

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'G', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member  
And  
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2122/Del/2018 : Asstt. Year : 2012-13**

Rishabh Buildwell P. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCR9776R</b>		

**ITA No. 2163/Del/2018 : Asstt. Year : 2012-13**

Rishabh Buildcon P. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCR7502F</b>		

**ITA No. 2123/Del/2018 : Asstt. Year : 2012-13**

R.G.V. Fininvest P. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACR4383G</b>		

**ITA No. 2162/Del/2018 : Asstt. Year : 2011-12**

R.G.V. Fininvest P. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACR4383G</b>		

**ITA No. 2124/Del/2018 : Asstt. Year : 2011-12**

Shristhi Computers P. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAICS9543H</b>		

**ITA No. 2491/Del/2018 : Asstt. Year : 2012-13**

Aggarwal Capfin Financial Services Pvt. Ltd., 196, Ram Vihar, New Delhi-110092	Vs	DCIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCA0925E</b>		

**Assessee by : Sh. Kapil Goyal, Adv.**  
**Revenue by : Sh. S. S. Rana, CIT DR**

<b>Date of Hearing: 10.06.2019</b>	<b>Date of Pronouncement: 04.07.2019</b>
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**ORDER****Per B. R. R. Kumar, Accountant Member:**

The assessee has raised following grounds of appeal:

" 1. On the facts and circumstances of the case and in law, the Learned CIT Appeals has erred in upholding the addition of Rs.150 lacs as income of the assessee by treating the share capital as unaccounted money of assessee though no incriminating documents were recovered during search operations u/s 132 and the assessment had been completed before the date of search.

2. On the facts and circumstances of the case and in law, the learned CIT (Appeals) has erred in upholding an addition of Rs.150 lacs as income of the assessee by treating the share capital as unaccounted money of the assessee.

3. Assessee craves leave to add amend or alter the grounds of appeal at the time of hearing."

2. Since, the issue being dealt in all the appeals are similar except the quantum involved, they are being adjudicated together for the sake of convenience. The ITA No. 2122/Del/2018 is taken as lead case.

3. Brief facts of the case are that a search and seizure proceedings u/s 132 of the Act was conducted on 13.05.2014 in the premises of the assessee comprising cloud 9 and Sethi group of cases. Notice u/s 153A was issued on 08.08.2016. The assessee filed its return of income declaring total income of Rs. 6,48,84,460/ in pursuant to the notice issued u/s 153A of the Act.

4. The assessment order has been passed on 30.12.2016 after obtaining approval of the Joint Commissioner, Central Range, Meerut vide letter dated 30.12.2016.

5. At the outset, the Id. AR argued to admit the additional grounds filed before the Tribunal which reads as under:

*"That assessment framed u/s 153A/143(3) for the period under consideration (AY 2012-13) is void ab initio being passed on basis of invalid and incomplete and inchoate approval u/s 153D dated 30/12/2016 by JCIT Central Range Meerut as patent from para 3 there of reciting that " ...You are directed to ensure taking into account seized documents/papers and comments in the appraisal report pertaining to AYs.... " as after this there is no approval u/s 153D on final draft order which facts gets doubly confirmed from case order sheet which is blissfully silent on approval aspect (taken vide specific application dated 23/04/2019 and supplied vide DCIT Central Circle letter dated 26/04/2019) and ergo assessment framed as confirmed by Ld CIT-A deserves to be quashed and assessment may be declared as nullity."*

6. To support the admission of their legal & Jurisdictional ground, the Ld.AR relied on following case laws:

- *Singhad Technical Society 397 ITR 344 (SC)*
- *Fast Booking (I) Pvt. Ltd., 378 ITR 693 (Del.)*
- *Silver Line 383 ITR 455 (Del.)*
- *M/s VMT Spinning Co. Ltd., 389 ITR 326 (P&H)*
- *Jolly Fantasy World Ltd 373 ITR 530 (Guj.)*
- *CIT Vs. Lalitkumar Bardia (2017) 84 taxmann.com 213 (Bom)*

7. The Id. DR vehemently objected to the admission of the additional evidences and argued that no legal question is involved in the grounds taken by the assessee at this juncture.

8. We have heard the arguments and find that the issue is a purely legal issue pertaining to approval of assessment u/s 153D of the Act and hence being admitted. We rely on the judgment of the Hon'ble Supreme Court in the case of NTPC v. CIT(1998) 229 ITR 383 SC wherein it has explained that the power of the Tribunal in dealing with the appeals under Section 254 of the Act is "expressed in the widest possible terms". It was further observed as under:

*"5. ....The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."*

9. The Id. AR argued that the approval given by the Joint Commissioner of Income Tax, Central Range, Meerut is invalid and the short and narrow legal issue of assessment being framed on basis of invalid approval u/s 153D no longer res integra. The Id. AR relied on the decision of Delhi ITAT in case of M3M India Holdings order dated 15.03.2019 in ITA 2691/Del./2018 , ITAT, Jodhpur Bench in the case of Smt. Indira Bansal vs., ACIT (2018) 192 TTJ 968 (Jodh.) and Cuttack bench ITAT Sri Trinadh Chowdary, IT(S)A No.44 to 46/CTK/2016 27/09/2018.

On basis of the ration of the above judgements, it was argued that the additional grounds be admitted on legal and jurisdictional grounds , allow the appeal, and quash the orders passed by Ld AO and Ld CIT(A).

10. The Id. DR argued that as per the Section 153D of the Act, the JCIT has duly approved the assessment orders after going through the draft assessment order given by the Deputy Commissioner of Income Tax, Central Range, Ghaziabad. It was also argued that there was no fix it format for according the approval and from the letter dated 30.12.2016, it can be gauged that approval has been duly given by the JCIT in accordance with the provisions of the Act.

11. We have heard the arguments of both the parties and gone through the record and documents filed before us. For ready reference the entire part of the letter of approval dated 30.12.2016 is reproduced as under:

*Subject: Prior approval u/s 153 D in the cases of Cloud-9 & Sethi Group-regarding.*

*Please refer to your office letter F. No. DCIT/ CC/ GZB/ S&S/153D 2016-17/2904, 2908 & 2911 dated 28-12-2016 & 30-12-2016 on the above mentioned subject.*

*2. In the following cases of Cloud-9 & Sethi Group, prior approval u/s 153D of the IT Act, 1961 accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:*

S. No.	Name of the assessee	PAN	A.Yrs.
1	M/s Risabh Buildcon Pvt. Ltd.	AACCR7502F	2009-10 to 2015-16
2	M/s R.G.V. Fininvest Pvt. Ltd.	AAACR4383G	2009-10 to 2015-16
3	M/s Aggarwal Capfin Financial Services P. Ltd.	AABCA0925E	2009-10 to 2015-16
4	M/s Arihant Info Solutions P. Ltd.	AADCA5015H	2009-10 to 2015-16
5	M/s Sethi Estate P. Ltd.	AABCS7643B	2009-10 to 2015-16
6	Sh. Chander Mohan Sethi	AASPS1246A	2009-10 to 2015-16
7	Sh. Gulshan Sethi	AASPS1248Q	2009-10 to 2015-16
8	M/s East View Developers P. Ltd.	AABCE5324R	2009-10 to 2015-16
9	Sh. Desh Bhushan Jain	A AFPJ6467R	2009 10 to 2015-16
10	M/s Max City Developers Pvt. Ltd.	AAECM5401A	2009-10 to 2015-16
11	Sh. Sanjeev Jain	ACFPJ3817P	2009-10 to 2015-16
12	M/s Sethi Buildwell Pvt. Ltd.	AAICS9/42C	2009-10 to 2015-16
13	Sh. Satpal Nagar	AAFPN6467M	2009 10 to 2015-16
14	M/s Risabh Buildwell Pvt. Ltd.	AACCR9776R	2009-iO to 2015-16
15	Srnt. Magan Jain	AIMPJ8085G	2009-10 to 2015-16
16	M/s Angel Buildcon Pvt. Ltd.	AAFCAI968H	2009-10 to 2015-16

*2. A technical approval is accorded to pass assessment orders in the above cases on the basis of the drafts assessment orders submitted for the assessment years in reference years. You are directed to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to AYs. The fact of initiation of penalty proceedings, wherever, applicable, must also be incorporated in last para of the order. The initiation of correct penalty provisions of I.T. Act u/s 271 (1)(c)/ 271AAB, as per facts of the case, must be ensured.*

*3. This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should be sent to this office for record immediately on passing the assessment orders.*

*4. It must also be ensured that if any document in this case, pertains to any third party assessed with a different AO, the necessary information for taking necessary action must be sent to concerned AO immediately.*

12. The salient points of the approval letter is as under:

- 1. It is a technical approval*
- 2. The AO was directed to ensure that the comments in the appraisal report are duly ensured.*
- 3. The penalty proceedings should be mentioned wherever applicable for the initiation of correct penalty provisions must be ensured.*
- 4. After taking into consideration, the above points, a copy of the final orders passed be sent to the JCIT.*

13. The Income Tax Act envisages prior approval of the JCIT before passing the assessment order. The provisions read as under:

*"no order of assessment or reassessment shall be passed by the assessing officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of Section 153A or assessment year referred to in clause (b) of sub-section (1) of Section 153B except with the prior approval of Joint Commissioner."*

14. When the approval given by the JCIT, Meerut is juxtaposed against the directions and provisions of the Income Tax Act pertaining to completion to assessment u/s 153B(1) of the Act, it can be said that the approval given by the JCIT is invalid. The Act envisages that the JCIT's approval before passing of the final order. There is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been accorded. The approval to be given is statutory in nature and legally

binding. In the instant case, the approving authority has clearly mentioned that the approval given is a technical approval. Moreover, he has directed the DCIT to ensure the seized materials and the findings of the appraisal report to be incorporated in the final assessment order. This clearly goes to prove that the approval given by the JCIT is not a final approval as required u/s 153D of the Act but a conditional approval subjected to modifications by the DCIT after receiving of the approval which makes it an invalid, qualified, uncertain approval. This is not the mandate of the Act. It has also been laid down that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. The approval has to be statutory nature after due application of mind, it should be neither technical nor proforma approval which is envisaged u/s 153D of the Act. Reliance is placed the judgment of Coordinate Bench in the case of M3M India Holdings (ITA 2691/2018). And the judgment of Hon'ble High Court of Bombay in the case of Pr CIT vs. Smt. Shreelekha Damani [ ITA no 668 of 2016 Dated: 27<sup>th</sup> November, 2018 ] is as under:

*"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.*

*2. Following question was argued before us for our consideration:-*

*"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"*

*3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 1 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc 2007-08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.*

*4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations*

*made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.*

*5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time 2 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.*

*6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :-*

*"To, The DCIT(OSD)-1 Mumbai Subject : Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg.*

*Ref : No. DCIT (OSD)-1/CR-7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted.*

*Approval to the above said draft order is granted u/s 153D of the I.T. Act, 1961."*

*7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st 3 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.*

*8. Accordingly, the Tax Appeal is dismissed."*

15. Hence, keeping in view the facts and circumstances of the case and peculiarities of the instant case, owing to the judgment of the Hon'ble High Court, we hereby hold that the assessments completed by the DCIT do not stand in the eyes of law. Since the orders have been treated as null and void, any adjudication on other issues would be academic in nature only, hence refrained to do so.

16. In the result, the appeals of the assesseees are allowed.  
(Order Pronounced in the Open Court on 04/07/2019).

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 04/07/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**