आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 403/Chd/ 2025
निर्धारण वर्ष / Assessment Year : 2022-23

Jamna Dass Nikkamal Jain Saraf Private Ltd. 455, The Mall Road Ludhiana Punjab-141001	बनाम	The DCIT Central Circle-1 Ludhiana
स्थायी लेखा सं./PAN NO: AAACJ4166F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA No. 628/Chd/ 2025
निर्धारण वर्ष / Assessment Year : 2022-23

The DCIT Central Circle-1 Ludhiana	बनाम	Jamna Dass Nikkamal Jain Saraf Private Ltd. 455, The Mall Road Ludhiana Punjab-141001
स्थायी लेखा सं./PAN NO: AAACJ4166F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri Manav Bansal, CIT, DR

सुनवाई की तारीख/Date of Hearing : 16/10/2025
उदघोषणा की तारीख/Date of Pronouncement : 04/11/2025

आदेश/Order

PER LALIET KUMAR, J.M:

Both these appeals one filed by the assessee and the other by the Revenue arise from the common order of the Ld. CIT(A)-5, Ludhiana dated 20-01-2025 for A.Y. 2022-23. Since the issues are common and interconnected, they are heard together and disposed of by this consolidated order.

2. Assessee has raised the following grounds in its appeal:

1. That the Ld.CIT(A) has erred in confirming the addition of Rs. 1,83,15,900/- as per sub-para (vii) of para 5.2.3, at page 25 of the order.

2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 1,21,18,390/- as per sub-para (iv) of para 5.3.3, at page 27 of the order and has also erred in applying the provisions of section 69A r.w.s.115BBE of the Income Tax Act, 1961.

3. That the Ld. CIT(A) has erred in dismissing the ground of appeal with regard to addition of Rs. 7,54,923/- as per para 5.4, page 27 of the order and has also erred in confirming the application of provisions of section 115BBE of the Income Tax Act, 1961.

4. That the Ld. CIT(A) has erred in confirming the addition of Rs. 12,25,593/- as per para 5.5.1, page 29 of the order and has also erred in confirming the application of provisions of section 115BBE of the Income Tax Act, 1961.

5. That the Ld. CIT(A) has erred in confirming the addition of Rs. 25 Lacs as unexplained cash loan given to Sh. Modi Ji and alleged consequent interest of Rs. 97,972/- as per page 34 of the order and also erred in applying the provisions of section 115BBE of the Income Tax Act, 1961.

6. That the Ld. CIT(A) has erred in confirming the addition of Rs.1,85,90,274/- on account of low gross profit rate as per page 38 of the order.

7 That the confirmation of additions by the Ld. CIT(A) are not in order since the books of accounts of the assessee had not rejected u/s 145(3) and, as such, additions as confirmed is against the facts and circumstances of the case.

8. That the Ld. CIT(A) has erred in rejecting the ground of appeal with regard to the approval granted by the superior authority u/s 151 and not accepting the contention of the assessee that the approval has been given in a mechanical manner.

2.1 Besides these grounds, the assessee also raised additional grounds; however, we are reproducing only those pressed before us during the course of hearing:

"3. That the assessment framed under section 143(3) is bad in law, as it pertains to a year immediately preceding the search year where the mandatory approval as prescribed under section 148B has not been followed, and in absence of such compliance, the assessment is vitiated and liable to be annulled."

"4. That the approval sought by the Assessing Officer for the order u/s 143(3) from the Addl. CIT is non-est and bad in law; the granting of approval of the order u/s 143(3) by the Addl. CIT is null and void; hence, assessment framed u/s 143(3) vide order dated 24.08.2023 deserves to be quashed."

3. Revenue has raised the following grounds in its appeal:

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified to restrict the addition from Rs.36,75,23,049/- to Rs.1,83,15,900/- on account of addition made by the A.O. being unexplained opening balances found from the seized material and the assessee failed to reconcile the same with its books of accounts, without appreciating the facts of the case?

2. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified to restrict the addition of Rs.7,42,53,247/- to Rs.1,85,90,274/-made by the AO on account of enhanced GP rate on the basis of specific findings given by the AO during the course of assessment proceedings and its purported findings in this behalf have been arrived at by ignoring the relevant material and/or by taking into consideration irrelevant and/or extraneous material and/or are otherwise arbitrary un reasonable and perverse ?

3. Whether upon facts and circumstances of the case, the CIT(A) was justified to reduce the G.P. rate from 20% to 14.12% on the disclosed turnover of the assessee, by ignoring the complete facts of the case and taking weighted average GP rate of AY 2021-22, AY 2022-23 and AY 2023-24 without any basis?

4. Whether upon facts and circumstances of the case, the CIT(A) was justify to allow the telescoping benefit on the partly addition confirmed on account of low G.P. with the earlier addition confirmed in this case, whereas earlier addition was made on the basis of seized material, without considering the facts of the case?

4. Briefly the facts of the case are that a search & seizure operation under section 132 was conducted on 24-11-2022 in the case of the Jamna Dass Nikkamal Jain group. The present assessee, a private limited company engaged in gold and jewellery trading, filed its return of income on 04-11-2022. The case was centralised on 01-02-2023 and assessed u/s 143(3) on 31-03-2024 making total additions of Rs. 10.71 crore approximately.

5. The Ld. CIT(A) partly sustained the additions and granted partial relief. Both sides are in appeal—Revenue challenging the relief and the assessee challenging the sustained additions.

6. Additional Grounds No. 3 & 4 – Jurisdictional Issue

6.1 It was submitted by the learned Authorised Representative that the first two additional grounds were not being pressed. With respect to Ground Nos. 3 and 4, it was contended that the assessment framed under section 143(3) of the Income-tax Act, 1961, was completed without fulfilling the mandatory conditions prescribed under section 148 read with Explanation 2(iv) thereof.

6.2 It was further submitted that the mandatory approval as required under section 148 of the Act had not been obtained from the competent authority, even though the year under consideration was immediately preceding the search year. It was also argued that the approval obtained by the Assessing Officer from the Addl. CIT in respect of the order passed u/s

143(3) was non-est and invalid in law, as the approval ought to have been obtained under section 148B of the Act.in the light of above it was submitted that the additional grounds raised by the assessee be admitted . He further relied on NTPC v. CIT (229 ITR 383 SC) to urge that the additional grounds, being purely legal, deserve admission.

7. Per contra Ld. DR objected to the admissions of the additional grounds.

8. We have considered the rival submissions and perused the material available on record. The assessee has moved additional grounds challenging the validity of the assessment on the ground that the mandatory procedure prescribed under section 148 read with Explanation 2(iv) of the Income-tax Act, 1961, was not followed and further that no approval as contemplated under the statutory framework was obtained from the competent authority. It has been contended that since the year under consideration immediately precedes the search year, the statutory safeguards mandated under the Act assume critical importance and any deviation therefrom renders the assessment void ab initio.

8.1 We find merit in the submissions of the learned Authorised Representative that the additional grounds raised are purely legal in nature and go to the root of the matter, involving the very jurisdiction of the Assessing Officer to assume assessment proceedings. The Hon'ble Supreme Court in **NTPC Ltd. v. CIT (229 ITR 383)** has held that a pure question of law, which does not require investigation into fresh facts and which goes to the root of the matter, can be raised at any stage of the proceedings, including before the Tribunal. The additional grounds raised by the assessee fall squarely within the ratio laid down by the Hon'ble Apex Court.

9. Further, the issue pertains to the validity of the assessment proceedings and the assumption of jurisdiction by the Assessing Officer, which strikes at the foundation of the assessment order. Once such foundational and jurisdictional issues are raised, the same deserve to be adjudicated before proceeding to decide the appeal on merits.

9.1 In view of the above legal position and respectfully following the binding decision of the Hon'ble Supreme Court in the case of NTPC Ltd. (supra), we are of the considered view that the additional grounds raised by the assessee merit admission. Accordingly, the additional grounds are admitted for adjudication.

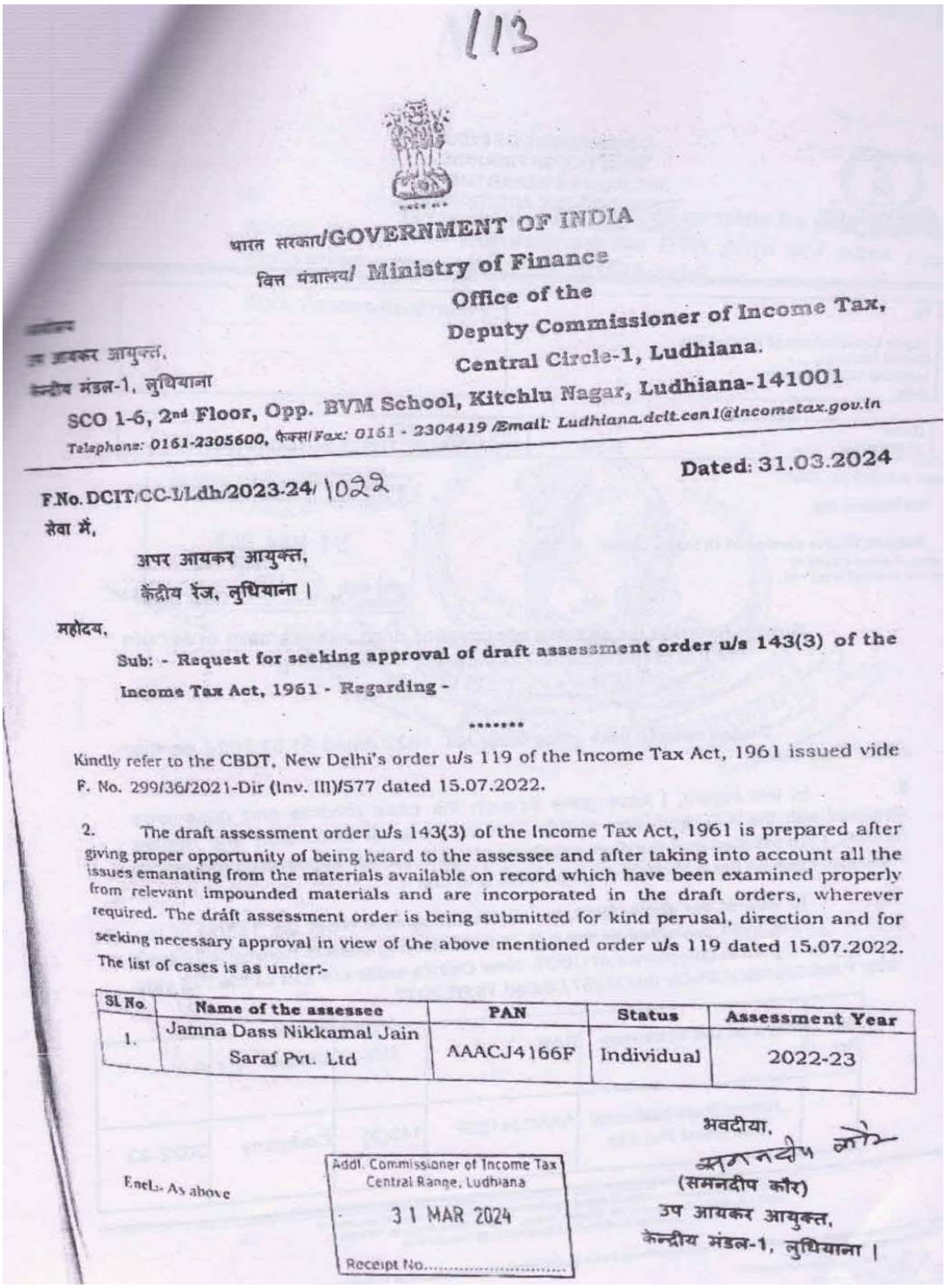
10. The brief sequence of events relevant to this ground was submitted as follows: the return of income had been filed on 04.11.2022; search operations were carried out on 24.11.2022; the PAN was centralized on 01.02.2023; and notice under section 143(2) was subsequently issued on 21.06.2023. It was thus emphasized that the notice u/s 143(2) had been issued after centralization, and therefore, the Assessing Officer was fully equipped with the information and material seized during the search.

11. Ld.AR relied on Explanation 2 to section 148 of the Act, particularly clause (iv), to submit that where search action is conducted, the Assessing Officer shall be deemed to have information suggesting escapement of income for the three assessment years immediately preceding the year relevant to the year of search, and assessments relating to such period are mandatorily required to be framed under section 148 of the Act.

11.1 Attention of the Bench was invited by Ld.AR to the notice issued u/s 143(2) dated 21.06.2023, evidencing that the said notice was issued merely for scrutiny of the return and not under the reassessment mechanism contemplated by section 148. Reference was also drawn to section 148B, which mandates prior approval for assessments pertaining to search cases, and it was submitted that no such statutory approval under section 148B had been obtained, rendering the assessment void.

11.2 It was further pointed out by the Ld.AR that the approval sought by the Assessing Officer vide letter dated 31.3.2024 was only in respect of a draft assessment order u/s 143(3), and that the approval granted by the Addl. CIT on 31.03.2024 was also in relation to section 143(3) only. It was contended that the statutory requirement of approval under section 148B had not been

complied with and the approval obtained under section 143(3) could not cure the defect. Copies of relevant documents placed in the Paper Book at page 113 and 114-115 are as under:



113

भारत सरकार/GOVERNMENT OF INDIA
वित्त मंत्रालय/ Ministry of Finance
Office of the
Deputy Commissioner of Income Tax,
Central Circle-1, Ludhiana.
SCO 1-6, 2nd Floor, Opp. BVM School, Kitchlu Nagar, Ludhiana-141001
Telephone: 0161-2305600, फैक्स/Fax: 0161 - 2304419 /Email: Ludhiana.dcit.cen1@incometax.gov.in

उप आयकर आयुक्त,
केन्द्रीय मंडल-1, लुधियाना

F.No. DCIT/CC-1/Ldh/2023-24/1022 Dated: 31.03.2024

सेवा में,

अपर आयकर आयुक्त,
केंद्रीय रेंज, लुधियाना।

महोदय,

Sub: - Request for seeking approval of draft assessment order u/s 143(3) of the Income Tax Act, 1961 - Regarding -

.....

Kindly refer to the CBDT, New Delhi's order u/s 119 of the Income Tax Act, 1961 issued vide F. No. 299/36/2021-Dir (Inv. III)/577 dated 15.07.2022.

2. The draft assessment order u/s 143(3) of the Income Tax Act, 1961 is prepared after giving proper opportunity of being heard to the assessee and after taking into account all the issues emanating from the materials available on record which have been examined properly from relevant impounded materials and are incorporated in the draft orders, wherever required. The draft assessment order is being submitted for kind perusal, direction and for seeking necessary approval in view of the above mentioned order u/s 119 dated 15.07.2022. The list of cases is as under:-

Sl. No.	Name of the assessee	PAN	Status	Assessment Year
1.	Jamna Dass Nikkamal Jain Saraf Pvt. Ltd	AAACJ4166F	Individual	2022-23

भवदीया,

(समनदीप कौर)
उप आयकर आयुक्त,
केन्द्रीय मंडल-1, लुधियाना।

Encls.- As above

Addl. Commissioner of Income Tax
Central Range, Ludhiana
31 MAR 2024
Receipt No.....

114

31/3

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ADDITIONAL
COMMISSIONER OF INCOME TAX
ADDL CIT,CENTRAL
RANGE,LUDHIAN

To, Deputy Commissioner of Income Tax Central Circle-1, , Ludhiana 141001,Punjab India	

Dated: 31/03/2024	DIN & Letter No : ITBA/COM/F/17/2023-24/1063791034(1)

कार्यालय उप आयकर आयुक्त (केन्द्रीय) सर्कल-1
O/o Deputy Commissioner of Income Tax (Central) Circle-1
31 MAR 2024
प्राप्ति संख्या 1165
Receipt No.

Sir/ Madam/ M/s.

Subject: Online service of Orders - Letter

Sub: Request for seeking approval of draft assessment order u/s 143(3) of the Income Tax Act, 1961 -Regarding-

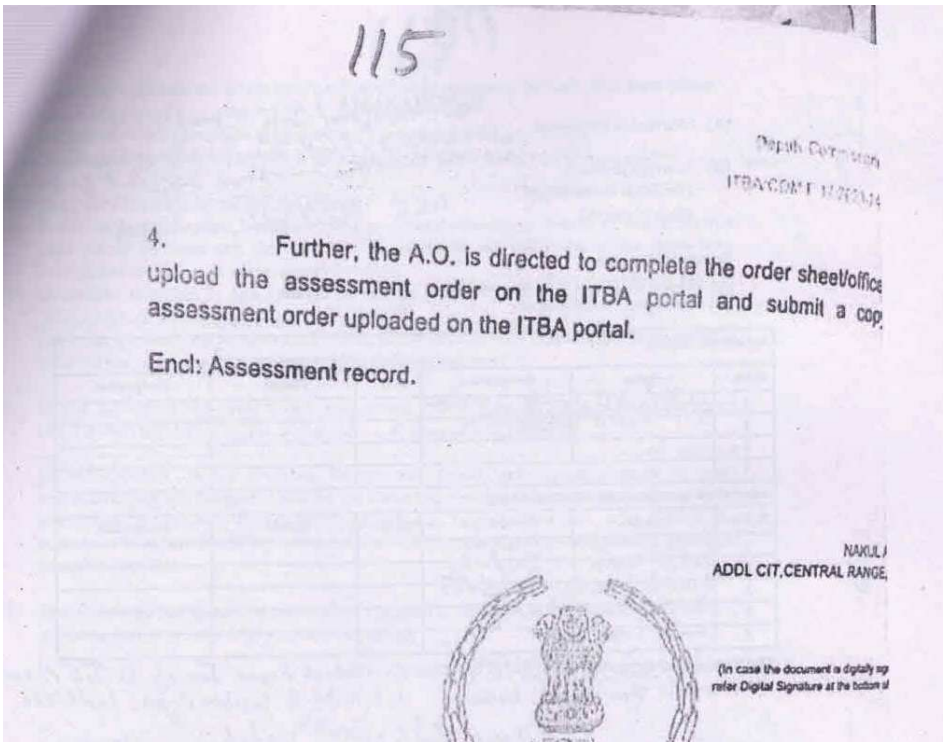
Please refer to your office letter No. 1022 dated 31.03.2024 on the subject cited above.

2. In this regard, I have gone through the case records and case was discussed with the A.O. from time to time. On the basis of discussion and replies received, I am satisfied that the draft assessment order put for approval in the below mentioned case for the A.Y. 2022-23 is justified and fair.

3. In view of the above facts, the draft assessment order u/s 143(3) of the Income Tax Act, 1961 submitted by the A.O. in the following case is hereby approved by the undersigned in compliance of CBDT, New Delhi's order u/s 119 of the Act vide letter F.No. 299/36/2021-Dir (Inv.III)/577 dated 15.07.2022.

Sr. No.	Name of the assessee	PAN	U/s	Status	A.Y.
1.	Jamna Dass Nikkamal Jain Saraf Pvt. Ltd.	AAACJ4166F	143(3)	Company	2022-23

Note: If digitally signed, the date of digital signature may be taken as date of document
SCO 14, 3rd Floor, Opp. BVM, Kitchlu Nagar, LUDHIANA
Email: LUDHIANA.ADDLCIT



115

4. Further, the A.O. is directed to complete the order sheet/office upload the assessment order on the ITBA portal and submit a copy assessment order uploaded on the ITBA portal.

Encl: Assessment record.

NAKUL
ADDL CIT,CENTRAL RANGE,

11.3 Ld.AR strongly relied upon the decision of the Hon'ble ITAT, Chandigarh Bench in the case of *Homelife Buildcon Pvt. Ltd.*, ITA No. 880/Chd/2024 & Others dated 17.07.2025, particularly paragraphs 19 to 34, wherein it had been held that in identical circumstances, the assessment for the year falling within the three years preceding the search year was required to be framed u/s 148 with mandatory approval u/s 148B, and any assessment framed u/s 143(3) in such circumstances was liable to be quashed.

11.4 In conclusion, it was submitted that since the year under appeal formed part of the three assessment years immediately preceding the year in which search was conducted, the assessment ought to have been framed under section 148 with approval u/s 148B. The framing of the assessment u/s 143(3) and approval taken only for the purposes of section 143(3) was thus asserted to be fundamentally defective, non-compliant with statutory mandate, and consequently void ab initio. On these grounds, following the ratio in *Homelife Buildcon Pvt. Ltd.*, it was prayed that the impugned assessment be quashed.

12. The Ld. CIT-DR Shri Manav Bansal opposed the contention, stating that the return for A.Y. 2022-23 was filed prior to the date of search, and validly selected for scrutiny under CASS. The AO was competent to complete the assessment u/s 143(3).

12.1 He contended that section 148B applies only to "re-assessment" and not to "regular assessments." The AO's approval from Addl. CIT, being in line with the CBDT Instruction No. 7/2022 dated 15.07.2022, fulfils the supervisory requirement. The DR also submitted that *Homelife Buildcon* is distinguishable, as the AO therein relied on third-party search data, whereas the present case is based on assessee's own seized material.

13. We have carefully considered the rival submissions and perused the record. It is undisputed that search u/s 132 was conducted on 24.11.2022, relevant to A.Y. 2023-24. Thus, A.Y. 2022-23 is one of the three preceding years under Explanation 2(iv) to section 148. The Explanation reads that if a search is initiated, ***"the Assessing Officer shall be deemed to have information suggesting escapement of income for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated."***

13.1 Therefore, the only permissible statutory course was to issue notice u/s 148 and obtain prior approval u/s 148B before passing assessment order.

13.2 As the Assessing Officer completed the assessment under section 143(3) of the Act without issuing the notice under section 148 of the Act. Therefore, the **question before us is whether the assessment proceedings initiated under section 143(3) of the Act can be validly continued and completed after a search under** section 132 has been conducted in the case of the same assessee, without following the procedure prescribed under section 148 (Explanation 2) of the Act.

13.3 In our considered opinion, the answer lies in the scheme of the Act itself. Section 143 provides the general framework for regular assessment, whereas sections 147–148 (post-2021 regime) deal with reassessment based

on information suggesting escapement of income, including that unearthed during a search.

13.4 A plain reading of section 143(2) shows that such notice can be issued only when a return of income is furnished under section 139 or in response to a notice under section 142(1). It empowers the Assessing Officer to scrutinize that return if he considers that income has been understated or tax underpaid. However, when a search under section 132 takes place and materials are found indicating possible escapement of income, the statute envisages a different route for carrying out assessment or reassessment under section 147 read with section 148, which is the special mechanism for bringing to tax the income discovered in consequence of a search.

13.5 Although section 148 (inserted w.e.f. 01.04.2021) does not begin with a non-obstante clause similar to the erstwhile section 153A, its context and Explanation 2 make it clear that where a search is initiated, the jurisdiction thereafter must flow through this special channel, subject to prior satisfaction and approval of the Principal Commissioner or Commissioner. The legislative intent is to ensure that when a search is carried out, the assessment is framed under the specific provisions meant for such cases and not under the general provision of section 143(3). Further we may mention that no notice under section 143(2) could have been issued after 3 months from the ***from the end of the financial year in which the return is furnished***. In the present case the original return of income was filled on 4/11/2022 for the assessment year 2022-23 and 143 (2) was issued on 21/6/2023 , therefore also the assessment was framed under 143(3) of the Act is not sustainable. In other words the time required for issuing the notice under 143(2) had already expired, and the revnue can not be allowed to issued issue 143(2) on 21.6.2023 after the search was carried out and notice had been issued on 21.6.2023 and assessment was framed under 143(3) of the Act. The relevant portion of section 143(3) reads as under:-

> *143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if considers it necessary*

or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be issued after the expiry of three months from the end of the financial year in which the return is furnished.

13.6 This position finds substantial support from the ratio of various decisions of Hon'ble High Court and Hon'ble Supreme Court. The Courts unanimously held that once a search has been conducted and proceedings are triggered under section 153A, the Assessing Officer cannot continue parallel proceedings under section 143(3) or section 147 for the same assessment year, because the entire assessment for that year stands merged in the search assessment. The Courts emphasized that *the existence of a special procedure for assessment consequent to a search is a complete code in itself*; therefore, ordinary assessments abate and cannot coexist with the search-based assessment.

13.7 Drawing this analogy to the current regime, it is evident that when a search takes place and information is unearthed suggesting escapement of income, the Assessing Officer must act under section 148 (which now performs the role formerly assigned to section 153A) rather than continuing with a pending section 143(3) proceeding. The legislative intent remains the same — to prevent multiplicity of proceedings and ensure that only one comprehensive order is passed, factoring in both the pre-search and post-search materials.

13.8 The rationale is further reinforced by the well-settled principle of **generalia specialibus non derogant** — the special provision overrides the general. Section 148 (as a special provision triggered by search information) must prevail over section 143 (the general provision for regular scrutiny). Allowing the Assessing Officer to continue and conclude proceedings under section 143(3) after a search would defeat this legislative scheme and render

the safeguards, such as prior approval of the Principal Commissioner, redundant.

13.9 Accordingly, we hold that once a search is initiated under section 132 and material is found relating to the assessee, the pending assessment under section 143(3) cannot validly continue, as the time for issuing the 143(2) in response to original return of income had already expired, therefore the Assessing Officer must necessarily proceed in accordance with the special provisions contained in section 148 of the Act.

13.10 We also draw the strength from the reasoning given by the Coordinate Bench in Homelife Buildcon Pvt. Ltd. (supra), faced with identical facts (search on 16.11.2021 and assessment u/s 143(3) for A.Y. 2021-22), held that:

> *22. The core question before the Bench is whether, in the facts and circumstances of the case, the assessment ought to have been framed under section 143(3) or under section 147 of the Income-tax Act, 1961. From the plain reading of the statutory provisions and in light of Explanation 2 to section 148, it becomes abundantly clear that the legislature has widened the scope of reassessment, particularly through the Finance Act, 2021, which introduced significant changes to the reassessment regime. These amendments explicitly include instances involving third-party search material and make it incumbent upon the Assessing Officer (AO) to follow the procedure under section 148, including obtaining prior approval from the Principal Commissioner of Income Tax (PCIT).*
>
> *23. In the present case, the AO proceeded to frame the assessment under section 143(3) despite relying heavily on material found during searches conducted on third parties. The AO, instead of complying with the jurisdictional preconditions laid down under the reassessment provisions, proceeded without recording the mandatory satisfaction and without obtaining prior sanction from the competent authority. This conduct not only, violates the express mandate of law, but also renders the assessment a jurisdictional error. The AO has, in fact, gone a step further by bypassing the legal safeguards embedded in section 147, thereby vitiating the assessment proceedings ab initio*
>
> *24. Furthermore, a plain reading of the Finance Act, 2021 and the Explanatory Memorandum to the Finance Bill clearly indicates that the legislative intent was to bring all searches conducted on 20 or after 1st April 2021 within the ambit of the new reassessment regime under section 147 of the Income-tax Act, 1961. This new regime was introduced through significant amendments to section 147 and section 148, along with the insertion of Explanations 1 and 2, and the concept of "information suggesting escapement of income" was explicitly defined. From the reading of Explanation 2 to Section 147, it is evident that in cases where a search is initiated on or after 1st April 2021, the Assessing Officer shall be deemed to have information, which suggests that income chargeable to tax has escaped assessment for three assessment years immediately preceding the assessment year relevant to the previous*

year, in which, the search is initiated, provided that books of account, documents, assets, bullion, jewellery, or other valuable articles are seized or requisitioned in the course of the search. This deeming provision is not limited only to the person searched, but also extends to "other persons", provided that due procedure under the law-specifically, the recording of satisfaction that such seized material belongs to the assessee and obtaining prior approval from the PCIT-is followed.

25. In the present case, where the AO has admittedly relied upon material seized during searches conducted on other persons, i.e., Sh. Ravi Kapoor and Sh. Ajay Kumar Prabhakar, it was mandatory for the AO to invoke the provisions of section 147 and not to bypass the statutory framework by proceeding under section 143(3). Granting such unfettered powers to the AO to rely on third-party material without adhering to the safeguards under section 147 would defeat the very purpose of the amendment and open the floodgates to arbitrary assessments.

26. The relevant extract Memorandum explaining the finance bill is reproduced as under:-

'(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

(VI) Further, in search, survey or requisition cases initiated or made or conducted, on or after Ist April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted."

27. The notice issued under section 143(2) was also produced by the AR. Upon perusal of the said notice, it is evident that the assessment under section 143(3) was initiated solely for the purpose of verifying the return of income filed by the assessee. In such circumstances, the importing and reliance upon material seized from third-party searches, namely, those conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, goes beyond the jurisdiction conferred under section 143(3). Particularly, where the applicable law— Explanation 2 to section 148 (as amended by the Finance Act, 2021) mandates prior approval from the Principal Commissioner of Income Tax (PCIT) before initiating reassessment proceedings on the basis of such material, the failure to comply with that requirement renders the assessment legally untenable.28. In the present case, the AO did not issue a notice under section 148, nor did he follow the due process of law under the new reassessment framework, including recording of satisfaction and obtaining prior sanction from the PCIT. Therefore, the assessment framed under section 143(3), because of being based on third-party material without adhering to statutory safeguards, is bad in law. The AO was only empowered to verify the return of income and restrict his scope of inquiry accordingly; he was not permitted to expand the assessment by importing and relying upon third-party seized material without following the mandatory procedure laid down under the law.

29. Furthermore, there exists a mandatory statutory requirement that in all cases involving search-related assessments falling within the assessment year, immediately preceding the year of the search, the prior approval of the Joint Commissioner is required under section 148B of the Income-tax Act, 1961. In the present case, the Assessing Officer (AO) has proceeded without obtaining

such approval, which is a clear violation of the procedural safeguards envisaged under the law and, as such, vitiates the assessment proceedings. In the present case, approval has been granted for assessment framed u/s 143(3) only.

The relevant provision of section 148B reads as under:

Prior approval for assessment, reassessment or recompilation in certain cass.

148B. No order of assessment or reassessment or recompilation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iti) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

30. A comparison of the requirement of approval under section 153D and section 148B is drawn, from which it is evident that approval under section 153D was earlier required only in cases where assessments were completed under section 153A/153C and also for search year. However, under the amended provisions, approval under section 148B is now required in all cases where proceedings are initiated pursuant to a search, requisition, or survey, or where asset/material/documents found during such search pertain to or relate to another person. In such cases, the Assessing Officer must take the approval under section 148B from the specified higher authority.

Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)
Applicable Period	Search initiated between 01.06.2003 to 31.03.2021	Search/survey initiated on or after 01.04.2021 but before 01.09.24
Context	Search assessment under Section 153A/153C	All cases where assessment/reassessment is based in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148
Triggering Event	Search or requisition on the assessee under Sections 132 /132A or material is used against assessee from third party search	1. Search/requisition 2. Survey (except under 133A(2A)) on assessee 3. Search/requisition on another person, but assets/documents relate to assessee
Purpose of Approval	Supervisory check in search assessments to ensure fairness and oversight	Prevent misuse of powers in reassessment based on search/survey-related information under new regime
Who Gives Approval	Joint Commissioner (mandatory)	Any of: Joint Commissioner / Commissioner / Joint Director / Director

Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)

Deeming Presumption	Not expressly stated	Explanation 2 creates a legal presumption: AO is deemed to have information suggesting income has escaped assessment in specified cases

31. *This requirement has also been explicitly discussed in the Explanatory Memorandum to the Finance Bill, 2022, which emphasizes the need to protect taxpayer rights by ensuring that no reassessment is carried out without proper sanction and due process. It is further seen that the Joint Commissioner has not even been supplied seized material relied upon as seized from third-party in the present assessment. There exists a prescribed procedure under which such seized material (including material found from third-party premises) is to be forwarded to the approving authority at least 30 days in advance of granting approval. This procedural safeguard is crucial to prevent arbitrary and unregulated use of third-party material.*

32. *In the present case, there is no evidence to demonstrate that the prescribed procedure was followed, or that the Joint Commissioner was apprised of the seized material by forwarding copies of the documents found from the third party prior to framing the assessment.* ***The complete failure to comply with the mandatory provisions of section 148B renders the reassessment not only. procedurally defective but also without jurisdiction.***

33. *Even we find while framing the assessment under section 143(3), the Assessing Officer (AO) has, on the last page of the assessment order, referred to an approval obtained from the supervisory authority. However, a bare perusal of this approval shows that it was obtained in reference to F. No. 299/36/2020/1DAR/INV3(3)/577 dated 15.07.2022, i.e., in accordance with the CBDT Circular dated 15th July 2022, and not under the mandatory provisions of section 148B of the Income-tax Act, 1961.*

At the outset, it is important to note that the approval so obtained does not mention or consider any of the seized materials sourced from the third-party. searches conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, despite the AO having heavily. relied on those materials in framing the additions. The approval merely states that the appraisal report was considered, without any reference to the original documents seized or to the statutory procedure outlined under section 148B.

It is pertinent to refer to the Manual of Office Procedure in February 2003, which lays down a mandatory protocol: that in all search cases, especially where material pertains to persons other than the one searched, such material is to be forwarded in original to the approving authority, and a draft order is required to be submitted for approval at least 30 days in advance. In the present case, the approval letter was issued by the DCIT only on 22nd August 2023, which clearly contravenes this procedural requirement. ***This procedural lapse is further compounded by the judgment of the Hon'ble Supreme Court in Serajuddin and Co. case, [2024] 163 taxmann.com 118 (SC) wherein it was held that in search cases, strict adherence to the approval protocol as laid down in the departmental Manual of Office Procedure in February 2003 and law is essential to uphold the validity of the assessment.***

34. *Thus, from the above, it is quite evident from the approval granted by the Addl.CIT(Central), there is no mention or consideration of the seized material sourced from the third party, namely Sh. Ajay Prabhakar and Sh. Ravi Kapoor, though, we find that in the assessment order and in the order of CIT(A), both the authorities have heavily relied upon on such seized material and it only states that the appraisal report have been considered without any reference to any original documents seized for statutory procedure outlined*

u/s 148. Thus, in view of above, the assessment as framed by Assessing Officer vide order dated 24.08.2023 is quashed."

14. With respect to Additional Ground No. 4 the Ld. AR submitted that the assessment has arisen from a search action wherein voluminous incriminating documents were seized. The panchnama and inventory of loose papers and diaries seized from the business premises are placed in the Paper Book at pages 116 and 121-122, comprising **1,596 pages**. Further seized documents were obtained from the residence of the director, Shri Manak Chand.

15. It was submitted that the Ld. DCIT forwarded the draft assessment order to the Ld. Addl. CIT on **31.03.2024** seeking approval and on the very same date, approval was granted. It was contended that there is no material on record to establish that the seized material was forwarded to the Ld. Addl. CIT for his consideration while according approval.

16. Considering the volume of seized documents running into 1,596 pages, the Ld. AR argued that it was **humanly impossible** for the Ld. Addl. CIT to have examined the entire record and apply his mind within the same day. The approval was thus submitted to be **mechanical, perfunctory, and without jurisdiction**, rendering the assessment order void ab initio. Reliance was placed on:

- **AB Alcobev Pvt. Ltd.**, ITA Nos. 356, 357, 358 & 360/Chd/2024, wherein the Chandigarh Bench held that absence of proper satisfaction and application of mind while granting approval vitiates the assessment.
- **Pushpanjali Construction Pvt. Ltd.**, ITA No. 1001/Del/2025 (Delhi ITAT), wherein similar approval granted mechanically on the same day was held to be invalid, and the assessment was quashed.

16.1 Thus, it was prayed that the assessment be quashed for want of valid approval.

17. Per contra, the Ld. DR submitted that no formal guidelines / formula has been provided for according the approval and therefore the approval granted by the authorities is in accordance with law.

18. We have heard the rival contentions and perused the material available on record. It is an undisputed fact that the request for grant of approval under statutory provisions was sought on 31/03/2024 and it was granted by the Ld. Addl. CIT on the same date on which the draft assessment was forwarded by the Assessing Officer.

18.1 It is also not disputed that the seized material runs into approximately **1,596 pages**, besides additional documents seized from the residence of the director. From the record, the Revenue has not demonstrated that the seized materials were actually forwarded to the approving authority, nor has it been shown that the Ld. Addl. CIT made any independent examination thereof. Although, in para 2 of the approval dt. 31/03/2024 it was mentioned as under"

> In this regard, I have gone through the case records and casde was discussed with the A.O from time to time. On the basis of discussion and replies received, I am satisfied that the draft assessment order put for approval in the below mentioned case from the A.Y. 2022-23 is justified and fair.

18.2 In such circumstances, when neither there is an evidence of submitting the information nor there is any evidence of replies received by the Addl. CIT it is difficult to comprehend that a meaningful consideration of such voluminous material in a single day appears to have taken place. The grant of approval is not an empty formality as it has the trapping of a quasi-judicial function by the competent authority. The approval authority is bound to apply its mind, which reflects the application of its mind and the documents submitted to it. The record shows that there was a tiring hurry for granting the approval, without looking into the contents of the underlying documents and placing on record the replies, if any, received in the office and the querries raised by the Addl. CIT.

18.3 The Coordinate Benches, in **AB Alcobev Pvt. Ltd. (supra)** and **Pushpanjali Construction Pvt. Ltd. (supra)**, have consistently held that approval granted in a mechanical manner without application of mind renders the assessment order invalid. The facts of the present case are squarely covered by these precedents. Once the statutory approval suffers

from non-application of mind, the consequential assessment cannot survive in the eyes of law.

18.4 In AB Alcobev Pvt. Ltd. (supra), the Tribunal held that an assessment framed u/s 143(3) for the year preceding the search year, without approval u/s 148B, is *non est in law being taken in a mechanical way.*

> *13.1 In the light of propositions laid down in all these judgements, if we examine the facts of the present case, then it would reveal that more than 100 assessments have been sent to the ld. Addl. CIT for approval. It was not humanly possible for the ld. Addl. CIT to go through these assessments of different assessees alongwith the seized material used in each case. For example, in the case of the assessee, assessment is running into 25 pages in each year, meaning thereby 175 pages of the assessment for six years in the case of the assessee were sent to the approving authority. Similarly, there were 15 more assessees whose six years' assessments have been sent to the ld. Addl. CIT simultaneously with the assessments of the assessee. If all those pages are to be counted, then they are more than 1000 pages. Practically, it was impossible for the ld. Addl. CIT to go through all these pages and apply his mind. Therefore, the proposition laid down in all these judgements is fully applicable in the case of the assessee. We find that ITAT Chandigarh in the case of S.P. Construction has made reference to the judgement of ITAT Delhi in ITA No.2503 and 2693/Del/2017 in the case of Seth Realtors Ltd. In this judgement, ITAT Delhi has taken note of the submissions made by the ld. CIT DR before us. In paragraph 8 of this judgement, the Co-ordinate Bench of the ITAT Delhi has duly taken note of the submissions made by the CIT DR that Addl. CIT is associated with the assessment proceedings from very inception. The ITAT has observed that if scheme of the Income Tax Act is being perused, then it would reveal that it provides a leeway to both the ld. AO as well as JCIT to even ignore the conclusion drawn in the Appraisal Report by the Investigation Wing and take a different stand in the assessment proceedings.*
>
> *13.2 The argument of the Revenue that JCIT is involved in the search assessment right from the receipt of copy of Appraisal Report, has no substance. Thus, this argument has duly been dealt with by the ITAT Delhi Bench and we concur with the finding of the ITAT Delhi on this aspect. The ITAT, across India has followed this proposition and Hon'ble Delhi High Court, Allahabad High Court, Bombay High Court, Orissa High Court has affirmed the conclusions drawn by the ITAT that if it was not humanly possible to go through all the assessment orders alongwith the seized material, then it is to be construed that approval granted by the Addl. CIT/JCIT is not in consonance with the scheme of Income Tax, rather it is being granted in a mechanical way which would render the assessment order unsustainable in the eyes of law. Accordingly, we allow this ground of appeal and quash all the assessment orders for A.Y. 2016-17, 2017-18 and 2019-20.*

19. In the light of the above said discussion with respect to additional ground no. 3 & 4 we hold that the impugned assessment order dated 24.08.2023 is without jurisdiction, and the assessment order was passed without taking the approval from the competent authority as envisaged under the Act and further the approval granted under section 153D was

mechanical and was not in accordance with law. In view of the above the assessment is required to be quashed and the additional grounds 3 & 4 are allowed. Consequently, the Revenue's grounds challenging partial relief also fail, as the foundation assessment does not survive. Nevertheless, since both parties argued the merits, we record findings thereon for completeness.

20. Common Issue – Unexplained Balances (AO Rs. 36.75 cr→ CIT(A) Rs. 1.83 cr).

21. The Assessing Officer in para 3.5 to 3.15 has adjudicated as under:

> *"3.5 Further, similar handwritten pages were also found at the business premise of assessee, as page no 44 and 45 of A-3. Page no 44 is similar to all the tables mentioned above dated 16.09.2021 to 21.09.2021 having opening balance of 12,80,679/- and unreconciled entries of Column no 1 at Rs. 41,080/- and Rs. 1,07,390 in Column no 2. Further, page no 45 dated 11.08.2021 to 06.09.2021 has opening balance of Rs. 12,13,774 and unreconciled entries of Rs. 82,000 in column no 1 and Rs. 6,23,500/- in column no 2.*
>
> *3.6 Further, similar handwritten page was also found at the business premise of assessee, as page no 6 of A-1, where no opening balance was mentioned but excess cash of Rs.64,366 was written is being considered as unexplained in absence of any justification or explanation. Further, assessee could not reconcile total entries amounting to Rs.1,30,605/- in column no.1 and Rs.4,71,756/- in column no. 2.*
>
> 3.7 The assessee was specifically asked to reconcile opening balances both in response to questionnaire issued u/s 142(1) and again in show cause notice. But it has completely failed to provide any justification regarding the same. Assessee has stated that it is unable to reconcile opening balances. Moreover, in each table, two opening balances are written which are again not reconciling with each other. Further, assessee has stated that these pages are not in continuation but rather overlapping. Further, closing of one date does not match with opening of another. The assessee has stated that opening should not be termed as opening as there are a lot of duplicate entries from another table and it appears that accountant is cumulating the figures since long, the reason of which is not known to assessee.
>
> 3.8 The assessee's contention is completely unacceptable as the perusal of all the handwritten pages reflect that closing balance of one page ending on particular date does not reconcile with opening balance of another page having the immediately next date. For example, closing balance of Table no 1 ending on 21.12.2021 does not match with opening balance of Table no. 2 starting on 22.12.2021. Hence, the opening balances mentioned on these pages can not be considered in continuation.
>
> 3.9 Further, where it is observed that pages are having overlapping period, even then, no duplicate entries are being found baring few, whereas all the contents mentioned on one page for example table no 4 should have been mentioned in Table no 3 who has overlapping period with table no 4, but only few entries are getting repeated in these pages. It establishes that each page is separate and maintained for separate purposes and has no

correlation with each other. Hence, onus is on assessee to explain and reconcile each and every entry mentioned on these pages.

3.10 Furthermore, assessee has reconciled around 80% of the total entries with its books of accounts or its director's books of accounts (M/s. Manak Jewellers) but could not reconcile the opening balances. This proves and strengthen the fact that all these handwritten pages are not dumb documents and maintained for the business purposes. Further, all the entries pertain to business related activities, hence, the same can not be stated to have personal transactions. All these entries further authenticate and act as a corroborative evidence about the credibility of the seized papers and can not be termed as dumb papers.

3.11 When assessee is able to reconcile and prove genuineness of 80 percent of the transactions mentioned in the said pages, then it gives credibility to the opening balances as well. Hence, in absence of any justification given by assessee along with any documentary evidence, the opening balances mentioned on each handwritten pages are considered as unexplained and unaccounted in hands of assessee, source of which was not explained by assessee.

3.12 It is important to mention that the said pages have been found pertaining to various dates spread over the year under consideration. The earliest hand written page pertains to period 12.06.2021 to 05.07.2021 as per Table 9 mentioned above. Hence it is not clear whether opening of all papers are from 01.04.2021 till date or pertain to earlier years. Assessee is also not providing any details despite numerous opportunities. It has opening balance of Nil in column no 1 and Rs. 67,94,892 in the column no. 2. From this page, it can not be established opening balance pertains to this year or carried forward from earlier years. But in absence of any reconciliation or paper explanation provided by assessee, the same is being considered pertaining to the year under consideration. Further, similar pages are also found in subsequent years. Hence, these pages can not be brushed aside by citing mere dumb documents or rough notings.

3.13 Further, assessee has stated that these records were maintained by some accountant, but neither any PAN, name, address of the accountant was provided nor any affidavit by the said person accepting the said pages and purpose of their maintenance was filed. Assessee has not given any justification of the opening balances nor any purpose was established by assessee for maintenance of these records, when assessee is maintaining regular books of accounts.

3.14 The onus lies on the assessee to prove the genuineness of his claim. Such a burden had to be discharged by the assessee with very strong, cogent and clinching evidence in view of blatant denial by him in his submissions and coupled with the various other circumstantial evidences. The adjudication of the undersigned finds support from two landmark judgments of Hon'ble Supreme Court of India where the vital principle of test of human probabilities was propounded and followed. Each of them is discussed briefly below:

a) In CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)Hon'ble Supreme court has held that "the apparent must be considered as real until it is shown that there are reasons to believe that the apparent is not the real and the tax authorities are entitled to look at the surrounding circumstances to find out the realities and the matter has to be considered by applying the test of human probabilities."

b) In Sumati Dayal vs. Commissioner of Income tax (1995) 214 ITR 801 (SC) the Supreme Court observed "It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being un-rebutted, can be used against him by holding that it was a receipt of an income nature." The Apex court finally also held that "The majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine "

Both the above landmark judgements have held that even if a transaction or entry prima facie appear to be legal and is duly supported by documentary evidences, the tax authorities have the right to make deeper inquiries and examine the transaction in light of surrounding circumstances and test of human probability to uncover its real nature.

3.15 Further, to take a considerate and judicious view, I am considering the lower balances out of two opening balances mentioned in each page. Hence, the following opening balances remain unexplained and is being considered as unexplained money u/s 69A of the Act r.w.s 115BBE of the Act.

Particulars	Opening Balance(Rs.)
Table 1	5,68,78,906
Table 2	5,81,99,126
Table 3	4,15,99,065
Table 4	5,90,85,926
Table 5	6,13,95,026
Table 7	6,48,54,173
Table 8	1,87,18,474
Table 9	67,94,892
Page no 44 of A-3	12,80,679
Page no 45 of A-3	12,13,774
Page no 6 of A1(excess	64,366/-
Total	36,75,23,049/-

As the addition includes addition made on account of section 69A, hence, penalty proceedings u/s 271AAC are to be initiated, which are being initiated separately.

(Addition: Rs. 36,75,23,049-/)

22. Feeling aggrieved with the finding of the Assessing Officer the Assessee preferred the appeal before the Ld. CIT(A) and the Ld. CIT(A) has granted

the relief to the assessee. The finding of the Ld. CIT(A) are available at page 22 to 25 of the order. The relevant portion of the Ld. CIT(A) finding are as under:

> *(iv) On analysis of this data it is observed that the first period pertains to table 9, which is 12.06.2021 to 05.05.2021. There is neither any immediately preceding data nor immediately succeeding data. Opening balance on LHS is zero (0). However opening balance on RHS is Rs.6794892/-, which has been added by the AO. No figure of closing balance of any prior period is available. No proper explanation has been given for this entry. It is also a fact that a large number of entries in these documents are tallying with disclosed books of account and part are not tallying. It is a settled law that the entire document has to be read as whole to give it a logical meaning and not in bits and pieces. Hence, I find no reason to interfere with the finding given by the AO. Therefore, I am of considered view that the appellant has not been able to explain this opening balance of table-9 and therefore addition of Rs.67,94,892/- is confirmed.*
>
> *(v) When there is a time gap between the documents, in my considered view, the logical view would be to take 20% of difference of closing balance of preceding period and opening balance of succeeding period, as the AO in the assessment order has held that the 80% of the entries in these documents are tallying with disclosed books of account.*
>
> *(vi) Table 8, page 45A-3 and page 44A-3 are in continuation. The period is 01.08.2021 to 21.09.2021. However, opening balance is Rs.1,87,18,474/-. No closing figure of earlier available document is available. Therefore, I am of considered view that the appellant has not been able to explain this difference of opening balance of table 8 and therefore, as discussed above 20% of Rs.1,87,18,474/- (being Rs. Rs.1,87,18,474/- - Rs. 0, as no figure of closing balance of any prior period is avaiable) is confirmed. Closing balance of page-45A-3 are matching with opening balance of page 44A-3 (which is immediately succeeding period). Therefore, no adverse view can be taken on paper 45A-3 and 45A-3.*
>
> *(vi) Table-1, table-2, table-4 and table-5 are in continuation. The period is 12.12.21 to 10.01.22. However, closing balances of table-1 and table-2 are not matching, although these are in continuation, but there is difference of Rs.6,14,500/-. Similarly, closing balances of table-2 and table-4 are not matching, although these are in continuation, but there is difference of Rs.6,00,000/-. Closing balances of table-4 and table-5 are not matching, although these are in continuation, but there is difference of Rs.2,08,900/-. Therefore, I am of considered view that the appellant has not been able to explain this difference of opening balance of immediately succeeding table and closing balance of immediately preceding table and therefore out of total addition, these additions of Rs.6,14,500/-, 6,00,000/- and Rs.2,08,900/- are confirmed.*

(vi) Therefore, total addition confirmed is worked out as under:

Table	Addition confirmed (Rs.)	Amount (Rs.)	Basis
9	6794892		
8	374374.8	1871874	20% of difference in balances of broken period (1871874 — 0)
45A3	0		
44A3	0		

3	7832530.8	39162654	20% of difference in balances of broken period (41599065-2436411)
1	1418088.6	7090443	20% of difference in balances of broken period (56878906-49788463)
2	614500		difference in opening and closing balance (58199126 — 57584626)
4	600000		difference in opening and closing balance (59085926 — 58485926)
5	208900		difference in opening and closing balance (61395026 — 61186126)
7	472614	2363070	20% of difference in balances of broken period (64854173-62491103)
Total	18315900.2		

Thus, total addition confirmed is Rs. 1,83,15,900/-. Therefore, this ground of appeal of the appellant is partly allowed.

23. Now the assessee as well as Revenue are in appeal before us.

24. The Ld. AR had made the oral as well as written submission in support of the case of the assessee. The submission of the assessee are as under:

a). It is submitted that the assessee is mainly engaged in the business of trading of Goldjewellery and the assessee is maintaining proper books of accounts with complete purchase and sale invoices and the return has been filed on the basis of audited books of accounts and during the years under consideration, the sales of the assessee are as under:-

ASSESSMENT YEAR	*SALES*
2021-22	*62,62,10,141/-*
2022-23	*94,71,07,754/-*
2023-24	*1,32,21,29,419/-*

b). From the above, it is quite evident that the sale of assessee has increased by approximately 32,08,97,612/- and in the next year, it has been increased by Rs.37,50,21,665/-.

c). During the course of search, certain scanned copies of the loose sheets, were found, which have been reproduced at pages 2 to 5 of the assessment order and then from these seized documents , the Ld. Assessing Officer has drawn different tables, which have been reproduced at pages 6 to 19 of the order and during the course of assessment proceeding, the assessee was confronted with the such scanned sheets and the Assessing Officer has drawn a conclusion in para 3.10 of the order, that 80% of the total entries have been reconciled with the books of accounts of the assessee and then came to the conclusion as per para 3.15, pages 30 to 31 of the order and tabulated a chart by taking into consideration the alleged opening balance of each and every table as per scanned sheets and made an addition of Rs.36,75,23,049/-, though such opening balances are cumulative in nature.

This addition was challenged before the CIT(A) and the submissions on this issue have been made before the CIT(A) from para-5 to page 12 of the order of the CIT(A) and further, the additional submissions have been reproduced at pages 17 to 18 of the order of CIT(A) and the Ld. CIT(A) has given his decision on this issue starting from page 19 and at page 19, he has given the basis of addition made by the Assessing Officer in respect of scanned copies of tables for different periods of the year and the summary of facts have been highlighted by the CIT(A) from pages 20 to 22 of the order and briefly, the contentions are as under:-

i) It is admitted fact that no complete tables of scanned copies for the financial year 2021-22 have been found during the course of search starting from 1st table, starting from 12 June 2021 and, thus, it is incomplete tabulation of the different tables of the year and as per Assessing Officer at page 28, 80% of the total entries in such different tables, tally with the regular books of accounts and further, the closing balances of some of the tables tally with the opening balance of the next table, wherever, there is no gap of the dates and, as such, tables are of continuous dates and such tables are on Page 45 and 44 of A-3 as also tabulated in the CITY Appeal order at Page No.23.

ii). It was, thus, pleased by the assessee that the action of the Assessing Officer in making the entire addition on account of so-called 'opening balances' of each and every table amounts to multiple time addition and which cannot be made.

iii). Further, there are certain minor difference in closing and opening balances of some of the tables because, these are rough tabulation and complete datewise data was not found during the course of search for entire year and some of the entries as per books may have been missed..

iv). It was also submitted that, if the complete record could have been seized then, it could have very easy to explain and further since 80% of the transactions have been reconciled with the books of accounts and, thus, there cannot be possibility of any less accounted transactions being there in such tables because on four occasions, the closing balance tallies with opening balance of next table as per table No.1, 2, 4 and 5 of the assessment order, barring aside minor differences.

v). Further, the first table of the seized documents is starting from 12.06.2021 and the opening balance is Rs. 67,94,892/- and since the balance must have been coming from earlier period i.e. from 01.04.2021 and then since the opening balance is clearly mentioned against the figure of Rs. 67,94,892/- and it coming forward from earlier months i.e. from 1st April 2021 and, thus, any addition based on this figure of opening balance as on 12.06.2021, in the year under consideration is not sustainable, since it is coming forward from beginning of the year i.e. 01.04.2021 onwards and even if all the tables are put together and balances are coming forward from earlier period.

vi). Further, all opening balances mentioned are cumulative tables balances coming forward from earlier months and same modus operandi must have been there in the tables before 12.06.2021 as well and, therefore, the addition of Rs.67, 94,482/- as sustained by the Ld. CIT(A) at page 25 of the order is not sustainable, because when 80% of the transactions are as per books of accounts and, thus, there cannot be any Nil opening balance as on any given date.

vii). Thus, the finding of the Ld. CIT(A) in making the addition of Rs. 67,94,892/- on the basis of incomplete data is not justified and further to that on the sheet of 12.06.2021, it has clearly been mentioned "as opening balance" the figures of Rs. 67,94,892/-and the document as seized has to be read as a whole and the Ld. CIT(A) cannot ignore such noting of opening balances and the amount brought forward from the earlier period and, thus, coupled with the fact that on subsequent dates figures are tallying of opening balances and 80% of the transactions are matching with the books of accounts, the whole basis of confirmation of addition of Rs. 67,94,892/- by the CIT(A) is not justified.

viii). Further, the contention of the CIT(A) at page 24 in para (iv) that, no figure of closing balance of any prior period is available, is contrary to the finding to the Assessing Officer and CIT(A) that 80% of the transactions are tallying with the books of accounts and, thus, the said addition of Rs. 67,94,892/- is not maintainable.

ix). Further, the finding of CIT(A) that, wherever, there is difference between the opening and closing balance in different tables, and if there is time gap, he has made an addition of 20% difference of amount among the tables, it is submitted that, since the complete datewise record had not been seized coupled with the fact that 80% of the transactions are verifiable, then the adhoc disallowance of 20% is not proper. Similar are our arguments with regard to confirmation of addition of Rs.6,14,000/- and 2,08,900/- as per para 6, page 24 of the order. Thus, in nutshell, the confirmation of addition of Rs. 1,83,15,900/- as per para (vii), page 24 of the order of CIT(A) deserves to be deleted.

25. Per contra, the Ld. DR had submitted that the Ld. CIT(A) had wrongly granted the relief to the assessee.

26. We have heard the rival contention of the parties and perused the material available on the record. First we shall deal with the additions made in Tables 1, 2, 4 and 5 of the seized material. The Assessing Officer had made additions of Table 1. Rs 5,68,78,906/-, Table 2. Rs.5,81,99,126/-, Table 4. Rs. 5,90,85,926/- and Table 5. Rs. 6,13,95,026/-.

26.1 On perusal of the findings recorded by the learned CIT(A) in paragraph 5.2.3 (vi & vii) of the appellate order. The learned CIT(A) had examined the opening and closing balances appearing in Tables 1, 2, 4 and 5 of the seized material and noted that, though these tables were in continuation, certain minor differences were noticed particularly, that the closing balance of Table-1 and Table-2 did not tally, resulting in a difference of Rs. 6,14,500/-, and likewise, the closing balance of Table-2 and Table-4 also did not match. On this premise, the learned CIT(A) sustained small additions

of Rs. 14,18,088/-, Rs. 6,14,500/-, Rs. 6,00,000/-, and Rs. 2,08,900/-.On careful consideration of the record, we find that the Assessing Officer himself, in paragraphs 3.10 and 3.11 of the assessment order, has categorically recorded that nearly 80 per cent of the entries appearing in such seized tables were duly reconciled with the books of account of the assessee or of its director concern, M/s Manak Jewellers. This acknowledgment clearly establishes that the seized papers were nothing but *rough memoranda or auxiliary accounts* contemporaneously maintained and subsequently incorporated in the regular books of account. Assessee had failed to explain arithmetical differences between the closing and opening balances of consecutive tables therefore the Ld. CIT(A) was right in sustaining these additions.

26.2 It is further significant that the Assessing Officer has not brought any material on record to demonstrate that any asset, money, bullion or valuable article corresponding to such balances was found or remained unrecorded in the regular books. Once the most of entries, nature and purpose of such rough tabulations stand explained and substantially tallied with the audited books, then Ld. CIT(A) was right in sustaining the unexplained entries.in view of the above, we dismiss the ground raised by the assessee and revenue pertaining to these Tables 1, 2, 4 and 5 of the seized material and sustain the additions of Rs. 14,18,088/-, Rs. 6,14,500/-, Rs. 6,00,000/-, and Rs. 2,08,900/-.

27. Now we shall deal with the additions made in Table no 9 of the seized material.

28. The Ld. CIT(A) had sustained the addition of Rs. 6794892/- as the assessee was unable to explain the opening balance mentioned in Table-9. The submission of the assessee reproduced above has submitted that the opening balance of Rs. 6794892/- was coming forward from the earlier month i.e 01/04/2021 and was appearing on 12/06/2021. It was submitted that the said opening balance appearing as on 12/06/2021 cannot be added to the income of the assessee. It was further submitted that the 80% of the transactions are matching in the books of account. Further it was submitted

that the CIT(A) cannot ignore the opening balance of Rs. 6794892/- by closing his eyes to the Brought Forward(B/F) balance.

29. Per contra, the Ld. DR relied upon the order passed by the Assessing Officer. The finding of the Assessing Officer are reproduced in para 3.4 onwards.

30. The moot question is whether the addition of opening balance of Rs. 6794892/- has made by the Assessing Officer and confirmed by the Ld. CIT(A) is justified or not ?

31. The assessee, though has sought to explain that the amount of Rs. 6794892/- is nothing but the B/F of the Opening Balance (O/B) as available on 01/04/2021. Though this explanation seems to be very genuine and appealing but in the absence of any evidence on record the same cannot be accepted. The assessee has not brought to our notice from his books of account the O/B as on 01/04/2021. The O/B as appearing on the Balance Sheet at page 21 of the paper book mentioned the amount of Rs. 2,769,000/- towards the capital reserves, Rs. 34,453.97 (Surplus) O/B. Thus the argument of the assessee that Rs. 6794892/- was the O/B as on 31/03/2021 is without any basis and therefore we find no reasons to interfere in the finding given by the Ld. CIT(A). Accordingly, the ground raised by the assessee is dismissed with respect to Table No. 9.

32. Now we shall deal with the additions made in Table no 8of the seized material.

32.1 In this regard, the Ld. CIT(A) had given the finding at page 24 (vi) reproduced hereinabove. The finding of the Ld. CIT(A) was that the assessee failed to explain the difference of O/B of Table No. 8 and therefore had only made 20% of Rs. 18718474/-. The Ld. AR had objected to the same and submitted that it was the O/B for the previous period. The Table -9 is for the previous period i.e 12/06/2021 to 05/07/2021 and the O/B on the debit side of Table-8 is not matching with the Closing Balance (C/B) of Table -9. In fact, the documents / table/seized material is missing from 05/07/2021 to 31/07/2021.

32.2 In our considered opinion, once both the lower authorities have undisputedly mentioned that 80% of the entries are matching then the addition of 20% of the unexplained amount is justified by the Ld. CIT(A).

32.3 In view of the above we do not find any merit in the submissions of the assessee and therefore the ground no. 1 raised by the assessee is dismissed. As we have sustaining the order passed by the Ld. CIT(A), the corresponding ground no. 1 raised by the Revenue is dismissed.

33. The next ground raised by the assessee is with respect to the addition of Rs. 1,21,88,930/- (Page 26 & 27 of the order of the CIT(A)).

34. In this regard, the submission of the assessee are as under:

> *14. The next ground of appeal of the assessee is with regard to confirmation of addition of Rs. 1,21,18,290/- as per para 5.3.3, (iii), at pages 26 & 27 of the order of CIT(A). This addition is also based on the same tables in the sense that certain entries could not be tallied, due to shortage of time during assessment proceedings and one entry of Rs. 15 lacs with regard to HDFC Bank was got tallied and after giving the benefit of the same, the addition of Rs. 1,21,88,930/- i.e.(Rs. 1,35,88,930 minus 15,00,000/-) was confirmed by CIT(A)a against the addition of Rs. 135,88,930/-.*
>
> *15. It is submitted that these entries are part and parcel of the same tables, which have been discussed above and it amounts to double addition as confirmed by the CIT(A). Further to that, it is submitted that certain entries as reflected on the loose sheet, certain amount has been mentioned and against that, there are majorly the names of staff members have been written and that staff had been dealing with that customer at that time and lateron, the invoice is issued in the name of 'actual customer' as the bill is issued in the name of customer only and, thus, it is very difficult to match the entries on the loose paper, with the nature of transactions. However, it is submitted that, since it is part and parcel of the same nature of transactions, the whole basis of confirmation of the addition is not justified.*

35. Per contra, the Ld. DR relied upon the order passed by the lower authorities.

36. We have heard the rival contentions of both parties and perused the material available on record. The submissions of the assessee have been duly considered by the learned CIT(A), who after examining the same, granted partial relief of Rs. 14,70,000/- to the assessee and thereby restricted the addition to Rs. 1,21,18,390/-.

37. The Ld. AR reiterated that this represented a double addition made by the Assessing Officer, since the figure of Rs. 1,35,88,930/- represented 20% of the entries that allegedly remained unreconciled, and those very entries were already subsumed in the addition sustained by the learned CIT(A) at Rs. 1,83,15,900/-.

37.1 As discussed in the preceding paragraphs, the addition sustained by the learned CIT(A) to the extent of Rs. 1,83,15,900/- stands duly explained and reconciled. The only overlapping amounts are Rs. 3,74,374/- pertaining to Table-8, Rs. 78,32,530/- pertaining to Table-3, and Rs. 14,18,088/- pertaining to Table-1, aggregating to Rs. 96,24,992/-. The contention of the assessee to this limited extent appears correct because this 20% component, i.e., Rs. 96,24,992/-, already forms part of the addition sustained at Rs. 1,83,15,900/-. Accordingly, the same cannot be again subjected to separate addition. In view of the above, the assessee is entitled to a relief of Rs. 96,24,992/-. The balance addition of Rs. 24,93,398/- is therefore sustained.

38. Thus, this ground no. 2 of appeal of the assessee is partly allowed.

39. GP Rate and Telescoping (Revenue Grounds 2-4; Assessee Ground 6)

40. This ground by the assessee and the Revenue arise out of the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana, dated 20.01.2025, for the assessment year 2022-23, framed pursuant to the assessment order passed under section 143(3) of the Income-tax Act, 1961 on 31.03.2024 by the DCIT, Central Circle-1, Ludhiana.

41. The sole controversy relates to the estimation of gross profit rate applied by the Assessing Officer at 23.85%, reduced by the Ld. CIT(A) to 14.12%, and now contested by both parties before us.

42. The assessee is engaged in the business of trading in gold, kundan, polki and diamond-studded jewellery. During the course of search proceedings conducted on 24.11.2022, certain documents and digital data

were impounded, including valuation sheets relating to polki jewellery. On the basis of such data and the statement of the accountant, the Assessing Officer concluded that certain stone-embedded ornaments had been sold at rates applicable to gold jewellery, resulting in an understatement of gross profit. The Assessing Officer, therefore, rejected the books of accounts under section 145(3) and applied the gross profit rate of 20%, being close to the gross profit rate of 23.85% declared in the earlier year, as against 12.16% declared by the assessee during the year under consideration. The resultant addition worked out to Rs.7,42,53,247/-, and the total income was assessed accordingly.

42.1 In paragraph 8.7 of the assessment order, the Assessing Officer recorded that the reply of the assessee was considered and found without merit. During the course of assessment proceedings, the assessee was asked to furnish the details of sales in the category of Polki Meena 22 carat jewellery along with gross and net weight. The assessee, according to the Assessing Officer, failed to furnish such segregated details and also did not provide separate stock registers or purchase bills for each category. During search, it was observed that the weight of non-gold material such as stones and beads had been included in gold weight, indicating that the assessee sold such items at the price of gold. The statement of the Director, Shri Manak Chand Jain, was recorded, and on that basis, the Assessing Officer inferred that the assessee had suppressed its actual profit. Relying upon this reasoning, the Assessing Officer estimated the gross profit rate at 23.85% as against 12.16% shown by the assessee and made the corresponding trading addition. For ready reference, the relevant finding of the Assessing Officer as contained in paragraph 8.12 of the assessment order is reproduced below:

> "8.12 During the year under consideration, on the reported turnover, the assessee has shown gross profit @ 12.16% whereas, the GP for the last year i.e. A.Y. 2021-22 is 23.85%. From the above, it is clear that the GP rate of the assessee for the year under consideration has declined by 11.69% in comparison to the immediate preceding A.Y. In view of this, the gross profit / GP rate of 12.16% shown by assessee company is rejected by invoking the provision of section 145(3) of the Income-tax Act, 1961 and the same is estimated at 20% for the year under consideration, which will be applied on total turnover shown at Rs.94,71,07,754/- in the audited accounts for A.Y. 2022-23. Accordingly, the difference of GP rate worked out @ 7.84% and after

> applying the said difference on the total turnover of the assessee, additional gross profit is calculated at Rs.7,42,53,247/- and the same is added back to the income of the assessee company on account of suppressed GP/additional Gross Profit earned by assessee for the year under consideration."

42.2 Based solely on this comparative analysis of the gross profit rates, the Assessing Officer concluded that the fall in profit during the year remained unexplained and accordingly made an addition of Rs. 7,42,53,247/- to the total income of the assessee.

43. The Ld. CIT(A), after a detailed examination of the assessment record and the submissions of the assessee, observed that the Assessing Officer had not brought on record any independent valuation report from a government-approved valuer, as mandated under law, to substantiate the conclusion that the assessee had sold stones or non-gold materials at the rate of gold. The so-called valuation referred to during the course of the search was found to be only a rough, on-the-spot estimation, unsupported by any scientific verification or corroborative material.

43.1 Before the Ld. CIT(A), it was contended that the Assessing Officer's conclusions were entirely based on presumption and that no legally admissible valuation report or quantitative discrepancy had been demonstrated. The valuation, if any, carried out during the search was only a preliminary estimate and not based on any weighing or item-wise analysis. It was further argued that the assessee's business primarily comprised trading in 22-carat gold ornaments where the profit margins were comparatively lower, while the polki and kundan segments accounted for only a small fraction of the total turnover. Therefore, the application of the polki rate to the entire turnover was arbitrary and unjustified.

43.2 The Ld. CIT(A), after considering the detailed written and oral submissions, found merit in the assessee's contentions. He recorded that the Department had failed to produce any valuation report prepared in accordance with law to demonstrate that the assessee had sold stones or non-gold materials at prices equivalent to gold. The valuation made during

the search proceedings was only a rough field estimate without any documentary corroboration. The Ld. CIT(A) further held that the Assessing Officer's approach of applying a uniform gross profit rate of 23.85% across all categories of jewellery was unsustainable, since the alleged irregularity, if any, was confined only to the polki and kundan jewellery segment. At the same time, he accepted that some variation in the gross profit rate could exist owing to changes in product mix and turnover volume and, following the principle of reasonableness, estimated the gross profit rate at 14.12% as against 12.16% declared by the assessee, thereby granting partial relief.

44. Before us, the Ld. Authorised Representative reiterated that the Assessing Officer had not relied upon any legally acceptable valuation report and that the entire addition rested on conjecture and assumption. It was submitted that the turnover during the year had increased substantially and that the gross profit of 12.16% was consistent with the trend of the preceding and succeeding years. It was further contended that once the books of accounts are rejected, the estimation of profit must be made with reference to the assessee's own past history and the general business trend, as laid down by the Hon'ble Supreme Court in CIT v. A. Krishnaswami Mudaliar (53 ITR 122) and CIT v. K.Y. Pilliah & Sons (63 ITR 411).

45. Per contra, the Ld. Departmental Representative relied on the order of the Assessing Officer and submitted that even in the preceding year, the assessee had disclosed a gross profit rate of 23.85% as against 12.16% declared during the current year, and therefore, the Assessing Officer's estimation deserved to be restored.

46. We have carefully considered the rival submissions and perused the record. It is evident that the Assessing Officer, while making the addition, mainly relied upon the statement of the accountant and certain valuation remarks that lacked any scientific or evidentiary foundation. No valuation report conforming to the prescribed methodology or rules was ever placed on record. While rejection of books of accounts under section 145(3) empowers the Assessing Officer to make a best-judgment assessment, such

estimation must nonetheless be rational, reasonable, and based on objective material. The mere adoption of the gross profit rate of an earlier year, without analysing the turnover composition, market trend, or other commercial circumstances, cannot be sustained.

46.1 The findings of the Ld. CIT(A) reveal that he has made a detailed and balanced appraisal of the facts. He has rightly considered the increase in turnover, the change in product mix, and the absence of any credible valuation evidence. We fully concur with his view that the application of the polki jewellery margin to the entire turnover of the assessee was wholly unjustified, since the business predominantly consists of 22-carat gold ornaments with moderate profit margins.

46.2 At the same time, considering that a small portion of the assessee's sales pertained to polki and kundan jewellery, which yield relatively higher margins, a marginal upward adjustment over the declared gross profit rate would be reasonable. Having regard to the totality of the facts, the nature of business, and past history of the assessee, we are of the considered view that a fair and just estimate of the gross profit rate would be 14%, which adequately balances the interests of the Revenue and the assessee. Accordingly, we direct that the gross profit rate be restricted to 14%, as against 14.12% sustained by the Ld. CIT(A) and 23.85% adopted by the Assessing Officer. The Assessing Officer is directed to recompute the trading addition by taking the GP Rate @ 14% .

46.3 As a result, the ground no. 6 of the assessee is partly allowed, while the ground 2-4 of the Revenue is dismissed.

47. The Ld. AR, had pressed the other grounds raised in the memo of appeal and submitted that these grounds are required to be allowed. He relied upon the submission filed before us.

48. Per contra, the Ld. DR relied upon the order passed by the Assessing Officer.

49. We have heard the rival contention of the parties and perused the material available on the record. The order of the Ld. CIT(A) on the remaining grounds is speaking and reasoned order based on the documents found during the course of search. We do not find any reason to interfere with the finding given by the Ld. CIT(A) and accordingly the remaining grounds of the assessee appeal are dismissed.

50. In the result, the appeal filed by Revenue is dismissed and the appeal filed by the Assessee is allowed.

Order pronounced in the open Court on 04/11/2025

Sd/-	Sd/-
कृणवन्त सहाय	**ललित कुमार**
(KRINWANT SAHAY)	**(LALIET KUMAR)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य /JUDICIAL MEMBER**

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar