

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.717/Del./2021
(ASSESSMENT YEAR : 2004-05)**

**ITA No.718/Del./2021
(ASSESSMENT YEAR : 2005-06)**

**ITA No.719/Del./2021
(ASSESSMENT YEAR : 2006-07)**

**ITA No.720/Del./2021
(ASSESSMENT YEAR : 2007-08)**

**ITA No.721/Del./2021
(ASSESSMENT YEAR : 2003-04)**

DCIT, Central Circle 8,
New Delhi.

vs.

Amolak Singh Bhatia,
C – 22, Minocha Colony,
Bilaspur – 495 001 (Chhattisgarh).

(PAN : AIZPB9572H)

**CO Nos.126 to 130/Del/2022
(in ITA No.717 to 721/Del./2021)
(ASSESSMENT YEARS : 2004-05 TO 2007-08 & 2003-04)**

Amolak Singh Bhatia,
C – 22, Minocha Colony,
Bilaspur – 495 001 (Chhattisgarh).

vs. DCIT, Central Circle 8,

(PAN : AIZPB9572H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Wadhwa, Advocate
REVENUE BY : Shri P. Praveen Sidharth, CIT DR

Date of Hearing : 05.04.2023
Date of Order : 18.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue and cross objections by the assessee against the common order of Id. CIT (Appeals)-3, Bhopal dated 22.12.2020 pertaining to Assessment Years 2003-04 to 2007-08.

2. In Revenue's appeals, the Revenue is aggrieved by the deletion of addition of Id. CIT (A) for absence of incriminating material found during the search and also on the merits of the case.

3. In the cross objections, assessee has supported the order of Id. CIT(A) and raised fresh ground which reads as under :-

“Without prejudice to the above, on the facts and circumstances of the case and in law, the Id. CIT (A) has not considered the legal issue that approval granted by the Jt.CIT u/s 153D is in mechanical & routine manner without application of mind by the Jt.CIT in a hasty manner, merely a formality, an empty ritual; in absence of valid approval as mandated by law u/s 153D as per sec.153B(1)(a); assessment made u/s 153A would be invalid, bad in law & non-est and is liable to be quashed.”

4. Upon careful consideration, we find that above said ground goes to the root of the matter and we would adjudicate the same first.

5. Before proceeding further, it is gainful to refer to section 153 approval in this case which reads as under :-

ITA Nos.717 to 721/Del./2021
CO Nos.126 to 130/Del/2022

“To
The Asst. Commissioner of Income tax (Central),
Bilaspur.

Subject– Approval under u/s 153D of the I.T. Act – Amolak Singh Bhatia Group, Bilaspur – Regarding.

Please refer to your letter in F.No.ACIT (CC)/BSP/153D/2018-19 dated 08.02.2019.

2. The draft assessment orders u/s 153A and 143 (3) in the following cases submitted vide above mentioned letter are hereby approved u/s 153D of the I.T. Act –

S.No.	Name of the assessee	PAN	AY
1	Golden Prince Wines P. Ltd.	AACCG2083J	2001-02 to 2007-08
2	Bhatia Wines Merchant P.Ltd.	AAACB7021M	2001-02 to 2007-08
3	Surjeet Singh Bhatia	ADBPB3248F	2001-02 to 2007-08
4	Gurmeet Singh Bhatia	AIZPB9571E	2001-02 to 2007-08
5	Amolak Singh Bhatia	AIZPB9572H	2001-02 to 2007-08
6	Mahendra Singh Bhatia	ADBPB3244K	2001-02 to 2007-08
7	Inderpal Singh Bhatia	ADBPB3241K	2001-02 to 2007-08

3. Further in view of this office letter no.F.No.JCIT (C)/ RPR/Draft Asst. Order/2016-17 dated 09.09.2016 it is presumed that the AO has –

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.

4. You may act accordingly. The copy of the final order may be submitted for record purpose in this office.

Encls. : case records

sd/-

(R.M. Mujumdar)
Joint Commissioner of Income tax,
Range – Central, Raipur.”

6. Assailing the above approval, ld. Counsel of the assessee made following submissions :-

“I. Approval granted by the Joint Commissioner of Income Tax, Range Central, Raipur ("JCIT") was devoid of application of mind and without considering material on record; assessment order passed under section 153A r.w.s 143(3) is null and void.

1. In the present case, the Ld. Assessing Officer, Bilaspur, has sent the draft assessment order in the case of 7 assesseees from Bilaspur to the office of the Joint Commissioner of Income Tax, Range Central, Raipur, (hereinafter referred to as "JCIT") on 08.02.2019 for approval as is evident from the copy of approval attached at page 24-25 of the common paper book.

2. The approval was granted by the Ld. JCIT on 09.02.2019.

3. Defects or illegalities in the approval: We have observed the following on perusal of the copy of approval:

a. A common approval was given for 7 assesseees with the same comments.

b. The approval given does not indicate what material and facts have been perused before granting the approval.

c. The approval given does not even indicate that any material was supplied by the Assessing Officer to the approving authority for its perusal. It is mentioned that "draft assessment orders u/s 153A and 143(3) in the following cases submitted vide above mentioned letter are hereby approved u/s 153D of the I. T. Act. This shows only orders were submitted.

d. It is no-where stated that the approving authority has perused such draft assessment orders or not.

e. It is not mentioned in the approval that what is the amount of determination of income in each assessment year of each assessee.

f. Approval was granted within 24 hours of proposal.

g. Approval have been granted on the same day on 22.12.2017 despite the fact that A.O. was having his office at

Jabalpur and JCIT was holding his Office at Bhopal in which there is a significant distance. It is not humanly possible to look into assessment records as well as draft assessment orders thereon and apply its own mind objectively by a senior designated authority involving such complex matters and grant approval as contemplated under s.153D of the Act.

h. Not mentioned as to how the draft order and assessment record, if any, have been received by JCIT, if he has gone through the assessment record or that assessment record, about the mode, through which, assessment record was transmitted by the Ld. Assessing Officer at Bilaspur to JCIT, Raipur and vice-versa.

i. The Assessing Officer had time till September 2019 for passing the assessment order, why the approvals were granted within 24 hours and order also was passed.

j. The approval given was a conditional approval and on the basis of presumption only as is evident from para 3 of the approval reproduced below:

3. Further in view of this office letter no. F.No. JCIT(C)/RPR/Draft Asst. Order/2016-17/ dated 09.09.2016 it is presumed that the AD has-

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.

4. These facts clearly show that the action of the JCIT granting approval in this case was. Thus, a mere mechanical exercise, accepting the draft order as it is, without any independent application of mind on his part. 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.

5. As per the provisions of section 1530 of the Act, no assessment order under section 153A or 153C can be framed without prior approval of the prescribed authority under section 153D of the Income Tax Act 1961.

6. The relevant provisions of section 1530 of the Act are as under:

153D. Prior approval necessary for assessment in cases of search or requisition.-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 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. "

7. Hon'ble Supreme Court in the case of Rajesh Kumar (287 ITR 91) has examined the provisions of section 142(2A) and held that:

50. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the Assessing Officer if he was found to have adapted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of account and/or the entries made therein. While exercising its power, the Assessing Officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the

matter and not at a subsequent stage, viz., after the approval is given.

8. Hon'ble Supreme Court in the case of Sahara India (300 ITR 403) has examined the provisions of section 142(2A) and held that the word "prior/previous approval of Commissioner" cast heavy duty on the higher authority to form his opinion on the basis of material available on record and it must reflect application of mind. The relevant portion of the judgement of Hon'ble Supreme Court is as under:

'A bare perusal of the provisions of sub-section (2A) of the Act would show that the opinion of the Assessing Officer that it is necessary to get the accounts of assessee audited by an Accountant has to be formed only by having regard to: (i) the nature and complexity of the accounts of the assessee; and [ii] the interests of the revenue. The word "and" signifies conjunction and not disjunction. In other words, the twin conditions of "nature and complexity of the accounts" and "the interests of the revenue" are the prerequisites for exercise of power under section 142(2A) of the Act. Undoubtedly, the object behind enacting the said provision is to assist the Assessing Officer in framing a correct and proper assessment based on the accounts maintained by the assessee and when he finds the accounts of the assessee to be complex, in order to protect the interests of the revenue, recourse to the said provision can be had. The word "complexity" used in section 142(2A) is not defined or explained in the Act. As observed in *Swadeshi Cotton Mills Co. Ltd. v. CIT*[1988] 171 ITR 634 (All.), it is a nebulous word. Its dictionary meaning is: "The state or quality of being intricate or complex, or that is difficult to understand. However, all that is difficult to understand should not be regarded as complex. What is complex to one may be simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it, may not be really so if one tries to understand it carefully." Thus, before dubbing the accounts to be complex or difficult to understand, there has to be a genuine and honest attempt on the part of the Assessing

Officer to understand accounts maintained by the assessee; appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. But opinion required to be formed by the Assessing Officer for exercise of power under the said provision must be based on objective criteria and not on the basis of subjective satisfaction. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case.'

9. Hence, the approval is not an empty formality but it must show that the officer has examined the material and applied his mind.

10. The Courts have held that provisions of section 153D are mandatory and not directory. The meaning of approval is not simple approval or approval of the order in the mechanical manner. The essence of approval should actively, circumstantially and substantively demonstrate application of mind by the competent authority both as to the law and facts. Approval should be absolute and it cannot be conditional or interlocutory sort of approval. In fact, conditional approval is no approval in the eyes of law for the purpose of section 153D of Income tax Act 1961.

11. Non-compliance of provisions of section 153D vitiated the order passed under section 153A of the Act

a. Hon'ble High Court of Gujarat in the case of PCIT vs. Sunrise Finlease (Pvt.) Ltd. has held that:

9. As regards proposed questions [B] and [C] viz., whether lack of approval under section 153D would invalidate the assessment order and was not a curable defect; it may be noted that section 153D of the Act mandates that 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. In the present case, the assessment order has been passed by an Income Tax Officer, who admittedly is an officer below the rank of joint Commissioner; therefore, the provisions of section 153D of the Act would be applicable. Section 153D starts with the words "No order of assessment or reassessment shall be passed ". In other words, the language employed in the provision is couched in the negative and therefore, there is a prohibition against passing of an assessment or reassessment order, except with the prior approval of the Joint Commissioner.

10. In *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [2005] 7 SCC 234, the Supreme Court has observed that if the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases, absolute, and that neglect to attend to them will invalidate the whole proceeding. In *Vijay Narayan Thatte v. State of Maharashtra* [2009] 9 SCC 92, the Supreme Court has held that it is well settled that when a statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. The Supreme Court, in some decisions has held that merely because a provision of law is couched in a negative language implying mandatory character, the same is not

without exceptions. However, the present case deals with the interpretation of a taxing statute. It is well settled that a taxing statute has to strictly construed, therefore, from the language employed in section 153D of the Act, the requirement of obtaining the prior approval of the Joint Commissioner has to be regarded as mandatory in nature.

b. Hon'ble ITAT Pune in the case of AKil Gulamji Somi (20 ITR(T) 255) has held that:

We further note that the provisions u/s. 153D start with a negative wording "no order of assessment or re-assessment" supported by the further wording "shall" makes the intention of the Legislature clear that compliance of Sec. 153D requirement is mandatory. No universal rule can be laid down as to whether mandatory enactment shall be considered directory or obligatory with an implied nullification for disobedience. As per the decision of Hon'ble Supreme Court in the cases of Banwari Lal Agarwalla v. State of Bihar AIR 1961 SC 849 ; Raza Buland Sugar Co. Ltd., v. Municipal Board AIR 1965 SC 895 if object of the enactment will be benefited by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to nascent persons without very much further object of enactment, the same will be construed as directory. But all these does not mean that language used is to be ignored, only that the prima facie inference of the intention of the legislature arising from the words used may be displaced by considering the nature of the enactment, its designed consequences flowing from alternative constructions. The wordings and language used in Sec. 153D of the Act and the heading "prior approval necessary for assessment in cases of search or requisition" under which, Sec. 153D has been provided do not leave an iota of doubt about the very intention of the legislature to make the compliance u/s. 153D a mandatory.

12. Only writing the word "approved" does not fulfil the requirement of section 153D of the Act

c. Hon'ble High Court of Orissa in the case of ACIT vs M/S. Serajuddin & Co. (ITA no. 39- 45 of 2022) has held that:

22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of Section 158BG of the Act it would equally apply to Section 153D of the Act There are three or four requirements that are mandated therein (i) the AO should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; on the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

13. Approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case

d. Hon'ble High Court of Allahabad in the case of PCIT vs. Sapna Gupta (147 taxmann.com 288) and

e. PCIT vs. Siddarth Gupta (450 ITR 534) wherein a common approval was given by the approving authority in a mechanical manner for 85/123 cases, the Court has held as under:

19. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment.

21. In the instant case, the draft assessment order in 85 cases, i.e. for 85 assessment years placed before the Approving Authority on 30-12-2017 was approved on same day i.e. 30-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.

14. Inability to analyse the issues in draft assessment order by the approving authority is no approval and renders the assessment order null and void

f. Hon'ble Bombay High Court (ITA No. 668 of 2016) and ITAT Mumbai in the case of Smt. Shreelekha Damani vs. Dell (173 ITI 332) has held that:

12. Coming to the facts of the case in hand in the light of the analytical discussion hereinabove and as mentioned elsewhere, the Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left, inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of any application of mind, is mechanical and without considering the materials on record. In our considered opinion, the power vested in the Joint Commissioner/Addl. Commissioner to grant or not to grant approval is coupled with a duty. The Addl. Commissioner/Joint Commissioner is required to apply his mind to the proposals put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. Commissioner before granting the approval. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w. sec. 153A of the Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed.

g. Hon'ble ITAT Delhi in the case of Uttrakhand Uthan Samiti (ITA No. 130/DDN/2019) has held that:

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 30th March, 2015 as per the order sheet entry which indicated that the AO was very much available in her office at Dehradun on 30th 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.

h. Hon'ble ITAT Delhi in the case of Rishabh Buildwell P. Ltd. (ITA No. 2122/D12018) has held that:

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 plated 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 Daman; [ITA no 668 of 2016 Dated: 27th November, 2018]

i. Hon'ble ITAT Delhi in the case of MIs. M3M India Holdines (26911012018) has held that

Para 13 and 14. Considering the facts of the case in the light of above discussion, it is clear that assessee filed last reply before assessing officer at Faridabad on 29th January 2014 and according to Learned Counsel for the Assessee, it contained more than 500 pages. Therefore, it is difficult for the Assessing Officer 'at Faridabad to go through these voluminous papers and prepare a draft order on 30th January 2014, so that the draft order could be transmitted to the Addl. CIT at Chandigarh on same day. In reply to RTI application, the assessing officer has reported that no record of mode of dispatch of assessment record to the Addl. CIT is available with the Assessing Officer. Similarly, no record is available as to how the draft order and assessment record have been received by Addl. CIT at Chandigarh. The Addl. CIT, Chandigarh did not mention in his approval dated 31st January 2014 (supra), if he has gone through the assessment record or that assessment record was produced before him. Since no details are available on record about the mode, through which, assessment record was transmitted by the assessing officer at Faridabad to Addl. CIT in Chandigarh and vice-versa by Addl. CIT, Chandigarh to Assessing Officer at Faridabad on the very next day would lead to suspicion, in explanation of A.O. if any, valid draft order was transmitted to the Addl. CIT within the time or if the Addl. CIT has communicated the approval under section 153D to the Assessing Officer at Faridabad on 31st January 2014. These facts would clearly show that the action of the Addl. CIT, Chandigarh granting approval in this case was, thus, a mere

mechanical exercise, accepting the draft order as it is, without any independent application of mind on his part. Nothing has been clarified during the course of hearing to the effect that if Addl. CIT has gone through the assessment record, before accepting the draft assessment order. Thus, there was no application of mind on the part of the Addl. CIT before granting approval. The Addl. CIT, Chandigarh has merely gone through the draft assessment order as per PB-47. Therefore, the contention of Learned Counsel for the Assessee is justified that the approval was granted in a most mechanical manner without application of mind and such approval was intimated to assessing officer only on 5th February 2014, after passing of the assessment order on 31st January 2014. The above decisions are clearly applicable to the facts and circumstances of the case. In view of the above discussion, we are of the view that no valid approval/sanction have been granted by the Addl. CIT, Chandigarh before passing the assessment order in the matter. The requirement of Section 153D of I. T. Act, 1961, are not satisfied in this case. We accordingly hold that entire assessment order is vitiated and is null and void. We, accordingly, set aside the orders of the authorities below and quash the assessment order in the matter. Resultantly all additions stand deleted. In the result, Ground No.1.3 of the appeal of Assessee is allowed.

15. Common approval for all the assessment years in respect of the single assessee; no application of mind; No reference of assessment records and seized material

j. Hon'ble ITAT Delhi in the case of Sanjay Duggal (ITA No. 1813/012019) has held that:

the authorities below and the Approving Authority [JCIT] shall have to verify the incriminating material found during the course of search or the seized material if pertain to the same assessment year and its basis. The assessee has explained above that these cases are coming up because of the assessments framed in the case of M/s. JIL and others prior to the search in the case of assessee.

Therefore, all material was within the knowledge of the Income Tax Authorities prior to the search in the cases of the assessee. Therefore, for granting approval under section 153D of the I. T. Act, the Approving Authority shall have to verify and consider each assessment year and shall have to apply independent mind to the material on record to see whether in each assessment year there are un-abated or abated assessments and their effect, if any. But, in the present case, the Approving Authority i.e; JCIT has granted common approval for all the assessment years in respect of the single assessee. Thus, there is no application of mind on the part of JCIT while granting approval for all the common years instead of granting approval under section 153D for each assessment years separately.

In the approval under section 153D there is a reference to the A.O. letter only. There is no reference to the seized material or record or notice under section 142 and reply of the assessee and if procedure for its inspection or perusal is there. There is no material considered by the JCIT. Learned Counsel for the Assessee has pointed out that assessee has suffered serious prejudice because of non-application of mind on the part of the JCIT while granting approval under section 153D of the I. T. Act because the A.O. has made several double or triple additions on account of share capital, investments, FDRs purchased, loans, capital gains because these were created out of bank deposits made in the bank accounts of the assessee after the money transferred from the account of M/s. Alfa India.

The JCIT even in approval did not mention if assessment record is seen by him.....Further, there is no reference that seized material as well as appraisal report have been verified by the JCIT. It is not clarified whether assessment record is also seen by the JCIT.

We also rely on following decisions:

- k. MG Metalloy Pvt. Ltd. (ITA No. 3306/D/2018)- ITAT Delhi

- l. MDLR Hotels Pvt. Ltd. (3076/D/2016) - ITAT Delhi
- m. Shri Subash Dabas (ITA No. 2399/D/2016) - ITAT Delhi
- n. Ajay Sharma (ITA No. 3554/D/2015) - ITAT Delhi
- o. M/s Akshata Realtors Pvt. Ltd. (IT(SS)A No. 09/RPR/2018)- ITAT Raipur
- p. M/s. Goyal Energy & Steel Pvt. (ITA No. 240 to 243/RPR/2019) - ITAT Raipur
- q. Arch Pharmalabs Ltd. (ITA No. 6656/Mum/2017) - ITAT Mumbai
- r. Navbharat Refrigeration & Industries Limited vs. DCIT in ITA No 136/Mum/2013 - ITATMumbai
- s. AAA Paper Marketing Ltd. (ITA No. 167 /Lkw/2016)- ITAT Lucknow
- t. Shri Naveen Jain (IT(SS)A No. 639 to 641/Lkw/2019) - ITAT Lucknow
- u. Dilip Constructions Pvt Ltd. (ITA No. 66 to 71/CTK/2018)- ITAT Cuttak
- v. Geetarani Panda (ITA No. 01/CTK/2017)- ITAT Cuttak
- w. M/s Rajat Minerals Pvt. Ltd. (41 to 47/Ran/2019) - ITAT Ranchi
- x. Rajesh Ladhani (106, 107 and 108/Agra/2019) - ITAT Agra
- y. Shri Tarachand Khatri (2020 (1).TMI 1027) - ITAT Jabalpur
- z. Indra Bansal & Ors, Vs ACIT (ITA Nos. 321 to 324, 279 to 281, 325 to 331 & 400 to 404/Jd/2016)-ITAT–Jodhpur”

7. Per contra, ld. DR for the Revenue made the following submissions:-

“ As per the details submitted by the AR of the assessee vide Synopsis dated 28.03.2023, there are 5 quantum appeals and 5 Cross Objections relating to 5 AYs 2003-04 to 2007-08, wherein one common issue has been challenged. The issue pertains to legality of approval given by the Income Tax Authorities under section 153D of the Income Tax Act, 1961. In the cases before the Hon'ble Bench on 29.03.2023, the same legal issue has been raised by the Ld. AR.

The gist of the objections raised in the Grounds of Appeal is that "2. Without Prejudice to the above, on the facts and circumstances of the case and in law, the Ld. CIT(A) has not considered the legal issue that approval granted by the Jt. CIT under section 153D is in mechanical & routine manner without application of mind by the Jt. CIT in a hasty manner, merely a formality, an empty ritual; in absence of valid approval as mandated by the law under section 153D as per section 153B(1)(a); assessment made under section 153A would be invalid, bad in law & non-est and is liable to be quashed."

The undersigned with respect to this legal issue raised by the assessee submits as under:-

1. For the sake of repetition the provisions of Section 153D are reproduced below-

Prior approval necessary for assessment in cases of search or requisition.

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 [Principal Commissioner or] Commissioner under sub-section (12) of section 144BA.

2. Perusal of the section reproduced above along with the innumerable cases quoted by the learned AR unmistakably point to underlying principle and intention of the legislators and law makers that in the interest of justice, equity and fair play, it was imperative that the Range head/ supervisory authority of the Assessing Officer(AO) must give his approval prior to the passing of the Assessment Order, after going through the seized

materials upon which the AO is relying whilst making his Order and most importantly, after due and proper application of mind, give his prior approval that the Order proposed by the Officer is as per law and the facts of the case. The judicial pronouncements of Various Courts cited by the Id. AR suggest the same and on this there is no dispute.

3. The Revenue objects to the allegation cast by the Ld. AR that, just because draft orders were prepared by the AO, Bilaspur, which were forwarded to the office of the Jt. CIT Range- Central, Raipur (Hereinafter refer to as JCIT) on 08.02.2019 for approval and thereafter approval was given by the Ld. JCIT on 09.02.2019, this means that the common approvals given were mechanical, without going through the seized materials and without due application of mind. Further, he states that the approval given does not indicate what material and facts have been perused before granting the approval and the approval given does not even indicate that any material was supplied by the Assessing Officer to the approving authority for its perusal.

4. The grounds raised by The Ld. AR betray a lack of appreciation of the working of the Income Tax Department. The Range head is continuously involved in search assessments right from the start i.e. date of issue of first questionnaire. There are generally multiple discussions between the AO and the range head before finalization of search assessments.

5. The final approval is as mandated in section 153D and herein it may be noted that there is no specific format for granting approval that has been prescribed.

6. What is communicated on the file is the approval per se. But just by looking at the date of approval or the fact that other approvals have also been granted alongwith, it cannot be concluded that approval is mechanical or without application of mind. Such a conclusion will do injustice to the entire process that lies behind the approval granted.

7. Search assessments are some of the most complicated Assessments that are undertaken by the Department and a presumption that the range head only looks at draft assessment

orders a day prior to the finalization and without application of mind will not do justice to the reality of sustained involent on all issues by Range heads and their ultimate responsibility for these assessments.

8. Furthermore, The Ld. AR has referred to certain lines of the approval granted by the range head.

"Further in view of this office letter no. F. No. JCIT(C)/RPR/Draft Asst. Orderj2016-17 / dated 09.09.2016 it is presumed that the AO has-

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed."

9. Herein, it is alleged that the Range head has not applied his mind. On the contrary, this shows that the Range head has in fact satisfied himself completely with the draft order and the presumption is only to the extent that the AO has also satisfied himself. This cannot in any way be constructed as mechanical as it has been sought to do by Ld AR.

10. As for as the various judicial pronouncement cited by the Ld AR, it is prayed that ultimately the finding of mechanical approval u/s 153D is a factual finding. In this current case, the arrival of such a finding cannot rest on the interpretation of a few lines written by the Range Head. It will be imperative to examine the assessment records, the records of meetings/ discussion of AO with range head, order sheet entries etc. before a factual finding can be made."

8. We have carefully considered the submissions and perused the records. We note that the issue raised by the assessee is that whether the assessment framed by the AO u/s 153A r.w.s. 143 (3) of the Act after

getting approval from the JCIT, Range – Central, Raipur in view of the provisions of section 153D of the Act is valid and sustainable or not. The defects as pointed out by the Id. Counsel for the assessee are enumerated in the initial part of his submissions. We are not repeating the same. We note that on identical approval in the case of M/s. Akshata Realtors Pvt. Ltd. vs. ACIT, Central Circle 2, Raipur in IT(SS)A No.09/RPR/2018 vide order dated 27.03.2023, ITAT Raipur Bench has quashed the assessment order on the ground that approval u/s 153D of the Act has been granted in the case of assessee is without application of mind. We may gainfully refer to the order of ITAT in that case as under :-

“14. We have considered the rival submissions and perused the record carefully. The issue before us is to decide as to whether the assessment framed by the AO u/s.153A r.w.s.143(3) of the Act after getting approval from the JCIT, Range-Central, Raipur in view of the provisions of Section 153D of the Act, is valid and sustainable or not, as has been raised by the Id. AR of the assessee during the course of hearing in the form of additional ground. On perusal of the assessment order we found that the AO has made addition u/s.56(2)(vii) of the Act under the head income from other sources as the assessee could not explain the source and details of the investment made by the assessee in M/s Crest Steel and Power Ltd. and Topworth Pipes and Tubes Pvt. Ltd. in different financial years. Before passing the assessment order, the AO has sought approval from the JCIT, Range-Central, Raipur vide letter dated 03.11.2016 in the case of the assessee along with other assesseees. The JCIT, RangeCentral, Raipur has approved the draft assessment orders u/s.153A r.w.s.143(3) of the Act vide letter dated 08.11.2016. Consequently, the AO has passed assessment order on 08.11.2016. On perusal of the approval given by the JCIT, Range-Central, Raipur, we found that the JCIT hasgiven approval only on the basis of presumption that

the AO after giving proper opportunity to the assessee, thoroughly verified the seized material and proposed for making addition, which in our opinion, without looking into the complex facts of the search assessment has been approved in a mechanical manner. Even the CIT(A) has also overlooked this technical error in the assessment order. Further, it is not clarified as to whether the assessment record in the case of the assessee has been seen by the JCIT or not. Therefore, the approval granted by the JCIT, Range-Central, Raipur in the case of the assessee is merely technical approval just to complete the formality and without application of mind as there was no examination of the seized documents, only on the presumption the approval cannot be granted. Thus, we hold the approval under section 153D of the Act has been granted in the case of the assessee was without application of mind, the same is invalid, bad in law and liable to be quashed.

15. Reliance can be placed on the case law relied on by the ld. AR of the assessee, in the following cases :-

(i) Pr.CIT v. Subodh Agarwal in I.T.Appeal No.86 of 2022 (Date of Judgment: 12.12.2022) (Allahabad HC):

“The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on

the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or reassessment.

Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of Section 153A which provides for assessment in case of search under Section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in Clause (b) of subsection (1) of Section 153A. The proviso to Section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A.

In the instant case, the draft assessment order in 38 cases, i.e. for 38 assessment years placed before the Approving Authority on 31.12.2017 was approved on same day i.e. 31.12.2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.

(ii) Pr.CIT v. Sapna Gupta in I.T.Appeal No.88 of 2022 (Date of Judgment: 12.12.2022) 2022 (12) TMI887

(Allahabad HC), wherein the similar findings were offered by the Hon'ble High Court of Allahabad as in the case of Subodh Agrawal (supra) and held as under :-

Search and seizure—Assessment under s. 153A—Approval under s. 153D—Prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the approving authority before preparing the draft assessment order—In the instant case, the draft assessment orders in 123 cases placed before the approving authority on 30th Dec., 2017 and 31st Dec., 2017 were approved on 31st Dec., 2017, which not only included the cases of assessee but the cases of other groups as well—It is humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the approving authority—Conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record—No substantial question of law arises for consideration

(iii) M/s.Goyal Energy & Steel Pvt. Ltd. v. ACIT, CC-2, Raipur in ITA No.240 to 243/RPR/2019 (Date of Order : 17.09.2021) (ITAT Raipur), wherein the approval granted by the JCIT was identical to the approval granted in the case of the present assessee, held as under :

22. On careful perusal of the approval order of JCIT, we find that the JCIT while granting approval on 22.12.2018 recorded that “ it is presumed that the AO has – given proper opportunity of hearing to the assessee, thoroughly verified the seized material and that there is no adverse finding, satisfy himself that all issues emanating from the record have been verified and additions wherever required have been proposed.”

23. Before us, the ld AR for the assessee vehemently argued that JCIT has granted approval under section 153D in a casual and mechanical manner and without any application of mind and that from the communication

made to the JCIT by AO vide letter dated 14.12.2018, the AO had not made any iota of reference as to what are the seized materials nor furnishes any assurance with respect to approval and appraisal of all evidences and corresponding reply by the assessee. And that Id. JCIT approved the assessment order by presuming that the necessary opportunity has been given to the assessee and all the records, evidences and materials have been thoroughly verified. The JCIT granted bulk approval of 95 assessment orders which clearly defeats the intent and purpose behind insertion of section 153D brought in the statute by the Finance Act, 2007.

24. We find that the Id. JCIT while granting approval, presumed that Assessing Officer has given proper hearing to the assessee and thoroughly verified seized material and there are no adverse findings, satisfied himself that all the issues emanating from the records have been verified and additions wherever required have been proposed. We further find that there is no independent application of mind on the part of Id.JCIT while granting the approval.

25. We find that coordinate bench of Mumbai Tribunal while considering the similar ground of appeal in granting bulk approval of the assessment under section 153A, in case of Arch Pharmalabs Ltd Vs ACIT (supra) held that the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind. The relevant part of the order is extracted below;

“11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter

merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and ca not be countenanced in law.

26. Similar view was taken by Coordinate bench of Delhi Tribunal in Sanjay Duggal & others (supra).

27. So far as the contention of Id CIT-DR that the assessment under section 153A is passed under the supervision of JCIT and that JCIT granted approval of the draft assessment after considering the material placed before him. We do not find any such satisfaction in the approval order that draft assessment after considering the material placed before him, rather the Id JCIT recorded that it is presumed that the AO granted proper opportunity to the assessee etc...

28. In view, of aforesaid discussion and respectfully following the decisions of coordinate benches in Sanjay Duggal & others (supra) and Archpharma Labs & Acrh Impex P Ltd (supra), we find convincing force in the submissions of the assessee that the approval granted by JCIT suffer from non-application of mind and depends on presumption of proper performance of duty by A.O. such per functionary approval under section 153D cannot termed as legitimate. The consequential assessment orders based on nonest approval under section 153D, thus are void-abinitio on this ground alone. Considering the facts that we have allowed the appeal on the legal issues therefore, consideration of appeal on merit have become academic.

(iv) Ritanjali Khatai & Ors. v. ACIT, CC-1, Bhubaneswar in IT(SS) A.No.51 to 53/CTK/2019 (Date of Order: 08.04.2022) (ITAT Cuttack), wherein the Tribunal has held that the assessment framed u/s.153A/143(3) of the Act is not sustainable without proper approval u/s.153D of the Act. The relevant observations of the Tribunal are as under :-

11. On perusal of the above two approvals given in the case of two different assessees, we found that both the approvals are similar to each other. In both the approval letter, the JCIT has simply mentioned that approval is hereby accorded as per provisions of Section 153D of the Act for passing the assessment order, therefore, the arguments of the Id. CIT-DR that facts and circumstances along with the approval given in Dilip Construction Pvt.

Ltd. and in the case of Ritanjali Khatai are different, cannot be accepted. Accordingly, we are in complete agreement with the contention of Id. AR of the assessee that the issue is covered by the decision of coordinate bench of the Tribunal in the case of Dillip Construction Pvt. Ltd.(supra), wherein the relevant observations of the Tribunal are as under :-

31. Before we proceed, we find it appropriate to consider the contention of Id CIT DR wherein, he submitted that as per letter dated 19.12.2018, the JCIT, the approving authority had given approval for passing order u/s.153A r.w.s 143(3) in both the cases after satisfying himself with the draft assessment orders. This letter has been written to the JCIT (Central) by approving authority i.e. JCIT (BPU) pertaining to the office communication regarding additional ground of appeal, which are being adjudicated but in view of approval order dated 23.11.2017, thus we are inclined to accept the contention of Id A.R. that this submission of approving authority is mere an attempt to fill the gaps and procedural lacunas occurred in the procedure adopted by JCIT while granting approval under section 153D of the Act and, therefore, the contention of Id A.R. in this regard hold the field.

32. Similarly letter dated 4.1.2019 issued by JCIT (Central), Bhubaneswar to the CIT (Audit & ITAT), Bhubaneswar is merely a covering letter supplying copy of the approval dated 23.11.2017, which cannot be treated as an explanation to the approval dated 23.11.2019 curbing the mistake in the procedure adopted by the JCIT while granting approval u/s.153D of the Act. On these subsequent letters/correspondences,

we are of the considered view that for adjudicating legal ground of assessee challenging the validity of approval u/s.153D of the Act dated 23.11.2017, we have to evaluate said approval apparently by considering the totality of facts and circumstances and the manner in which such approval has been granted. This cannot be improvised by way of subsequent exercise or correspondence between the approving authority and the AO or other officers.

33. In view of foregoing discussion, we are inclined to hold that the Id JCIT has granted approval under section 153D of the Act in a mechanical manner without application of mind to the relevant assessment records and draft assessment orders submitted before him by the AO for grant of approval u/s.153D of the Act before passing the relevant assessment orders u/s.153A r.w.s 143(3) of the Act.

34. Considering the facts and circumstances of the case in the light of above discussion, it is amply clear that the AO vide letter dated 17.11.2017 requested the Approving Authority i.e. JCIT to grant approval u/s 153D of the Act and furnished relevant assessment records and draft assessment order before him for consideration prior to grant of approval. As we have already noted above that there is no requirement of mandate of section 153D of the Act that an opportunity of hearing should be allowed to the assessee before grant of approval u/s.153D of the Act but at the same time, it is also a requirement of mandate of section 153D of the Act that the approving authority must apply his mind to the relevant assessment records and draft assessment order before granting approval

u/s.153D of the Act. As the requirement of grant of approval by the Superior authority is not merely a formality but it is a mandate and requirement of provisions of the Act.

35. In our considered and humble opinion, no procedure for grant of approval has been provided u/s.153D of the Act and the Income tax Rules, 1962. However, when legislature has enacted some provision to be exercised by a higher revenue authority enabling the AO to pass assessment or reassessment orders in the search cases, then, it is the duty of the approving authority to exercise such power by applying his judicious, vigilant and cautious efforts. We are of the view that the obligation on the approval granting authority is of two folds, one the one hand, he has to apply his mind to secure inbuilt for the department against any omission or negligence by the AO in taxing right income in the hands of right person in the right assessment year and on the other hand he is also responsible and duty bound to do justice with the taxpayer/assessee by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO crating baseless tax liability on the assessee and thus he has to discharge his duties as superior authority. Thus, granting approval u/s.153D of the Act is not merely an official formality but it is a supervisory act which requires proper application of administrative and judicial skill by the authority on the application of mind and this exercise should be discernible from the order of approval u/s.153D of the Act.

36. In our humble understanding the provisions of section 153D of the Act has been introduced by the legislature in its

cautious wisdom to make it mandatory on the supervisory authority/approving authority to discharge the duty towards both the assessee as well as revenue to follow the proper procedure and to apply his mind on the material, relevant evidences and other documents including materials found during search & post search investigations and explanation & supporting documents of the assessee to the issue show caused to him by the AO, on the basis of which the AO wants to pass or frame assessment or reassessment orders and after such exercise by perusing and going through the relevant assessment folders/files alongwith proposed draft orders and also by applying his mind has granted approval u/s.153D of the Act. This is the minimum required exercise by the approving authority before granting approval u/s.153D of the Act. The approving authority has undertaken any such exercise should be discernible from the order of the approval and the subsequent internal correspondence between the lower authorities have no relevance and the defects or omissions or non-application of mind cannot be cured or rectified by any other exercise or working undertaken by the approving authority after grant of approval and after passing the assessment orders u/s.153A of the Act by the Assessing officer.

37. The provisions of section 153D of the Act was inserted by the Finance Act, 2007 w.e.f. 1.6.2007. In our humble understanding of said provision, the legislative intent for insertion of said provision is clear inasmuch as prior to insertion of provision u/s.153D, there was no provision for taking approval in cases of assessment or reassessment where search

and seizure operation was conducted u/s.133A of the Act. Therefore, in our considered view, the legislature wanted the assessment/reassessment of search and seizure cases should be made and orders should be passed with the prior approval of superior authority, which also means that the superior authority should apply his mind on the materials on the basis of which the AO is making or passing assessment orders and after due application of mind to material in the hands of department while initiating search proceedings, material found & seized during the course of search and also material or information unearthed or gathered during post search investigation and enquiry alongwith explanation, documentary evidence and other relevant material or information submitted by the assessee during search and assessment proceedings, the superior authority has to grant the approval u/s.153D of the Act for passing assessment/reassessment orders in the search cases.

38. Further, in our considered view, the approval u/s.153D of the Act cannot be treated as an official formality but the provision has been inserted by the legislature with some specific and useful purpose. It is apparent that the purpose behind enactment of the said provision in the Statute by the legislature are of two folds viz (i) before approval, the Sr. Authority will ensure that the assessee should be protected against undue or irrelevant addition & disallowances in the assessment and (ii) the approving granting authority will also ensure that proper enquiry investigations are carried out by the Assessing Officer on all the relevant materials including material in hands of the

department at the time of initiating search proceedings, material or documents found and seized during search operation and materials found and unearthed during post search investigations and enquiries. Therefore, said provision provides and requires application of mind by the approving authority of the department which, in turn, provides safeguard to the both the parties i.e. revenue and the assessee. Therefore, the provisions of section 153D of the Act cannot be treated as a mere formality and mandate therein required to be followed by the approving authority in a judicious manner by due application of mind in a manner of cautious judicious or quasi judicial authority. This view has also been expressed by Pune Bench of the ITAT in the case of Akil Gulamali somji, in ITA Nos.455 to 458(Pune) of 2010 vide order dated 30.3.2012, wherein, it was held that when the approval was granted without proper application of mind, the order of assessment will be bad in law. We also take respectful cognizance of the fact that the Hon'ble Bombay High Court in the case of Akil Gulamali Somji (supra) has concurred with the said findings and view taken by the Pune Tribunal that not following the provisions of section 153D of the Act will render the related order of assessment void.

39. In view of foregoing discussion, we reach to a logical conclusion that it is the duty of the approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment

folders/files and draft assessment orders while granting approval u/s.153D of the Act. This is not a formality but a statutory duty of the approving authority with a corresponding obligation on him to examine relevant record and assessment orders and thereafter grant the approval. We are cautious about that the reasons for granting approval may not be a subject matter of challenge or are not required to be mentioned in the order of approval but the manner and the material on the basis of which approval has been granted can be challenged by the assessee and following proper procedure and application of mind by the approving authority should be discernible from the order of approval. No other evidence or documents is required to be considered or appreciated as the approval should be self-speaking that it has been granted by the Id JCIT by following due procedure and due application of mind to the relevant records and orders. The scope and issue agitated by the assessee by way of legal ground in the present case is not that of grant of hearing or representation to the assessee at the time of granting approval but the main grievance and legal objection of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized materials and investigation report and draft assessment/reassessment orders and this fact should be clearly discernible from the approval order and no other extraneous material/document can be seen in this regard.

40. In view of above, we are inclined to hold that if an approval has been granted by the approving authority in a mechanical manner without application of mind then the

very purpose of obtaining of approval u/s.153D and mandate of enactment by the legislature will be defeated. In the present case, the approving authority, the Id JCIT got five days time but from the order of approval, we are unable to see any exercise by the approving authority and even in the approval orders (supra), he has not mentioned that the relevant appeal folders/files alongwith assessments/reassessment orders have been perused or any discussion or consultation has been made with the AO prior to granting of approval u/s.153D of the Act. Accordingly, we are compelled to hold that the approval granted by the Id JCIT in the appeals under consideration has been granted in a mechanical manner without application of mind and that the assessments/reassessment orders passed by the AO on such approval are declared to be void and bad in law. We hold so.

41. In view of aforesaid discussion, we clearly find that approving authority has not applied his mind to the relevant assessment records and draft assessment orders prior to granting approval to the Assessing officer for passing assessment orders u/s.153A/143(3) of the Act. Therefore, the contention of Id A.R. of the assessee is justified and sustainable that the approval was granted in most mechanical manner without application of mind and respectfully following the proposition rendered by Hon'ble Bombay High Court in the case of Smt. Shreelakha Damani (supra), the order of ITAT Delhi Bench in the case of M3M India Holdings (supra) and decision of ITAT Cuttack Bench in the case of Geetarani Panda (supra), we hold that no valid approval has been sanctioned or accorded by

the Id JCIT before allowing the AO to pass the relevant assessment orders. From the relevant approval orders dated 23.11.2017, it is vivid that Id JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval. These facts clearly show that the approval had been granted in a mechanical manner without application of mind and, thus, no valid approval has been granted by the Id JCIT before authorising the AO to pass assessment orders u/s.153A of the Act. Accordingly, all assessment orders are vitiated and thus same are void being bad in law. The requirement of mandate of section 153D of the Act has not been satisfied in both the cases and accordingly we hold that the all assessment orders are vitiated and thus same are void being bad in law. We, accordingly set aside the impugned orders of lower authorities and quash the assessment orders by allowing additional ground of the assesseees in all appeals filed by both the assesseees having identical and similar facts and circumstances.

12. Thus, respectfully following the above observations of the Tribunal and especially the fact that the approval u/s.153D of the Act given by the JCIT for passing assessment orders in case of assessee and other group concern is without application of mind as the JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval, therefore, we hold that the impugned order passed by the CIT(A) affirming the assessment order passed by the AO, is not unsustainable. Accordingly, we allow the ground No.2 of the assessee and cancel the assessment order framed u/s.153A/143(3) of the Act.

16. In the present appeal, the JCIT, Range-Central Raipur has granted approval on the presumption basis, which in our opinion is not permissible. When the approval is not valid, then the assessment framed u/s.153A r.w.s.143(3) of the Act in the case of the assessee is not sustainable.

17. Before concluding and offering our final view on the issue, this is pertinent to mention here that the case laws relied upon by the Ld CITDR are distinguishable on facts, have no bearing on the issue under discussion in the present appeal, thus the same are not of any help to the revenue to support their contentions. The judgment in the case of Bharat Krishi Kendra Vs Union of India (supra) was decided in favour of the revenue only on the reason that where “Joint Commissioner recorded satisfaction on proposal of Assessing Officer by mentioning that it is a fit case for issuance of notice, approval under section 151 giving details of approving authority as Principal Commissioner in itself will not make approval invalid”, this is altogether on different footing than the facts of the present case, where approval was granted by the Ld JCIT himself but on the basis of certain presumptions without verifying the seized material by himself, even the responsibility of satisfaction was placed on shoulders of the AO. We therefor of the view that guidance of the Hon’ble Jurisdictional High Court of Chhatisgarh in the case of Bharat Krishi Kendra Vs Union of India (supra) cannot be adopted for deciding the issue in the present appeal. Regarding the judgment in the case of Sahara Credit Cooperative Society Ltd. Vs. DCIT/ACIT (supra), Hon’ble Allahabad High Court has emphasised on the issue of communication of the approval, whether same is done physically or through uploading the same on portal of the department makes no difference, however in the present case no such issue has been agitated, thus the same has no bearing on the issue to be decided herein.

18. In view of the above discussion and observations, respectfully following the decision of the Hon’ble High Court of Allahabad as well as orders of the coordinate benches of the Tribunal referred to above, in absence of any submission or decisions contrary to what has been emerged by the observations herein above, we do not have any reason to upheld the order of the authorities below, consequently we hold that

the order of Ld CIT(A) in affirmation of the order of Ld AO u/s.153A r.w.s.143(3) of the Act is unsustainable and derives to be quashed and we do so. Accordingly, the assessment order in the case of the assessee u/s.153A r.w.s.143(3) of the Act stands cancelled. Thus, the legal ground raised by the assessee in the form of additional ground is allowed. Since, we have allowed the legal ground of the assessee, other grounds, though not argued by the Id AR, are not adjudicated upon.

19. In the result, the appeal of assessee is allowed.”

9. We note that facts and approval in that case are identical to the present cases. We may recap the features in present case already mentioned earlier. In this case also, a common approval was given for 7 assesseees with the same comments and the approval given does not indicate what material and facts have been perused before granting the approval. The approval given does not even indicate that any material was supplied by the Assessing Officer to the approving authority for its perusal. It is mentioned that draft assessment orders u/s 153A and 143(3) in the following cases submitted vide above mentioned letter are hereby approved u/s 153D of the I. T. Act and this shows only orders were submitted. It is no-where stated that the approving authority has perused such draft assessment orders or not. It is not mentioned in the approval that what is the amount of determination of income in each assessment year of each assessee. Approval was granted within 24 hours of proposal. Approval have been granted on the same day on 22.12.2017 despite the fact that A.O. was having his office at Jabalpur and JCIT was holding his

Office at Bhopal in which there is a significant distance. It is not humanly possible to look into assessment records as well as draft assessment orders thereon and apply its own mind objectively by a senior designated authority involving such complex matters and grant approval as contemplated under section 153D of the Act. Not mentioned as to how the draft order and assessment record, if any, have been received by JCIT, if he has gone through the assessment record or that assessment record, about the mode, through which, assessment record was transmitted by the Ld. Assessing Officer at Bilaspur to JCIT, Raipur and vice-versa. It is also noted that the Assessing Officer had time till September 2019 for passing the assessment order, why the approvals were granted within 24 hours and order also was passed. The approval given was a conditional approval and on the basis of presumption only as is evident from para 3 of the approval reproduced below:

3. Further in view of this office letter no. F.No. JCIT(C)/RPR/Draft Asst. Order/2016-17/ dated 09.09.2016 it is presumed that the AD has-

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.

These facts clearly show that the action of the JCIT granting approval in this case was. Thus, a mere mechanical exercise, accepting the draft order as it is, without any independent application of mind on his part. 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.

10. Thus, the facts in the present case are quite identical to the case dealt with by the coordinate Bench at Raipur. Case laws referred in the aforesaid order and cited by the Id. Counsel of the assessee also support the case of the assessee.

11. Ld. DR for the Revenue could not make any cogent rebuttal of the submissions of the case laws cited by the Id. Counsel of the assessee. His plea shows that section 153D approval is proper and that there is lack of appreciation of the Income-tax Department. He further submitted that as per section 153D, there is no specific format for granting the approval. As regards various case laws cited by the assessee, Id. DR for the Revenue did not rebut the same but only stated that judicial pronouncements cited by the assessee are factual finding. Thus, it is clear that there is no cogent rebuttal by the Id. DR for the Revenue of the submissions and case laws relied upon by the Id. Counsel of the assessee and as discussed by us herein above.

12. In view of the above and respectfully following the order from the coordinate Bench of the Tribunal, we also hold that legal ground raised in the cross objections deserves to be allowed and accordingly, the

assessment orders passed u/s 153A r.w.s. 143 (3) stand cancelled. Since we have allowed the legal ground of the assessee, consideration of other grounds are now only of academic interest and we are not engaging to the same. It is not the case that the above said decision of coordinate Bench of ITAT has been reversed by any High Court. Accordingly, respectfully following the precedent as above, this ground of cross objections is allowed. Accordingly, the assessment order in the case of the assessee u/s. 153A r.w.s. 143 (3) of the Act stands cancelled. Since we have allowed the legal ground of the cross objections, other grounds are only academic and we are not engaging to it. Hence, the cross objections filed by the assessee are allowed as above.

13. Since we have quashed the assessment, Revenue's appeals on merits are only of academic interest, hence we are not getting into the same and the Revenue's appeals are treated as infructuous.

14. In the result, all the cross objections filed by the assessee are allowed as above and all the appeals of the Revenue are dismissed as infructuous.

Order pronounced in the open court on this 18TH day of April, 2023.

**SD/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 18TH day of April, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, Bhopal.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.