

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA Nos.48 to 52/DDN/2019  
Assessment Years: 2008-09 to 2012-13

ITA No.130/DDN/2019  
Assessment Year : 2013-14

Uttarakhand Uthan Samiti,  
32/4, EC Road,  
Dehradun.

Vs ITO,  
Ward-45(5),  
New Delhi.

PAN: AAAAU1376N

(Appellant)

(Respondent)

|                       |   |                                                                                                                                 |
|-----------------------|---|---------------------------------------------------------------------------------------------------------------------------------|
| Assessee by           | : | Shri Salil Kapoor, Advocate,<br>Shri Sidharth Kanwar, Advocate,<br>Shri Sumit Lal Chandani, Advocate &<br>Shri Swaran Singh, CA |
| Revenue by            | : | Ms Pramita M. Biswas, CIT, DR                                                                                                   |
| Date of Hearing       | : | 16.01.2020                                                                                                                      |
| Date of Pronouncement | : | .04.2020                                                                                                                        |

ORDER

PER R.K. PANDA, AM:

ITA Nos.48 to 52/DDN/2019 filed by the assessee are directed against the common order dated 28<sup>th</sup> March, 2019 of the CIT(A)-4, Kanpur relating to A.Ys. 2008-09 to 2012-13 respectively. ITA No.130/DDN/2019 filed by the assessee is

directed against the order dated 31<sup>st</sup> July, 2019 of the CIT(A)-4, Kanpur relating to A.Y. 2013-14.

2. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order.

3. First we take up ITA No.48/DDN/2019 for A.Y. 2008-09 as the lead case. Facts of the case, in brief, are that the assessee is a society registered with the Registrar of Societies and was also registered u/s 12AA of the IT Act, 1961 by the CIT, Dehradun vide order Order No.C-40(206)/ Registration/Dehradun/2006-07/Tech/9703 dated 24.11.2007. The society runs various educational institutes in the name of Dev Bhoomi Group of Institutes at Dehradun and Saharanpur. A search and seizure operation u/s 132 of the IT Act was conducted on the Dev Bhoomi Institute of Technology, Uttarakhand Uthan Samiti and other group concerns on 26<sup>th</sup> April, 2012. In response to notice u/s 153A, the assessee filed its return of income declaring nil income. During the course of assessment proceedings, the AO noted that the assessee society has siphoned off its funds by the founder member and trustee of the society Shri Sanjay Bansal by floating some fictitious entities in the names of trusted employees/accountants, namely, Shri Sunil Dandriyal, Shri Sushil Kumar and their family members and opened bank accounts in their names by forging the documents submitted with the account opening forms. The deposits credited in these accounts were from the term

loan/OD accounts of Uttarakhand Uthan Samithi and Dev Bhoomi Institute of Technology, Dehradun, which are as under:-

1. M/s Fortech Computer System Proprietor Sh. Sunil Dandriyal, 194- Dharampur Danda, Dehradun.
  2. M/s Cad Arena Proprietor Shri Sunil Dandriyall, 194- Dharampur Danda, Dehradun.
  3. M/s Nice Home Builders Proprietor Shri Sunil Dandriyal, 194- Dharampur Danda, Dehradun.
  4. M/s Drishti Associates, 32/4, E.C.Road, Dehradun Proprietor Smt. Mamta Dandriyal w/o Shri Sunil Dandriyal, 194- Dharampur Danda, Dehrdun.
  5. M/s Pawan & Co.Prop. Pawan Kumar, 194-Dharampur Danda, Dehradun (non-existent person).
  6. M/s Rana Steel Prop. Rahul Kumar Rana, 22, Co-operative Industrial Estate, Patel Nagar, Dehrdun(Non-existent person)
  7. M/s Akashganga Associates Prop. Sushil Kumar, s/o Sh. Jai Prakash r/o Devbhoomi Institutes residential flats, Manduwala, Dehradun.
  8. M/s Alaknanda Realtors Prop. Smt. Rama Gautam w/o Sh. Sushil Kumar r/o Devbhoomi Institutes residential flats, Manduwala, Dehradun.
  9. M/s Confinite Prop. Sushil Kumar r/o Devbhoomi Institutes residential flats, Manduwala, Dehradun.
  10. M/s Negi Builders & Suppliers Prop, Mukesh Negi, r/o Dhalwala near Doon Steel, Rishikesh.
4. The AO further noted that other than the above concerns and their bank accounts, there were certain entities/concerns which are existing concerns doing

business, but, their bank accounts were fraudulently used by Mr. Sanjay Bansal who transferred funds of the society and then withdrawn the same for personal use.

Those concerns are as under:-

1. M/s Edisons Sales corp, Prop. Smt. Bimal Bansal who is mother of Sh. Sanjay Bansal:
2. M/s Strategic Marketing Pvt. Ltd. 29/3 Rajpur Road Dehradun.
3. Account number 14500100010404 in Federal Bank, Dehradun in Name of Smt. Satyeshwar Dhyani.
4. M/s Wali Gramudyog, Roorkee in the name of trust by Shri Sanjay Bansal. The evidences unearthed and examined during the search action, post-search enquiries and scrutiny proceedings have revealed following facts which proved the modus operandi of Sh. Sanjay Bansal to divert the funds of society through above accounts and other means for his personal motives and personal motives and purposes other than solely educational.
5. Rejecting various explanations given by the assessee and observing that the bank accounts were fraudulently used by Shri Sanjay Bansal to transfer funds of the society which were then withdrawn for personal use, the AO completed the assessment u/s 153A determining the total income of the assessee at Rs.33,01,340/- for the A.Y. 2008-09 wherein he disallowed proportionate interest on bogus loans, depreciation on fictitious assets, etc. He similarly disallowed the exemption claimed by the assessee u/s 12AA/10(23C) and brought to tax the surplus income. Similarly, for other A.Ys, the AO determined the total income of the assessee at Rs.2,09,19,860/- for A.Y. 2009-10, Rs.5,16,28,950/- for A.Y. 2010-11,

Rs.7,21,99,580/- for A.Y. 2011-12, Rs.6,20,72,846/- for A.Y. 2012-13 and Rs.7,28,35,130/- for A.Y. 2013-14.

6. In appeal, the Id.CIT(A) not only confirmed the addition made by the AO, but also directed the AO to enhance the income of the assessee to the extent of amount siphoned off for non-charitable/educational purposes which were not disallowed by the AO inadvertently in the assessment order. The amount of such enhancement made by the CIT(A) for the A.Ys 2008-09 to 2012-13 as per Para 10.4 of his order are as under:-

M/s. Uttarakhand Uthan Sam A.Y. 2008-09 to A.Y. 201.

| S.No. | A.Y.    | Amount siphoned off |
|-------|---------|---------------------|
| 1.    | 2008-09 | Rs.32,00,000/-      |
| 2.    | 2009-10 | Rs. 4,04,71,200/-   |
| 3.    | 2010-11 | Rs. 7,55,37,000/-   |
| 4.    | 2011-12 | Rs. 7,27,93,800/-   |
| 5.    | 2011-12 | Rs. 28,99,27,000/-  |
| 5.    | 2012-13 | Rs. 37,03,049/-     |
| 6.    | 2012-13 | Rs. 2,75,43,264/-   |
| Total |         | Rs. 51,31,75,413/-  |

7. Similarly, for A.Y. 2013-14, he enhanced the income of the assessee to the tune of Rs.40,20,100/- as per Para 7.3 of his order.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

1. That the notice issued U/s 153A and /the assessment order passed u/s 153A r.w.s. 143(3) of the Income Tax Act (‘‘Act’’) is illegal, bad in law, without jurisdiction and barred by time limitation.
2. That the CIT(A) has grossly erred in law and on facts in upholding the assessment order passed by the Assessing officer u/s 153A r.w.s. 143(3) of the Act.
3. That no valid search is conducted on the Appellant, hence the notice issued u/s 153 A of the Act is illegal, bad in law and without jurisdiction. Thus, the order passed u/s 153A r.w.s. 143(3) of the Act is also illegal bad in law and without jurisdiction.
4. That the assessment order passed without valid approval U/s 153D of the Act is illegal, bad in law and without jurisdiction and the CIT(A) has erred in law and on facts in upholding the same.
5. That the alleged approval u/s 153D of the Act is illegal, bad in law and without any application of mind and the Assessment order passed without obtaining valid approval is liable to be quashed.
6. That the notice for enhancement by the CIT(A) and the enhancement made by CIT(A) are illegal, bad in law and without jurisdiction.
7. That CIT(A) has erred both on facts and in law, in enhancing the income of the appellant and making further additions.
8. That the additions made by the AO and also additions made by CIT(A) by way of enhancement are illegal, bad in law and without jurisdiction.
9. That without prejudice, the additions made by CIT(A) by way of enhancement are illegal, bad in law as such amounts were never claimed as expenditure and are in the nature of capital expenditure.
10. That the assessment order under section 143(3) r.w.s 153A of the Act is passed after taking the approval of the Addl. CIT under section 153D of the Act and therefore, without setting aside the directions of the Addl. CIT/without seeking approval under section 153D of the Act, the order under section 143(3) r.w.s 153C of the Act, cannot be enhanced.
11. That without prejudice even when enhancing, the income, the learned CIT(A) has neither stated even the source of income or head of the income, which is stated to have been enhanced. Hence, the enhancement is illegal and bad in law.

12. That in view of the facts and in circumstances of the case and in law, the CIT(A) has erred in law and on facts in enhancing the income by Rs. 32,00,000/-.

13. That the order by the CIT(A) in enhancing the income is without jurisdiction and is wholly arbitrary as the order passed is without providing sufficient and adequate opportunity.

14. That the order passed by AO and also by CIT(A) are without giving reasonable and sufficient opportunity to the appellant and said orders have been passed in violation of principles of natural justice.

15. That the CIT(A) has arbitrarily rejected the ground of 'Non-opportunity' as no reasonable opportunity was afforded by the AO while framing the Assessment and in the same way, The Ld CIT(A) has not afforded reasonable/sufficient opportunity before passing the impugned order.

16. That in view of the facts and circumstances of the case CIT (A) after admitting the additional evidences U/r 46A has ignored the said evidences and have not dealt with merits of such evidences and has also failed to appreciate the contents of such evidences.

17. That the CIT(A) has erred in law and on facts in upholding the additions of Rs. 33,01,340 /- for the relevant Assessment Year as against the returned income at Nil. The addition is illegal, bad in law and arbitrary without considering the explanations/ evidences available on record and based upon mere surmises and conjectures.

18. That having regard to the facts and circumstances-of the case, AO/CIT(A) has erred in recording incorrect facts and findings and without providing the alleged adverse material used against the appellant, without providing opportunity of cross examination and without considering the submissions and evidences of the appellant.

19. That CIT(A) has erred in upholding the disallowance of Rs.178/- on account of interest paid on OD account. The addition is illegal, bad in law and arbitrary without considering the explanations/ evidences available on record and based upon mere surmises and conjectures.

20. That CIT(A) has erred in upholding the of Rs. 3,20,000/- on account of depreciation on building. The addition is illegal, bad in law and arbitrary without considering the explanations/ evidences available on record and based upon mere surmises and conjectures.

21. That the AO and the CIT(A) has failed to appreciate the fact that the Appellant society is eligible for registration U/s 12AA and exemption U/s 10(23)(C) of the Act.

22. That CIT(A) has erred in upholding the disallowance of the exemption admissible under the Act and has further erred in calculating the surplus at Rs. 29,81,162/- instead of Rs.29,71,297/- as claimed by appellant in the return.

23. That CIT(A) has erred in treating the surplus to the tune of Rs.29,81,162/- instead of Rs.29,71,297/- as taxable and in taxing the same at maximum marginal rate in the status of Association of Person against the facts and circumstances a/the case. The addition is illegal, bad in law and arbitrary without considering the explanations/ evidences available on record and based upon mere surmises and conjectures.

24. That CIT(A) has erred in upholding the action of AO in not allowing the full credit of prepaid taxes as claimed by the appellant in the return of income filed, without assigning any reason thereof.

25. That in view of the facts and circumstances of the case the AO & the CIT(A) has failed to appreciate that the additions cannot be made on the basis of alleged statements of Sunil Daundriyal & Sushil Kumar. The recorded statement do not have any evidentiary value.

26. That the AO & CIT(A) has failed to appreciate that the procedure prescribed under section 65B of the Information Technology Act 2000 was not fulfilled, therefore, various electronic evidences relied upon by the AO & CIT(A) are inadmissible in law and no adverse inference can be taken on these electronic evidences.

27. That the hard disk seized during the search was operated by the Income Tax Authorities in their office in the absence of Appellant or its representative and hence, the alleged contents of the same cannot be used against the Appellant. It has no evidentiary value.

28. That order u/s 127 of the Act was not passed in accordance with law consequently the impugned order passed under section 153A of the Income Tax Act, 1961 is illegal and liable to be quashed. The DCIT Central Circle, Dehradun was not competent to pass the Assessment Order as the order u/s 127 was not valid and legal order.

29. That the AO and CIT(A) has erred in law and on facts in charging the total income of the appellant at maximum marginal rate.

30. That the order of the learned CIT(A) in confirming the assessment is based on misconceived and erroneous assumption and on non-existent facts and hence is unsustainable in law.

31. That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for.

32. That the observation and the additions by the AO and by the CIT(A) made are unjust, illegal, arbitrary, bad in law, highly excessive and based on surmise conjecture.

33. That interest U/s 234A, 234B and 234C of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out.

34. That the applicant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing.

9. Identical grounds have been taken by the assessee for other years.

9.1 These appeals were heard on the preliminary issue of validity of the assessment in absence of proper approval given by the Addl.CIT, Central Range, Meerut u/s 153D of the IT Act.

10. The Id. Counsel for the assessee, at the outset, drew the attention of the Bench to page 37 of the paper book Volume-I which is the order sheet entries for the A.Y. 2008-09 and submitted that the AO on 30<sup>th</sup> March, 2015 has submitted the draft assessment order for approval u/s 153D. He submitted that the Addl.CIT had given the approval on the very same day u/s 153D and the order was also passed and served on the assessee on the very same day. He submitted that a perusal of the approval letter u/s 153D, copy of which is placed at page 38 and 39 of the paper book Volume-I shows that the approval has been granted on a condition that the final order has to be passed subject to the amendments made in the drafts as per

discussion. He submitted that the Addl. CIT, Meerut, while giving the alleged approval had added a condition precedent to the passing of the final order. He submitted that the approval, if any, accorded to the proposed draft order has to be in clear terms and cannot be based on certain conditions. Referring to the decision of the Delhi Bench of the Tribunal in the case of *Rishabh Buildwell Pvt. Ltd. vs. DCIT, vide ITA No.2122/Del/2018, order dt. 04.07.2019*, he submitted that the Tribunal under identical circumstances has quashed the assessment on the ground that the approval was given in a mechanical manner and was a conditional approval subject to modification by the DCIT after receiving of the approval which makes it an invalid, qualified and uncertain approval.

11. Referring to various pages of the paper book, the ld. Counsel for the assessee submitted that the alleged draft order was prepared on 30<sup>th</sup> March, 2015 by the DCIT at Dehradun which was submitted on the same day for approval u/s 153D of the Act to the Addl.CIT at Meerut which is about 250 Kms. away. Further, the proposal for obtaining approval u/s 153D of the Act along with submission of draft assessment order is dated 30<sup>th</sup> March, 2015 and it would show that such proposal is prepared in the office of the DCIT, Central Circle, Dehradun on 30<sup>th</sup> March, 2015. Further, letter dated 30<sup>th</sup> March, 2015 is addressed to the Addl. CIT, Central Range, Meerut. He submitted that a perusal of the approval granted u/s 153D of the Act by the Addl. CIT, Central Range, Meerut dated 30<sup>th</sup> March, 2015 shows that approval was given to pass final assessment order in 21

cases totaling to 130 orders on 30<sup>th</sup> March, 2015 to the Dy. CIT, Central Circle. Referring to the reply obtained to the application under Right to Information Act as to how many search cases approval to draft assessment order made u/s 153A r.w. section 143(3) and 153C of the Act, 1961 were given on 30<sup>th</sup> March, 2015 by the Joint/Addl. CIT, Central Circle, Meerut, in terms of the provisions contained in section 153D of the Act, copy of which is placed at paper book page 42 of the consolidated paper book, he submitted that the total draft orders approved on 30<sup>th</sup> March, 2015 were only 10 (ten). He submitted that the total number of approval obtained as per the letter F. No. Addl. CIT/CR/MRT/153D/2014-15/1158 dated 30.03.2015 totals to 21 assessees and total number of orders covered in such approval is 130. However, in the order passed u/s 7(1) of the RTI Act, 2005 dated 14<sup>th</sup> February, 2017, it is mentioned to be 10 which itself shows that no valid approval u/s 153D has been given. He submitted that the approval so granted by the Addl.CIT is merely a formality to pass the assessment orders in the cases as recorded in the approval letter. According to the Id. Counsel, it is not possible to go through the files of each and every case on the day of receipt of draft order for approval and granting the approval on the same day. He submitted that the distance between Dehradun and Meerut is 250 Kms and request for approval as well as granting of approval was on the very same date and the assessment orders were also passed on the very same day which shows that no independent satisfaction has been recorded by the Addl.CIT and there is no application of mind while passing the final assessment order. He further submitted that the assessee has

filed its submissions dated 30<sup>th</sup> March, 2015 in assessee's own case which was received by the AO on 30.03.2015 which further strengthens the point that the AO was present in her office on 30<sup>th</sup> March, 2015 at Dehradun. Even otherwise, the order sheet entry dated 30<sup>th</sup> March, 2015 also proves that the AO was very much present at Dehradun on 30<sup>th</sup> March, 2015. Therefore, when the draft assessment order was sent for approval on 30<sup>th</sup> March, 2015 from the office of the AO at Dehradun which was received by the Office of the Addl.CIT, Central Range, at Meerut, who went through the records/suggested changes and amendment, granted approval on the same date i.e., on 30<sup>th</sup> March, 2015 in 130 cases and returned the records to the AO, who, thereafter passed the orders on the same day after considering the changes/amendments suggested and issued demand notice is nothing, but, an impossible task. Therefore, it is very clear that the provisions of section 153D were not complied with and approval, if any, was nothing, but, mere farce and is in a mechanical manner. Relying on various decisions, he submitted that approval u/s 153D is not a mere mechanical exercise and sanction has to be given only after independent application of mind and after considering the relevant issues. He accordingly submitted that the orders passed by the AO being not in accordance with the law should be quashed. For the above proposition, he relied on the following decisions:-

- i) Indra Bansal & Others vs. ACIT, 192 TTJ 968 (Jodhpur);
- ii) Geetarani Panda vs. ACIT (IT(SS)A No.01-02/CTK/2017),

iii) CIT vs. Shri Akil Gulamali Somji, ITA (L) No.1416-19/2012 & Others-BHC.

iv) Akil Gulamali Somji vs. ITO, ITA No.455-58/PN/2010

v) M3M India Holdings vs. DCIT, ITA No.2691/Del/2018

vi) Smt. Shreelekha Damani vs. DCIT, (2017) 88 TAXMANN.COM 383;

vii) Pr. CIT vs. Smt. Shreelekha Damani, ITA 668 of 2016-BHC;

viii) Shri Saurabh Agarwal, C/o D.S. (India) Jewelmart P Ltd. vs. DCIT, ITA No.263-267/Agr/2017.

12. The ld. DR, on the other hand, strongly challenged the submissions made by the ld. Counsel for the assessee. She submitted that the AO has passed the order after obtaining prior approval of the JCIT/Addl.CIT and due process of law has been followed. Therefore, the assessee now cannot challenge the manner of approval obtained from the Addl.CIT/JCIT by the AO. She submitted that nowhere the AO has taken cognizance of the reply which the assessee claims before the Tribunal was furnished on 30<sup>th</sup> March, 2015. She submitted that this was only a dilatory tactic adopted by the assessee in order not to comply with the show cause notice dated 24<sup>th</sup> March, 2015 issued by the AO. She submitted that the AO accepted the reply furnished by the assessee on 26<sup>th</sup> March, 2015, incorporated the same in the draft assessment order which was approved by the JCIT/Addl.CIT, Central Range, Meerut u/s 153D on 30<sup>th</sup> March, 2015. The final assessment order was issued by the AO and received by the assessee on 30<sup>th</sup>

March, 2015. Therefore, not only approval was granted by the JCIT/Addl.CIT, Central Range, Meerut u/s 153D in accordance with the provisions of the IT Act, but, there was adequate application of mind by the JCIT/Addl.CIT, Central Range, Meerut from the date of receipt of appraisal report from the Investigation Wing till the date of granting approval u/s 153D to the draft assessment order on 30<sup>th</sup> March, 2015. She accordingly submitted that the plea raised by the Id. Counsel for the assessee should be rejected and the appeals should be decided on merits and not on this preliminary issue.

13. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by the parties. The only issue to be decided in the impugned appeals are regarding the validity of the assessment order in absence of proper approval necessary for assessment as per the provisions of section 153D. The provisions of section 153D read as under:-

**“153D.** No order of assessment or reassessment shall be passed by an 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 the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.

**Provided that** nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Commissioner under sub-section (12) of section 144BA.”

13.1. A perusal of the order sheet entries copy of which is placed at page 37 of the paper book, Volume-I shows that on 30<sup>th</sup> March, 2015, the AO has mentioned as under:-

ôDraft order submitted for approval u/s 153D. Approval received vide letter No.1158. Order passed u/s 153A. Issue notice of demand.ô

14. Similarly, the letter addressed by the DCIT, Central Circle, Dehradun to the Addl.CIT, Central Range, shows that such draft assessment orders were submitted for approval on 30<sup>th</sup> March, 2015. The relevant scanned copy of the same reads as under:-

ô F.No.: DCIT/CC/DDN/DFA/2014-15/

Office of the Dy. Commissioner of  
Income Tax, Central Circle,  
Dehradun  
Dated : 30.03.2015

To  
The Addl. Commissioner of Income Tax,  
Central Range,  
Meerut  
Sir,

Subject: Submission of Draft Assessment Orders in DBIT Group of cases, Dehradun - Approval thereof - regarding

Kindly refer to the subject cited above.

2 In this context, it is submitted that in compliance to your directions the Draft Assessment Orders in the following cases u/s 153A of the I T Act 1961 are being submitted for your kind perusal and necessary approval.

| Sl.No. | Name of the assessee           | PAN          | Asstt. Years           |
|--------|--------------------------------|--------------|------------------------|
| 1.     | Sh. Sanjay Bansal              | ACZPB9725A   | 2007-08 To 2013-2014   |
| 2.     | Uttarakhand Uthan samiti       | AAAAU1376N   | 2007-08 To 2013-2014   |
| 3.     | Wali Gram Udhog sansthan       | AAA AW1501B  | 2007-08 To 2013-2014 ; |
| 4.     | Shri Krishna Educational Trust | AAATS 3624 C | 2007-08 To 2013-2014   |

It is requested that approval may kindly be accorded to the draft assessment orders.

Encl: Case records:

Yours faithfully,

Sd/-  
(Poonam Sharma)  
Dy. Commissioner of income Tax,  
Central Circle, Dehradun.

15. We find, Addl.CIT, Central Range, Meerut, granted approval vide letter dated 30<sup>th</sup> March, 2015, the relevant scanned copy of which reads as under:-

6OFFICE OF THE ADDL. COMMISSIONER OF INCOME TAX,  
CENTRAL RANGE, MEERUT  
F. No. Addl. CIT/CR/MRT/153D/2014-15/1158 Dated: 30.03.2015

Toö  
The Dy. Commissioner of Income Tax  
Central Circle,  
Dehradun

Sub.: Draft Assessment Orders u/s 153A/153C in DBIT Group of cases, Dehradun  
- Approval u/s 153D of Income Tax Act, 1961 - regarding ñ

Please refer to your letters F.No. DCIT/CC/DDN/2014-15/2338 dated 27.3.2015 and F.No. DCIT/CC/DDN/2014-15/2339 dated 30.03.2015 on the above the above mentioned subject.

2. In the following case of DBIT Group' of ca.ses, prior approval u/s 153D of the Income Tax Act, 1961 is accorded for passing assessment orders u/s 153A/143(3) or 144 and 153C/143(3) of the I.T. Act, 1961 in respect of the assesses for the assessment years as mentioned below:-

U/s. 153 A

| Sl.No. | Name of the assessee   | PAN        | Asstt. Years         |
|--------|------------------------|------------|----------------------|
| 01     | Smt. Seema Bansal      | AHBPB3579P | 2007-08 To 2013-2014 |
| 02     | Smt Bimal Bansal       | ADCPB1768R | 2007-08 To 2013-2014 |
| 03     | Drishti Builders       | AAIFA4643E | 2012-13 to 2013-14   |
| 04     | Sh. Sushil Kumar       | AQLPK2365D | 2007-08 To 2013-2014 |
| 05     | Sh Sunil Dandriyal     | ALTPD8489N | 2007-08 To 2013-2014 |
| 06     | Strategic Marketing    | AADFS8010M | 2007-08 To 2013-2014 |
| 07     | Sh. Ashok Mehta        | ABNPM2590F | 2007-08 To 2013-2014 |
| 08     | CKSR Animation pvt ltd | AAECC0802F | 2011-12 to 2013-14   |
| 09     | Bharti Water Pvt Ltd   | AACCB5459M | 2007-08 To 2013-2014 |

|                                                      |              |                       |
|------------------------------------------------------|--------------|-----------------------|
| 10 Chand sons education city pvt ltd                 | AAECC0801G   | 2011-12 to 2013-14    |
| 11 Water wealth infra tech india pvt ltd./AABCW0319C |              | 2011-12 to 2013-14    |
| 12 Sumer chand and sons                              | AACFS6622C   | 2007-08 To 2013-2014, |
| 13 Sh. Sanjay Bansal                                 | ACZPB9725A   | 2007-08 To 2013-2014  |
| 14 Uttarakhand Uthan samiti                          | AAAAU1376N   | 2007-08 To 2013-2014  |
| 15 Wali Gram Udhog sansthan                          | AAA AW1501B  | 2007-08 To 2013-2014  |
| 16 Shri Krishna Educational Trust                    | AAATS 3624 C | 2007-08 To 2013-2014  |

u/s 153C

| Sl.No. | Name of the assessee | PAN        | Asstt. Years         |
|--------|----------------------|------------|----------------------|
| 01     | Rama Gautam          | ADQPA8706L | 2007-08 To 2013-2014 |
| 02     | Mamta Dandriyal      | AYDPD5055F | 2007-08 To 2013-2014 |
| 03     | Gulzar Ahmed         | AFGPA7405Q | 2007-08 To 2013-2014 |
| 04     | Sohan lal kala       | AKMPK8071H | 2007-08 To 2013-2014 |
| 05     | Rishi Raj            | ANOPS3775M | 2007-08 To 2013-2014 |

3. You are directed to pass necessary orders, as discussed/as amended in the drafts, in the above cases for all the relevant years. This office letter approving the draft orders shall invariably be quoted in the final order. A copy of final order passed in these cases shall be sent to this office for record. Further, proceedings are to be filed in the case of assessee when it was incorporated/was not in existence.

4. Record submitted in the cases of the above assesses are being returned.

Sd/-

(Anupam Kant Garg)

Ends: as above.

Addl. Commissioner of Income Tax  
Central Range, Meerut.ô

16. From the above, it is seen that the AO passed the draft assessment order on 30.03.2015 and submitted the same for approval before the Addl.CIT who is stationed at a place 250 Kms away from Dehradun on 30.03.2015, the Addl. CIT gave the approval subject to certain modifications/amendments on 30.03.2015 and the AO passed the order on the same date i.e., 30<sup>th</sup> March, 2015. On a pointed query raised by the Bench as to whether any movement register is available to verify as to whether the files were sent to the Addl.CIT at Meerut, the Id.CIT- DR

submitted that there is no separate movement register for the purpose of sending for approval of the draft assessment orders by the AO to the JCIT/Addl.CIT, Central Range, Meerut. She submitted that it is customary practice that staff go with file and after discussion/approval get it back. The relevant portion of the reply given by the Id. CIT-DR at para 10 of her written synopsis reads as under:-

ó10. It has been submitted by the Assessing Officer that the there is no separate movement register for the purpose of seeking approval of draft order by the Assessing Officer from the JCIT/Addl. CIT, Central Range Meerut. It is customary practice that staff go with file and after discussion/approval get it back.ô

17. A perusal of the above clearly shows that the approval was given in a mechanical manner by the Addl.CIT to the draft assessment orders passed by the AO. As mentioned earlier, the AO has submitted the draft assessment orders on 30<sup>th</sup> March, 2015 as per the order sheet entry which indicated that the AO was very much available in her office at Dehradun on 30<sup>th</sup> March, 2015. The Office of the Addl.CIT is situated at Meerut which is about 250 Kms from Dehradun. There is no other record to suggest that the files containing the draft orders were, in fact, moved from the office of the AO at Dehradun to the office of the Addl.CIT at Meerut who went through the same and has given approval with certain amendments. It is not possible on the part of the Addl.CIT to go through the orders in about more than 100 cases on the very same day and give approval. Even if such approval has been given, it can be said that the same is nothing but a technical formality without application of mind. Further, as mentioned earlier, there is nothing on record to suggest that the files have in fact moved from

Dehradun to Meerut for obtaining approval. Therefore, in our opinion, the mandatory provisions as required u/s 153D has not been complied with.

17.1 We find identical issue had come up before the Delhi Bench of the Tribunal in the case of Rishabh Buildwell Pvt Ltd. (supra). The Tribunal, after considering the various decisions, quashed the assessment orders by observing as under:-

ó 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:

óSubject: 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. Name of the assessee<br>No.             | 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 Fin. 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                    | AAFPJ6467R | 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 | 2009-10 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: 27th November, 2018 ] is as under:

01. 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-ITXA15=.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.ô

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 assessee are allowed. (Order Pronounced in the Open Court on 04/07/2019).ô

18. We find, the Jodhpur Bench of the Tribunal in the case of *Indra Bansal & Ors (supra)* has observed as under:-

66.4 Coming to the facts of the case, it is apparent from the documents on record that the approval was given by the Joint Commissioner in hasty manner without even going through the records as the records were in Jodhpur while the Joint Commissioner was camping at Udaipur. The entire exercise of seeking and granting of approval in all the 22 cases was completed in one single day itself i.e., 31-3-2013. Thus, it is apparent that the Joint Commissioner did not have adequate time to apply his mind to the material on the basis of which the assessing officer had made the draft assessment orders. Tribunal, Mumbai Bench and Tribunal, Allahabad Bench in their orders, as discussed in the preceding paragraphs, have laid down that the power to grant approval is not to be exercised casually and in routine manner and further the concerned authority, while granting approval, is expected to examine the entire material before approving the assessment order. 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. In all the cases before us, the Department could not demonstrate, by cogent evidence, that the Joint Commissioner had adequate time with him so as to grant approval after duly examining the material prior to approving the assessment order. The circumstances indicate that this exercise was carried out by the Joint Commissioner in a mechanical manner without proper application of mind. Accordingly, respectfully following the ratio of the Co-ordinate Benches of Mumbai and Allahabad as

afore-mentioned and also applying the ratio of the judgement of the Hon'ble Apex Court in the case of Sahara India (Firm) v. CIT (supra), we hold that the Joint Commissioner has failed to grant approval in terms of section 153D of the Act i.e., after application of mind but has rather carried out exercise in utmost haste and in a mechanical manner and, therefore, the approval so granted by him is not an approval which can be sustained. Accordingly, assessments in three COs and nineteen appeals of the assessee(s), on identical facts, are liable to be annulled as suffering from the incurable defect of the approval not being proper. Accordingly, we annul the assessment orders in CO Nos, 8 to 10/Jodh/2016 and ITA Nos.325 to 331/Jodh/2016. Thus, all the three Cos and the nineteen appeals of the assessee, as aforesaid are allowed. *(emphasis supplied by us)*

19. Since the facts of the instant case are identical to the facts of the case cited (supra), therefore, respectfully following the decisions cited above, we hold that there is no proper approval given u/s 153D in the instant case for which the assessment orders passed by the AO are not in accordance with law. We, therefore, have no hesitation in holding that the assessments completed by the DCIT do not stand in the eyes of law and, therefore, these orders are treated as null and void. Accordingly, the orders passed by the AO are annulled and the ground raised by the assessee on this preliminary issue as per grounds of appeal No.4 and 5 are allowed. Since the assessee succeeds on this preliminary ground of validity of assessment order in absence of proper approval u/s 153D, the other grounds raised by the assessee do not require any adjudication being academic in nature. The appeal filed by the assessee is accordingly allowed.

19.1 Since facts of the other appeals are identical to the facts of the appeal for A.Y. 2008-09, therefore, following similar reasonings the assessment orders for

other years are also held to be null and void being not in accordance with law.

Accordingly, these appeals filed by the assessee are also allowed.

20. In the result, all the six appeals filed by the assesseees are allowed.

The decision was pronounced in the open court on .04.2020.

(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: April, 2020

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

|    |                                            | Date       |
|----|--------------------------------------------|------------|
| 1. | Draft dictated on                          | 28.04.2020 |
| 2. | Draft placed before the author             | 29.04.2020 |
| 3. | Draft placed before the other Member       |            |
| 4. | Approved Draft comes to the Sr.PS/PS       |            |
| 5. | Order uploaded on                          |            |
| 6. | File sent to the Bench Clerk               |            |
| 7. | Date on which file goes to the Head Clerk. |            |
| 8. | Date on which file goes to the AR          |            |
| 9. | Date of dispatch of Order.                 |            |