

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

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

**ITA No.4461/Del./2019  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.4462/Del./2019  
(ASSESSMENT YEAR : 2010-11)**

DCIT, Central Circle II, vs. M.G. Metalloy Pvt. Ltd.,  
Noida. B – 16, Sector 2,  
Noida – 201 301 (Uttar Pradesh).

**(PAN : AAGCM5789D)**

**CO No.129/Del./2019  
(in ITA No.4461/Del./2019)  
(ASSESSMENT YEAR : 2009-10)**

**CO No.130/Del./2019  
(in ITA No.4462/Del./2019)  
(ASSESSMENT YEAR : 2010-11)**

M.G. Metalloy Pvt. Ltd., vs. DCIT, Central Circle II,  
B – 16, Sector 2, Noida.  
Noida – 201 301 (Uttar Pradesh).

**(PAN : AAGCM5789D)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Pranav Yadav, Advocate  
REVENUE BY : Shri Subhra Jyoti Chakraborty, CIT DR

Date of Hearing : 06.10.2023  
Date of Order : 10.10.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are appeals by the Revenue and the cross objections by the assessee against the common order of the Id. CIT (Appeals)-IV, Kanpur dated 25.02.2019 pertaining to the assessment years 2009-10 & 2011-12. The order of Id. CIT (A) was common for AYs 2009-10 to 2013-14.

2. Since the issues are common and connected the appeals and cross objections were heard together and these are being consolidated and disposed off by this common order.

3. Since grounds are similar we are referring grounds of AY 2009-10 as under :-

**ITA No.4461/Del/2019 (Revenue's Appeal)**

1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that material seized during the search operations constituted "incriminating material" for the purpose of the issue of notice u/s 153C in the context of assessee.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that while recording the satisfaction for issue of 153C the test for 'incriminating material' has to be only in nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society, which was distinguishable as the same pertained to period prior to 01.04.200S whereas after amendment w.e.f. 01.04.200S, 153C notice can be issued even in case where AO is satisfied that seized material has a bearing on the assessment of income of other person.

4. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) failed to allude to the relevant facts & circumstances and misread

the provisions of section 153C to arrive at the conclusion. The order of the CIT(A), therefore, suffers from perversity in view of the ratio of decision in case of Viiav Kumar Talwar 330 ITR 1 (SC), Sudarshan Silk Sarees 300 ITR 205(SC).

5. The order of the Ld CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.”

**CO No.128/Del/2019 (Assessee’s CO)**

“1. On the facts and circumstances of the case and in law, the notice u/s 153C issued by the assessing officer is bad-in-law, barred by limitation, without jurisdiction and illegal.

2. On the facts and circumstances of the case and in law, the assessing officer has not complied with the provisions of section 153C and other allied provisions for issuance of notice u/s 153C of the Act, therefore the said notice alongwith the assessment order passed on the foundation of such notice are liable to be quashed.

3. On the facts and circumstances of the case and in law, the addition of unsecured loans of Rs.16,95,19,950/- made by the assessing officer u/s 68 of the Act on account of alleged unexplained cash credits is erroneous and without jurisdiction. The addition made is beyond the scope / jurisdiction of provisions of section 153C read with section 153A of the Income Tax Act, 1961.

4. On the facts and circumstances of the case and in law, the assessing officer has erred in making addition of unsecured loans of Rs.16,95,19,950/- on the account of alleged unexplained cash credits u/s 68 of Income Tax Act, 1961.

5. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Income Tax Act, 1961.”

4. Brief facts of the case are that a search and seizure operation was carried out u/s 132(1) of the Act in M/s. Apple Group of Companies (AGC) on 11.11.2014, wherein certain incriminating documents were found & seized belonging to the assessee. Thereafter, notices u/s 153C of the Income-tax Act, 1961 (for short 'the Act') were issued for Assessment

Years 2009-10 to A.Y. 2013-14. Further, assessee filed its return showing income of Rs. (-) 2,04,664/, Rs. NIL, Rs. (-) 61,071/-, Rs. (-) 37.162/- and Rs. (-) 49,505/- respectively. Subsequently, notices u/s 143(2) and 142(1) were issued and AO completed assessment by making addition of Rs.16,65.19,950/-, Rs.3.18,73,447/-, Rs. 38,13.12,000/-, Rs.3,59,00,000/- and Rs.65,00,000/- for AYs 2009-10 to 2013-14 on account of unexplained cash credit u/s 68 of the Act and disallowance of expenses.

5. Upon assessee's appeal, ld. CIT (A) decided the appeal in favour of the assessee on the ground that notice u/s 153C of the Income-tax Act, 1961 (for short 'the Act') was ab-initio invalid and legally not sustainable. We may refer to the concluding part of the order of the ld. CIT (A) as under :-

“5.12 In view of the detailed discussion mentioned here in above and respectfully following the judgement of the Supreme Court in the case of Sinhgad Technical Educational Society, it is concluded that notice u/s 153C issued by the AO need to be treated as ab-initio invalid and legally not sustainable, therefore, assessment framed on the basis of legally unsustainable notice is hereby quashed and annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2009-10 to A.Y. 2013-14 (5 Years) are decided in favour of the appellant.”

6. Against the above order, Revenue has filed the appeal and the assessee has filed the cross objections. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee raised a preliminary ground and submitted that the assessment framed in the case is bad in law on account

of absence of valid and effective approval u/s 153D of the Act by the competent authority. The detailed submissions of the Id. Counsel of the assessee in this regard are as under :-

1. The assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Act. The provisions of section 153D are 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.”*

- 1.1. 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.

- 1.2. The letter addressed by the AO to JCIT seeking his approval is reproduced as under: -

F.No. DCIT/cc/Noida/S&S/153D/2016-17/2623

Dated: 30/12/2016

To,

The Joint Commissioner of Income Tax,  
 Central Range, Aayakar Bhawan, Bhainsali Ground, Meerut.

Sir,

**Sub: Draft assessment orders u/s 153A/153C/143(3) of the I.T. Act, 1961 in Apple Group (D.O.S 11/11/2014)- Approval u/s 153D of the I.T. Act, 1961- regarding.**

Please find herewith revised list of cases for your kind approval u/s 153D of the IT Act.

SI. No.	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg,	AEKPG6296A	2009-10 to 2015-16

**ITA Nos.4461 & 4462/Del./2019**  
**CO Nos.129 & 130/Del./2019**

2	Smt. Shaloo Narender Kumar Garg,	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg,	ABIPG9791P	2009-10 to 2015-16
4	Smt. Madhu Garg,	ABIPG9792Q	2009-10 to 2015-16
5	Sh. Pulkit Garg,	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg	AAIPG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garg,	AAHPG8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd.,	AAGCA9960N	2009-10 to 2015-16
9	M/s Nirman Stelco Pvt. Ltd.,	AACCN4842Q	2009-10 to 2015-16
10	M/s M.G. Metallody Pvt. Ltd.,	AAGCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.	AAFCA8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit.	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.,	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd.,	AAFCA8106K	2009-10 to 2015-16
15	M/s Apple Insurance Brokers Pvt. Ltd.,	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd.,	AAACZ5235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd.,	AAHCA8642G	2010-11 to 2013-14
18	M/S Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

Draft assessment order received Late i.e. on 31/12/2016  
 Beyond the time as per internal Action Plan.  
 And thus having a very little time/ almost no time for proper  
 Examination of facts of the case/ further enquiries etc.

Yours sincerely

-----sd-----

Deputy Commissioner of Income Tax  
 Central Circle Noida

For J.C.I.T., Central Range (Meerut)

1.3. The letter addressed by the JCIT to CIT granting his approval is reproduced  
 as under:-

F. No. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477  
 2016

Dated: 31-12-

To,  
 The Dy. Commissioner of Income Tax.  
 Central Circle, Noida.

**Subject: Prior approval u/s 153D in the cases of Apple Group cases-regarding.**

Please refer to your office letter F. No. DCIT/CC/Noida/S&S/153D/2016-17/2623 dated 30-12-2016 received in this office on 31-12-2016 on the above mentioned subject.

1. In the following cases of **Apple Group**, prior approval u/s 153D of the IT Act, 1961 is accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:



**ITA Nos.4461 & 4462/Del./2019**  
**CO Nos.129 & 130/Del./2019**

SI. No	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg	AEKPG6296A	2009-10 to 2015-16
2	Smt. Shaloo Narender Kumar Garg	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg	ABIPG9791P	2009-10 to 2015-16
4	Smt. Madhu Garg	ABIPG9792Q	2009-10 to 2015-16
5	Sh. Pulkit Garg	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg	AAIPG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garg	AAHPG8132G	2009-10 to 2015-16
8	M/S Apple Industries Ltd.	AAGCA9960N	2009-10 to 2015-16
9	M/S Nirman Stelco Pvt. Ltd.	AACCN4842Q	2009-10 to 2015-16
10	M/s M. G. Metalloy Pvt. Ltd.	AAGCM5789D	2011-12 to 2015-16
11	M/S Promart Retail India Pvt. Ltd.	AAFCP8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit.	AAFCA1965L	2009-10 to 2015-16
13	M/S Apple Metal Industries Ltd.	AAACD7670E	2009-10 to 2015-16
14	M/S Apple Buildtech Ltd.	AAFCA8106K	2009-10 to 2013-14
15	M/S Apple Insurance Brokers Pvt.Ltd	AAECA5320N	2009-10 to 2015-16
16	M/S Zync Global Pvt. Ltd.	AAACZ5235H	2012-13 to 2015-16
17	M/S Apple Iron Enterprises Pvt. Ltd	AAHCA8642G	2010-11 to 2013-14
18	M/S Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

3. 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 the last para of the order. The initiation of correct penalty provisions of I.T. Act u/s271(1)(c)/271AAB per facts of the case must be ensured.

4. 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.

5. 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.

Encl. : As above

-----sd-----

Joint Commissioner of Income

Tax

Central Range, Meerut

1.4.From the above, it is apparent that the JCIT received the draft assessment order from the AO on 31/12/2016 and he granted the approval on the same day. In the letter of the AO for seeking approval from JCIT, the JCIT has himself made the following remarks:-

*Draft assessment order received late i.e on 31/12/2016 Beyond the time as per internal Action Plan And thus having a very little time /almost no time for proper Examination of the facts of the case/further enquiries etc.*

From the above remarks of the JCIT himself, it is evident that he has granted the approval without examination of the facts of the case. The approval by the JCIT is an empty ritual. The approval given by the JCIT is not a statutory approval as is required under the Act. The approval is not a final approval as required u/s 153D of the Act but a technical/conditional approval subjected to modifications by the DCIT after receiving of the approval which makes it an invalid, qualified and uncertain approval. This is not the mandate of the Act. The action of the JCIT of granting the approval was a mere mechanical exercise accepting the draft order



as it is without any independent application of mind on his part. Therefore, the approval is invalid in eye of law.

**2. It may also be submitted that appeal of another group company M.G. Metalloy Pvt. Ltd. involving the same approval u/s 153D has been considered and allowed in favour of the assessee by Hon'ble ITAT in ITA. No. 3693/Del/2018 vide order dated 08/05/2023. Therefore, the issue involved in the present appeal stands covered in favour of the assessee company.**

8. Per contra, ld. DR for the Revenue relied upon the order of Assessing Officer.

9. Upon careful consideration, we find that ITAT on the basis of similar batch of approvals has considered the identical issue for AY 2014-15 and decided the plea raised by the assessee in assessee's favour.

We may gainfully refer to the adjudication of the ITAT as under :-

“8. We have carefully considered the rival submissions and material placed on record and case laws cited. The legal objection of transgression of requirements of approval under Section 153D is in question which has the effect on the very substratum of the assessment and appellate proceedings. We thus require to address ourselves into such mainstay issue at the outset.

9. We shall straight away advert to the communication between the Assessing Officer and the JCIT being the competent authority for the purposes of approval contemplated under Section 153D of the Act.

9.1 For the sake of convenience, the communication exchanged between the AO and the JCIT are extracted below.

9.1.1 The communication made by the AO (stationed at Noida) to the JCIT (stationed at Meerut) seeking approval under Section 153D of the Act is reproduced here under:

XXXXXXXXXX

9.1.2 Likewise, the approval memo in response to the communication made by AO seeking approval under S. 153D is also reproduced here under:

XXXXXXXXXX

9.2 On perusal of communication dated 30/12/2016 (para 9.1.1) addressed by the AO to the JCIT, the salient features that emerge are:

a) The approval is merely a technical approval. The JCIT in the communication letter himself has made a discordant remark that the draft orders have been received on the last date and thus he is having very little time / no time at his disposal for proper examination of facts of the case or for conducting enquiries etc. The JCIT in its last minute approval letter, in dated 31/12/2016 (para no. 9.1.2) while granting approval under Section 153D, in turn, has again noted that the 'technical approval' has been accorded to pass assessment orders in 18 cases including assessee, for which draft assessment orders were submitted by the Assessing Officer Noida.

b) The JCIT in his approval memo for all 18 cases also directed the AO to ensure taking into account the seized documents / papers and comments in the appraisal report pertaining to AYs under reference. The JCIT thereafter also observed that the fact of initiation of penalty proceedings, wherever applicable, must also be incorporated in the last para of the order. The initiation of correct penalty provisions of the Act under Section 271(1)(c)/ 271AAB as per facts of the case were also directed to be ensured at the end of the AO.

c) After taking into consideration the above points, a copy of the final orders passed be sent to the JCIT.

d) As many as 18 draft assessment orders including the assessment order of the assessee herein were combinedly placed before the JCIT in one go seeking statutory approval under

Section 153D of the Act in relation to multiple assessment years of each assessee.

e) No reference to the assessment records being sent along with the draft assessment order to the JCIT stationed long away is found in the communication addressed to JCIT by the Assessing Officer.

f) The communication letter dated 30/12/2016 have been delivered to the Office of JCIT on 31/12/2016 i.e. the very last date of limitation for completion of the assessment. Subject to these broad observations, the approval was granted vide approval memo F. NO. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477 dated 31/12/2016. By implication, the JCIT, while granting the approval, was not privy to seized material, appraisal report etc. and left the onus of varied compliances to the wisdom of the AO.

9.3 From the perusal of the communication made by the AO seeking approval under Section 153D and the approval given under Section 153D thereon by the JCIT, it is seen that the AO has forwarded the draft assessment orders for as many as 5 assessment orders in the case of the assessee along with multiple assessment orders in the case of remaining 17 assessee in one go on the last day of the expiry of limitation for carrying out assessment under Section 153A for endorsement and approval of designated authority i.e. JCIT to meet the legal requirement imposed under Section 153D of the Act. The JCIT i.e. the competent authority, in turn, was forced to grant a combined and consolidated approval for all assessee named therein for all assessment years in promptu on the same day of receipt of the order i.e. on 31/12/2016. It is a classic case of approval by giving a complete go bye to the inbuilt safeguards intended by insertion of S. 153D of the Act.

9.4 It may be pertinent to observe at this stage that the impugned assessment order was passed under Section 143(3) r.w.s. 153A of the Act pursuant to search carried out under Section 132 of the Act. For passing such assessment orders, the Assessing Officer is governed by Section 153D of the Act whereby the AO should complete the assessment proceedings and prepare a draft assessment order which needs to be placed

before the approving authority i.e. Joint / Addl. Commissioner (designated authority giving approval to search assessment under Section 153D of the Act) for his perusal and prior approval. The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/ her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law and with underlying factual matrix. The AO is obligated to pass the assessment order exactly, as per approval / directions of the designated authority. It is not open to the AO to modify the assessment order without the knowledge and concurrence of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

9.5 In the instant case, it is a matter of record by the own admission of JCIT that the approval granted is merely technical and without appraisal of evidences or enquiries. Thus fact thus need not be traversed any further. In the backdrop of the unequivocal observations made by the JCIT, approval granted under Section 153D apparently does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment order thus passed is vitiated in law which illegality cannot be cured.

10. In nutshell, the approval under S. 153D is repugnant for more than one reasons;

(i) the approval accorded under Section 153D is admittedly without any occasion to refer to the assessment records and seized materials, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders and consequently suffered from total non-application of mind.

(ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 5 assessment years admittedly a symbolic exercise to meet the requirement of law.

The JCIT himself has made such fact abundantly clear without any demur.

(iii) The red flag raised by JCIT and unambiguous assertions of the JCIT himself that the approval granted is in the nature of “technical approval” and he is having very little time at his disposal for proper examination of facts of the case or for related enquiries says it all and has brought quietus to any different possibility or interpretation. The approving authority himself has thus discredited its own approval.

(iv) abject failure in drawing satisfaction on objective material while giving a combined approval for 5 assessments and also without evaluating the nuances of each assessment year involved. The combined approval of several assessee combinedly for multiple assessment years runs contrary to the judgment of the Hon’ble Allahabad High Court in the case of PCIT vs. Sapna Gupta judgment dated 12-12-2022 Income Tax appeal no. 88 of 2022. The Hon'ble High Court inter alia observed that the compliance of S. 153D qua each assessee and for each assessment year is expected.

(v) The mundane approval under Section 153D in a cosmetic manner gives infallible impression of approval on dotted line and without discharging the onus placed on competent authority thus defeats the intrinsic purpose of supervision of search assessments. Such hawkish approval has thus tarred the assessment and rendered it bad in law.

11. It may be pertinent to observe, Section 153D bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirements in letter and spirit. As noted in the preceding paragraphs, it is a classic case of collective abdication of statutory responsibility assigned under Act and yet putting civil consequences of onerous nature on a tax payer. It is axiomatic from the plain reading of approval memo that the JCIT is in complete dark on facts while being called upon to grant his clearance to the draft assessment orders. It is evident from the CBDT Circular No.3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom



made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. The solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional/ Joint CIT concerned, with his experience and maturity of understanding, should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act enjoins due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. At the cost of repetition, it may be reiterated that in the instant case, the approving authority has granted a mere 'technical approval' by his own express admission in departure to a substantive approval expected in law. The JCIT rather himself fairly recorded his objections to the fag end supply of draft assessment orders by the AO in bulk for several assesseees involving multiple assessment years and effectively claimed that he had no opportunity to peruse the relevant underlying material for effective discharge of duty of supervisory nature owing to last minute supply of draft assessment orders. As discernible from the conjoint approval memo, the sanctioning authority(JCIT) has, in fact, under the force of circumstances, relegated his statutory duty to the subordinate AO, whose action the JCIT, was supposed to supervise as per the scheme of the Act. Manifestly, the JCIT, without any consideration of factual and legal position in proposed additions/disallowances and without contents of appraisal report before him or incriminating material collected in search etc. has buckled under statutory compulsion and proceeded to grant a simplicitor

approval with caveats and disclaimers. This approach of the JCIT has ipso facto rendered the impugned approval to be a mere ritual or an empty formality to meet the statutory requirement and can not thus be countenanced in law.

12. The identical issue has been favourably adjudicated in assessee's own case in ITA 3306/Del./2018 order dated 23-08-2021 concerning other AY 2015-16 where coordinate bench found total lack of propriety in such statutory approval. There are plethora of decisions of various co-ordinate benches including Sanjay Duggal & ors (ITA 1813/Del/2019 & ors; order dated 19.01.2021 which have also echoed the same view on similar fact situation.

13. The CIT(A) in para 7 of first appellate order has brushed aside the legal objection summarily merely on an inept & indifferent premise that the assessment order makes mention of the approval from JCIT under 153D of the Act. The cryptic conclusion drawn by the CIT(A) is bereft of any reasons whatsoever and thus cannot be reckoned to be a judicial finding on the point. The observations so made are not tenable in law.

14. In the light of foregoing discussions, We are unhesitatingly disposed to hold that the assessment order for AY 2014-15 in question, in pursuance of a hollow & cosmetic approval accorded under S. 153D and undeniably without application of mind, is rendered unenforceable in law and hence quashed.

15. In view of legal objection answered in favour of the Assessee, the aspects of other objections on jurisdiction or merits of additions/ disallowance does not call for separate adjudication.”

After careful consideration, we find that the facts in the present case with regard to the validity and effectiveness of approval u/s 153D of the Act is similar to the one adjudicated by the ITAT for AY 2014-15 as above. Accordingly, respectfully following the precedent as above, we hold that

the assessment in the AY 2009-10 in pursuance of invalid approval accorded u/s 153D is invalid and liable to be quashed and quashed as such.

9. Our above order applies *mutatis mutandis* to Assessment Year 2010-11 in Revenue's appeal.

10. We have held that jurisdiction in these cases is not valid and the adjudication of Revenue's appeals is of academic interest. Hence, these Revenue's appeals are dismissed as infructuous. The cross objections filed by the assessee are allowed in terms of the above order.

11. In the result, the appeals filed by the Revenue are dismissed and the cross objections filed by the assessee are allowed.

**Order pronounced in the open court on this 10<sup>th</sup> day of October, 2023.**

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

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

**Dated the 10<sup>th</sup> day of October, 2023**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (E)-IV, Kanpur.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**