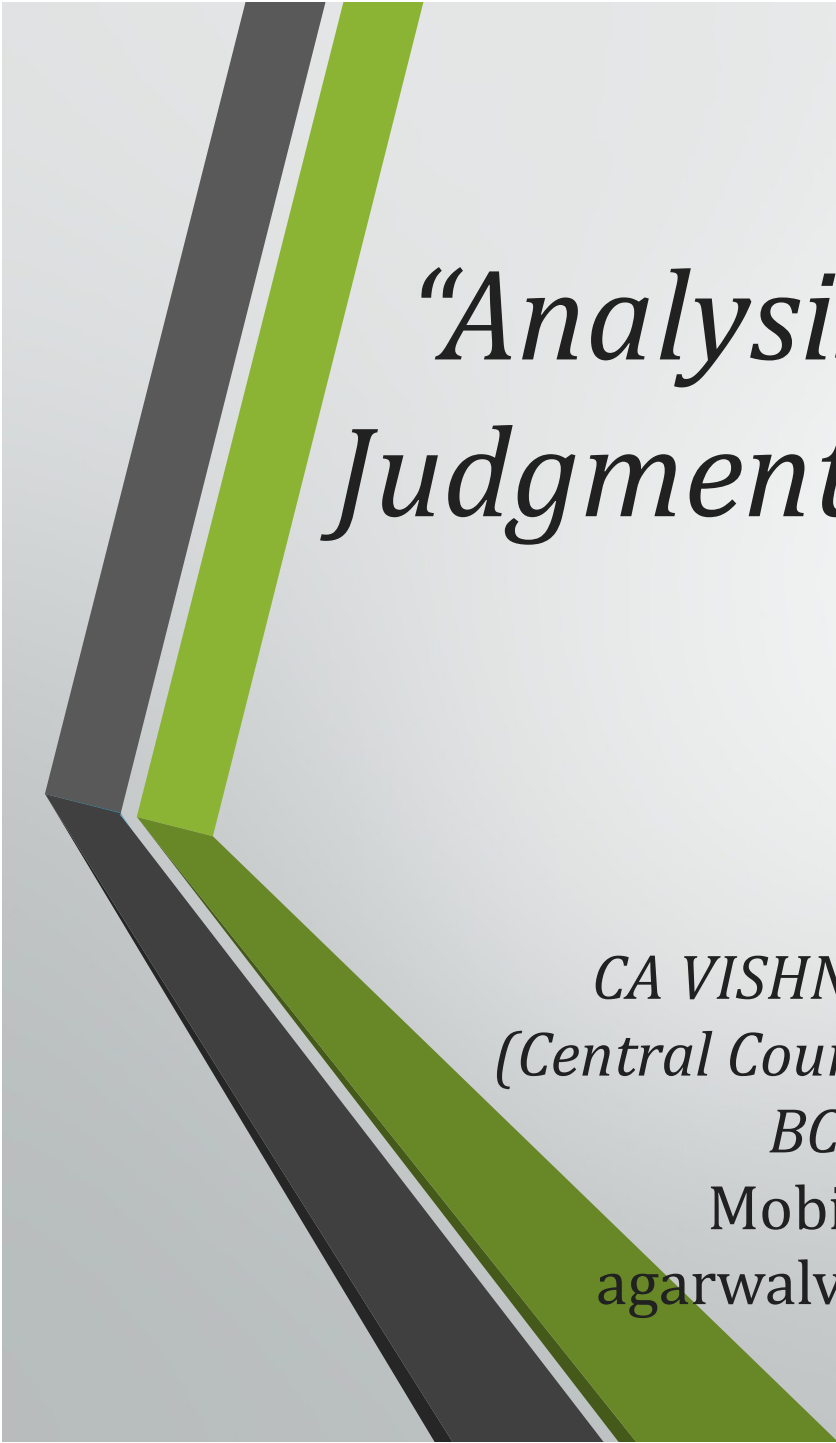




“Analysis of Important Judgments of SC, HC and ITAT”

By

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ANALYSIS & IMPORTANCE OF
APPROVAL/ SANCTION BEFORE
ISSUING NOTICE UNDER
RELEVANT SECTION



Importance of Approval/ Sanction

1. Hon'ble apex court in case of UOI vs. Rajeev Bansal [2024] 469 ITR 46 (SC) on quality of approval/ sanction u/s 151.
2. **Sanction of specified authority:** Section 151 imposes a check upon the power of Revenue to reopen assessments. The provision imposes a responsibility on the revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to save the assessee from harassment resulting from the mechanical reopening of assessments.

Meaning of Approval

Hon'ble apex court in case of CMJ Foundation and Others (Appellant) vs. State of Meghalaya and Others (Respondents) 2025 INSC 211.

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

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

Therefore, the contention of the Ld. Counsel for the appellants that the **failure of the visitor to grant approval for appointment of the Chancellor would lead to a 'deemed approval' is totally misplace and unsubstantiated by law.**

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

Requirement of Approval

- **APPROVAL MUST BE DATED**

As per the decision of Hon'ble Punjab & Haryana High Court in case of CIT vs. Prahalad Singh ITA no. 91 of 2019 wherein it is held that **an approval must be dated.**

- **APPROVAL MUST BE SIGNED**

As per the decision of Hon'ble Telangana High Court in case of M/s Bigleap Technologies and Solutions Pvt. Ltd. and Others vs. State of Telangana, W.P. no. 21101 of 2024 wherein it is held that **unsigned document has lost its efficacy. Therefore, an approval must be signed.**

- **APPROVAL MUST BE IN RELEVANT PRESCRIBED PROFORMA AS PER CBDT GUIDELINES**

It is necessary for the revenue to obey CBDT guidelines before issuing the notice.

- **APPROVAL MUST BE BY SPECIFICED AUTHORITY AND NOT ANYONE ELSE**

Hon'ble Delhi HC in case of Abhinav Jindal HUF case 468 ITR 787 and many other decisions on same lines (including Hon'ble apex court in case of Rajeev Bansal) has held that approval must be by specified authority only and not anyone else.

Requirement of Approval

- **APPROVAL MUST BE PRIOR TO RELEVANT STATUTORY ACTION AND NOT SUBSEQUENT TO THE SAME**

Where there is statutory requirement to obtain prior approval of specified authority before issuing the notice under relevant section then such a requirement cannot be overlooked for issuing the notice. Thus, where a prior approval is required then the approval cannot be taken subsequently. Refer decision of Hon'ble Supreme Court in case of Independent Sugar Corporation Ltd. (Appellant) vs. Girish Sriram Juneja & Ors.(Respondents).

- **APPROVAL MUST BE BASED ON CORRECT FACTS TO BE STATED IN PROFORMA**

On issue of fatal impact of incorrect fact stated in SANCTION PROFORMA *if sanctioning authority u/s 151 is not able to correct error apparent on fact of proforma of sanction then reopening would be invalidated* ACIT vs. Kartik Sureshchandra Gandhi **SLP 48253/ 2024**. In the said decision it was held that ***“Even otherwise, we have gone through the SLP and do not find any merit in the in the same. The SLP is therefore dismissed on ground of delay as well as on merits.”***

Requirement of Approval

- **APPROVAL MUST BE WITH DUE APPLICATION OF MIND**

While issuing notice under relevant section approval must be granted with due application of mind. Refer decision of Hon'ble Bombay High Court in case of C. C. Dangi and Associates vs. ACIT.

- **APPROVAL MUST BE SUPPLIED TO THE ASSESSEE ALONGWITH RELEVANT NOTICE/ ORDER**

Hon'ble SC High Court in case of ITO vs. M/s Tia Enterprises Pvt Ltd., [2024] 468 ITR 10 (SC) has upheld the decision of Hon'ble Delhi HC in case of M/s Tia Enterprises Pvt Ltd. vs. ITO wherein it was since the copy of approval was not supplied by the A.O. even after the request of the assessee proved that the condition requiring the A.O. to obtain prior approval of the specified authority was not fulfilled as otherwise, there was no good reason not to furnish it to the assessee along with copy of reasons recorded.

IMPACT OF DECISION OF SC IN
CASE OF UOI VS. RAJEEV BANSAL
[2024] 469 ITR 46 (SC)

Impact of decision of SC in case of UOI vs. Rajeev Bansal

➤ UOI vs. Rajeev Bansal [2024] 469 ITR 46 (SC)

1. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income-tax Act falls for completion between 20 March 2020 and 31 March 2021. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to AY 2013-14, 2014-15, 2015-16, 2016-17, and 2017-18 will be within the period of limitation.
2. Therefore, this judgement will be applicable only in cases if notice is issued for AY 2013-14 to AY 2017-18 between 01 April 2021 to 30 June 2021.
3. The impact of the decision can be explained for different A.Y. which is as follows:
 - AY 2013-14 & 2014-15
 - AY 2015-16
 - AY 2016-17 & 2017-18

Impact of decision of SC in case of UOI vs. Rajeev Bansal

For AY 2013-14 & 2014-15:

1. After the decision of Hon'ble High Court in case of UOI vs Ashish Agarwal directions were given to the department to treat the notice issued u/s 148 of old regime as notice issued u/s 148A(b) of the amended and pass an order u/s 148A(d) and issued a new notice u/s 148 as per the requirement of the Amended Act or New Regime.
2. Department as per the directions of Supreme Court conducted inquiry proceedings and issued the notice u/s 148 of the I. T. Act, 1961. **However, the said notice was required to be issued within the surviving time limit and if the reassessment notice is issued beyond surviving time limit, then such notice issued u/s 148 of the I. T. Act, 1961 is time-barred.**
3. What is surviving time limit?? **Surviving or balance time limit is the number of days between the date of issuance of the deemed notice and 30 June 2021.**
Let us understand the same with an illustration:

Particulars	Notice is invalid	Notice is valid
Extended deadline to issue notice u/s 148 as per TOLA and notifications issued	30/06/2021	30/06/2021
Notice issued under old law	28/06/2021	06/05/2021
Date of notice issued u/s 148A(b)	31/05/2022	31/05/2022
Reply filed by the assessee	Yes	Yes
Date of Reply	07/06/2022	14/06/2022
Time excluded as per Rajeev Bansal	30/06/2021 to 07/06/2022	30/06/2021 to 14/06/2022
Time that was available/ left to issue notice u/s 148 as per TOLA limit	2 days – 28/06/2021 to 30/06/2021	55 days – 06/05/2021 to 30/06/2021
Extended time to be given as per fourth Proviso to section 149(1)	7 days since time is below 7 days	NA since time is in excess of 7 days
Time limit to issue notice u/s 148 as per section 149 as amended by Finance Act 2021 and as per Rajeev Bansal case	14/06/2022	08/08/2022
Order passed u/s 148A(d) & Actual date of notice u/s 148	27/07/2022	27/07/2022

Relevant judgements as an outcome of decision of SC in case UOI vs. Rajeev Bansal for AY 2013-14 & AY 2014-15

- **Sunil Ghorawat vs. ACIT, W.P.(C) 3230 of 2023 (Delhi HC)**
- **Ram Balram Buildhome (P.) Ltd. vs. ITO, W.P.(C) No. 16232 of 2024 (Delhi HC)**
- **Lalit Garg vs. DCIT CC, 6(2), Mumbai, ITA – 6122 & 6123/MUM/2024 (Mumbai Trib.)**
- **Nilanjana Arvinder Singh vs. DCIT, ITA – 6140 and 6167/MUM/2024 (Mumbai Trib.)**
- **DCIT vs. Larsen & Turbo Ltd, ITA – 5745/MUM/2024 (Mumbai Trib.)**
- **Mahendra Singh Arora vs. DCIT, ITA – 6338/MUM/2024 (Mumbai Trib.)**

Impact of decision of SC in case of UOI vs. Rajeev Bansal

For AY 2015-16:

1. Any notice issued u/s 148 of the I. T. Act, 1961 between 01 April 2021 to 30 June 2021 for initiating reassessment proceedings for AY 2015-16, then the same is required to be dropped as they will not fall for completion during the prescribed period under TOLA. **Since TOLA will be applicable only for action or proceeding specified under the substituted provisions of the Income-tax Act falls for completion between 20 March 2020 and 31 March 2021.** However, provisions of TOLA is not applicable for AY 2015-16 since the due date for issuing the notice under old and new regime do not fall between 20 March 2020 to 31 March 2021. The same can be explained with an illustration which is as follows:

Particulars	Due Date
Last date to issue notice u/s 148 as per Amended Act 2021	Within 3 years – 31/03/2019
Last date to issue notice u/s 148 as per Amended Act 2021	Within 6 years – 31/03/2022

2. Therefore, proceedings initiated for AY 2015-16 by issuing notice u/s 148 shall become invalid as provisions of TOLA is not applicable to them.

Impact of decision of SC in case of UOI vs. Rajeev Bansal

For AY 2015-16:

3. Recently a judgment was passed by Hon'ble Madras High Court in case of **Ramadoss Srikanthi vs. ACIT, W.P. No. 22901 & 21931 of 2022 (Madras HC)** wherein it was held that, for AY 2015-16, **Where impugned notice dated 31-3-2021 under section 148 was issued within extended limitation period under section 149(1)(b) as it stood till 31-3-2021, such notice could not be said to be time-barred even after application of first proviso to section 149 as amended with effect from 1-4-2021.**

For AY 2015–16, the assessee challenged the original notice issued u/s 148 dated 31-03-2021 (issued under the old law), the order under Section 148A(d) dated 30-07-2022, and the fresh Section 148 notice dated 30-07-2022 under the amended regime effective from 01-04-2021. It was held that the original notice dated 31-03-2021, issued within the extended limitation under Section 149(1)(b) (as it stood prior to 01-04-2021), was valid and not time-barred, even after the amended first proviso to Section 149. The reassessment proceedings rightly continued under the new regime by treating the original notice as a deemed Section 148A(b) notice, and the limitation was to be computed excluding the time taken for the show-cause and response, as clarified by the SC in Rajeev Bansal. Hence, reassessment was held to be both procedurally and legally valid.

Relevant judgements as an outcome of decision of SC in case UOI vs. Rajeev Bansal for AY 2015-16

- **Lalit Garg vs. DCIT CC, 6(2), Mumbai, ITA – 6124/MUM/2024 (Mumbai Trib.)**
- **ACIT vs. Manish Financials, ITA – 5055/MUM/2024 (Mumbai Trib.)**
- **Ashok Amratlal Shah vs ITO, ITA – 4286/MUM/2024 (Mumbai Trib.)**
- **DCIT vs. Larsen & Turbo Ltd, ITA – 5743/MUM/2024 (Mumbai Trib.)**
- **Bhagwan Sahai Sharma vs. DCIT, W.P. (C) 2211 of 2023 (Delhi HC)**
- **Rohit Kumar vs. ITO, W.P. (C) No. 2830 of 2022 (Delhi HC)**
- **Kamlesh Kukreja vs. ITO, ITA – 379/RPR/2024 (Raipur Trib.)**

Impact of decision of SC in case of UOI vs. Rajeev Bansal

For AY 2016-17 & AY 2017-18:

1. Non-compliance by the assessing officer with the strict time limits prescribed under section 151 (as amended by Finance Act, 2021) affects their jurisdiction to issue a notice under section 148.
2. Provisions of section 151 state that:
 - (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 where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.
3. Thus, the impact of the decision on Supreme Court for AY 2016-17 & AY 2017-18 was that, if the notice u/s 148 is issued after a period of 3 years from the end of the relevant assessment year then approval was required to be taken u/s 151(ii) of the I. T. Act, 1961 i.e. approval of Pr. CCIT or Pr. DGIT was required to be taken. Let us understand the same with help of an example

Impact of decision of SC in case of UOI vs. Rajeev Bansal

For AY 2016-17 & AY 2017-18:

4. relaxes the time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021. TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under section 151.

The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under section 151(i) has an extended time till 30 June 2021 to grant approval.

Particulars	AY 2016-17	AY 2017-18
Last date to issue notice as per new regime	31.03.2020	31.03.2021
Approval required for passing order u/s 148A(d) & issuing notice u/s 148 till 30.06.2021	u/s 151(i) i.e. PCIT	u/s 151(i) i.e. PCIT
Extended date to issue notice	30.06.2021	30.06.2021
Approval required for passing order u/s 148A(d) & issuing notice u/s 148 after 30.06.2021	u/s 151(ii) i.e. PCCIT	u/s 151(ii) i.e. PCCIT

Relevant judgements as an outcome of decision of SC in case UOI vs. Rajeev Bansal for AY 2016-17 & AY 2017-18

- **ITO vs. Pradeep Himatlal Shah, SLP (CIVIL) Diary No. 46177 of 2024 (SC)**
- **Lalit Garg vs. DCIT CC, 6(2), Mumbai, ITA – 6125 & 6126/MUM/2024 (Mumbai Trib.)**
- **Ramlal Suthar vs. ITO, ITA – 3224/MUM/2024 (Mumbai Trib.)**
- **Viren Rohitkumar Shah vs. ITO, ITA – 90/MUM/2025 (Mumbai Trib.)**
- **ACIT vs. Surya Ferrous Alloys Pvt Ltd, ITA – 1406/MUM/2024 (Mumbai Trib.)**
- **Ashok Amratlal Shah vs ITO, ITA – 4287 & 4288/MUM/2024 (Mumbai Trib.)**
- **Keshri Rice Industries vs. DCIT, ITA – 410/RPR/2024 (Raipur Trib.)**
- **ACIT vs. Ramchand Thakurdas Jhamtani, ITA – 3551/MUM/2024 (Mumbai Trib.)**



**ORDER PASSED IN CASE IF NON-
EXISTING ENTITY/ DEAD PERSON
HELD TO BE INVALID**

Order passed in case if non-existing entity held to be invalid

➤ PCIT vs Maruti Suzuki India Ltd Civil Appeal No. 5409 of 2019 (SC)

Where assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside.

Section 170, read with section 292B, of the Income-tax Act, 1961 - Succession to business otherwise than on death (Validity of assessment) - Assessment year 2012-13 - Whether issuance of jurisdictional notice and assessment order thereafter passed in name of non-existing company is a substantive illegality and not a procedural violation of nature adverted to in section 292B - Held, yes. Whether, therefore, where during pendency of assessment proceedings, assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity would be without jurisdiction and was to be set aside - Held, yes

Order passed in case if non-existing entity held to be invalid

➤ DCIT vs. Sterlite Technologies Ltd., SLP (Civil) Diary No. 54326 of 2024 (SC)

The Assessing Officer issued a notice under Section 148 on 30-03-2021 for AY 2013-14 in the name of Company 'E', which had ceased to exist due to amalgamation with the assessee-company effective from 29-09-2015. Despite being informed of the amalgamation on 28-04-2021, the AO proceeded to issue further notices and passed an assessment order against the non-existent entity. The High Court held that issuance of notice and subsequent proceedings in the name of a non-existent entity were void ab initio and thus set aside the assessment and penalty proceedings. The Supreme Court dismissed the Special Leave Petition (SLP) filed against the High Court's order, affirming that proceedings initiated against a non-existent entity are invalid in law.

Notice issued in case of dead person held to be invalid

➤ ITO Ward 1(3)(7), Surat vs Durlabhbhai Kanubhai Rajpara SLP (CIVIL) Diary No. 30693 of 2019 (SC)

Where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a dead person, SLP filed against said order was to be dismissed.

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Notice to dead person) - Pursuant to summons issued in name of assessee's father under section 131(1A), assessee brought to notice of revenue authorities that his father had already died - Despite knowing said fact, Assessing Officer issued notice in name of assessee's father under section 148 seeking to reopen assessment - Assessee thus filed instant petition contending that impugned notice was without any jurisdiction which was issued against a dead person - High Court held that no valid notice could be issued against a dead person and, thus impugned notice was required to be quashed and set aside - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 2][In favour of assessee]

Relevant judgements where notice issued on non-existing entity or dead person, held to be invalid

- **ACIT vs. Gayatri Microns Ltd, SLP Appeal (C) No. 13270 of 2020 (SC)**
- **Hinal Estates (P.) Ltd. vs. Union of India, W.P. No. 878 of 2019 (Bombay HC)**
- **Rupa Shyamsundar Dhumatkar vs. ACIT, W.P. No. 404 of 2019 (Bombay HC)**
- **Smt. Preethi vs. ITO, W.P. No. 12537 of 2024 (Karnataka HC)**
- **Sumit Balkrishna Gupta vs. ACIT, W.P. No. 3563 of 2018 (Bombay HC)**
- **BDR Builders & Developers (P.) Ltd. Vs. ACIT, W.P. (C) No. 2712 of 2016 (Delhi HC)**



CROSS EXAMINATION

Cross – Examination

➤ Kishinchand Chellaram vs CIT Civil Appeal No. 2728 of 1972 (SC)

Before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him.

“Section 23(3) of the Indian Income-tax Act, 1922 [Corresponding to section 143(3) of the Income-tax Act, 1961] - Assessment - Income from undisclosed sources - Employee of one office of assessee made, through a bank, telegraphic transfer of certain amount to employee of another office - ITO, on the basis of letters from bank manager, not shown to assessee, treated amount so remitted as income from undisclosed sources - Tribunal, relying on letters of bank manager, upheld ITO's action - Whether tribunal justified - Held, on facts, no - Whether burden of proof lay on department to show that remitted amount belonged to assessee by bringing proper evidence - Held, yes”

Cross – Examination

➤ H.R Mehta vs ACIT IT Appeal No. 58 of 2001 (Bombay HC)

The revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

“Where assessee had taken loan from one 'N' and Assessing Officer added loan amount in income of assessee under section 68 on basis that no confirmation letter had been obtained from 'N', since loan was advanced and repaid vide account payee cheques, Assessing Officer should have provided assessee material used against him apart from providing him an opportunity to cross examine deponents whose statements were relied upon”

Relevant judgements related to Cross Examination

- **PCIT vs. Kishore Kumar Mohapatra, S.L.P. (Civil) Diary No. 10281 OF 2024 (SC)**
- **Amrapali Fincap Ltd. vs. VC of Settlement Commission, Special Leave to Appeal (Civil) No. 34350 of 2016 (SC)**
- **CIT vs. Odeon Builders (P.) Ltd., Civil Appeal No. 9604-9605 of 2018 (SC)**
- **I.C.D.S vs. CIT, Civil Appeal No. 6053-6054 of 2014 (SC)**
- **Shakambhari Udyog Partnership Firm vs. CIT, Civil Writ Jurisdiction Case No. 7244, 16693, 16697 and 17742 of 2022 (Patna HC)**
- **Smt. Preethi vs. ITO, W.P. No. 12537 OF 2024 (Karnataka HC)**
- **Paramjit Singh Seehra vs. ACIT, ITA – 1318/MUM/2019 (Mumbai Trib.)**

DECISIONS RELATED TO DUMP
DOCUMENTS AND LOOSE PAPER/
FOUND WHATSAPP CHAT
RECOVERED FROM MOBILE
DURING SEARCH PROCEEDINGS

Case 1

10.01.2024 £ 10.00 = 00

15.02.2024 £ 250 = 00

31.05.2024 £ 755 = 80.

Case 2

10.01.2024 - Ram £ 1,000 = 00

15.02.2024 - Shyam £ 250 = 00

31.05.2024 - Anun £ 755 = 80.

Case 3

10.01.2024 - Ram ₹ 1000 = 00 Given

15.02.2024 - Shyam ₹ 250 = 00 Recd.

31.05.2024 - Arun ₹ 650 = 00 Recd.

Case 4

10.01.2024 - Ram ₹ 10,000 - Recd.

15.01.2024 - Shyam ₹ 2,000 - Expenses.

20.01.2024 - Hari ₹ 1,00,000 = Loan Given

25.01.2024 - Lucky ₹ 2,00,000 Loan Given.

15.02.2024 - Hari ₹ 1,00,000 - Loan Recd. (Repayment)

15.02.2024 - Hari ₹ 2000 - Int. on loan.

Loose Papers found during course of search to be treated as Dump Document

➤ ACIT vs. Shanker Nebhumal Uttamchandani ITA – 321/SRT/2022 (Surat – Tribunal)

Assessing Officer made addition on basis of a paper found and seized from office premises of assessee allegedly showing some transaction of land – On appeal, CIT(A) found that such paper was not in handwriting of assessee or his family members and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land - Commissioner (Appeals) held that such loose paper was nothing but a dump document which could not be relied upon solely for making huge addition - Whether since Assessing Officer had neither brought any corroborative evidence nor further investigated fact nor referred any corroborative evidence if collected during search action by Investigation Wing, Commissioner (Appeals) was justified in deleting addition

Addition made by AO on account of some undisclosed land transaction on basis of a loose paper found during search at assessee's premises was not justified when said paper was not in handwriting of assessee and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land.

Electronic material without Corroborative Evidence to be treated as Dump Document

- **Rucha Consultancy LLP vs. DCIT, CC-6(1)
ITA – 4996 & 5706/MUM/2024 (Mumbai - Trib.)**

Where additions were made under sections 69A and 69C respectively on basis of a WhatsApp image found in phone of assessee's personal assistant, which neither bore assessee's name nor was corroborated by independent evidence, and no physical cash was found with assessee, said document was to be treated as a dumb document and impugned additions were to be deleted.

Whether, where addition was made under section 69C on basis of image found in employee's mobile phone showing alleged cash disbursements, but said image did not contain assessee's name & was disowned by assessee, and no corroborative material was brought on record, such image was to be treated as a dumb document and addition was liable to be deleted.

Electronic material without Corroborative Evidence to be treated as Dump Document

➤ DCIT vs. Gordhanbhai L. Talavia, ITA – 1554/SRT/2017 (Surat-Trib.)

Pursuant to search and seizure operation at residential premises of assessee, certain loose papers were found and seized wherein figure of Rs. 4.49 crore was mentioned against name of assessee. Accordingly, a show cause notice was issued to assessee. Assessing Officer recorded that assessee failed to furnish details and in absence of any details, made addition of Rs. 4.49 crores. However, it was found that addition was merely based on dump documents found during search. Assessing Officer had not conducted any separate or independent evidence to bring corroborative evidence to connect entry in seized material with assessee. Whether therefore, in absence of any corroborative evidence, no contrary presumption could be drawn against assessee on a mere figure on loose papers and thus, there was no infirmity or illegality in order passed by Commissioner(Appeals) in deleting addition - Held, yes.

Loose Papers are irrelevant as evidence not admissible

➤ **Common Cause v. Union of India,
(2017) 394 ITR 220 SC**

During raids on two business groups, various incriminating materials such as loose sheets, computer prints, hard disks, and pen drives indicating alleged money transactions were seized. However, there was no evidence to establish that these documents and electronic records were maintained regularly in the course of business. The Court held that such materials lacked evidentiary value and could not be relied upon to initiate criminal proceedings, including the registration of an FIR or investigation against high-ranking public officials. It was further held that the seized materials were irrelevant and legally inadmissible under Section 34 of the Indian Evidence Act..

Relevant judgements related to Digital Evidence/ Whatsapp Chat/ Loose Paper not admissible or treated as Dump Document

- CIT(A) vs. Sunil Kumar Sharma, SLP (CIVIL) Diary No. 21526 of 2024(SC)
- PCIT vs. Nishant Construction (P.) Ltd., SLP (CIVIL) Diary No. 42776 of 2018 (SC)
- Cannon Industries (P.) Ltd. Vs. DCIT, ITA – 5410 & 5411/MUM/2011 & 5512/MUM/2012 (Mumbai Trib.)
- CIT Vs Maulik Kumar K. Shah, (2008) 307 ITR 137 (Gujarat HC)
- Smt. Harmohinder Kaur Vs DCIT, (2021) 187 ITD 289 (Amritsar Trib)
- DCIT Vs Tulsibhai Mavjibhai Shankar, (2010) 4 ITR (T) 670 (Ahmedabad HC)



**DECISIONS RELATED TO NO
ADDITION CAN BE MADE IF NO
INCRIMINATING MATERIAL FOUND
FROM THE SEARCHED PREMISES**

No Incriminating Material found from search premises

- **PCIT vs. Abhisar Buildwell (P.) Ltd
Civil Appeal No. 6580 of 2021 (SC)**

In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A.

No Incriminating Material found from search premises

- **CIT-20 vs. Deepak Kumar Agarwal**
IT Appeal Nos. 1169,1178,1709,1780 of 2014 & 131 of 2015,
467 to 470,472,477,483,566,914,1194 & 1197 of 2017 (Bombay
HC)

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

“Whether assessment under section 153A can be made only on basis of incriminating material found in search under section 132 - Held, yes. Assessing Officer as a result of search conducted under section 132 on assessee framed assessment of assessee under section 143(3) read with section 153A and made additions under sections 68 and 14A to his income - Tribunal held that additions were made beyond scope of section 153A, as no incriminating material in support of additions made under section 68 and under section 14A was brought on record by revenue – Whether in peculiar facts and circumstances of case, no substantial question of law arose from order of Tribunal - Held, yes”

Relevant judgements related to No Incriminating material found

- **PCIT vs. Welspun India Ltd, IT Appeal No. 3152, 3203, 3245, 3250, 3261 & 3356 of 2018 (Bombay HC)**
- **CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd, IT Appeal No. 523 & 1969 of 2013 (Bombay HC)**
- **PCIT vs. Ahinsa Vinimay (P.) Ltd., SLP (CIVIL) Diary No. 33203 of 2024(SC)**
- **PCIT vs. TDI Infrastructure Ltd., IT Appeal No. 494 and 495 of 2022 (Delhi HC)**
- **PCIT vs. Speciality Paper Ltd., IT Appeal No. 16, 22, 30 of 2019(Bombay HC)**
- **PCIT vs. Salarpuria Properties (P.) Ltd., ITAT NO. 157 OF 2023 (Calcutta HC)**
- **PCIT vs. Rohit Kumar Jain, IT Appeal No. 5 of 2023 (Gauhati HC)**



NO APPEAL CAN BE FILED BY
DEPARTMENT AGAINST CIT(A)
ORDER IF SUCH ORDER IS PASSED
ON THE BASIS OF REMAND
REPORT

No Appeal can be filed by Department against CIT(A) order if such order is passed on the basis of Remand Report

➤ DCIT vs. Bharat Ratilal Shah ITA – 383/MUM/2025 (Mumbai Trib.)

A bare perusal of the impugned order shows that the learned CIT(A) has accepted the Remand Report and has deleted the disallowances made on account of bogus purchases; both inter-branch and other parties, and unexplained expenditure added under Section 69C of the Act. Once the Assessing Officer has accepted the claim of the assessee after due verification of the documents produced, it is difficult to see as to how the Revenue can challenge the same on the spacious ground that the learned CIT(A) was in error in accepting and placing reliance on the Remand Report.

No Appeal can be filed by Department against CIT(A) order if such order is passed on the basis of Remand Report

➤ Jivatlal Purtapshi vs CIT [1967] 65 ITR 261 (Bom.) (Bombay HC)

Whether on appeal to Tribunal can only be taken against a part of order against which appellant can be said to be feeling aggrieved - Held, yes.

During course of assessment, ITO made addition to returned income of assessee as part of branch profits of assessee arising from its branch at "R" – While appeal against said addition was pending a settlement was arrived between assessee and department and department agreed to delete said addition – Accordingly, when AAC decided appeal ITO conceded deletion of said amount and AAC, recording that concession deleted that amount – However, subsequently department appealed to Tribunal against said deletion by AAC - Whether it was impossible that department could be treated as being aggrieved by that part of the order so as to entitled to take an appeal to the Tribunal - Held, yes – Whether therefore, Tribunal had no jurisdiction to deal with said deletion in face of AAC's statement that ITO had conceded point and had no objection to exclusion of that amount from assessment - Held, yes.

Relevant judgements related to no appeal by department if CIT(A) order is passed on the basis of Remand Report

- ITO vs. Shri Ajay Ramchandra Chande, ITA No.583/MUM/2020 (Mumbai Trib.)
- ITO vs. Liberal Realtors LLP, ITA No. 450 & 451/MUM/2021 (Mumbai Trib.)
- PCIT vs. Ambition Agencies (P.) Ltd., ITAT No. 143 of 2017 (Calcutta HC)
- Smt. B. Jayalakshmi vs. ACIT, Review Application No. 88 to 90 of 2014 (Madras HC)
- DCIT vs. J.A. Infracon (P.) Ltd, ITA No. 166/AHD/2021 (Ahmedabad Trib.)



DECISIONS WHERE ADDITION IS
MADE IS MADE IN RESPECT OF
LONG-TERM CAPITAL GAIN
EARNED ON SALE OF SHARES
TREATED AS PENNY STOCK

Addition in respect of LTCG on sale of shares treated as Penny Stock

➤ PCIT vs. Indravadan Jain HUF IT Appeal No. 454 of 2018 (Bombay HC)

Where shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, there was no reason to add capital gains as unexplained cash credit under section 68

Assessee had claimed sale proceeds of shares as long-term capital gain (LTCG) exemption - However, A.O. held that scrip was a penny stock and thus, he made an addition of same under section 68 - Commissioner (Appeals) observed that shares were purchased on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange and, accordingly, held that there was no reason to add capital gains as unexplained cash credit under section 68 - Whether Tribunal had rightly concluded that there was no merit in appeal against Commissioner (Appeals) order - Held, yes

Addition in respect of LTCG on sale of shares treated as Penny Stock

➤ CIT vs. Shyam R Pawar IT Appeal Nos. 1568 to 1571 of 2012 (Bombay HC)

Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68

Assessee declared capital gain on sale of shares of two companies - Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices, held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus - Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted - Held, yes

Addition in respect of LTCG on sale of shares treated as Penny Stock

➤ ITO vs. Prakashmal Malraj Jain IT Appeal No. 454 OF 2018 (Bombay HC)

Where assessee earned long-term capital gain on sale of shares and claimed same as exempt under section 10(38) and Assessing Officer treated long-term capital gain declared by assessee as bogus in nature, since assessee had purchased shares from market in physical form, got it transferred in his name and later dematerialized same and payment for purchase of shares was made through banking channels, impugned addition made by Assessing Officer was unjustified

Assessee had earned long-term capital gain on sale of shares and claimed same as exempt under section 10(38) - Assessing Officer reopened assessment on ground that long-term capital gain declared by assessee was bogus in nature on basis of report of Investigation Wing - It was noted that assessee had purchased shares from market in physical form, got it transferred in his name and later dematerialised same - Payment for purchase of shares was made through banking channels and assessee had furnished copy of demat statement, which showed entry and exit of shares - Further, Assessing Officer had not found fault with any of documents furnished by assessee evidencing purchase and sale of shares and had also not carried out any independent enquiry with regard to transactions carried on by assessee - Whether, on facts, impugned addition made by Assessing Officer was unjustified

Relevant judgements related to addition made in case of LTCG on sale of shares treated as Penny Stock

- **PCIT vs. Damodar Jajoo, SLP(C) No. 1144 of 2025 (SC)**
- **PCIT vs. Renu Aggarwal, SLP(C) No. 13033 of 2023 (SC)**
- **PCIT vs. Genunie Finance (P.) Ltd., SLP(C) Diary No. 18362 of 2024 (SC)**
- **Harsh Vardhan Bansal vs. ACIT, W.P. (C) No. 330 of 2023 (Delhi HC)**
- **Praksh Pushparaj Golcha vs. ACIT, ITA – 4417/MUM/2023 (Mumbai Trib.)**
- **Tejash Ramesh Shah, HUF vs. ITO, ITA – 5813 & 5814/MUM/2024 (Mumbai Trib.)**
- **Smt. Anusmriti Sarkar vs. ITO, ITA – 390/MUM/ 2020 (Mumbai Trib.)**
- **PCIT vs. Smt. Krishna Devi, IT Appeal Nos. 125, 130 and 131 of 2020 (Delhi HC)**



DECISIONS WHERE ADDITION IS
MADE IN RESPECT OF SHARE
CAPITAL/ PREMIUM IS RECEIVED

Addition u/s 68 Share Capital/ Share Premium

➤ CIT vs. Lovely Exports [2008] 216 CTR 195 (SC)

Section 68 of the Income-tax Act, 1961 - Cash credit - If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company

Addition u/s 68 Share Capital/ Share Premium

- **PCIT vs. Esspal International (P.) Ltd.**
D. B. Income Tax Appeal No. 25 of 2024 (Rajasthan HC)

Where assessee received share application money and had furnished each and every document required for proving identity, creditworthiness of share applicants and genuineness of transactions, impugned addition made under section 68 on ground that it was accommodation entry was to be deleted

During a search conducted upon one SCS, it was found that he was engaged in providing accommodation entries of share capital, share premium, share application money, unsecured loans, long term capital gains, short term capital gains etc. in lieu of cash received by him and that it had also provided one-time entry of certain amount towards share application money to assessee-company through a broker and such transaction was not genuine - Assessing Officer made addition under section 68 to income of assessee on account of same - It was noted that Tribunal had noted that assessee had furnished each and every document required for proving identity, creditworthiness of share applicants and genuineness of transactions, however, Assessing Officer had not been able to brought on record any evidence to show that cash was paid by assessee to any person for obtaining accommodation entries in form of share application money - Whether, on facts, impugned addition made by Assessing Officer was without any basis - Held, yes.

Relevant judgements related to addition of Share Capital

- **CIT vs. Gagandeep Infrastructure (P.) Ltd., IT Appeal No. 1613 of 2014 (Bombay HC)**
- **CIT vs. Expo Globe India Ltd., IT Appeal No. 1257 of 2011 (Delhi HC)**
- **ITO vs. Frohar Trading Pvt. Ltd., ITA No. 543/MUM/2018 (Mumbai Trib.)**
- **ITO vs. Ahaan Financial Services Pvt. Ltd., ITA No. 5904/MUM/2017 (Mumbai Trib.)**
- **ITO vs. Fulton Corporation Pvt. Ltd., ITA No. 544/MUM/2018 (Mumbai Trib.)**
- **ITO vs. Agarwal Cloth Agency Pvt. Ltd., ITA No. 2969/MUM/2017 (Mumbai Trib.)**

DECISIONS WHERE ADDITION IS
MADE IN RESPECT OF
UNSECURED LOAN TAKEN

Addition u/s 68 in respect of Unsecured Loan Taken

➤ Gaurav Triyugi Singh vs. ITO IT Appeal No. 1750 of 2017 (Bombay HC)

Where assessee had received unsecured loan of certain amount from an individual, since loan amount was received by assessee through cheque and there was no dispute as to identity and creditworthiness of creditor and genuineness of transaction and revenue could not prove or bring any material to impeach source of credit, no addition under section 68 could be made on account of this loan amount.

Addition u/s 68 in respect of Unsecured Loan Taken

➤ PCIT vs. Naresh Nemchand Shah R/ Tax Appeal No. 389 of 2023 (Gujarat HC)

Where pursuant to a survey, unsecured loans taken by assessee from GCSL were deemed non-genuine by Assessing Officer on basis of statement of director of GCSL, since apart from said statement, there was no other evidence against assessee and moreover, assessee had filed evidence in form of confirmation from creditor, audited accounts of creditor and copies of banks accounts to prove genuineness and creditworthiness of creditor which was within parameters of section 68, impugned addition made in that respect to be deleted.

Relevant judgements related to addition of Unsecured Loan Taken

- **Labh Chand Bohra vs. ITO, IT Appeal No. 92 of 2005 (Rajasthan HC)**
- **PCIT vs. Hi-Tech Residency (P.) Ltd., IT Appeal No. 628 of 2016 (Delhi HC)**
- **CIT vs. Chandela Trading Co. (P.) Ltd., IT Appeal No. 831 of 2004 (Calcutta HC)**
- **CIT vs. Sree Ganesh Trading Company, IT Appeal No. 286 of 2009 (Kerala HC)**
- **CIT vs. Hemant Hasmukhlal Shah, Tax Appeal No. 2417 of 2009 (Gujarat HC)**
- **CIT vs. Haresh D. Mehta, IT Appeal No. 1785 of 2014 (Bombay HC)**

DECISIONS WHERE ADDITION IS
MADE IN RESPECT OF
UNSECURED LOAN TAKEN &
REPAID SUBSEQUENTLY

Addition u/s 68 in respect of Unsecured Loan Repaid Subsequently

➤ PCIT vs. Bairagra Builders (P.) Ltd IT Appeal No. 1427 of 2018 (Bombay HC)

Where assessee had taken unsecured loan from two companies and had submitted all evidences to substantiate loan including confirmation from creditors and loan was taken and repaid through banking channels, Assessing Officer was not justified in treating said unsecured loan as fake and unexplained cash credit.

“Assessee-company took unsecured loans from two companies - On basis of statement of one PKJ recorded during search and seizure operation that he had provided accommodation entries to assessee, Assessing Officer treated said loans as fake - Whether since Assessee had submitted all evidence to substantiate loans in question, including confirmation from creditors and loans were taken and repaid through banking channels, Assessing Officer was not justified in treating said unsecured loan as fake and making addition of interest paid on said loan to assessee's income - Held, yes.”

Addition u/s 68 in respect of Unsecured Loan Repaid Subsequently

➤ Pendurthi Chandrasekhar vs. DCIT IT Appeal No. 701 & 702 of 2016 (A.P. and Telangana HC)

Assessee received loan of Rs. 10 Lakhs from one JV and same was repaid by bank transfer - Assessing Officer added loan amount as unexplained credit on ground that identity of creditor was not proved. However, copy of bank account statement of JV stated to have been obtained by Assessing Officer showed that a sum of Rs. 10 lakhs was withdrawn from his account and transferred to assessee's account, and later a sum of Rs. 10 lakhs was credited to account of JV, transferred from account of assessee to show genuineness of transaction - Further, identity of JV was clearly established from bank account statement sent by ING Vysya bank, authenticity and genuineness of which were not doubted by Assessing Officer - Whether therefore, addition of Rs. 10 lakhs to assessee's income as unexplained cash credit was not justified - Held, yes



Relevant judgements related to addition of Unsecured Loan Taken & Repaid

- **Dazzling Construction (P.) Ltd. vs. ITO, ITA – 3771/DEL/2023 (Delhi Trib.)**
- **DCIT vs. Hetal Nitin Shah, ITA – 1080/MUM/2023 (Mumbai Trib.)**
- **PCIT vs. Neotech Education Foundation, R/ Tax Appeal No. 390 of 2022 (Gujarat HC)**
- **Pratapbhai Virjibhai Patel vs. ITO, Tax Appeal No. 1017 of 2013 (Gujarat)**

DECISIONS WHERE ADDITION IS
MADE IN RESPECT OF CASH
DEPOSIT MADE DURING
DEMONITISATION PERIOD

Addition u/s 68 in respect Cash Deposit during Demonitisation

➤ Jitendra Kumar Tahilramani vs. ITO ITA – 98/JP/2024 (Jaipur - Trib.)

Where assessee, engaged in trading of gold and diamond jewellery deposited cash of Rs. 50 lakhs during demonetization period in his bank accounts and claimed that said cash was proceeds of cash sales, since assessee furnished all sales invoices with complete year cash book, names, addresses and telephone numbers of person to whom cash sales were made, such sales could not be considered as unexplained money and that too when profit derived from those sales proceeds was already taxed as part of sales

Addition u/s 69A in respect Cash Deposit during Demonitisation

- **ITO vs. Zee Bangles Pvt. Ltd.**
ITA no. 815/MUM/2022 (Mumbai Trib.)

Section 69A of the Income Tax Act applies when a person is found to own unexplained money not recorded in their books of account. However, in this case, the assessee had maintained duly audited books under Section 44AB and filed them with the return of income. The assessee substantiated that the cash deposits were from recorded cash sales, supported by proper documentation such as purchase and sales books, and invoices. Given these facts, the Assessing Officer (AO) incorrectly invoked Section 69A. The Commissioner of Income Tax (Appeals) rightly concluded that Section 69A was not applicable, as the cash deposits were already accounted for and declared as income. Consequently, the Revenue's appeal was dismissed.

Relevant judgements in respect of cash deposit during demonitisation

- **Vidisha Gold Pvt. Ltd. vs. ITO, ITA 1790/MUM/2024 (Mumbai Trib.)**
- **ACIT vs. Hirapanna Jewellers, ITA 253/MUM/2020 (Mumbai Trib.)**
- **Bandari Gold and Jewellers Pvt. Ltd. vs. CIT(A), ITA 1619/MUM/2022 (Mumbai Trib.)**
- **DCIT vs. M/s Kundan Jewellers Pvt. Ltd., ITA 1035/MUM/2022 (Mumbai Trib.)**
- **R. S. Diamonds India (P.) Ltd. vs. ACIT, ITA 2017/MUM/2021 (Mumbai Trib.)**
- **ACIT vs. Ramlal Jewellers (P.) Ltd., ITA 1600/MUM/2023 (Mumbai - Trib.)**
- **Fine Gujranwala Jewellers vs. ITO, ITA 1540/DEL/2022 (Delhi - Trib.)**



263 provisions cannot be invoked if
order is passed after approval of
requisite authority

Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **PCIT vs. Prakhar Developers (P.) Ltd.,
IT Appeal No. 182 of 2023 (Madhya Pradesh HC)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.

Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **Devendra Kumar Gupta vs. PCIT,
ITA – 1890 to 1893/DEL/2024 (Delhi - Trib.)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263 without giving a finding that prior approval under section 153D was vitiated and was also erroneous so far as prejudicial to interest of revenue.

Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from ACIT

- **Smt. Abha Bansal vs. PCIT,
ITA – 383 to 386/DEL/2021 (Delhi - Trib.)**

Whether an order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.



OTHER IMPORTANT JUDGEMENTS

Approbate and Reprobate

- **K. K. Spun India Ltd. vs. DCIT,
ITA – 2005 to 2008/DEL/2024 (Delhi Trib.)**

Secondly revenue has to consequentially reduce returned income if case against assessee is **INFLATING BOOKS/ INGENUINE SALES/ PURCHASES** as revenue cannot approbate and reprobate.

These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

Reopening on basis of information u/s 148 after period of 3 years and addition made below Rs. 50 lakhs not sustainable

➤ Santosh vs. ITO, ITA – 2025/DEL/2024 (Delhi Trib.)

The assessee had sold a property for ₹43 lakhs and reinvested the proceeds in a new property worth ₹90 lakhs. However, the Assessing Officer (AO) issued a notice under section 148 based on alleged sale of immovable property worth ₹1.33 crore, relying on two sources: (i) Sub-Registrar data (₹43 lakhs) and (ii) a TDS return under section 194-IA, which actually pertained to the assessee as a purchaser. The AO mechanically combined both without proper verification, leading to an incorrect assumption of capital gains escapement. The Tribunal held this reopening beyond three years as invalid under the new regime, citing lack of proper application of mind and absence of tangible evidence. Grounds 1.3 to 1.5 were allowed, and the appeal of the assessee was upheld.

Where assessment Order itself is invalid or void then order (u/s 263) passed under revisional authority remains unsustainable

➤ **Ambika Alloys vs. PCIT,
ITA – 1918 & 1921 /DEL/2024**

It is established by law that provision of section 153D is mandatory to initiate assessment or reassessment u/s 153C and in section 263 “any order” does not include an order which is void ab initio. The submission of appellant that approval is mechanical and without application of mind, at best on such approval if any proceeding is initiated it will have null and void effect in the eye of law and will have no relevancy; and that it is not subject to revision. It is also submitted that in the above circumstances any order passed under revisional authority remains unsustainable.



Thank You