* ***NO.*** *33771 OF 2023 where the Court categorically held that satisfaction note meant for internal circulation only do not require a DIN, this specific observation of the Hon'ble Kerala High Court as made in para 4, 4.1 and 4.2of the judgement has been reproduced hereunder for the sake of ready reference,*
>
> *"4.The satisfaction notes recorded bythe Assessing Authority, which have been placed on record in Exts.P19 toP24, would suggest that the*

Assessing Authority has examined the documents and recorded satisfaction for issuing notices under Section 153C of the IT Act. The petitioner has demanded the satisfaction note, and the letter issued by the Assistant Commissioner of Income Tax in Ext.P18, whereby the satisfaction notes have been provided to the petitioner on his demand, would disclose that the letter bears the DIN number. The satisfaction note need not bear the DIN number, and thisCourt doesnotfind any substance in the submission ofthe learned Counselfor the petitioner thatsince the satisfaction notesdonotbearthe DIN number, wholeproceedings are invalid

42.1 The judgment cited by the learned Counsel for the petitioner in the case of Ashok Commercial Enterprises (supra)isofnohelptothe petitioner asthe factsofthe said case are distinguishable. In that case, the Bombay High Court has taken note of Circular No.19/2019 issued bythe CBDT inthe exercise ofpower under Section 119(1) of the IT Act dated 14.08.2019 providing that no communication shall be issued by any Income Tax Authority interalia relating to assessment orders, statutory or otherwise, inquiries, approvals toanassessee oranyother person onorafter1st October 2019 unless a computer generated DIN has been allottedThe said Circular is extractedhereunder:

"CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II], DATED 14-8-20.....

....31stOctober2019."

42.2 The satisfaction note isa document prepared bythe Assessing Authority whichis kept in the file, and unless an assessee demands the satisfaction note, it is not required tobe provided tothe assessee. Therefore, there isnorequirement tohave aDIN numberinthe satisfaction note recorded by the Assessing Authority. When ... case."

43. Additionally, it is submitted that under ***Section 282A(l) of the Income-tax Act,*** *any document issued by the department in paper formis deemed to be authenticated if it bears the signature of the issuing authority. The provisionstates:*

"Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicatedinelectronicform by that authorityin accordancewith suchprocedure as may be prescribed."

44. In the present case, theapprovalunder Section 151 was issued in ***paper form*** *and duly signedby the competentauthority.The lack of a DIN does notinvalidatethe approval, as the documentis legally deemed to be authenticatedby virtue of the Assessing Officer's signature. The assessee's argument that prejudice has been caused due to the absenceof a DINis,therefore,devoidofmerit, asthereis nostatutoryrequirementfor a DIN on such approvals whenthey areissuedmanually andsigned.*

> *45. In view of the above, it is respectfully submitted that the challenge raised by the assessee regarding the absence of a DIN on the sanction obtained under Section 151 is legally unsustainable. The Hon'ble Kerala High Court has already ruled in* ***South Coast Spices Exports Pvt. Ltd.*** Supre Note 63 *that a satisfaction note is an internal document that does not require a DIN unless pecifically demanded. Further more, as per* ***Section 282A(l),*** *the document, having been issued in paper form and bearing thesignature of the competent authority, standsduly authenticated.Accordingly, the ground of appeal raised bythe assessee is* ***liable to be dismissed."***

147. In response to the submission of the Ld. DR, the Assessee filed rejoinders to rebut the contentions of the Ld. DR. The rejoinders filed by the Assessee are reproduced as under:

> *"Para 2 of* ***CBDT Circular 19 of 2019 dated August 14, 2019 (2019) 416 ITR 140 (St)*** *is usefully extracted as under:*
>
> > ***"2.*** *In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided* ***that no communication shall be issued by any income-tax authority relating to*** *assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification,* ***approval etc.*** *to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication."*

It clearly states that even approval requires DIN.

Further, the sanction under section 151 of the Act was provided by the Department to the Assessee and was a mandatory requirement to issue a Notice under section 148 of the Act. Hence it cannot be said that the same was demanded by the Assessee

Once again it is submitted that, the decision in the case of ***South Coast Spices Exports (Supra)*** *is a single-judge bench and the decision of* ***Ashok Commercial Enterprises (Supra)*** *and* ***Hexaware Technologies (Supra)*** *are division judge bench decisions."*

148. We have considered the rival contentions and has gone through the submission filed by the Assessee and the Ld. DR. It is undisputed fact that on the approval accorded u/s.151 of the Act by the appropriate authority there is no mention of DIN and no DIN is generated and this approval is issued in paper form and not electronic form. The Approval as per sec.151 of the Act is enclosed in the paper book of the Assessee at pages 160 to 162 and the same is reproduced as under:

Form for recording the reasons for initiating proceedings under section 147 and for obtaining the approval of the Pr. Commissioner of Income Tax (Central)-3, Mumbai.

1.	Name	J Kumar Infraprojects Ltd.
2.	Address of the assessee	CTS No. 448,448/1, 449, vile parle (East), Shubhash Road, Mumbai-400057.
3.	Permanent Account Number	AAACJ9161C
4.	Status	Company
5.	Circle/Ward/Range/CIT Charge	Central Circle – 5(1), Mumbai.
6.	Assessment Year in respect of which it is proposed to issue notice U/s. 148	A.Y. 2019-20
7.	In quantum of income which has escaped assessment	-
8.	Approval needed for (Tick appropriate box)	☐ Order u/s. 148A(d) required for issuance of notice u/s. 148 ☐ Order u/s. 148A(d) for dropping proceedings ☑ Issue of notice u/s. 148 where there is no requirement for passing order u/s. 148A(d)
9.	Time Limit for current proceeding covered under (Tick appropriate box)	☑ U/s. 149(1)(a) – for 3 years ☐ U/s. 149(1)(b) – for more than 3 years but no more than 10 years
10.	Limitation date for issuance of notice u/s. 148A	Not Applicable
11.	Whether the show cause notice u/s. 148A(b) contains the details of the information as per explanation-1 of the section 148	Not Applicable
12.	(i) Enquiry conducted (if any) u/s. 148A(a)	Not Applicable
	(ii) Whether the show cause notice u/s. 148A(b) contains the details of results of enquiry conducted 148A(a)	Not Applicable
13.	Date of issuance of show cause notice to assessee u/s. 148A(b)	Not Applicable
14.	Date by which assessee was required to submit reply to show cause notice u/s. 148A(b) for the final extended date	Not Applicable
15.	Whether any reply received from assessee u/s. 148A(b)	Not Applicable
16.	Whether personal hearing requested by assessee	Not Applicable
17.	Whether the provision of section 150(1) are applicable	No
18.	Reason for the belief that income has escaped assessment	As per Annexure-1

Dated: 24/03/23

(Ashish Kumar Shukla)
Dy. Commissioner of Income Tax

Central Circle-5(1), Mumbai

19.	Recommendations of Additional / Joint CIT	I agree with the proposal. Accordingly being recommended.

Dated:

Kumar
28/03/23

(Jeetendra Kumar)
Addl. Commissioner of Income Tax
(Central Range)-5, Mumbai

Sanction by specified Authority

20.	Reasons for according approval / rejection by the specified authority for issuance of notice u/s. 148 of the Act, 1961?	Perused the proposal of the AO, remarks of the Addl. CIT and examined the relevant records. This is a fit case for issue of notice u/s 148 of the Act as a search has been initiated in the case of the assessee on 11.10.2022, vide Warrant Sr. No. MUM/U-2/22-23/18 dated 10.10.2022. Accordingly approval in terms of proviso to section 148 of the Act r.w.s. 151 of the Act is granted for issue of notice u/s 148 in this case.

Dated : 31.03.2023

31/3/23

(Y.D. Sharma)
Pr. Commissioner of Income Tax
(Central)–3, Mumbai

149. We have considered the rival submissions and the legal contentions raised. It is not in dispute that there is no DIN mentioned in the approval sanctioned u/s.151 of the Act. The Assessee has contended that not obtaining DIN for issue of approval makes the approval invalid and therefore the consequential proceedings i.e. notice issued u/s.148 of the Act and reassessment order passed thereto are bad in law and liable to be quashed. The Ld. DR on the other hand has contended that issuing approval u/s.151 of the Act is internal communication and thus, not mandatory to obtain DIN for such internal communications.

150. We has also considered the decisions relied upon by the Assessee and the Ld. DR on this issue and there are contradictory decisions of High Courts on this issue. At the same time, we are aware of the decision of the Hon'ble Delhi High Court in the case of CIT (IT) v. Brandix Mauritius Holdings Ltd. (2023) 456 ITR 34 (Del) wherein it is held that assessment order

passed by the AO did not bear DIN and there was nothing on record to show any exceptional circumstances as mentioned in 2019, Circular No.19 of 2019 dated 14.08.2019 reported in (2019) 416 ITR 140 (St.) and this decision is stayed by the Hon'ble Supreme Court in CIT v. Brandix Mauritius Holding Ltd. (2024) 297 Taxman 228 (SC).

151. We have also gone through the CBDT Circular no.19 of 2019 dated 14.08.2019 and in para 1 and 2 of the said circular, it is stated that where communication is to be made to the Assessee, the same required proper audit trail and therefore necessity for generating DIN. The approval u/s.151 of the Act is not directly communicated to the Assessee but the same is given to the AO for issue of notice u/s.148 of the Act and thus, it is internal communication and is given to the Assessee where the Assessee demand the same. This is not the case where notice u/s.148 of the Act or any assessment or other order is passed in absence of valid DIN. Also, as per provisions of sec.282A(1) of the Act, the paper form notice or other document gets validated and authenticated once the same is duly signed by that authority. It is undisputed fact that the approval sanctioned u/s.151 of the Act is duly signed and is thus valid document. The AO has issued notice u/s.148 of the Act in pursuance thereto and this notice clearly bears valid DIN. We are also of the view that by not obtaining and mentioning DIN on the approval sanctioned u/s.151 of the Act can be said to be irregularity but that does not make the same illegal. In view of the same, this legal grounds of the Assessee is ***dismissed***.

152. The Assessee has in the additional grounds of appeal no. 2 and 3 taken issue that in the approval sanctioned u/s.151 of the Act, there is no mention of any income escaping assessment and that the approval granted is mechanically without any application of mind.

153. We have already reproduced the copy of the approval sanctioned u/s.151 of the Act. According to us, there is no requirement in any provisions of the Act as also in the approval sanctioned u/s.151 of the Act to specifically state that income has escaped assessment and in fact, the reasons recorded for reopening of the assessment for which approval is required to be taken, does mention that income of the Assessee has escaped assessment. No serious contentions were raised by the Assessee in respect of this ground and neither any submission is filed. Thus, additional ground of appeal no.2 is hereby rejected. We have also gone through the approval sanctioned u/s.151 of the Act and in our view the same is not mechanical or without any application of mind. Again, for this additional ground also, the Assessee did not raised any specific contention nor filed any submission. In any case, since the approval sanctioned is not mechanical or without any application of mind, this additional ground of appeal of the Assessee is hereby rejected. Thus, additional grounds of appeal of the Assessee no. 2 and 3 are ***dismissed***.

154. The fourth additional ground of the Assessee relates to the legal issue that the notice u/s.148 of the Act is issued by jurisdictional Assessing Officer (JAO) and not by Faceless Assessing Officer (FAO). This issue is already considered by us in the case of the Assessee for AY 2016-17 and the same applies to this year also. We have given detailed reasoning in the order passed for AY 2016-17 and dismissed this additional ground of appeal. On the same reasoning, this additional ground no.4 raised by the Assessee is hereby ***dismissed***.

155. Now we take up the grounds of appeal filed by the Assessee and the Department.

156. Grounds of appeal no.1 of the Assessee appeal and Grounds of appeal nos.17 to 21 of the Department appeal is in respect of addition made by the AO as unexplained money u/s.69A of the

Act on the basis of diary found and seized from the residence of Shri Nalin Gupta. The AO has added the total amount noted on the receipt side (left side) of the diary by decoding the figures noted therein (i.e. figures noted in diary are to be read in lakhs) and the total so derived was reduced by the total of opening balance carried forward (referred in diary as 'O' and 'N') only to the extent where the carry forward balance from one page to another matched and also allowed where the rounding off mismatch of 1 or less than 1 (i.e. 1 lakhs or less than 1 lakhs after decoding) and thus, for this AY 2019-20, the total of received side was worked out to 49.12 cr. and after giving relief for opening balance carried forward (as explained above) of 24.27 cr., the balance amount of Rs.24.85 cr. was added. On same basis, the AO has made additions for other years also i.e. AY 2020-21 and AY 2022-23, however for AY 2021-22, the entire total of receipt side is added without given any relief and the reason for the same is that this year assessment was completed first being time barring regular assessment which proceedings were pending as on the date of search action and thus, the Assessee was not able to file any detailed submission nor the AO had sufficient time at his disposal. However, Ld. CIT(A) had called for remand report from the AO for AY 2021-22 and in the remand report, the AO has accepted for giving similar relief as given by him for other years in respect of opening balances in the diary.

157. The CIT(A) after considering the detailed explanation of the Assessee in respect of each of the noting in the diary restricted the addition only to the extent the explanation given was not satisfactory. Thus, for this AY 2019-20, the addition sustained is of Rs.30 lakhs. The Assessee has filed appeal against the addition sustained of Rs.30 lakhs whereas the department has filed appeal against the relied granted by the CIT(A) and similar grounds of appeal are taken for other years except for AY 2022-23 where Assessee is not in appeal since the CIT(A) has deleted the entire addition made by the AO in this year.

158. Brief facts of the case in respect of issue of addition of unexplained money u/s.69A of the Act is that during the course of search action u/s.132 of the Act at the residence of Shri Nalin Gupta, a black colour Luxor Diary was found and seized. In the statement recorded of Shri Nalin Gupta u/s.132(4) of the Act, in response to Q.76, he stated that the diary belonged to his father Shri Jagdishkumar Gupta and is record of money received and paid in business. He further stated that the noting in the diary **includes both accounted and unaccounted transactions in business**. Search officers prepared excel sheets on the basis of the entries made in the diary and in response to Q.79, Shri Nalin Gupta explained full form of certain abbreviations used in the diary i.e. 'HO' referred to Head Office, 'NG' as Nalin Gupta, 'KG' as Kamal Gupta, 'scrap' as cash from scrap sale. Shri Nalin Gupta further stated that since the diary is maintained and belongs to his father Shri Jagdishkumar Gupta, he would be in better position to explain the contents of the same. Statement of Shri Nalin Gupta was confronted to Shri Jagdishkumar Gupta and explanation was sought in respect of the contents of the diary. Shri Jagdishkumar Gupta stated that the figures noted in the diary are to be read in lakhs; the noting in the dairy is made by himself and also few of his staff as per his directions and contain inflow of cash on left side and outflow of cash on right side of the diary and also explained few of the noting in the diary pages which is reproduce by AO at page 42 of his order for AY 2019-20.

159. Before the AO, the Assessee raised various contentions and gave explanation in respect of the contents of the diary. Assessee contended that noting in the diary are rough and random noting and the same should be treated as dumb document more particularly for the reason that Shri Jagdishkumar Gupta suffered for various ailments and due to his age and ill-health, he does not remember and recollect entries. Further, the noting in diary are written by various personnel and not one person and thus, the noting are made as per the own understanding by the

person making noting in the diary. The Assessee further contended that the main reason for maintaining the diary was to keep track of the cash belonging to the Assessee and kept at the residence of promoter and directors due to reason of theft in the office premises for which FIR was filed with police and thus, the noting did not contain unaccounted cash transactions. These noting were made against the abbreviations 'HO', 'NG', 'KG', 'office', '3 no. / no. 3', etc. In support of the contention that the noting related to cash in hand of Assessee, day to day cash book of Assessee Company was filed proving that the balance of cash in hand as per regular books of account of the Assessee Company on any given day was higher than the cash balance found in the diary and thus, not unaccounted cash transaction. Assessee also explained that the noting against abbreviations 'O' and 'N' were carried forward balances in the diary from page to page and also proved this by showing working of few diary pages and explained that 'O' related to balance of old notes and 'N' related balance of New notes and even these are not unexplained cash transactions.

160. The AO in the assessment order has discussed various noting in the diary and corroborated the same with certain other evidences found in search action such as cash sale of scrap, bogus purchases, etc. and concluded that the noting in the diary contains unaccounted cash transactions of the Assessee and thereby rejected the contention of the Assessee that the diary is dumb document. In respect of other contention of the Assessee that figures noted against 'O' and 'N' are opening balances and carried forward from one page to another and cannot be treated as unexplained cash transaction, the AO partly accepted this contention and allowed relief to the extent the carried forward balance matched from page to page and wherever there is mismatch, allowed relief to the extent the difference was such mismatch was not more than 1 lakhs by considering the same as rounding off difference in balances carried forward. The AO rejected the contention of the Assessee that the figures noted

against 'HO', 'NG', 'KG', 'No.3 / 3 no.', 'office', etc. on both receipt and payment side as relating to cash sent from office to residence of promoters and directors and once again brought back. The AO also reduced noting in respect of scrap to the extent corroborated with other scrap evidences found as also reduced noting relating to purchase party since the purchases were treated as bogus. Accordingly, the AO made addition of the balance noting in the dairy as unexplained money u/s.69A of the Act.

161. Before the CIT(A), the Assessee reiterated the contentions as made before the AO and the submission of the Assessee is reproduced in the CIT(A) order in para 48 at pages 105 to 115. After considering the submission of the Assessee, the CIT(A) held that – all the noting against abbreviations 'O' and 'N' are opening balance carried forward in the diary; noting against 'HO', 'NG', 'KG', 3 no., etc. are movement of cash from office to residence and vice versa and thus, accepted the explanation of the Assessee thereby giving relief for such noting and confirmed addition to the extent the explanation of the Assessee was not found satisfactory. The relevant finding of the order of the Ld. CIT(A) is reproduced as under:

> *"**49.** I have considered the facts of the case. It is now not disputed by the appellantthat this diary contains records of cash transactions. It is also not disputed that thefigures represented therein are in Rs. Lakhs. The diary is maintained by Shri JagdishGupta and according to the appellant various persons have made entries at theinstructions of Shri Jagdish Gupta. However, the appellant has disputed with respectto the quantum of addition made by AO relying on the said diary. According to theappellant, no addition lies.*
>
> ***49.1.** The AO added the receipts side and brought the same to taxation. While doingso, he also made certain adjustments, which are discussed below.*

49.2. *The 'O' and 'N' represents Old and New currency notes respectively and arebalances carried forward from one date to another. The AO observed that there werediffernces in certain pages in the carried forward figures of 'O' and 'N' as comparedto closing figures of 'O' and 'N' of the earlier day. Wherever the difference ormismatch was 1 or less, the AO accepted the same. However, he did not acceptwherever the carried forward balances did not match. This, according to theappellant, has resulted in taxation of balance figures which are not in the nature ofreceipts.*

49.3. *I have gone through the copy of the diary produced before me in the form ofpaper book. For example, the page 99, 100 of Annexure A1 of Annexure A to thepanchnama dt. 15.10.2022 seized from the residence of Shri Nalin Gupta are referredto. On 02.06.2019, the opening balance is 245 of 'O' and 60 of 'N'. Two payments of50 each are reflected. In the next immediate page in the diary dt. 04.06.2019, theentries start as 145 'O' and 60 'N'. Thus, there is enough basis to conclude that theclosing balances of one day are carried forward to be the opening balances of thenext day. As noted earlier, there are certain discrepancies though. While the AO hasaccepted differences of upto 1, he has taxed the opening figures of 'O' and 'N'wherever the difference computed from the end of the earlier day exceeded 1. Theappellant is contesting this particular action of the AO and has vehemently arguedthat such opening balance should not be treated as its income. It has also citedcertain instances where the mismatch in diary gets corrected over a period of time(page 113, 114, 115).*

49.4. *Having given a thoughtful consideration to the claims and counter claims, I amof the view that in the absence of any concrete evidence to show fresh receipts, the'O' and 'N' have to be taken as opening balance figures and cannot be brought to taxas cash receipts. Once 'O' and 'N' are accepted*

as brought forward balances, itwould be appropriate that the same stand is consistently adopted for the entire diary.To this extent, the argument of the appellant is accepted.

49.5. *The appellant has also contended that entries relating to HO, NG, KG, 3 No,etc. relate to movement of cash between the head office and residence of Shri NalinGupta, Shri Kamal Gupta. The '3 No' is also stated be referring to the residence ofPage 116 of*
the Chairman at Road No. 3, JVPD, Vile Parle West. The appellant has cited theinstance of page 124 of the diary, wherein on 22.03.2019 there is a entry of 110 asHO on the receipt side and there is also an entry of 148 as HO on the very samedate. This, according to the appellant, confirms that cash was brought in and againsent back. It is worth noting that cash receipt of scrap sales recorded in the said diaryhave already been brought to tax separately. Under these circumstances, I am of theview that the explanation given by the appellant is a possibility which the AO has notproved otherwise and the amounts written against such code words cannot bebrought to tax. To this extent, the argument of the appellant is accepted.

49.6. *In view of the above, the entire additions made by the AO on the basis of thediary cannot be brought to tax, in my humble view. At the same time, certain entriesin the diary are unable to be fully explained. While doing so, the entries related tocash sales and bogus purchases which have already been brought to tax separatelyare also excluded. The appellant could not substantiate the following receipts:-*

Page No. of Diary	***Date of Diary***	***Particulars***	***Receipt***	***Remarks of CIT(A)***

Relevant to AY 2019-20				
133	*09.02.2019*	*Not mentioned*	*15*	*No valid explanation has been givenfor this receipt*
131	*12.02.2019*	*Not mentioned*	*15*	*No valid explanation has been givenfor this receipt*
		Total for AY 2019-20	***30***	
Relevant to AY 2020-21				
55	*02.03.2020*	*Nagpur*	*7*	*No valid explanation has been givenfor this receipt*
		Total for AY 2020-21	***7***	
Relevant to AY 2021-22				
50	*21.08.2020*	*A Rathi JK Sofware*	*35*	*No valid explanation has been givenfor this receipt*
48	*03.09.2020*	*HO Scrap 10=NG, 5=Kg*	*15*	*Although this is scrap receipt, thesame has not been included in thescrap receipts discussed as part ofanother ground.*
45	*28.09.2020*	*HO Scrap*	*5*	*Although this is scrap receipt, thesame has not been included in thescrap receipts*

				discussed as part ofanother ground.
42	*21.11.2020*	*HO Tyre Scrap*	*2*	*Although this is scrap receipt, thesame has not been included in thescrap receipts discussed as part ofanother ground.*
32	*27.03.2021*	*Scrap Ghodbunder*	*15*	*Although this is scrap receipt, thesame has not been included in thescrap receipts discussed as part ofanother ground.*
Total for AY 2021-22			***72***	
Relevant to AY 2022-23				
13	*02.10.2021*	*Nashik Banglow*	*3.50*	*This pertains to bungalow at Nashiksold by Shri Jagdish Gupta in hispersonal capacity. Hence, additionconfirmed in his personal hands andnot in the case of the appellant.*
10	*23.10.2021*	*Nashik Banglow*	*52.00*	*This pertains to bungalow at*

				Nashiksold by Shri Jagdish Gupta in hispersonal capacity. Hence, additionconfirmed in his personal hands andnot in the case of the appellant.
			Total for AY 2022-23	***55.50***	

49.7. *In view of the above discussion, the following additions are confirmed undersection 69A of the Act.*

Asst. Year	***Addition Made by theAO***	***Addition confirmed by CIT(A)***	***Relief Granted***
2019-20	*24,84,55,000*	*30,00,000*	*24,54,55,000*
2020-21	*80,94,00,000*	*7,00,000*	*80,87,00,000*
2021-22	*51,75,24,000*	*72,00,000*	*51,03,24,000*
2022-23	*59,82,00,000*	*0*	*59,82,00,000*

49.8. *The addition is confirmed to the extent of Rs.30,00,000/- instead of Rs.24,84,55,000/-. Accordingly,* ***Ground No. 1*** *stands* ***PARTLY ALLOWED****."*

162. Before us, the Assessee has filed detailed chart wherein the contentions made before the lower authorities were reiterated and also included the working of the AO to arrive at the figure of addition made by the AO in each of the year. The relevant part of the submission and working of AO for each year is summarised and reproduced hereunder:

"1. Shri Nalin Gupta stated that the diary belongs to his father Shri Jagdishkumar Gupta and includes both accounted and unaccounted transactions in business.

2. The Appellant submits that both Shri Nalin Gupta and Shri Jagdishkumar Gupta have retracted their statements by filing Affidavits stating therein that their statements were recorded under tremendous pressure and the contents of the statement does not record the actual answers given but modified answers to suit the requirements of the tax officials.

3. in the post search proceedings, in respect of the diary found and seized, it has been submitted that the diary marked as Annexure A1 and numbered as pages 1 to 139 contains rough and random noting of receipts and payments and are dumb rough noting and Shri Jagdishkumar Gupta has been suffering from various ailments and due to his health issues, he does not remember and recollect the noting.

4. the noting in the diary found and seized is written by several people and NOT one particular person and thus, the person has made noting in the diary as per his own understanding and which may not reveal the correct transaction. Further, the diary is NOT continuous and the diary page numbers are given by the search officers and thus, there could be missing pages in between. The Appellant further submits that the diary found is not in form of proper accounting books or even day to day book

5. the noting stated in the diary are not any unaccounted income (except for scrap sales and for which separate addition is made, thereby making double addition and in any case, there is no noting in respect of scrap sales noted in the diary for the impugned year). The Appellant submits that the main purpose or reason for maintaining this diary was to

keep track on the cash amount belonging to the Appellant Company and kept at the residence of the Chairman Shri Jagdishkumar Gupta for safe custody.

6. there was theft at the office premises and for which FIR was also filed and due to which, it was necessary to keep safe the cash and gold bullion belonging to the Company and thus, the same was kept at the residence / locker

7. It is for this very reason that the diary is maintained to keep track in respect of the cash balance of the Appellant Company at the residence of the Chairman. It can be seen that the majority of the transactions recorded in the diary are in respect of noting of cash brought from head office (HO) and returned back to head office (HO).

8. cash and gold of the Appellant Company is kept at the residence / locker of the Chairman / family member for safe custody; It is for this reason that even during the course of search and seizure action, entire Gold Bullion and majority of cash in hand (as per regular books of account of the Appellant Company) was found at the residence / locker of the Chairman / family members;

9. in the same manner, wherever 'NG' or 'KG' is noted, the transaction is similar i.e. taking cash to residence and bringing back to office since these noting are also mentioned on both the receipt side and payment side of the diary i.e. both left and right side of the diary page;

10. there is no reason whatsoever to make noting on both side as 'HO' or 'NG' or 'KG', if the same were of income nature as alleged and added by the AO;

11. in the entire diary, majority of the noting made are of this nature only and this only means that the Appellant Company

cash in hand is taken to residence for safety purpose and again brought back to the office premises as per requirements;

12. it is for this reason that all scrap sales amount noting are not found in the diary and only if any scrap sale cash is brought to office is recorded in the diary;

13. the abbreviation referred to as 'O' / 'Old', 'N' / 'New' in the entire diary – refers to opening balance only whereby O or old is in respect of used notes that have become old with passage of time and N or New is in respect of notes that are new and not used much i.e. not changed hands frequently;

14. The Appellant submits that in the chart tabulated in the assessment order, the AO has himself clearly stated in column of 'Particulars' as 'Opening Balance' and thus, once the AO has accepted the fact that the abbreviations 'O' and 'N' in the diary are balances carried over from page/s to page/s, in such situation, the AO could not have taken different view of the matter and treated all such balance figures as unaccounted cash income receipts merely for the reason that there is some mismatch in the figures of balances carried over. Further, the AO has in para 12 at page 64 of the assessment order has held that rounding off difference by 1 or less than 1 is not considered as mismatch and since figures are noted in the diary in lakhs, the AO has considered the differential amount of up to Rs.1 lakh and not mismatch.

15. The Assessee has submitted the day wise cash balance as per the books of accounts during the course of assessment proceedings. On verification of the same it can be seen that on no day the cash on hand in the books of accounts of the appellant company JKIl is less than the day to day noting and or opening closing of the diary.

Working of AO for making addition in each of the years:

Rs. in crores

AY 2019-20	***Gross Amount***	***Relief given***	***Addition made***
Balances noting i.e. against 'O' and 'N'	*32.99*	*24.27*	*8.72*
Other than balance noting i.e. against abbreviations – H.O.; N.G.; K.G.; etc.	*16.13*	*-*	*16.13*
Total	***49.12***	***24.27***	***24.85***

AY 2020-21	***Gross Amount***	***Relief given***	***Addition made***
Balances noting i.e. against 'O' and 'N'	*131.7750*	*77.54*	*54.2350*
Other than balance noting i.e. against abbreviations – H.O.; N.G.; K.G.; etc.	*26.7050*	*-*	*26.7050*
Total	***158.48***	***77.54***	***80.94***

AY 2021-22	***Gross Amount***	***Relief given***	***Addition made***
Balances noting i.e. against 'O' and 'N'	*8.12*	*-*	*8.12*
Noting relating to abbreviations – H.O.; N.G.; K.G.; etc.	*39.0839*	*-*	*39.0839*
Noting relating to scrap sale – Duplicate	*0.3725*	*-*	*0.3725*
Noting considered as dumb noting	*0.35*	*-*	*0.35*
Totalling error, strike out noting, etc.	*3.8160*	*-*	*3.8160*
Total	***51.7424***	***-***	***51.7424***

AY 2022-23	***Gross Amount***	***Relief given***	***Addition made***
Balances noting i.e. against 'O' and 'N'	*4.28*	*-*	*4.28*
Noting relating to abbreviations – H.O.; N.G.; K.G.; etc.	*50.23*	*-*	*50.23*
Noting relating to scrap sale – Duplicate	*9.36*	*9.36*	*-*
Noting – purchases	*19.79*	*18.29*	*1.50*
Contra entry noting	*0.9*	*-*	*0.9*
Others	*2.9*	*-*	*2.9*
Total	***87.46***	***27.65***	***59.82***

163. The Ld. DR relying upon the order passed by the AO contended that the Ld. CIT(A) was not correct in granting the relief without considering the fact that the promoter and director has admitted in their statements recorded u/s.132(4) of the Act that the diary contains recording of unaccounted cash transactions proved by the noting in the diary corroborating with cash received on sale of scrap, bogus purchases and figures matching with trial balance and excel sheets. The Ld. DR contended that the AO has clearly brought out in the assessment order that the noting in the diary are unaccounted cash receipts and has thus, rightly added the same as unexplained money u/s.69A of the Act and the order of the AO be restored.

164. Against the contentions of the Ld. DR, the Assessee has filed rejoinder, the relevant part of which is reproduced as under:

"As metioned above, all the statements recorded are retracted.

Further, it is pertinent to note that the cash diary was in fact the movement of cash between the company's offices and promoters.

There was a theft in the company. ***(Page 163 to 165 of Paper Book 1 for AY 2019-20)*** *Pursuant to which it was necessary to send the surplus cash back to the promoter's residence.*

The cash in hand appearing in the balance sheet of the assessee is higher than any figure appearing in the diary.

The diary is the circulation of cash in hand within the company's offices and personnels.

Further, the Ld. AO has made an addition of the total of every page based on the noting of the left-hand side, treating it as receipts of the cash diary.

The Ld. CIT(A) has subtracted the (i) opening balances, (ii)the internal transfers of cash (as cash in hand is greater in value) for which day wise cash book has been submitted to the AO and no discrepancy has been pointed out by the AO and (iii) cash received in alleged bogus purchases and alleged scrap sale and confirmed the remaining sum.

(Para 49-49.8 of Ld. CIT(A) Order)

Hence it is prayed that the assessee's appeal may be allowed and the Department's appeal may be dismissed."

165. We have gone through the assessment order, CIT(A) order, arguments advanced by the Assessee and Ld. DR. The undisputed facts of the case is that a black colour Luxor diary was found and seized in the course of search action carried out at the residence of Shri Nalin Gupta whereby in the statement recorded u/s.132(4) of the Act, Shri Nalin Gupta has stated that the diary contains receipts and payment of business transaction and contains accounted as well as unaccounted transactions and the said diary belonged and maintained by his father Shri

Jagdishkumar Gupta. This statement of Shri Nalin Gupta was confronted with Shri Jagdishkumar Gupta during search action and in the statement recorded of Shri Jagdishkumar Gupta, few noting in the diary was explained mainly noting relating to scrap sale and admitted the same as cash received on sale of scrap at various sites. However, in the statement recorded u/s.132(4) of the Act, explanation was neither sought nor given in respect of all the noting of the diary. Further, majority of the amount noted in respect of sale of scrap was corroborated with other material seized in respect of sale of scrap in cash and thus, the AO did not make addition in respect of such entries in order to avoid double addition. In our view, addition cannot be simply based upon the statement recorded u/s.132(4) of the Act and in any case, there is no disclosure made in the statement recorded and in fact, Shri Nalin Gupta has stated that part of noting in the diary is accounted and part unaccounted, however the accounted and unaccounted noting were not identified during the course of search action.

166. We now address the explanation given by the Assessee in respect of various noting in the diary and the first amongst them is relating to the abbreviations 'O' and 'N'. The explanation given that the same is balance amount noted and carried forward in the pages of the diary is not disputed by the lower authorities and in fact, the AO has also given part relief in respect of the same. However, we do not agree with the view of the AO for rejecting part of the noting in respect of these abbreviations where the balances does not match and the reason for the same is also given by the Assessee that the mismatch may have occurred due to totalling error or missing page/s in the diary, etc. since the diary is not continuous like regular cash book and in fact on many pages of the diary, the balance are either not carried forward or not noted. It was also brought to our notice that the mismatch in the balance carried forward is rectified in few occasions in subsequent part of the diary and instances of the same were given in the submission filed before the Ld. CIT(A)

and reproduced by CIT(A) at page 112 of the order and the relevant part of the same is reproduced herein below for the sake of brevity:

> *"42. The Appellant further submits that in few cases, the mismatch in figures of balance carried over gets duly corrected in the subsequent page/s of the diary itself and thus, on some occasion, the calculation error found in the diary is corrected by the person making the noting and thereby carrying forward the correct figure thereafter. This itself proves beyond any doubt that these figures of balances noted, even though there is mismatch at few places, the same are 'balances' only and not separate noting of any unaccounted cash income. Example of the calculation error mismatch corrected in the diary itself can be seen from the chart tabulated in the assessment order as shown hereunder-*

Example 1:

Diary page	***Date***	***Particulars***	***'O' Amount***	***Difference***
119	*02.04.2019*	*Opening Balance*	*256*	*-19.85*
117	*05.04.2019*	*Opening Balance*	*271.50*	*19.60*
		Net difference		*-0.25*

In this case, the mismatch in the diary gets corrected and the net difference is of meagre amount and can be considered as rounding off difference.

Example 2:

Diary page	***Date***	***Particulars***	***'O' Amount***	***Difference***
115	*11.04.2019*	*Opening*	*158*	*-27.50*

		Balance		
114	*16.04.2019*	*Opening Balance*	*198.50*	*27.50*
		Net difference		*0.00*

In this case, the mismatch in the diary gets corrected and the net difference is NIL amount.

43. The Appellant submits that from the above illustrations, it is proved beyond any doubt that the mismatch is NOT and CANNOT be construed as separate and independent unaccounted cash income. The Appellant further submits that from the chart tabulated in the assessment order, in most of the cases, there is NO mismatch in the balance carried over as noted against abbreviation 'N', which also proves that abbreviation 'O' and 'N' are balances carried over from page/s to page/s of the diary and thus, cannot be treated and considered as unaccounted cash income."

167. In view of the above, we have no hesitation in holding that the figures noted against the abbreviations 'O' and 'N' to be depicting balances and carried forward in the diary wherever noted. The AO was not correct in rejecting this explanation partly and the Ld. CIT(A) has rightly allowed the entire amount noted against these abbreviations as not unexplained money in para 49.3 and 49.4 of his order at page 116 and thus, the order of the Ld. CIT(A) is ***confirmed in respect of the same***.

168. The next contention is in respect of noting in the diary against the abbreviations 'HO', 'KG', 'NG', 3 No., etc. and during the course of search action, in the statement of Shri Nalin Gupta, these abbreviations are explained to be depicting Head Office for HO, Kamal Gupta for KG, Nalin Gupta for NG. It is further explained during the course of assessment proceedings, that the '3 No.' abbreviation is used to refer the residence of the Chairman

at Road no.3, JVPD, Vile Parle West. We have considered the explanation of the Assessee that cash and gold of Assessee Company was kept at residence of Chairman / Directors for safe keeping and therefore there was movement of cash from office to residence and vice versa and the diary was maintained mainly to keep track of the same and this was done due to theft at the business premises of the Assessee for which FIR was also filed. The fact of theft at business premises is not disputed by the AO and it cannot be disputed since FIR filed is placed on record. We have also noted that during the course of search action, part of the gold was kept in the lockers pertaining to the Chairman / Directors and their close relative staying with them as also cash of the Assesse Company was explained to be found at their residence. Therefore, the explanation of the Assessee that noting against abbreviations 'HO', 'KG', 'NG', etc. are nothing but movement of cash between office and residence and vice versa and not unexplained money is plausible explanation considering the facts and circumstances of the case. This view of ours gets further fortified for the reason that noting in the nature of unaccounted cash income is noted specifically as scrap sale, etc., which is not disputed by the Assessee as relating to sale of scrap in cash and for which other corroborative evidences are also found. However, the AO has not brought on record anything to show that noting against abbreviations 'HO', 'NG', 'KG', etc. depicts unexplained income or unaccounted cash more so when HO refers to Head Office and how can there be unaccounted cash income received from head office and similarly from Nalin Gupta and Kamal Gupta as also from Road no.3. The Assessee has also shown instances whereby the noting in the diary proves the movement of cash and such instances are also taken into account by the CIT(A) in the order passed in para 49.5 at pages 116 and 117. We have also noted that the cash in hand balance of the Assessee Company as per the regular books of account is higher at any given point of time as compared to the diary balances and this fact supported with cash book was submitted to the AO and the AO has nowhere disputed the same. Having

accepted that the cash in hand as per regular books of account is higher than that recorded in the diary, further fortifies the view taken by us. We are therefore in agreement with the finding of the Ld. CIT(A) as given in para 49.5 of the order in respect to this contention of the Assessee and ***uphold the same***.

169. Apart from the above, we now deal with addition confirmed by the Ld. CIT(A) on other issues for each of the year in appeal:

a. For the AY 2019-20, the Ld. CIT(A) has confirmed addition of Rs.30 lakhs in respect of two noting in the diary at pages 133 and 131 whereby only figure 15 is mentioned at both the pages without any narration. The Assessee has explained these two noting as relating to movement of cash from office to residence and vice versa. The Ld. CIT(A) has not accepted this explanation with the remark that no valid explanation is given for this receipt. We are not in agreement with the finding of the Ld. CIT(A) on this issue. Once it is found and undisputed fact that no narration whatsoever is mentioned against the noting and only figures are mentioned as 15 at both the places, it cannot be presumed that the same is unaccounted cash receipt of the Assessee. Addition cannot be made merely on assumption and presumption. We find that when all the noting in the diary for this year are either balances or movement of cash from office to residence and vice versa, there is no reason to deviate from this view already taken by us. As per the legal maxim '*pari passu*', the noting without any narration can be placed with equal footing with the noting having abbreviations 'HO', etc. and thus, this explanation of the Assessee is found acceptable. The Assessee also argued that such noting can be termed as rough noting / dumb noting since there is no narration mentioned and the diary was written by various personnel. This explanation of

the Assessee also cannot be rejected since where there is no narration, either the same is rough noting or it can be placed with equal footing as per the other noting. Hence, on both these reasoning, we are of the view that the addition sustained of Rs.30 lakhs for AY 2019-20 in respect of this two figures of 15 is also deleted and to this extent the order of the Ld. CIT(A) is ***reversed***.

Hence, for this AY 2019-20, on the issue of unexplained money addition u/s.69A of the Act, the Assessee appeal is allowed and that of the department is dismissed.

b. For AY 2020-21, the Ld. CIT(A) has confirmed the addition of Rs.7 lakhs in respect of noting made on page 55 of the diary dated 02.03.2020 with the narration 'Nagpur'. In this case, we are in agreement with the finding of the Ld. CIT(A) that no proper explanation is given in respect of this noting. The explanation of the Assessee to consider this noting also as relating to movement of cash from residence to office cannot be accepted. When specific narration is stated in the diary, it is for the Assessee to give convincing explanation for the same. Hence, we confirm the order of the Ld. CIT(A) on this issue.

Hence, for AY 2020-21, on the issue of addition of unexplained money u/s.69A of the Act, the appeal of the Assessee as well as of the Department is dismissed.

c. For ***AY 2021-22***, as stated hereinabove, this assessment order was passed first as the same was pending as on the date of search action and hence, no proper explanation was given by Assessee and the AO

completed the assessment due to limitation issue. Though the AO has considered the evidences found in course of search action in the order passed, however, the Assessee could not file proper explanation to the AO, which however was filed before CIT(A) [for which remand report was called for by CIT(A)] and also before AO for other years. In this year, the addition confirmed by the Ld. CIT(A) as per the tabulated chart is dealt with as under:

i. In respect of noting on page 50 of the diary dated 21.08.2020, the narration given is 'A Rathi JK Software' with figure of 35 i.e. Rs.35 lakhs. As per the finding given in AY 2020-21 in respect of noting on diary page 55 with narration 'Nagpur', on the same reasoning we uphold the finding of the Ld. CIT(A) in respect of this noting and thereby confirm the addition of Rs.35 lakhs;

ii. The next four noting addition confirmed by Ld. CIT(A) as per the table on page 118 of the order is in respect of noting with the narration 'scrap' in all the noting such as HO scrap, HO Tyre scrap, scrap Ghodbunder, etc. and all these noting figures total to Rs.37 lakhs. The Assessee has explained that the same is amount received at head office in lumpsum from the balance remaining out of sale of scrap at various sites and are thus part of the overall gross receipt of sale of scrap in cash. The Ld. CIT(A) has remarked that although the same is from sale of scrap, however do not form part of scrap receipts added by AO separately. We are not in agreement to the finding given by Ld. CIT(A). This is for the reason that similar sale of scrap noting is found in the diary at various places falling in the year relevant to AY 2022-23 and for that year, the total of sale of

scrap noting in the diary worked out to Rs.9.36 cr. and the AO has himself given full relief of the same to avoid double addition on the ground that the same is forming part of the overall addition made on account of sale of scrap added separately. Since the AO has accepted that the noting in the diary relating to scrap sale receipt is part of the overall addition made separately in respect of sale of scrap in cash, we do not find any justification to sustain this addition. We also accept the explanation of the Assessee that there is no scrap sold at head office and lumpsum balance amount remaining at various sites and not utilised are send back to office and the same is noted in the diary. In view of the same, we delete the addition of Rs.37 lakhs and reverse the order of the Ld. CIT(A) to this extent.

Hence, for AY 2021-22, on the issue of addition of unexplained money u/s.69A of the Act, the appeal of the Assessee is partly allowed and that of the department is dismissed.

Hence, for this *AY 2021-22*, on the issue of unexplained money addition u/s.69A of the Act, the Assessee appeal is allowed and that of the department is dismissed.

d. For AY 2022-23, the Ld. CIT(A) has though pointed out two noting in the diary at pages 13 and 10 with the narration Nashik Bunglow and the amount noted as 3.50 and 52 respectively i.e. total Rs.55.50 lakhs, it was contended before the Ld. CIT(A) that bungalow owned by Shri Jagdishkumar Gupta was sold by him and cash received on sale was noted in the diary and thus, the addition of this amount cannot be made in

the hands of the Assessee Company as not relating to the Assessee. The Ld. CIT(A) has remarked the addition in respect of on-money on sale of bungalow is confirmed in the hands of Shri Jagdishkumar Gupta and therefore deleted in the hands of the Assessee. We concur with the finding of the Ld. CIT(A) on this issue and it is well settled principle of taxation that income has to be added in the hands of the person to whom it relates and not any person. It is admitted position that bungalow in Nashik belonging to Shri Jagdishkumar Gupta was sold and capital gains on the sale of the same was also disclosed in the return of income filed by Shri Jagdishkumar Gupta for AY 2022-23. Hence, the on-money receipt on sale of the bungalow also has to be taxed in his hands. The order of the Ld. CIT(A) is confirmed.

Hence, for the *AY 2022-23*, on the issue of addition of unexplained money u/s.69A of the Act, the appeal of the Department is *dismissed*.

170. The issue of addition of unexplained money u/s.69A of the Act is decided in accordance of the above for each of the year in appeal and for the impugned year, appeal of the Assessee on this issue is allowed whereas that of department is dismissed.

171. Grounds of appeal no.2 of the Assessee appeal and Grounds of appeal nos.15 and 16 of the Department Appeal is in respect of addition made by the AO of Rs.44,99,64,137/- [exclusive of GST] u/s.37(1) of the Act on account of alleged bogus purchases made at 100% / 12.50% (as per table below), whereby the Ld. CIT(A) has restricted 100% disallowance to 12.50% and confirmed the disallowance made in respect of parties @12.50% made by AO. The following table gives party-wise details as to the disallowance made by AO and restricted / confirmed by CIT(A):

Sr	Name	Amount	Disallow	%	Disallow	Confir

. No	**of the Party**		**ance by AO**	**Disallowed**	**ance confirmed by CIT(A)**	**med by CIT(A)**
1	Mahaveer Steel	1,51,05,562	1,51,05,562	100%	18,88,195	12.50%
2	Kavita Enterprises	35,68,66,756	35,68,66,756	100%	4,46,08,345	12.50%
3	Vijay Steel	74,01,727	9,25,216	12.50%	9,25,216	12.50%
4	Akshay Tradelink	2,38,61,897	29,82,737	12.50%	29,82,737	12.50%
5	Nikhil Trading Company	4,31,65,404	53,95,676	12.50%	53,95,676	12.50%
6	Guare Traders	4,97,72,895	62,21,612	12.50%	62,21,612	12.50%
7	Rishabh Enterprises	3,66,89,328	45,86,166	12.50%	45,86,166	12.50%
8	Commercial Corporation	17,46,52,188	2,18,31,524	12.50%	2,18,31,524	12.50%
9	Jagdisha Traders	3,43,38,825	42,92,353	12.50%	42,92,353	12.50%
10	Tiwari Traders	7,21,93,525	90,24,191	12.50%	90,24,191	12.50%
11	Avinash Traders	7,46,57,363	93,32,170	12.50%	93,32,170	12.50%
12	Aman Industries	4,01,78,468	50,22,308	12.50%	50,22,308	12.50%
13	Divya Enterprises	4,79,37,356	59,92,169	12.50%	59,92,169	12.50%

14	GG Engineering	68,00,268	8,50,034	12.50%	8,50,034	12.50%
15	Shri Ram Enterprise	1,22,85,308	15,35,664	12.50%	15,35,664	12.50%
	Total	**99,59,06,870**	**44,99,64,137**		**12,44,88,360**	

172. The Assessee is in appeal claiming deletion of the disallowance confirmed by CIT(A) of Rs.12,44,88,360/- whereas the department is in appeal in respect of relief given by Ld. CIT(A) by restricting disallowance at 12.50% in respect of disallowance made at 100% by AO in respect of two parties at sr. no. 1 & 2 in the above table i.e. Mahaveer Steel and Kavita Enterprise.

173. In respect of the issue of alleged bogus purchases with reference to the above parties, and after considering the arguments of the Assessee as also the findings in the assessment order and CIT(A), we deem fit to discuss the said issue and give our finding on the basis of facts relating to the above purchase parties independently as under.

A. <u>Mahaveer Steels:</u>

(i) In respect of Mahaveer Steel, the Assessee has contended that:

a. the AO in the assessment order in para 12 at page 130 discussed the alleged bogus purchases from this party under the heading 'Mahaveer Steels' however, the discussion from pages 131 to 140 of the assessment order does not relate to purchases made from Mahaveer Steels but relates to the parties from whom Mahaveer Steels is said to have made purchases, the details of which are not known and not furnished to the Assessee. The AO has observed in para 12.1 on page 131 of the assessment order that

this party has filed returns of income for AY 2018-19 to AY 2022-23 and shown huge turnover and further observed that profit disclosed is only 0.20%, which is very low and thus indicative of party being accommodation entry provider;

b. The Assessee contended that merely on the basis of low profit disclosed by this party, it cannot be presumed that purchase of Assessee from this party is bogus more particularly when the department has carried out search action against this party also and the party was found existence at the business premises and dealing in civil construction material and no incriminating material or evidence was found in course of search action either at Assessee premises or at premises of this party proving bogus purchases;

c. All the relevant documentary evidences in respect of purchase made from this party in the form of purchase invoices, E-way bills, purchase order, goods receipt note, weight slip, ledger, bank statement of Assessee showing payment made, etc. were filed and no discrepancy is pointed out in the same;

d. AO has placed reliance on statements recorded of various third parties, however copy of the same were not furnished nor opportunity to cross-examine was provided and therefore no reliance could be placed on the statement recorded of third party for making addition in case of Assessee;

(ii) The Ld. DR placed reliance on the findings given in the assessment order and pleaded that AO has correctly made entire disallowance and the Ld. CIT(A) was not justified in restricting the same at 12.50%. Emphasis was made on the search action carried out against his party

and it was found that the purchases made by this party from various concerns from whom Assessee also purchased was found to be bogus. Ld. DR further replied upon the decision of the Hon'ble Supreme Court in case of N.K. Protein [2017] 250 Taxman 22 (SC) and Hon'ble Bombay High Court in case of Pr. CIT v. Kanak Impex (India) Ltd.in ITA no.791 of 2021, order dated 03.03.2025 (copy of which was handed over during hearing) in support of disallowance made at 100% by the AO. Hence, the Ld. DR pleaded to restore the order of the AO and confirm disallowance @100%.

(iii) We have considered the rival submission and gone through the records and find that the identity of the party Mahaveer Steel is not in dispute and although search action is carried out at Assessee premises as well as premises of Mahaveer Steel, no evidence or material is brought on record conclusively proving that the purchase made from this party is bogus. The AO has relied upon certain statements of third parties i.e. various other concerns who allegedly might have made bogus sales to Mahaveer Steel however copies of the statements were not furnished to the Assessee nor opportunity to cross-examine them and therefore merely placing reliance on statements to hold that Assessee made bogus purchase from Mahaveer Steel cannot be accepted and no reliance can be placed on the statement of third parties once cross-examination is not given as held by Hon'ble Supreme Court in the case of ***Andman Timber Industries vs. CCE – [2015] 62 taxmann.com 3 (SC), (2016) 15 SCC 785 (SC)*** as well as other decisions in the case of ***CIT v. Odeon Builders P. Ltd. 418 ITR 315 and by Hon'ble High Court of Rajasthan in the case of CIT vs. Sunita Dhadda & Ors. (2018) 406 ITR 0220 (Raj.)*** – holding that no addition can be made / sustained where cross examination is not allowed by the

department. In fact, we find that the purchases made from various parties directly by the Assessee, which are allegedly stated to have made bogus sale to Mahaveer Steel, has been substantiated by the Assessee before the AO as admitted by the AO in the assessment order in para 19 of the order at pages 151 and 152 and estimated disallowance is made by AO on the ground of over invoicing and doubts regarding actual purchase and movement of goods. The relevant para 19 of the order is reproduced hereunder:

> *"19. The submission of the assesse has been considered and it is observed that the assesse has substantiated the purchase details for aforementioned parties and some cases part details are filed. However, because of the reasons mentioned in SCN notice for these parties, there is element of doubt regarding genuineness of all the parties and doubt regarding actual movement of goods in some cases. And hence, possibility of overbilling cannot be ruled out. Considering all these points and relying on the submission of the assesse, 12.5% of the expenses booked for Akshay Tradelink (Proprietor Akshay Gaure), Nikhil Trading Company (Proprietor Nikhilesh Ramashankar Gaure), Gaure Traders (Proprietor Rohit Gaure), Rishabh Enterprises (Proprietor Rishabh Tambe), Commercial Corporation (Proprietor Amit Awadhiya), Jagdisha Traders, Tiwari Traders, Avinash Traders, Aman Industries, Divya Enterprises, Vijay Steel Trader, G.G. Engineering, Shri Ram Enterprises amounting to i.e. Rs.7,79,91,819/- 12.5% of Rs.62,39,34,551/- (exclusive of GST) hereby disallowed u/s.37(1) of the Act."*

Once the AO has himself accepted that the direct purchases made from these parties are substantiated by the Assessee and made disallowance on estimated basis @12.50% on grounds of over invoicing, etc., the AO has contradicted his stand for making 100% disallowance in respect of purchase made from Mahaveer Steel by holding that this party made bogus purchases from the very same concerns in respect of which Assessee has substantiated its purchases. Hence, we do not agree with the view of the AO. The Ld. CIT(A) has restricted the disallowance of purchases made from this party @12.50%. The Ld. CIT(A) has also observed in para 52.3 at page 151 of the order that the name of this party is mentioned in Annexure D of statement of Shri Deepak Ashok Kadam, however, as per para 13.6 of the assessment order, the Annexure D reproduced does not contain name of this party and contains only name of Vijay Steel Traders. In any case, we have dealt with Annexure D and statement of Shri Deepak Ashok Kadam while deciding the issue of alleged bogus purchase made from Vijay Steel Traders hereunder and have taken the view that the reliance placed on the same is not correct. The Ld. DR placed reliance on the decision of Supreme Court in case of N.K. Protein, *supra*, which is relied upon in the decision of the Bombay High Court in Kanak Impex, *supra*. The Assessee distinguished these decisions in the rejoinder filed contending that facts of present case is different than the facts in those cases. We have considered both the decisions relied upon by the Ld. DR, however we find that the facts of those decisions are entirely different from that of the present case. In the present case of the Assessee, the disallowance is made u/s.37 of the Act whereas in those case, the disallowance was made u/s.69C of the Act. Further, in the present case of the Assessee, the parties are existing and even search action is carried out on the same, however in those cases, the parties were not traceable and mainly

related to bogus purchase unearthed by sales tax department and the parties did not give any response. The facts of the Assessee case stand on total different footing as compared to the cases relied upon the Ld. DR. and are thus not applicable in the instance case of the Assessee.

In view of the above, we are of the considered view that in absence of any incriminating material or evidence found in respect of this party proving any bogus purchases made, more particularly when search action is carried out at the business premises of Assessee as well as Mahaveer Steel, no disallowance is called for and thus, we held that the AO was not justified in making 100% disallowance of purchase made from Mahaveer Steel and Ld. CIT(A) was not justified in restricting the same to 12.50% and thus, direct to delete the entire disallowance made in respect of this party.

B. <u>Kavita Enterprises:</u>

1. In respect of party Kavita Enterprises, the Assessee has contended that:

   a. It has purchased steel from this party and has been purchasing the material since past several years as also in the later years, as per the table submitted before the Ld. CIT(A), which is reproduced as under:

Assessment Year	**Amount**
2012-13	10,09,33,080
2013-14	13,98,91,849
2014-15	24,03,34,507

2015-16	22,69,52,365
2016-17	13,82,18,530
2017-18	8,74,87,964
2018-19	62,63,04,097
2019-20	76,71,02,329
2020-21	15,00,05,832
2021-22	62,56,350
2022-23	1,55,945
Total	**2,48,36,42,848**

b. The AO has alleged bogus purchases only in this year and made 100% disallowance and has allowed purchases for all the other years and thus, accepted the purchases as genuine more particularly when all the assessment years from AY 2016-17 to AY 2022-23 were open before the AO and order passed simultaneously (except for order of AY 2021-22);

c. Even for this year, the total purchase made from this party amounted to Rs.65,29,98,545/- [excluding GST) whereas the AO has disallowed Rs.35,68,66,756/- and thereby treated purchases of Rs.29,61,31,789/- as genuine;

d. All the relevant documentary evidences in respect of purchase made from this party in the form of purchase invoices, E-way bills, purchase order, goods receipt

note, weight slip, ledger, bank statement of Assessee showing payment made, etc. were filed and no discrepancy is pointed out in the same;

e. Even during the earlier Search action carried out against the Assessee on 30.08.2016, no evidence or material was found in respect of this party and no evidence or material is found during the search action carried out on 11.10.2022 in case of the Assessee;

f. The AO in para 4.10.1 of assessment order has stated that this party was also covered under search action u/s.132 of the Act, however no incriminating material or evidence is stated to be found and / or relied in the assessment order, except for statement recorded of Shri Paras Vora, husband of proprietor of Kavita Enterprises Kavita Vora, however the AO has not furnished the copy of statement and also not granted opportunity of cross-examine Shri Paras Vora, inspite of specific request made before him;

g. In para 4.10 to 4.10.6 at pages 88 to 91 of the assessment order has relied upon statement of Shri Paras Vora and that purchases made by Kavita Enterprises from certain parties stated therein from whom the Assessee has made direct purchases, however, AO failed to appreciate that purchases made from those parties referred therein were substantiated before the AO, which is accepted by AO in para 19 of the order.

(ii) The Ld. DR placed reliance on the findings given in the assessment order and made same arguments as made in respect of Mahaveer Steel.

(iii) We have considered the rival submission and gone through the records and find that the identity of the party Kavita Enterprises is not in dispute and although search action is carried out at Assessee premises as well as premises of Kavita Enterprises, no evidence or material is brought on record conclusively proving that the purchase made from this party is bogus. The AO has relied upon statement of Shri Paras Vora and observed that purchases made from various parties directly by Assessee were also made by Kavita Enterprises from those parties and since, bogus purchases are made by Kavita Enterprises the sale of same to the Assessee is also bogus. However copy of the statement of Shri Paras Vora is not furnished to the Assessee nor opportunity to cross-examine him given and therefore merely placing reliance on statements to hold that Assessee made bogus purchase from Kavita Enterprises cannot be accepted and no reliance can be placed on the statement of Shri Paras Vora once cross-examination is not given as held by Hon'ble Supreme Court in the case of ***Andman Timber Industries vs. CCE – [2015] 62 taxmann.com 3 (SC), (2016) 15 SCC 785 (SC)*** as well as other decisions in the case of ***CIT v. Odeon Builders P. Ltd. 418 ITR 315 and by Hon'ble High Court of Rajasthan in the case of CIT vs. Sunita Dhadda & Ors. (2018) 406 ITR 0220 (Raj.)*** – holding that no addition can be made / sustained where cross examination is not allowed by the department. We further fail to understand as to why the AO has not made any addition in any of the other years once the AO alleged that purchases from this party was bogus and not only this, the AO has himself accepted part of the purchases made by the Assessee in the impugned year as genuine and no reason for the same is seen in the assessment order. This proves that the AO has himself accepted purchases from this party as genuine and there is no reason to doubt the rest of the

purchases made by the Assessee. Further, we find that the purchases made from various parties directly by the Assessee, which are allegedly stated to have made bogus sale to Kavita Enterprises, has been substantiated by the Assessee before the AO as admitted by the AO in the assessment order in para 19 of the order at pages 151 and 152 and estimated disallowance is made by AO on the ground of over invoicing and doubts regarding actual purchase and movement of goods. The relevant para 19 of the order is reproduced above.

Once the AO has himself accepted that the direct purchases made from these parties are substantiated by the Assessee and made disallowance on estimated basis @12.50% on grounds of over invoicing, etc., the AO has contradicted his stand for making 100% disallowance in respect of purchase made from Kavita Enterprises by holding that this party made bogus purchases from the very same concerns in respect of which Assessee has substantiated its purchases. Hence, we do not agree with the view of the AO more particularly when the AO has accepted part of the purchases from this party during the year as genuine and has not made any disallowance in any of the other years even though the Assessee has been making regular purchase from this party. Even in the earlier search on the Assessee in the year 2016, no material or evidence was found alleging any bogus purchase from this party as seen from the order of the ITAT for earlier year. The Ld. CIT(A) has restricted the disallowance of purchases made from this party @12.50%. However, we do not agree with the reason given by the Ld. CIT(A) in para 52.4 at page 152 of the order to restrict the disallowance @12.50%. The decisions relied upon by the Ld. DR in the case of N.K. Protein, *supra*, and Kanak Impex, *supra*, are already held to be not applicable to the facts of the Assessee case as discussed

hereinabove. Hence, in absence of any incriminating material or evidence found in respect of this party proving any bogus purchases made, more particularly when search action is carried out at the business premises of Assessee as well as Kavita Enterprises as also AO himself accepting purchase from this party in all other year and part purchase in this year as genuine, in our view, no disallowance is called for and thus, we held that the AO was not justified in making 100% disallowance of purchase made from Kavita Enterprises and Ld. CIT(A) was not justified in restricting the same to 12.50% and thus, direct to delete the entire disallowance made in respect of this party.

C. Vijay Steel Traders:

i. In respect of party Vijay Steel Traders, the Assessee has contended that:

a. It has purchased steel from this party and this party is engaged in the business of dealing in steel such as Alloy Steel, MS Angle, Whole and mild steel, etc. as stated by AO in para 13.1 at page 140 of assessment order and AO has also tabulated chart of turnover and profit of this party from AY 2018-19 to AY 2022-23;

b. AO on page 143 of assessment order has admitted that purchase from this party is genuine and verified the same from vehicle tracking software of GST authorities i.e. through toll charges paid via fast-tag;

c. In para 13.4 at page 144, AO has held that wherever tracking of vehicle movement not found via fast-tag toll charges, the said purchase is bogus, however failed to appreciate that fast-tag and vehicle

tracking software data is available from FY 2021-22 as admitted in para 13.2 at pages 140-141 of assessment order;

d. Assessee argued that alternate routes are available which are without toll charges and further payment of toll could have been made in cash for want of fast-tag and that not all transport vehicles can be assumed to have affixed fast-tag. In respect of the same, the Assessee filed google maps before AO showing alternative routes available, which the AO has failed to controvert and has not disputed the same;

e. Transportation of goods is done by supplier at his cost and thus beyond the control of the Assessee to prove exact route of transportation as also whether the vehicle has fast-tag and thus, vehicle movement tracking software of GST authorities can only trace if toll charges are paid via fast-tag and not otherwise;

f. All the relevant documentary evidences in respect of purchase made from this party in the form of purchase invoices, E-way bills, purchase order, goods receipt note, weight slip, ledger, bank statement of Assessee showing payment made, etc. were filed and no discrepancy is pointed out in the same;

g. In para 13.6 at page 146 of assessment order, AO referred to statement of Shri Deepak Ashok Kadam recorded u/s.132(4) of the Act whereby he was asked to given data of entries booked as per director of store incharge where no purchases were made in response to which, he submitted excel sheet marked

as Annexure D to the statement and reproduced in assessment order and total of such data furnished aggregated to Rs.87.34 lakhs including GST;

h. Assessee argued that nowhere in statement of Shri Deepak Ashok Kadam, he has admitted of any bogus purchases; he only stated SOP not followed in respect of certain purchases; in response to Q.20, he submitted that some purchases were made as per direction of store head Shri Santosh Kumar Rath and his team and list of such purchase was given which is Annexure D;

i. Having accepted and admitted part of the purchases as genuine, AO could not have disallowed balance purchases applying 12.50% only on the ground of fast-tag vehicle tracking software more particularly when no material or evidence is found in course of search action proving that purchases from this party is bogus and thus, contended that entire purchases from this party be allowed.

ii. The Ld. DR relied upon the order of the AO and contended that AO has with the help of vehicle movement tracking software of GST authorities proved that in some cases, the movement of vehicle is not proved thereby treating only such purchases as bogus and based upon the statement given by Shri Deepak Ashok Kadam and the AO is liberal enough to add only 12.50% of such bogus purchases and thus, the same be confirmed.

iii. We have considered the rival contentions and gone through the assessment order and order passed by Ld. CIT(A), however, we are not inclined to accept the reasoning given for making estimated disallowance @12.50% for part of the purchases as per list given in

Annexure D by Shri Deepak Ashok Kadam. In respect of this party, the AO has himself given data of turnover and profit earned by this party for various years and that the party is carrying out the business of dealing in steel. Hence, the identity and genuineness of the party is not doubted. The AO has himself accepted the genuineness of the purchases where he could trace the vehicle movement with the help of tracking software of GST authorities but this software only tracks movement of vehicle where the toll charges are paid via fast-tag. The AO has assumed and presumed that all the vehicles will have fast-tag affixed and will go through the toll route only and no other routes, which are toll free. We do not concur with such assumption and presumption and it is very common, at least in these years, where fast-tag was not mandatory and in fact, even after mandatory, many vehicle owners more particularly truck owners have not installed fast-tag and make payment via cash. Also, during the course of assessment proceedings before AO, the Assessee has filed google maps showing alternate routes available for transport and the AO has not disputed the same. In any case, this cannot be ground to consider part of the purchases as bogus more particularly when there is no material or evidence found in course of search action on the Assessee. In respect of the reliance placed on the statement of Shri Deepak Ashok Kadam, senior manager in purchases, recorded during the search action u/s.132(4) of the Act, we do not find that he has admitted to any bogus purchases but he has only confirmed that certain few purchase orders were made upon directions from store head thereby deviating from standard operating procedure (SOP) and when asked to submit list of such purchases, the list was prepared and handed over which is marked as Annexure D to the statement. In respect of SOPs not being followed in respect of certain purchases made, we have already

dealt with this aspect in our order for AY 2018-19 and agreed with the findings given by the ITAT in the order passed dated 22.02.2021 in Assessee own case for earlier search period that claim of the Assessee cannot be rejected primarily on the ground that SOPs have not been followed. Hence, merely not following SOPs would not render such purchases as bogus without any other incriminating material or evidence found in search proving that the purchase made is bogus. It is also undisputed fact that the AO has admitted part of the purchases made from this party as genuine and thus, without having any cogent reason, the part purchases could not be treated as bogus. The AO has also not made any inquiry directly with this party in case the AO doubted the vehicle movement, which the AO has not done. In view of the same, we hold that purchases made from this party i.e. Vijay Steel Traders is genuine and the disallowance made by AO @12.50% and confirmed by Ld. CIT(A) is hereby directed to be deleted. The order of the Ld. CIT(A) in respect of this party disallowance is reversed and purchases made from this party is directed to be allowed in entirety.

D. Other remaining parties as per list tabulated above:

i. In respect of all the other remaining parties, the contention of the Assessee is same and thus taken up together. The contention of the Assessee in respect of all the remaining parties is same as was made for AY 2018-19 in the case of M/s. Divya Enterprises and hence, not once again repeated here.

ii. The Ld. DR arguments in respect of these parties remained more or less same as was argued in respect of M/s. Divya Enterprises for AY 2018-19.

iii. We have considered the rival submission and the orders passed by AO and CIT(A) in respect of these parties and since the facts are identical and similar to that of AY 2018-19 in respect of purchases made from M/s. Divya Enterprises and this party also exist in the list of all the other parties for this year as tabulated hereinabove, we follow our decision given in AY 2018-19 and confirm the estimated disallowance made at 12.50% in respect of all these parties.

174. In view of the above, we summarise the finding given hereinabove in the table as under:

Sr. No	**Name of the Party**	**Amount**	**Disallowance by AO**	**% Disallowed**	**Disallowance confirmed by this order as held above**	**Confirmed by this order**
1	Mahaveer Steel	1,51,05,562	1,51,05,562	100%	Nil	0
2	Kavita Enterprises	35,68,66,756	35,68,66,756	100%	Nil	0
3	Vijay Steel	74,01,727	9,25,216	12.50%	Nil	0
4	Akshay Tradelink	2,38,61,897	29,82,737	12.50%	29,82,737	12.50%
5	Nikhil Trading Company	4,31,65,404	53,95,676	12.50%	53,95,676	12.50%
6	Guare Traders	4,97,72,895	62,21,612	12.50%	62,21,612	12.50%
7	Rishabh Enterprises	3,66,89,328	45,86,166	12.50%	45,86,166	12.50%

8	Commercial Corporation	17,46,52,188	2,18,31,524	12.50%	2,18,31,524	12.50%
9	Jagdisha Traders	3,43,38,825	42,92,353	12.50%	42,92,353	12.50%
10	Tiwari Traders	7,21,93,525	90,24,191	12.50%	90,24,191	12.50%
11	Avinash Traders	7,46,57,363	93,32,170	12.50%	93,32,170	12.50%
12	Aman Industries	4,01,78,468	50,22,308	12.50%	50,22,308	12.50%
13	Divya Enterprises	4,79,37,356	59,92,169	12.50%	59,92,169	12.50%
14	GG Engineering	68,00,268	8,50,034	12.50%	8,50,034	12.50%
15	Shri Ram Enterprise	1,22,85,308	15,35,664	12.50%	15,35,664	12.50%
	Total	**99,59,06,870**	**44,99,64,137**		**7,70,66,604**	

175. Thus, the disallowance made in respect of alleged bogus purchases by the AO of Rs.44,99,64,137/- u/s.37(1) of the Act and reduced by Ld. CIT(A) to Rs.12,44,88,360/- is further reduced to Rs.7,70,66,604/- as per the this order.

176. In view of the same, the grounds of the Assessee appeal on this issue is party allowed whereas that of the Department is ***dismissed***.

177. Grounds of appeal no.3 of the Assessee appeal and grounds of appeal no.14 of the department appeal is in respect of part relief given by CIT(A) on the issue of alleged bogus claim of salary

and professional fees. We have dealt with this issue in detail in the order passed for AY 2017-18. Facts for this year are identical to that of AY 2017-18. Hence, in view of the order passed for AY 2017-18, the appeal of the Assessee on this issue is allowed and that of the Department is ***dismissed***.

178. Grounds of appeal nos. 4&6 of the Assessee appeal and grounds of appeal nos. 1 to 6 of the department appeal is against the part relief given by CIT(A) in respect of the issue of sale of scrap and sale of scrap from piling work.

179. We have already dealt with this issue in the appeals filed by Assessee and Department for AY 2016-17 and the facts of the case in this year is identical to that of AY 2016-17, and thus, the decision rendered in the order for AY 2016-17 shall apply for this year also. Accordingly, appeal of Assessee is partly allowed on this issue and that of the Department is dismissed as per the findings and conclusion given for AY 2016-17.

180. Grounds of appeal no.5 of the Assessee appeal and grounds of appeal nos.7 to 13 of the department appeal is against part relief given by the CIT(A) in respect of out of books cash expenses (murrum expenses). We have dealt with this issue in detail in the order passed for AY 2016-17 on merits of the case even though in that year estimated addition was made. The facts of the case for this year are the same as that of the year AY 2016-17 and following the decision rendered in AY 2016-17, the appeal of the Assessee on this issue is allowed and that of the Department is ***dismissed***.

181. In view of the above, for AY 2019-20, the Appeal of the Assessee is partly allowed and that of the Department is dismissed.

Now we take up assessee's appeal No. 4153/Mum/2024 and revenues appeal No. 4589/Mum/2024 as both the appeals

pertains to same assessment year i.e A.Y 2020-21 and are against the order of Ld. CIT(A) dt. 24.06.2024.

182. For this year, the Assessee has raised the following grounds of appeal as per Form 36-

> *1. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs. 80,94,00,000/- being noting in cash diary as unexplained money u/s 69A of the Income Tax Act. The learned CIT (A) erred in confirming addition of Rs.7,00,000/- without the correct appreciation of the facts of the case and law on the subject.*
> *In view of the facts and circumstances of the case and law on the subject, the same be deleted.*
>
> *2. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.15,69,33,911/- on account of bogus purchase. The learned CIT(A) erred in confirming addition of Rs. 3,19,11,094/- against Rs. 15,69,33,911/- without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted.*
>
> *3. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.1,57,23,098/- on account of Bogus claim of salary and Professional fees. The learned CIT(A) erred in estimating & confirming addition of Rs. 47,16,929/- @ 30% of Rs. 1,57,23,098/- without correct appreciation of the facts of t the case & and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted*

4. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.11,35,93,619/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in estimating & confirming addition of Rs.97,23,614/- @ 8.56% of Rs. 11,35,93,619/- from sale of scrap in cash on estimated basis without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

5. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition amounting to Rs.47,10,40,608/- to the total Income of assessee on account of out of book cash expenses u/s 69C of the Act. The learned CIT(A) erred in estimating & confirming disallowance of Rs.2,92,31,711/- against the addition of Rs. 47,10,40,608/- on account of out of book cash expenses without correct appreciation of law and facts on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

6. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in disallowance of Rs.7,83,36,650/- on account of business promotion expenses u/s 37 of the IT Act. The learned CIT(A) erred in estimating & confirming addition of Rs.78,33,665/- @ 10% of Rs. 7,83,36,650/- without correct appreciation of the facts of the case and law on the subject.
In view of the facts and circumstances of the case and law on the subject, the same be deleted.

7. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

183. For this year, the Department has raised the following grounds of appeal as per Form 36-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs.11,35,93,619/- u/s 69A of the Act to Rs.9723614/- as business income of the assessee on the issue of cash income from scrap sale by considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

3. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted Income from scrap sale considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by relying on the fact that there is no evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters as unexplained investment.

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs.471040608/- u/s 69C of the Act to Rs. 29231711/- holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) by considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

7. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

8. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

9. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made. Thus, it is clear that the assessee do have accepted to receipts from non-recognising business sources.

10. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that AO has also referred a loose paper, page -1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise evidences of exact amount in trial balance are present, then there is no need estimation.

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that the figure for October 2017 was taken as Rs.2,55,84,420/-and these projects were allotted and were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that the AO has already excluded an amount in respect of 4 projects where earlier period was established & the same entry is available in trial balance for F.Y.2017-18 and for the projects where the assessee did not prove that these expenses related earlier years and also did not provide breakup of the same as the onus is lies on the assessee to prove the same.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that projects were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that unaccounted expenses are incurred even after the starting of projects also and onus is lies on the assessee to prove that these expenses related to earlier years.

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting addition made by the AO for Rs.7,83,36,650/- u/s 37 of the Act by disallowing the claim of deduction as business promotion expenses to Rs.78,33,665/- by holding that 10% of such disallowance is sufficient ignoring the facts and circumstances of the case established by the Assessing Officer.

14. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act, by disallowance of bogus professional Fee/Salary, to Rs.29,40,367/- being @30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

15. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) in restricting/deleting erred the addition/disallowance Rs.15,69,33,911/- in respect of bogus purchase made by the AO to Rs.3,19,11,094/ by restricting 100% disallowance made by the AO to 12.5%, ignoring the facts and circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the ration laid

down by the Hon'ble apex court in the case of N.K Protein [2017] 84 taxmann.com 195 (SC)/[2017] 250 Taxman 22 (SC), 2017-TIOL-23-SC-IT while finalizing the order in the case of assessee wherein 100% of the bogus purchases were held liable to be added in the hands of the assessee.

15. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of Rs.84,94,00,000/- in respect of unexplained money as per the Cash Diary, made by the AO u/s 69A of the Act to Rs.7,00,000/- ignoring the facts and circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that AO has not proved otherwise and the amounts written against such code words cannot be brought to tax ignoring the facts and circumstances of the case established by the Assessing Officer that the diary maintained by the assessee is for unaccounted cash generation and out of books expenses and the AO has given the telescoping benefits to the assessee to the extent of generation of scrap sale and bogus purchase entries mentioned in the diary. Therefore, it was established the entries mentioned in the diary were not brought to tax.

17. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that entries relating to HO, NG, KG, 3 No, etc. relate to movement of cash between the head office and residence of Shri Nalin Gupta, Shri Kamal Gupta ignoring the facts and circumstances of the case established by the Assessing Officer that the assessee did not submit reconciliation of cash

diary and correlation with cash in hand and entries corresponding to HO and there is no evidence of bringing and sending back cash to HO.

18. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that once 'O' and 'N' are accepted as opening balance Figures and cannot be brought to tax a cash receipt ignoring the facts and circumstances of the case established by the Assessing Officer that whenever working established that 'O' and 'N' are carry forward entries, relief already been given to assessee in assessment and where page wise working does not established 'O' and 'N' are carry forward, the same should be treated as fresh receipts and brought to tax as if working does establish 'O' and 'N' as carry forward, the same cannot be treated as carry forward.

19. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by ignoring the facts and circumstances of the case established by the Assessing Officer that various corroborate evidences found w.r.t bogus purchase, scrap sale in cash and out of books murrum expenses and mentioned in dairy.

20. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

184. The Assessee has raised the following grounds of appeal vide letter dated 25.11.2024 filed with registry on 29.11.2024:

“1. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining incorrect sanction under section 151 of the Act which does not contain a valid Document Indexation

Number (DIN) and this is in violation of ***CBDT Circular 19 of 2019 dated August 14, 2019***

2. The Ld. AO erred in issuing a Notice under section 148 of the Act by obtaining incorrect sanction under section 151 of the Act wherein the income escaping assessment is not mentioned.

3. The Ld. AO erred in issuing a Notice u/s.148 of the Act, wherein the sanction is obtained mechanically without application of mind.

4. The Ld. AO erred in issuing a Notice u/s.148 of the Act in violation of section 151A of the Act read with ***CBDT Notification 18 of 2022 dated March 29, 2022*** *as the same has to be issued by Faceless Assessing Officer.*

The Appellant craves to leave to add, amend, alter or delete any or all the above grounds of appeal."

185. All the aforesaid legal grounds raised by the Assessee in this year are identical to that raised in AY 2019-20. As the facts of the case remain same in respect of the legal grounds raised herein, following the order passed for AY 2019-20 all the above legal grounds of the Assessee are dismissed.

186. Now we take up the grounds of appeal filed by the Assessee and the Department as per Form 36.

187. Grounds of appeal no.1 of the Assessee appeal and grounds of appeal nos.15 to 19 (sr. no. 15 and 16 are repeated in department grounds of appeal and mentioned twice once in relation to issue of alleged bogus purchases and once again in respect of the issue of unexplained money addition) are against the part relief given by CIT(A) in respect of the issue of addition made of unexplained money u/s.69A of the Act on the basis of

the diary found. We have already dealt with this issue for AY 2020-21 also in detail in the order passed for AY 2019-20. As per the order passed for AY 2019-20, for the impugned AY 2020-21, the order of the Ld. CIT(A) on this issue is confirmed and hence, on this issued, the appeal of Assessee as well as Department is ***dismissed***.

188. Grounds of appeal no.2 of the Assessee appeal and Grounds of appeal nos.15 and 16 of the Department Appeal is in respect of addition made by the AO of Rs.15,69,33,911/- [exclusive of GST] u/s.37(1) of the Act on account of alleged bogus purchases made at 100% / 12.50% (as per table below), whereby the Ld. CIT(A) has restricted 100% disallowance to 12.50% and confirmed the disallowance made in respect of parties @12.50% made by AO. The following table gives party-wise details as to the disallowance made by AO and restricted / confirmed by CIT(A):

Sr. No	**Name of the Party**	**Amount**	**Disallowance by AO**	**% Disallowed**	**Disallowance confirmed by CIT(A)**	**Confirmed by CIT(A)**
1	Mahaveer Steel	12,70,33,747	12,70,33,747	100%	1,58,79,218	12.50%
2	BIUM Industries Ltd.	1,58,49,472	1,58,49,472	100%	19,81,184	12.50%
3	Aadesh Industries	6,87,08,866	85,88,608	12.50%	85,88,608	12.50%
4	Raj Traders	4,36,96,669	54,62,084	12.50%	54,62,084	12.50%
	Total	**25,52,88,754**	**15,69,33,911**		**3,19,11,094**	

189. The Assessee is in appeal claiming deletion of the disallowance confirmed by CIT(A) of Rs.3,19,11,094/- whereas the department is in appeal in respect of relief given by Ld. CIT(A) by restricting disallowance at 12.50% in respect of disallowance made at 100% by AO in respect of two parties at sr. no. 1 & 2 in the above table i.e. Mahaveer Steel and BIUM Industries Ltd.

190. We have already given finding in respect of purchases made from Mahaveer Steel in the order for AY 2019-20 and since the facts remain same for this year, following the order passed for AY 2019-20, we hereby direct to delete the entire disallowance made of this party.

191. In respect of the purchase made from BIUM Industries Ltd., the facts and arguments made by Assessee and Department are considered which are more or less similar to that made in respect of the party Vijay Steel Traders in AY 2019-20. However, the facts relating to this party are narrated hereunder:

a. BIUM Industries Ltd. is engaged in business of manufacturing of iron and steel products such as TMT bars, etc. and the company was incorporated in the year 1996;
b. The AO has discussed in the assessment order at pages 97 to 105 and held that part of the purchases made from this party is genuine and part is bogus relying upon the vehicle movement tracking software of GST authorities on the basis of fast-tag vis-à-vis toll charges paid;
c. In para 1 on page 97 of assessment order, AO has referred to the turnover of this party for various years and the profit offered to tax and observed that due to low profit declared, this party is indicative of issuing accommodation entries;

d. During the impugned year, this party has declared turnover of Rs.79.92 cr. and purchase of Assessee is Rs.3.76 cr., which is about 5%;
e. Assessee made total purchase from this party of Rs.3,76,93,101/- out of which AO has accepted purchases of Rs.2,18,43,629/- as genuine and disallowed 100% purchases of Rs.1,58,49,472/-. Similarly, in AY 2022-23, Assessee has made purchase of Rs.7,57,72,420/- out of which AO has allowed Rs.2,96,01,506/- as genuine and disallowed balance amount of Rs.4,61,70,914/-;
f. Assessee had made purchases of Rs.4.72 cr. in AY 2021-22 and the AO has not made any disallowance in the order passed u/s.143(3) of the Act dated 28.06.2023 i.e. post search proceedings.

192. After considering the facts of the case and the arguments advanced by the Assessee and the Ld. DR being identical to that of the case of Vijay Steel Traders, we find that facts are identical to that of purchases made from Vijay Steel Traders in AY 2019-20 with additional facts as stated hereinabove more particularly that the AO has accepted purchases of this party in its entirety in assessment order passed u/s.143(3) of the Act for AY 2021-22 i.e. post search action. Hence, following the decision given in AY 2019-20 in respect of party Vijay Steel Traders, we direct the AO to allow the entire purchases made from this party.

193. In respect of the other two remaining parties i.e. Aadesh Industries and Raj Traders, the contention of the Assessee and that of the Ld. DR is same as was made for AY 2018-19 in the case of M/s. Divya Enterprises and in AY 2019-20 in case of other remaining parties discussed therein and hence, not once again repeated here.

194. We have considered the rival submission and the orders passed by AO and CIT(A) in respect of both these parties and

since the facts are identical and similar to that of AY 2018-19 in respect of purchases made from M/s. Divya Enterprises and AY 2019-20 in respect of other remaining parties, we follow our decision given in AY 2018-19 and AY 2019-20 and confirm the estimated disallowance made at 12.50% in respect of both these parties.

195. In view of the above, we summarise the finding given hereinabove in the table as under:

Sr. No	**Name of the Party**	**Amount**	**Disallowance by AO**	**% Disallowed**	**Disallowance confirmed by this order as held above**	**Confirmed by this order**
1	Mahaveer Steel	12,70,33,747	12,70,33,747	100%	Nil	0
2	BIUM Industries Ltd.	1,58,49,472	1,58,49,472	100%	Nil	0
3	Aadesh Industries	6,87,08,866	85,88,608	12.50%	85,88,608	12.50%
4	Raj Traders	4,36,96,669	54,62,084	12.50%	29,82,737	12.50%
	Total	**25,52,88,754**	**15,69,33,911**		**1,15,71,345**	

196. Thus, the disallowance made in respect of alleged bogus purchases by the AO of Rs.15,69,33,911/- u/s.37(1) of the Act and reduced by Ld. CIT(A) to Rs.3,19,11,094/- is further reduced to Rs.1,15,71,345/- as per the this order.

197. In view of the same the appeal of the Assessee is party allowed on this ground whereas that of the Department is dismissed.

198. Ground no. 3 of the Assessee appeal and grounds of appeal no.14 of the department appeal are against the part relief given by the CIT(A) in respect of the issue of alleged bogus salary and professional fees. We have dealt with this issue in detail in the order passed for AY 2017-18 and following the same, the appeal of the assessee on this issue is allowed and that of the department is ***dismissed.***

199. Ground of appeal no.4 of the Assessee appeal and grounds of appeal nos. 1 to 5 of the department appeal are against part relief given by CIT(A) in respect of issue of sale of scrap in cash. This year there is no addition in respect of sale of scrap from piling work though the department has also taken grounds in respect of piling income scrap. The addition relates to sale of scrap issue in this year and this issue is dealt in detail in the order passed for AY 2016-17 and hence, following the same, the appeal of the Assessee on this issue is partly allowed and that of the department is ***dismissed***.

200. Ground no.5 of Assessee appeal and grounds of appeal nos.6 to 12 are against the part relief given by the CIT(A) in respect of issue of out of books expenses in cash (murrum expenses). We have already dealt in detail in respect of this issue in the order passed for AY 2016-17 and hence, following the said order, the appeal of the Assessee on this issue is allowed and that of the department is ***dismissed***.

201. Grounds of appeal no.6 of the Assessee and Grounds of appeal no.13 of the Department is in respect of business promotion expenses claimed by the Assessee whereby the AO has disallowed 100% of the same and the CIT(A) has restricted the same to 10% and given relief for balance. Hence, both the

Assessee and the Department are in appeal before us whereby the Assessee is seeking 100% relief and the Department contends that AO order be restored.

202. Brief facts of the case in respect of issue of business promotion is that during the course of search action u/s.132 of the Act at the office premises, it was found that the Assessee has purchased gold and total 57,700 grams was physically found during search action and the same was recorded in the books of account under the head 'plant and machinery'. Apart from the gold physically found during search action, as per the details received from accounts department, gold was consumed in the AY 2020-21 and AY 2021-22 and debited under the head 'business promotion'.

203. In respect of the above, in the statement recorded of Shri Kamal Gupta u/s.132(4) of the Act, he confirmed that the details given by the accounts department is correct and that for AY 2020-21 and AY 2021-22, gold purchased is debited under business promotion and balance shown under plant and machinery and no depreciation is claimed on the same. In respect to utilisation of the gold for business promotion, it was stated by him that he does not have proof of actual utilisation. The total amount claimed under business promotion for AY 2020-21 was Rs.7,83,36,650/- (out of this, purchase amount of Rs.49,95,603/- having quantity of 1,530 grams was wrongly debited under the head stores and spares instead of business promotion, however finally considered as business promotion by Assessee and AO) by utilising 20,300 grams of gold and for AY 2021-22 was Rs.6,63,77,320/- by utilising 13,000 grams and entire details in respect of the purchase of gold from various parties was filed before the AO including invoice and bank statement showing payments made.

204. During the course of assessment proceedings, before the AO, it was explained that the gold was converted into gold

medallion with J Kumar logo embossed on the same and also filed labour charges bills for the same whereby the labour charges was paid in the form of gold wastage left with them upon conversion of gold into gold medallion. The Assessee submitted that these gold medallions were then distributed to various business associates, dignitaries, employees, as also during Sports events conducted by the Assessee. Main purpose for distribution of gold medallions was for promoting the business of the Assessee and as mark of 40 years in the industry. AO was also apprised of the fact that no such gold medallion was found during the course of search action as the same was distributed in these two years and since these were also distributed to key level employees, request was made to one of such employee to give the gold medallion given as gift so as to physically show to the AO to prove that gold medallions was made and distributed. The Assessee also filed list of dignitaries and employees and various persons to whom gold medallions were distributed and also mentioned PAN number of few of them in the list submitted. It was submitted before the AO that for distributing gold medallions as gift to various dignitaries, it was obvious that neither any confirmation will be taken upon its distribution nor Assessee can ask for any such confirmation else the relationship would get spoil since the gift of gold medallion ranged in rupees between Rs.25,000/- to Rs.45,000/-.

205. The AO considered the submission of the Assessee, however, rejected the same on the ground that – in the statement recorded of Shri Kamal Gupta, he admitted that he does not have any evidence for utilisation and justification for claiming expenses as business promotion; third party confirmation not filed; failed to substantiate the target audience to whom gold medallion gifts were given and how these gifts promoted business; retraction of statement not valid and part of the expenses debited to stores and spares.

206. Before the CIT(A), the Assessee filed detailed submission, which is reproduced by the CIT(A) in his order in para 70 at pages 165 to 175 and after considering the submission of the Assessee held that the Assessee has not fully discharged its onus of establishing 100% usage as business promotion, however held that the Assessee has been able to reasonably establish the nature of business promotion expenses and therefore restricted the disallowance to 10% and thus, partly allowed the appeal of the Assessee.

207. Before us, the Assessee has filed chart summarising the contentions as were made before the AO and CIT(A). The contentions of the Assessee as per the chart filed are reproduced hereunder-

> *"1. The Appellant submits that in support of the purchase of the Gold, the bills issued by the aforesaid jewellers alongwith relevant part of the bank statement of the Appellant was filed before the AO and the same is NOT in dispute nor disputed by the AO.*
>
> *2. The Appellant submits that the aforesaid Gold purchased was converted into gold medallion with J Kumar Logo embossed on the same and distributed to various dignitaries and business associates including employees on various functions and occasions and thus, debited in the regular books of account under Business Promotion. The gold medallion with logo of J Kumar was PRODUCED before the AO during the course of assessment proceedings, which is NOT disputed by the AO. Thus, the gold purchased was converted into medallions and this fact is NOT disputed by the AO in the assessment order passed.*
>
> *3. The Appellant submits that almost about 40 years were completed in the business and the Chairman Shri Jagdishkumar Gupta had also crossed 70 years and thus, as*

mark of celebration, the Gold purchased was converted into medallion with J Kumar Logo embossed so as to distribute the same to various dignitaries, employees, etc. on different occasions.

4. the fact that the Gold purchased is consumed is also not in dispute for the reason that during the course of search and seizure action, there is NO excess Gold found and the total Gold bullion found of about 57,700 grams (from residence and locker) was part of the regular books of account wherein under the head plant and machinery, the Gold is reflected of 57,700 grams and thus, the gold bullion found in course of search and seizure action is duly reflected in the books of account and NO excess Gold Bullion is found and neither any gold medallion was found.

5. it was natural on the part of the Appellant Company to promote itself and also gain confidence and support of all its business associates, etc., the Appellant decided to promote itself by giving gift article that would look costly as well as promote its brand value and thus, decided to give gold medallions with J Kumar logo embossed on it. The Appellant submits that it has huge number of business associates, dignitaries, etc. and thus, considering the same, the gold consumed for medallions is also reasonable.

6. The Appellant submits that the AO has NOT disputed anywhere that any excess Gold was found or that the Appellant did not distribute the same by converting into gold medallions. The only ground of the AO for making the entire amount of disallowance of business promotion of the amount of Rs.7,83,36,650/- is that-
i. third party confirmation is not filed;
ii. failed to substantiate target audience and how gifts benefit to Appellant Company or promoted its business;

iii. in the statement recorded during search, no proper explanation was given;
iv. retraction of statement is not valid;

7. the Appellant Company does not and cannot expect these dignitaries and business associates to give confirmation of receipt of gifts else, instead of strengthening the relation with them, it will dampen the relationship as also the business dealings. Further, these gifts are distributed and kept secret so as to not dampen the relationship. However, during the course of assessment proceedings, list of various people including employees to whom these gold medallion was given as gift was submitted, which the AO has ignored and brushed aside for the reasons best known to him.

8. the Appellant duly produced before the AO only for the limited purpose of verifying that the Appellant had got the gold converted into gold medallion and distributed and the AO has NOT doubted the same anywhere in the assessment order that the gold purchased was not converted into medallions.

9. the conversion of the gold into gold medallion was done through Sanjay Jewellers & Shylen S. Das and they take their labour charges in the form of gold wastage left with them and thus, no separate payment is made for conversion of gold bullion into gold medallion. The Appellant submits that the labour charges bills were also filed before the AO, and the AO has not disputed the same

10. The Appellant is not and cannot be expected to ask various personnel to give confirmation of having gifted gold medallion worth about Rs.25,000/- to Rs.45,000/- and thereby dampen the relationship with various dignitaries and business associates worth crores of rupees;

11. The Appellant further submits that not a single piece of gold medallion was found in course of search and seizure action, which proves the fact that the same was distributed entirely and thus, the claim of the Appellant in regard to business promotion is genuine and the same needs to be allowed. The Appellant submits that neither gold medallions were found nor any excess gold bullion is found in the course of search and seizure action and this fact further proves and strengthens the claim of the Appellant that the gold medallions were distributed to various people.

12. The Appellant further submits that its total turnover for the year ending on 31.03.2020 amounted to Rs. 2970.53 crores and the expenses incurred on business promotion amounted to Rs.7,83,36,650/- and this works out to only 0.26% of the total turnover and thus, the expenses incurred on business promotion is miniscule as compared to the business relations that it would maintain and building a strong relationship for future growth prospects of the Company including the loyalty and efficiency of its top level and other employees.

13. that the expenses incurred is also allowable on the ground of commercial expediency and business requirements. An expenditure may not be incurred under any legal obligation but yet it is allowable as business expenditure if it is incurred on ground of commercial expediency.

14. The provisions of section 37(1) of the Act does not curtail or prevent an assessee from incurring an expenditure which he feels and wants to incur for the purpose of business"

208. The Ld. DR, on the other hand, relied upon the order passed by the AO and emphasising that gold was debited under plant and machinery, purchase of gold has no connection with the business of the Assessee and Shri Kamal Gupta admitted in his

statement recorded that he does not have any evidence showing utilisation of gold towards business promotion. The Assessee also filed rejoinder to the arguments made by the Ld. DR contending that books of account are not rejected, the expenses claimed are allowable u/s.37(1) of the Act as also on the grounds of commercial expediency.

209. We have heard the counsels for both the parties an dhave gone through the assessment order and CIT(A) order and also considered the contentions made before us by the Assessee and the Ld. DR. The undisputed fact is that during the course of search action, gold physically found and quantified was 57,700 grams and this was duly recorded in the books of account of the Assessee albeit under the head plant and machinery, however, no depreciation was claimed in respect of the same. Thus, no excess gold was found and more particularly no gold medallion was found in the course of search action and this fact proves that the gold purchased in AY 2020-21 and AY 2021-22 was consumed and utilised. We have also gone through the statement of Shri Kamal Gupta recorded u/s.132(4) of the Act and there is no admission by Shri Kamal Gupta that gold debited under the head business promotion for these two years and expenses claimed is bogus or not genuine but he only stated that he does not have evidence to show its utilisation towards business promotion. The explanation given by Shri Kamal Gupta was correct in the light of the facts of the case that having converted gold into gold medallion and distributed as gift to various dignitaries, business associates, employees, etc., there cannot be any proof of the same. The fact that the gold purchased during these two years were converted into gold medallions with J Kumar logo embossed on the same is also not disputed by the AO and one such gold medallion was also physically shown to the AO and this is not disputed by the AO. The labour charges paid for conversion of gold into gold medallions in the form of gold wastages generated during such conversion is also not disputed and the Ld. CIT(A) has also held the said explanation to be reasonable explanation

in 71.10 at page 178 of the order and we agree to the said findings.

210. We have also considered the explanation given by the Assessee that after being in the business for about 40 years, the Assessee decided to distribute gifts to business associates, dignitaries, employees, etc. in order to promote its business as also to maintain relationship and thereby promote its brand value and hence, distributed gold medallions (with J Kumar logo embossed on the same) of different grams i.e. 10 grams, 5 grams and 2 grams costing between Rs.25,000 to Rs.45,000. We also agree with the contention of the Assessee that it cannot ask confirmation for having distributed gifts to various business associates, dignitaries, etc. and asking for the same would in fact dampen the relationship instead of strengthening the same. We are also aware of the fact that most of the business corporates distribute gifts during festive occasions like Diwali, New Year, etc. to various business associates and it cannot be expected that confirmation are taken for giving such gifts. Thus, we accept the explanation of the Assessee that it could not have asked for confirmation from various people of having received gift from the Assessee. The Assessee has however filed list of parties to whom such gold medallions were distributed and some of the parties PAN numbers were also given as available with the Assessee. The AO has not disputed the list filed before him. As regards the growth of business, it is seen that the business of the Assessee has grown substantially over the years and has created its own brand value and therefore to maintain the growth in the business as also its brand value, distributing gift of gold medallion was only in furtherance to its business prospects and not otherwise. On the same basis, the gold medallions distributed during sports and other events, Investor conference, Bankers Meeting, etc. are also to promote business of the Assessee and to keep the reputation and standing of the Assessee Company in the industry.

211. We have also given our thoughtful consideration as to whether any estimated disallowance can be made as has been done by the Ld. CIT(A). We find that the total turnover of the Assessee for AY 2020-21 was Rs.2,970.53 crores and the business promotion expenses was Rs.7,83,36,650/- which works out to only 0.26% and thus, the business promotion expenses cannot be said to be excessive or unreasonable by any means. Similarly, for AY 2021-22, the total turnover is Rs.2,570.84 [this turnover achieved even though part of this year was under lockdown due to Covid-19 pandemic] and business promotion expenses incurred of Rs.6,63,77,320/-, which works out to 0.26% only and thus, not excessive or unreasonable.

212. We thus hold that the Assessee has incurred business promotion expenses wholly and exclusively for the purpose of business. The decisions relied upon by the Assessee in the case of ***ACIT v. Armee Infotech, ITA No.1778/Ahd/2016, order dated 11.01.2022*** also supports the case of the Assessee wherein also the AO made 100% disallowance of business promotion and the CIT(A) estimated disallowance, however, the ITAT gave full relief to the Assessee. The relevant part of the ITAT order is reproduced as under:

> *"18. We take facts first from the Asstt.Year 2012-13. In this assessment year, the assessee has debited a sum of Rs.1,29,93,438/- towards sales promotion expenses, and claimed the same in the profit & loss account. The ld.AO found that it has given costly gifts to certain parties. He worked out such amount at Rs.1,17,40,918/-. The AO disallowed this amount out of total claim made by the assessee. The reasons assigned by him is that the assessee failed to give list of persons to whom such valuable gifts have been made for business promotion. On appeal, the ld.CIT(A) has restricted this disallowance to Rs.9.50 lakhs.*

19. In the Asstt.Year 2014-15, the assessee has debited a sum of Rs.1,15,86,601/- as sales promotion expenses. The ld.AO found that Rs.30,52,101/- were debited by the assessee against trading business and Rs.85,34,500/- against commission income. The AO has disallowed a sum of Rs.85,34,500/- and this disallowance has been confirmed by the ld.CIT(A).

……

21. Stand of the assessee is that it was in the business of trading in computer spares and peripheral. It was also providing maintenance services. There are many suppliers in the area of business, in which the assessee was engaged. In order to remain in the market, and also to maintain assessee's hold in the market, it is essential to incur expenditure on sale promotion. The assessee further contended that it has achieved a turnover of Rs.102.32 crores, and against which it has incurred expenditure of Rs.1,29,93,438/-, which is just 1.14% of the total turnover. The expenditure cannot be said to be excessive or unreasonable. Only reason assigned by the AO is that it failed to give list of recipients of the gifts.

22. After going through well reasoned finding of the ld.CIT(A), we are of the view that there is no justification to interfere in it…… The ld.CIT(A) has partially confirmed disallowance of Rs.9.50 lakhs; but there is no justification for such disallowance also. The assessee is a well organized business house, who has achieved turnover of more than Rs.102 crores; meaning thereby, its affairs must have been managed in professional manner, where complete details might have been maintained. The assessee has given no details to whom such gift items were given. It is case of the assessee that in order to maintain secrecy of its line of business, it is not incumbent upon him to disclose personal details of recipients. It has shown bills and vouchers for the

purchases. All the details have been maintained scientifically. An estimation of disallowance could only be made, if there are some lapses in the detailed maintained by the assessee. The reasoning given by the AO is altogether different which did not meet approval of the CIT(A). Thereafter, the ld.CIT(A) ought to have not made adhoc disallowance. The ld.CIT(A) was not justified in partially confirming the disallowance. After perusal of the finding of the ld.CIT(A), we do not find any error in it to the extent the ld.CIT(A) has deleted the disallowance. There is no justification to interfere in his order.

23. However, we are of the view that there is no reason to disallow expenditure to the extent of Rs.9.50 lakhs on an adhoc basis. We delete this disallowance also. Thus, we allow the grounds of appeal raised by the assessee, and reject ground of appeal raised by the Revenue.

24. As far as Asstt.Year 2014-15 is concerned, in this year, the assessee has declared total income at Rs.6,15,58,474/-. ***The reasons for making disallowance of Rs.85,34,500/- out of sales promotion expenses is concerned, the AO was of the view that the assessee could not produce proprietor of M/s.Parkash Gold from whom the alleged gold was purchased, which was converted into 5-10 grams of gold coins.*** *The assessee pleaded before the ld.CIT(A) that factum of existence of Parkash Gold has been accepted by the ld.CIT(A) in the Asstt.Year 2013-14. It was not in doubt. The assessee also contended that this sale promotion expenditure was incurred consistently in the earlier year, and these have been allowed to the assessee.* ***The ld.CIT(A) concurred with the AO that the assessee failed to prove purchase of the gold out of which gold coins***

were got manufactured. The evidence exhibiting the fact of purchase of gold is for the accounting period relevant to the Asstt.Year 2014-15 i.e. before 31.3.2014. The AO has started inquiry in June, 2016. He has deputed Inspector to locate the shop somewhere in June, 2016. Emphasis of the AO is to the effect that whereabouts of Parkash Gold is not known, and the assessee failed to produce Shri P.V. Soni, proprietor of that concern. In this way, the ld.AO treated claim of the assessee as bogus.

25. On the other hand, ***the stand of the assessee is that it has purchased the gold. Thereafter, it was converted into 5-10 grams of coins which were distributed on festivities viz. Diwali and other occasions to its customers. Considering nature of the assessee's business, and expenses incurred in earlier years, it, but natural that this must have been recurring expenditure in this year also – there may be some irregularities crept in on the source of purchase of gifts items, but that is not sufficient to ignore claim of the assessee. The sales promotion expenses are one of necessary components for doing business smoothly and the returned income in this year has been enhanced****. It has shown total income of Rs.6.15 crores against Rs.4.13 crores in the Asstt.Year 2012-13. In Asstt.Year 2012-13, we have accepted the sales promotion expenses to the extent of Rs.1.29 crores, wherein this year it has also incurred Rs.85 lakhs. Considering nature of business, the consistency in incurring such expenditure which is essential components, we are of the view that there is no justification to disallow the sales promotion expenditure. We delete the*

disallowance. In the result, the ground of appeal taken by the assessee in the Asstt.Year 2014-15 is allowed."
[Emphasis supplied]"

213. Following the aforesaid decision in the case of Armee, supra, in the case of ***R.K. Trading Company v. Dy. CIT, ITA No.2609/Ahd/2017, order dated 22.12.2022*** it has allowed entire amount of gift in the form of Gold coins and Silver articles as business expenses, which were distributed upon completion of 25 years in business. The relevant part of the ITAT order is reproduced as under:

"3. Assessee Firm has been carrying on its business of trading in chemicals for past more than 25 years. It has a customer list of more than 1000 customers and suppliers with whom it carries on its business from time to time. Every year on the auspicious festival of Diwali and Dev Diwali, assessee firm distributes various gifts and sweets to its business associates, employees, suppliers, consultants etc. Even in the year under consideration, assessee had purchased gold coins and silver articles to be distributed on the occasion of Diwali and Dev Diwali which was celebrated on 3rd November 2013 and 17th November 2013 respectively. These expenses are essential for maintaining a healthy business relationship and advancement of the business objectives of the firm. During the year assessee had purchased gold coins and silver articles of Rs.23,91,895/-. The amount of expenditure incurred is not even 0.1% of the Turnover of the assessee. Further, assessee firm has been incurring these expenses year on year since the start of its business and distributing gifts on this auspicious occasion is a common practice across businesses in India.

A copy of the bills for purchase of Gold Coins and Silver Articles is being submitted as Annexure -1 of this letter.

We would further, like to draw you attention to the instructions issued by the CBDT vide its letter 13/A/20/68 dated 03/10/1968 wherein the CBDT has said that the expenses incurred on the occasion of Diwali and Mahurat are in the nature of business expenditure*."*

[Emphasis supplied]

214. We also hold that the expenses incurred are to be considered from the point of view of the businessman and not that of revenue. The "commercial expediency" depends upon the wisdom of the businessman and the Revenue has no role to play to decide as to what is "commercial expediency". The Revenue cannot occupy the position of the assessee and assume the role to decide whether a particular expenditure is required to be incurred, having regard to the facts and circumstances of the case. There cannot be any compulsion on the assessee to maximize his profit. The income-tax authorities should enter into the shoes of the assessee to see how a prudent businessman would act in the given facts and circumstances. In this regard, we place reliance on the decision of Hon'ble Supreme Court in the case of ***CIT v. Walchand & Co. P. Ltd. [1967] 65 ITR 381 (SC); S.A. Builders v. CIT [2007] 288 ITR 1 (SC); J.K Woollen Manufacturing v. CIT [1969] 72 ITR 612 (SC)*** wherein it is held that in applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively incurred for the purpose of business, the expenditure has to be adjudged from the point of view of the business and not of revenue.

215. In view of the above, we hold that there is no justification to restrict the disallowance of business promotion to 10% of the expenses incurred and thus, we direct that the entire expenses

claimed towards business promotion of Rs.7,83,36,650/- for AY 2020-21 and Rs.6,63,77,320/- for AY 2021-22 is allowed in entirety.

216. The appeal of the Assessee is allowed on this issue and that of department is ***dismissed***.

217. In view of the above, for AY 2020-21, the Appeal of the Assessee is partly allowed and that of the Department is ***dismissed***.

Now we take up assessee's appeal No. 4152/Mum/2024 and revenues appeal No. 4588/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2021-22 and are against the order of Ld. CIT(A) dt. 24.06.2024

218. For this year, the Assessee has raised the following grounds of appeal as per Form 36-

> *"1. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in disallowance of Rs.6,63,77,320/- on account of business promotion expenses u/s 37 of the IT Act and the learned CIT(A) erred in confirming the addition of Rs.66,37,732/- @ 10% of Rs.6,63,77,320/- on account of business promotion expenses without correct appreciation of the facts and law on the subject.*
> *In view of the facts and circumstances of the case and law on the subject, the same be deleted.*
>
> *2. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of cash diary of Rs. 51,75,24,000/- considering unexplained money u/s 69A of the Income Tax Act. The learned CIT (A) erred in confirming the addition of*

Rs.72,00,000/- against Rs. 51,75,24,000/-without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.24,49,39,971/- on account of bogus purchase. The learned CIT(A) erred in confirming the disallowance of Rs. 2,59,47,115/- on account of bogus purchase against addition of Rs. 24,49,39,971/- made by ld. AO, without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition may be deleted.

3. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.1,49,63,889/- on account of Bogus claim of salary and Professional Fees. The learned CIT(A) erred in confirming the addition of Rs. 44,89,167/- @ 30% of Rs. 1,49,63,889/- on estimate basis without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted

4. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.14,66,43,171/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in confirming the addition of Rs.1,25,52,655/- @ 8.56% of Rs. 14,66,43,171/- from sale of scrap in cash on estimate basis without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

5. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition amounting to Rs.51,90,74,693/- to the total Income of assessee on account of out of book cash expenses u/s 69C of the Act. The learned CIT(A) erred in confirming disallowance of Rs.2,59,53,735/- on estimated basis, against addition of Rs. 51,90,74,693/- on account of out of book cash expenses without correct appreciation of law and facts of the case on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

7. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.1,10,28,780/- u/s36(1)(va) of the Act and the learned CIT(A) erred in upholding the additions of Rs.1,10,28,780/- on account of PF/ ESIC without correct appreciation of facts of the case and law on subject.
In view of the facts and circumstances of the case and law on the subject, the same be deleted.

8. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

219. The department has raised the following grounds of appeal as per Form 36 filed-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs. 14,66,43,171/- u/s 69A of the Act to Rs. 1,25,52,655/- as business income of the assessee on the issue of cash income from scrap sale by considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

3. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale by relying on the fact that there is no evidence of such cash sales of scrap and income from piling business being invested in immovable or other assets have been found and ignoring the facts addition has been made in the case of promoters as unexplained Investment.

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs.51,90,74,693/- u/s 69C of the Act to

Rs. 25953734/- holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) by considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 690 of the Act.

7. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

8. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

9. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made. Thus it is clear that the assessee do have accepted to receipts from non-recognising business sources.

10. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that AO has also referred a loose paper, page -1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise evidences of exact amount in trial balance are present, then there is no need estimation.

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred-in providing relief on the issue of out of books expenses 'murrum' by observing that the figure for October 2017 was taken as Rs.1,02,00,170/-and these projects were allotted and were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that the AO has already excluded an amount in respect of 4 projects where earlier period was established & the same entry is available in trial balance for F.Y.2017-18 and for the projects where the assessee did not prove that these expenses related earlier years and also did not provide breakup of the same as the onus is lies on the assessee to prove the same.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that projects were started prior to FY 2017-18 ignoring the facts and circumstances of the case established by the Assessing Officer that unaccounted expenses are incurred even after the starting of projects also and onus is lies on the assessee to prove that these expenses related to earlier years.

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting addition

made by the AO for Rs.6,63,77,320/- u/s 37 of the Act by disallowing the claim of deduction as business promotion expenses to Rs.66,37,732/- by holding that 10% of such disallowance is sufficient ignoring the facts and circumstances of the case established by the Assessing Officer.

14. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act, by disallowance of bogus professional Fee/Salary, to Rs.1,49,63,889/-being @30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

15. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting/deleting the addition/disallowance Rs.24,49,39,971/- in respect of bogus purchase made by the AO to Rs.25947115/- by restricting 100% disallowance made by the AO to 12.5%, ignoring the facts and circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the ration laid down by the Hon'ble apex court in the case of N.K Protein (2017) 84 taxmann.com 195 (SC)/[2017] 250 Taxman 22 (SC), 2017-TIOL-23-SC-IT while finalizing the order in the case of assessee wherein 100% of the bogus purchases were held liable to be added in the hands of the assessee.

15. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of Rs.51,75,24,000/ in respect of unexplained money as per the Cash Diary, made by the AO u/s 69A of the Act to Rs. 72,00,000/- ignoring the facts and

circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that AO has not proved otherwise and the amounts written against such code words cannot be brought to tax ignoring the facts and circumstances of the case established by the Assessing Officer that the diary maintained by the assessee is for unaccounted cash generation and out of books expenses and the AO has given the telescoping benefits to the assessee to the extent of generation of scrap sale and bogus purchase entries mentioned in the diary. Therefore, it was established the entries mentioned in the diary were not brought to tax.

17. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that entries relating to HO, NG, KG, 3 No, etc. relate to movement of cash between the head office and residence of Shri Nalin Gupta, Shri Kamal Gupta ignoring the facts and circumstances of the case established by the Assessing Officer that the assessee did not submit reconciliation of cash diary and correlation with cash in hand and entries corresponding to HO and there is no evidence of bringing and sending back cash to HO.

18. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that once 'O' and 'N' are accepted as opening balance figures and cannot be brought to tax a cash receipt ignoring the facts and circumstances of the case established by the Assessing Officer that whenever working established that 'O' and 'N' are

carry forward entries, relief already been given to assessee in assessment and where page wise working does not established 'O' and 'N' are carry forward, the same should be treated as fresh receipts and brought to tax as if working does establish 'O' and 'N' as carry forward, the same cannot be treated as carry forward.

19. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by ignoring the facts and circumstances of the case established by the Assessing Officer that various corroborate evidences found w.r.t bogus purchase, scrap sale in cash and out of books murrum expenses and mentioned in dairy.

20. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

220. Grounds of appeal no.1 of Assessee appeal and grounds of appeal no.13 of the department appeal are filed against the part relief given by CIT(A) in respect of disallowance made of business promotion expenses. We have already dealt with this issue in the order passed for AY 2020-21 and the facts being same as of that year, following the said order, the appeal of the Assessee on this issue is allowed and that of the department is ***dismissed***.

221. Grounds of appeal no.2 of Assessee appeal and grounds of appeal nos.15 to 19 are against the part relief given by CIT(A) in respect of the issue of addition towards unexplained money u/s.69A of the Act. While deciding this issue in the order passed for AY 2019-20, we have decided the issue for this year also. As per the finding given in the order passed for AY 2019-20, on this issue, the appeal of the Assessee for this year is partly allowed and that of the department is ***dismissed***.

222. Grounds of appeal no.3 of the Assessee appeal and Grounds of appeal nos.15 and 16 of the Department Appeal is in respect of addition made by the AO of Rs.24,49,39,971/- [**inclusive of GST**] u/s.37(1) of the Act on account of alleged bogus purchases made at 100% (as per table below), whereby the Ld. CIT(A) has firstly considered the purchases from each of the party excluding GST amount and on this amount, restricted 100% disallowance to 12.50%. The following table gives party-wise details as to the disallowance made by AO and restricted by CIT(A):

Sr. No	**Name of the Party**	**Amount**	**Disallowance by AO**	**% Disallowed**	**Amount excluding GST**	**Disallowance confirmed by CIT(A)**	**Confirmed by CIT(A)**
1	Jineshwar Enterprises	17,63,81,688	17,63,81,688	100%	14,94,75,670	1,86,84,459	12.50%
2	Parshva Steel Corporation	2,27,04,868	2,27,04,868	100%	1,92,41,904	24,05,238	12.50%
3	Sambhavnath Corporation	2,54,56,604	2,54,56,604	100%	2,15,73,908	26,96,739	12.50%
4	Abhinandan Enterprises	2,03,96,811	2,03,96,811	100%	1,72,85,433	21,60,679	12.50%
	Total	**24,49,39,971**	**24,49,39,971**		**20,75,76,915**	**2,59,47,115**	

223. The Assessee is in appeal claiming deletion of the disallowance confirmed by CIT(A) of Rs.2,59,47,115/- whereas the department is in appeal in respect of relief given by Ld. CIT(A) by restricting disallowance at 12.50% in respect of disallowance made at 100% by AO in respect of all the above parties.

224. We firstly upheld the view of the Ld. CIT(A) given in para 82.2 at page 195 of the order holding that disallowance out of purchases, if any, needs to considered excluding GST and not inclusive of GST and the AO has made disallowance in other years excluding GST and thus, instead of disallowance made by the AO including GST of Rs.24,49,39,971/-, the amount to be considered for adjudication is excluding GST at Rs.20,75,76,915/- and to this extent the disallowance of the AO is not justified and is hereby deleted. In view of this, we now consider the amount of disallowance of the AO aggregating to Rs.20,75,76,915/- and accordingly discuss and decide the issue herein below.

225. The AO has discussed this issue in the assessment order of AY 2021-22 at pages 27 to 40 whereas the Ld. CIT(A) has discussed the issue in para 80 to 82.4 at pages 184 to 195. Similar additions relating to these 4 parties are also made in AY 2022-23. The facts relating to purchases made from the above 4 parties are discussed hereunder:

a. All the above 4 parties are proprietary concerns and the proprietors are related parties (as observed by AO at page 29 of the order);
b. Simultaneous search action was carried out u/s.132 of the Act against the aforesaid 4 parties and the parties were found at the address and no incriminating material or evidences were found proving any bogus sales made to the Assessee. Similarly, in the course of search action against the Assessee, there is no material or evidence found showing any bogus purchase made from these parties except for statements recorded of few employees of the Assessee Company and they have confirmed the SOPs not followed in respect of these parties;
c. All the relevant documentary evidences in respect of purchase made from this party in the form of purchase

invoices, E-way bills, purchase order, goods receipt note, weight slip, ledger, bank statement of Assessee showing payment made, etc. were filed and no discrepancy is pointed out in the same and the AO has not rejected the books of account even though the addition is made u/s.37 of the Act;

d. Notice were issued u/s.133(6) of the Act to these parties and though served on these parties, no reply was filed and even the Assessee was unable to produce the same;
e. During course of first appellate proceedings, Assessee filed additional evidences such as ledger confirmation of these parties, GST returns filed by them, Income tax returns filed by them, Copies of their bank statement proving no cash was withdrawn upon payments made to these parties against purchases made;
f. In AY 2021-22, the AO has relied upon statements recorded of employees of the Assessee recorded during course of search action such as Rajesh Gupta, Sunil Hazare and Suraj Sail and concluded that SOPs were not followed and as per their statements, no material was purchased from these parties;
g. In AY 2022-23, the AO has discussed this issue in para 5 to 8.9 at pages 98 to 123 wherein the disallowance is made in respect of these 4 parties on the basis of vehicle movement tracking software of GST authorities and held that vehicles did not pass toll plaza and thus made disallowance of entire amount.

226. The Assessee has made various arguments which are similar to made in the earlier assessment years in respect of vehicle tracking software of GST authorities, SOPs not followed, no incriminating material or evidence found in course of search action on Assessee as well as these 4 parties; etc. The Assessee has made specific additional argument in respect of these parties that they were found at the respective address during the course

of search action and they were found to be actually carrying on the business of dealing in civil construction material. Their statements were recorded, however, in the entire assessment orders passed, neither statements are referred nor any evidence found, if any, are referred, which only proves that no adverse material was found in the course of search action at the premises of these 4 parties. Assessee had also asked for the copy of statement recorded and allow cross-examination of parties, if needed, however copies of the statements recorded were not given and neither relied upon perhaps due to the reason that the same was favouring the Assessee case. Lastly, it was contended that the purchases made from these 4 parties are genuine and the 100% disallowance made by the AO u/s.37 of the Act and that restricted by the Ld. CIT(A) @12.50% may be deleted.

227. The Ld. DR arguments were similar to those placed in the earlier years and relied upon the findings of the AO in the assessment order.

228. We have heard the counsels for both the parties and have already given finding in respect of purchases made from various parties in the orders passed for AY 2019-20 in respect of similar additions made in the case of Mahaveer Steel, Kavita Enterprises and Vijay Steel Traders as also BIUM Industries Ltd. in the order for AY 2020-21 and the findings given therein applies to the additions made in respect of these 4 parties. We have already decided that not following SOPs cannot be the ground for making disallowance of purchases and the said finding is applicable to the facts of the present case also. Similarly, when simultaneous search actions are carried out at the Assessee premises and premises of these 4 parties and no incriminating material or evidence is found in the course of search action to conclusively

prove that no purchases were made from these 4 parties, disallowance is not justified. Similarly, we have held that no disallowance can be made on the basis of vehicle tracking software and the same finding applies to the facts of these case atleast for AY 2022-23. Additionally, we also find that the department has neither made any adverse remark in respect to the search action carried out at the premises of these 4 parties and it appears that nothing adverse was found during the course of search action due to which, no reference is made. We also find that the Assessee has contended that these parties were found to be carrying on business of civil construction material during the course of search action and this contention is not controverted by the Ld. DR. We also hold that no disallowance can be made merely on the basis of statements of employees recorded u/s.132(4) of the Act without any corroborative evidence proving purchases as not genuine. The Ld. CIT(A) has in para 82 at page 194 of the order followed the findings given in earlier years for confirming disallowance to the extent of 12.50% on estimation basis. For the reasoning given by us in the earlier year orders in respect of parties referred in this para above, following the order passed for AY 2019-20 and AY 2020-21 relating to 100% disallowance made by AO, we hereby direct to delete the entire disallowance made of these 4 parties.

229. In view of the same, the appeal of the Assessee is allowed on this ground whereas that of the Department is ***dismissed***.

230. Grounds of appeal no.3 of the Assessee appeal (assessee has mistakenly given sr. no.3 once again and there is no ground at sr. no.6 in appeal of the assessee) and grounds of appeal no.14 of the department appeal are against the part relief given by CIT(A) in respect of the issue of alleged bogus salary and professional fees. We have already dealt with this issue in AY 2017-18 and facts remaining same for this year also, the appeal of the assessee on this issue is allowed and that of the department is dismissed.

231. Grounds of appeal no.4 of the Assessee appeal and grounds of appeal nos.1 to 5 of the department appeal are against the part relief given by the CIT(A) in respect of the issue of sale of scrap in cash (department grounds wrongly include scrap from piling in this year whereas there is no addition on sale of scrap from piling work). We have dealt with this issue in detail in the order passed for AY 2016-17 and as the facts of the case remains same, following the said order of AY 2016-17 in this year, the appeal of the Assessee is partly allowed on this issue and that of the department is dismissed.

232. Grounds of appeal no.5 of the Assessee appeal and grounds of appeal nos.6 to 12 of the department appeal are against the part relief given by CIT(A) in respect of issue of out of books expenses in cash (murrum expenses). We have dealt with this issue in the order passed for AY 2016-17 and following the said order, the appeal of the Assessee on this issue is allowed and that of the department is dismissed.

233. Grounds of appeal no.7 of the Assessee appeal relates to disallowance of Pf/ESIC of Rs.1,10,28,780/- for non-payment of the same within the due date as per provisions of sec.36(1)(va) of the Act. During the course of hearing, the Assessee did not press for this ground of appeal and hence, the same is hereby dismissed.

234. In view of the above, the Appeal for AY 2021-22 filed by the Assessee is partly allowed and that of the department is ***dismissed***.

Now we take up assessee's appeal No. 4152/Mum/2024 and revenues appeal No. 4588/Mum/2024 as both the appeals pertains to same assessment year i.e A.Y 2022-23 and are against the order of Ld. CIT(A).

235. For this year, the Assessee has raised the following grounds of appeal.

> *"1. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.101,03,67,614/- on account of bogus purchase. The learned CIT(A) erred in confirming the disallowance of Rs.9,94,06,576/- on account of bogus purchase against addition of Rs.101,03,67,614/- made by ld. AO, without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted.*

2. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.1,96,89,131/- on account of Bogus claim of salary and Professional Fees. The learned CIT(A) erred in confirming the addition of Rs. 59,06,739/- @ 30% of Rs. 1,96,89,131/- on estimate basis without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted

3. On facts and in the circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.45,36,39,801/- as income from sale of scrap in cash u/s 69A r.w.s 115BBE of the Act. The learned CIT (A) erred in estimating & confirming the addition of Rs.3,88,31,567/- @ 8.56% of Rs. 14,66,43,171/- without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

4. On the facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition amounting to Rs.106,48,77,952/- to the total Income of assessee on account of out of book cash expenses u/s 69C of the Act. The learned CIT(A) erred in estimating & confirming disallowance of Rs.7,63,08,388/- against Rs. 106,48,77,952/- without correct appreciation of the facts of the case & law on the subject. In view of the facts and circumstances of the case and law on the subject, the same be deleted.

5. On the facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.76,50,000/- as cash income from piling business u/s 69A and the learned CIT(A) erred in estimating

& confirming addition of Rs. 6,54,840/- @ 8.56% of Rs.76,50,000/- without correct appreciation of the facts of the case and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same be deleted.

6. On the facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.27,61,353/- u/s36(1)(va) of the Act and the learned CIT(A) erred in upholding the additions of Rs.27,61,353/- on account of PF/ ESIC u/s s36(1)(va) of the Act without correct appreciation of facts and law on subject.

In view of the facts and circumstances of the case and law on the subject, the same be deleted.

7. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing."

236. The department has raised the following grounds of appeal as per Form 36 filed:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition made by the AO for Rs.453639801/- u/s 69A of the Act to Rs.38831567/- as business income of the assessee on the issue of cash income from scrap sale by considering that appropriate profit percentage as average PBT % at 8.56% ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether the Ld.CIT(A) erred in restricting/deleting addition made by the AO for Rs. 76,50,000/- u/s 69A of the Act to Rs.6,54,840/- as business income of the assessee on the issue of cash income from piling business and considering that appropriate profit percentage as average PBT % at 8.56%

ignoring the facts and circumstances of the case established by the Assessing Officer.

3. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the facts and circumstances of the case established by the Assessing Officer that the whole income from scrap sale and piling business is profit itself as the incidental expenses related to scarp sale already booked in books of accounts.

4. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by estimating unaccounted income from scrap sale and piling business ignoring the corroborative evidences unearthed during the search which provide the exact amount of project wise scrap sale in cash and exact amount of income from piling business established by the Assessing Officer.

5. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by considering the unaccounted income from scrap sale and piling business as business income ignoring the corroborative evidences unearthed during the search which proves that entire income from scrap sale and piling business in cash is unaccounted and not recorded in books of accounts.

6. Whether the Ld.CIT(A) erred in providing relief on the issue of unaccounted income from scrap sale and piling business as business income by relying on the fact that there is no evidence of such cash sales of scrap and income from piling, business being invested in immovable or other assets have

been found and ignoring the facts addition has been made in the case of promoters as unexplained investment.

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting/restricting the addition made by the AO for Rs. 1064877952/- u/s 69C of the Act to Rs.76308387/- holding them as business expenditure of the assessee on the issue of out of books cash expenditures (murrum expenses) by considering that an addition of 5% of such murrum expenses as business income would suffice instead of the entire addition made by the AO under Section 69C of the Act.

8. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by stating that the AO has made addition only on the basis murrum expenses in trial balances ignoring the facts and circumstances of the case established by the Assessing Officer that murrum expenses trial balances supported by the corroborative evidences unearthed during the search which provide the exact amount of project wise murrum expenses in cash.

9. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by estimating unaccounted out of books expenses ignoring the facts and circumstances of the case established by the Assessing Officer that evidences quantifies the exact amount of out of books cash expenses as 'murrum', there is no scope of estimation of out of books cash expenses.

10. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that in a case of a government contractor it would not be appropriate to held any other business receipts unless there are specific evidence ignoring the facts and circumstances of the case established by the Assessing Officer that in case of assessee

addition 69A on the unexplained income because of unaccounted sale of scrap etc. have been made. Thus it is clear that the assessee do have accepted to receipts from non-recognising business sources.

11. Whether the Ld.CIT(A) erred in providing relief on the issue of out of books expenses 'murrum' by observing that AO has also referred a loose paper, page 1& 2 of Annexure-A2 at a site office at G Block wherein murrum is 0.1% of running account ignoring the facts and circumstances of the case established by the Assessing Officer that quantification is concerned, it is clearly given in trial balance and the same is not in term of percentage of running account bill. Where project-wise evidences of exact amount in trial balance are present, then there is no need estimation.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition/disallowance made by the AO u/s 37 of the Act, by disallowance of bogus professional Fee/Salary, to Rs.5906739/-being @30% of the amount disallowed by the AO ignoring the facts and circumstances of the case established by the Assessing Officer.

13. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of Rs. 1010367614/- in respect of bogus purchase made by the AO to Rs.99406575/- by restricting 100% disallowance made by the AO to 12.5%, ignoring the facts and circumstances of the case established by the Assessing Officer.

14. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the ration laid down by the Hob'ble apex court in the case of N.K Protein [2017] 84 taxmann.com 195 (SC)/[2017] 250 Taxman 22 (SC),

2017-TIOL-23-SC-IT while finalizing the order in the case of assessee wherein 100% of the bogus purchases were held liable to be added in the hands of the assessee.

15. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of Rs.598200000/- in respect of unexplained money as per the Cash Diary, made by the AO u/s 69A of the Act ignoring the facts and circumstances of the case established by the Assessing Officer.

16. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that AO has not proved otherwise and the amounts written against such code words cannot be brought to tax ignoring the facts and circumstances of the case established by the Assessing Officer that the diary maintained by the assessee is for unaccounted cash generation and out of books expenses and the AO has given the telescoping benefits to the assessee to the extent of generation of scrap sale and bogus purchase entries mentioned in the diary. Therefore, it was established the entries mentioned in the diary were not brought to tax.

17. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that entries relating to HO, NG, KG, 3 No, etc. relate to movement of cash between the head office and residence of Shri Nalin Gupta, Shri Kamal Gupta ignoring the facts and circumstances of the case established by the Assessing Officer that the assessee did not submit reconciliation of cash diary and correlation with cash in hand and entries

corresponding to HO and there is no evidence of bringing and sending back cash to HO.

18. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by observing that once 'O' and 'N' are accepted as opening balance figures and cannot be brought to tax a cash receipt ignoring the facts and circumstances of the case established by the Assessing Officer that whenever working established that 'O' and 'N' are carry forward entries, relief already been given to assessee in assessment and where page wise working does not established 'O' and 'N' are carry forward, the same should be treated as fresh receipts and brought to tax as if working does establish 'O' and 'N' as carry forward, the same cannot be treated as carry forward.

19. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money as per the Cash Diary, by ignoring the facts and circumstances of the case established by the Assessing Officer that various corroborate evidences found w.r.t bogus purchase, scrap sale in cash and out of books murrum expenses and mentioned in dairy.

20. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing."

237. Grounds of appeal no.1 of Assessee appeal and and Grounds of appeal nos.13 and 14 of the Department Appeal is in respect of disallowance made by the AO of Rs.101,03,67,614/- [exclusive of GST] u/s.37(1) of the Act on account of alleged

bogus purchases made at 100% / 12.50% (as per table below), whereby the Ld. CIT(A) has restricted 100% disallowance to 12.50% and confirmed the disallowance made @12.50% by AO. The following table gives party-wise details as to the disallowance made by AO and restricted by CIT(A):

Sr. No	Name of the Party	Amount	Disallowance by AO	% Disallowed	Disallowance confirmed by CIT(A)	Confirmed by CIT(A)
1	Jineshwar Enterprises	39,15,16,560	39,15,16,560	100%	4,89,39,570	12.50%
2	Parshva Steel Corporation	9,54,50,138	9,54,50,138	100%	1,19,31,267	12.50%
3	Sambhavnath Corporation	10,89,42,039	10,89,42,039	100%	1,36,17,755	12.50%
4	Abhinandan Enterprises	12,85,40,132	12,85,40,132	100%	1,60,67,517	12.50%
5	Sanket Steel	4,70,46,084	58,80,761	12.50%	0	0
6	Hella Infra Market P. Ltd.	20,31,22,043	20,31,22,043	100%	0	0
7	Metarolls Ispat	13,83,05,316	1,72,88,165	12.50%	0	0
8	Dewan Steel	5,58,64,119	69,83,015	12.50%	0	0
9	Vijay Steel Traders	2,46,32,822	30,79,103	12.50%	30,79,103	12.50%
10	Global Steel	2,33,20,319	29,15,040	12.50%	0	0
11	BIUM Industries ltd	4,61,70,914	4,61,70,914	100%	57,71,364	12.50%
	Total	**126,29,10,154**	**101,03,67,615**		**9,94,06,576**	

238. The Assessee is in appeal claiming deletion of the disallowance confirmed by CIT(A) of Rs.9,94,06,576/- whereas the department is in appeal in respect of relief given by Ld. CIT(A) by restricting disallowance at 12.50% in respect of disallowance made at 100% by AO and giving full relief in respect of certain parties in respect of the parties tabulated above.

239. In respect of the parties at sr. nos. 1 to 4, 9 and 11 i.e. Jineshwar Enterprises, Parshva Steel Corporation, Sambhavnath Corporation, Abhinandan Enterprises, Vijay Steel Traders and BIUM Industries Ltd., we have already deleted the disallowance of purchases made from these parties in the order passed for the earlier years i.e. AY 2019-20, AY 2020-21 and AY 2021-22 and since the facts of the case remains same, the disallowance of purchases made in this year in respect of these parties are hereby deleted.

240. In respect of party Hella Infra Market P. Ltd., the Assessee has submitted that this party is engaged in the business of trading in steel and is well known e-commerce platform (https://infra.market) and the turnover of the company for AY 2022-23 was more than Rs.3,239 crores and net profit earned of Rs.78.81 cr. The Assessee has purchased more than Rs.140 crores from this party, however the AO has considered only Rs.20.31 cr. of purchases as alleged bogus purchase merely based on the vehicle movement tracking software. No material or evidence is found in course of search action proving that the purchase made from this party is bogus. The Assessee has placed reliance on the detailed submission made before CIT(A) in respect of this party.

241. With respect to the balance parties i.e. Sanket Steels, Metarolls Ispat P. Ltd., Dewan Steels and Global Steel Company, the Assessee argued that these companies are engaged in the business of steel and have shown turnover and net profit. The AO

has made the disallowance merely on the basis of vehicle tracking software and no incriminating material or evidence was found in the course of search action and thus, there was no necessity for making ad hoc estimated disallowance @12.50% and the Ld. CIT(A) rightly deleted the entire disallowance made by the AO in respect of these parties.

242. The Ld. DR on the other hands has made the same arguments as made in earlier years and relied upon the order of the AO and contended that the order of the AO be restored.

243. We have considered the facts of the case in respect of all these parties whose disallowance has been made in the impugned AY 2022-23. We find that the reasoning of the AO for making disallowance in respect of these 5 parties is same as that in the earlier years i.e. movement of goods not proved as per vehicle tracking software and statement of Shri Deepak Ashok Kadam. We have already given finding in respect of the same in the earlier years in respect of parties such as Vijay Steel Traders, BIUM Industries Ltd., etc. and the said finding squarely applies to the facts in respect of these 5 parties. Additionally, in respect of all these 5 parties, no incriminating material or evidence is found in the course of search action and further these parties have shown huge turnover and net profits and this fact is not disputed by the AO. In fact, in respect of Hella Infra Market P. Ltd., the said company is e-commerce platform and has shown huge turnover and net profit and hence, cannot be held to be bogus company. The Ld. CIT(A) in para 93.3 and 93.4 at pages

200 to 201 has given complete relief and deleted entire amount of disallowance made by the AO in respect of these 5 parties. We concur with the decision of the Ld. CIT(A) in respect of these 5 parties and confirm the order of the Ld. CIT(A) in respect of these 5 parties.

244. gIn view of the above, we summarise the finding given hereinabove in the table as under:

Sr. No	Name of the Party	Amount	Disallowance by AO	% Disallowed	Disallowance confirmed by this order as held above	Confirmed by this order %
1	Jineshwar Enterprises	39,15,16,560	39,15,16,560	100%	0	0
2	Parshva Steel Corporation	9,54,50,138	9,54,50,138	100%	0	0
3	Sambhavnath Corporation	10,89,42,039	10,89,42,039	100%	0	0
4	Abhinandan Enterprises	12,85,40,132	12,85,40,132	100%	0	0
5	Sanket Steel	4,70,46,084	58,80,761	12.50%	0	0
6	Hella Infra Market P. Ltd.	20,31,22,043	20,31,22,043	100%	0	0
7	Metarolls Ispat	13,83,05,316	1,72,88,165	12.50%	0	0
8	Dewan Steel	5,58,64,119	69,83,015	12.50%	0	0
9	Vijay Steel Traders	2,46,32,822	30,79,103	12.50%	0	0
10	Global Steel	2,33,20,319	29,15,040	12.50%	0	0
11	BIUM Industries ltd	4,61,70,914	4,61,70,914	100%	0	0
	Total	**126,29,10,154**	**101,03,67,615**		**0**	

245. Thus, the disallowance made in respect of alleged bogus purchases by the AO of Rs.101,03,67,615/- u/s.37(1) of the Act and reduced by Ld. CIT(A) to Rs.9,94,06,576/- is deleted in entirety as per the this order.

237. In view of the same the appeal of the Assessee is allowed on this ground whereas that of the Department is ***dismissed***.

238. Grounds of appeal no.2 of Assessee appeal and grounds of appeal no.12 of the department appeal are against the part relief given by CIT(A) in respect of issue of alleged bogus salary and professional fees. We have dealt with this issue in detail in the order passed for AY 2017-18 and facts are same for this year, hence, following the order passed for AY 2017-18, the appeal of the assessee on this issue is allowed and that of the department is ***dismissed***.

239. Grounds of appeal nos.3 & 5 of the Assessee appeal and grounds of appeal nos.1 to 6 of the department appeal are against the part relief given by CIT(A) in respect of the issue of scrap of sale in cash and scrap of sale from piling work. We have dealt with this issue in detail in the order passed for AY 2016-17 and facts are same in this year, hence following the order for AY 2016-17, the appeal of the Assessee on this issue is partly allowed and that of the department is ***dismissed***.

240. Grounds of appeal no.4 of Assessee appeal and grounds of appeal nos.7 to 11 of the department appeal are against the part relief given by CIT(A) in respect of the issue of out of books cash expenses (murrum expenses). We have dealt with this issue in detail in the order passed for AY 2016-17 and facts are same in this year, hence, following the order passed for AY 2016-17, the appeal of the Assessee on this issue is allowed and that of the department is ***dismissed***.

241. Grounds of appeal no.6 of the Assessee appeal is in respect of disallowance of PF/ESIC u/s.36(1)(va) of the Act. During the course of hearing, the Assessee filed revised grounds of appeal on this issue vide letter dated 13.01.2025 filed with the registry on 17.01.2025. The revised grounds of appeal in lieu of original grounds of appeal no.6is reproduced as under:

> *"On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) [CIT(A)] erred in confirming the disallowance of Rs. 27,61,353/- of business promotion expenses under section 37 of the Income-tax Act, 1961."*

242. Although the Assessee filed revised grounds of appeal in lieu of the grounds of appeal no.6 filed originally, however, during the course of appeal hearing, the Assessee did not press this ground of appeal and hence, the same is ***dismissed***.

243. Grounds of appeal nos.15 to 19 of the department appeal is against the relief given by CIT(A) in respect of the issue of unexplained money u/s.69A of the Act. As the CIT(A) has given full relief in this year, the Assessee is not in appeal. We have already dealt with this issue in the order passed for AY 2019-20 and dealt with the issue arising for this year also. Hence, as per the order passed for AY 2019-20, the department appeal on this issue for this year is ***dismissed***.

244. In view of the above, for AY 2022-23, the Appeal of the Assessee is partly allowed and that of the department is ***dismissed***.

Order pronounced in the open court on 03.07.2025.

Sd/- Sd/-

(PRABHASH SHANKAR) (SANDEEP GOSAIN)
(ACCOUNTANT MEMER) JUDICIAL MEMBER

Mumbai, Dated 03/07/2025
KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai