

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos. 1436 to 1438 & 1440/Del/2022
Assessment Years: 2011-12 to 2013-14 & 2015-16

The DCIT, Central Circle-02, New Delhi	vs.	Ruchi Garg, F-22, F-Block, Model Town-II, Delhi 110009 PAN AAGCM 5789 D
(Appellant)		(Respondent)

CO Nos. 41 to 43 & 45/Del/2023
In ITA Nos. 1436 to 1438 & 1440/Del/2022
Assessment Years: 2011-12 to 2013-14 & 2015-16

Ruchi Garg, F-22, F-Block, Model Town-II, Delhi 110009 PAN AAGCM 5789 D	vs.	The DCIT, Central Circle-02, New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Amit Goel, CA Shri Pranav Yadav, Adv.
Revenue For :	Ms. Suneeta Verma, CIT(DR)

Date of Hearing :	13.09.2023
Date of Pronouncement :	13.10.2023

ORDER

PER BENCH:-

Above captioned appeals of revenue and cross objection of assessee have been filed against the order of CIT(A)-4, Kanpur dated 14.02.2022 for AYs 2011-12 to 2013-14 & 2015-16.

2. Since grounds raised by the Revenue are identical and similar therefore we are taking AY 2011-12 as lead case for the sake of convenience and brevity. The grounds raised by the Revenue in ITA No. 1436/Del/2022 for A.Y. 2011-12 are as under:-

1. *The Ld. CIT(A) is not correct in law and on facts.*

2. *a. On the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs. 4.02.00.00 made u/s 68 of the Income Tax Act, 1961 as genuineness of the transaction and creditworthiness of the creditors could not be proved.*

b. The Ld. CIT(A) erred in deleting the addition of Rs. 4,02,00,000/- on account of unsecured loans received from various companies as on perusal of the bank statement it is found that the unsecured loan so received by the assessee by rotation of funds through the group of companies or through her family members for creating fictitious turnover by circular trading.

c. CIT(A) failed to appreciate that the unsecured loan so received from the companies are the one in which the assessee herself or her family members were the Directors during the said period.

d. The Ld. CIT(A) erred in deleting the addition of Rs. 4.02.00,000/- on account of unsecured loans as during search and post search investigation it was found that the Apple group of companies, in which assessee or her family members were Directors, were not doing any genuine business and were involved in providing accommodation entries

3. Since cross objections raised by the assessee are identical and similar therefore we are taking AY 2011-12 as lead case for the sake of convenience and brevity. The grounds of cross objection raised by the assessee in CO No. 41/Del/2023 for A.Y. 2011-12 are as under:-

1. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the addition of Rs. 4,02,00,000/- made by assessing officer on account of unsecured loans as alleged unexplained cash credits u/s 68 of the Act received is beyond the scope/jurisdiction of the provisions of section 153A of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

4. Brief facts of the case are that a search and seizure operation was carried out on the Apple Group of companies on 11.11.2014, wherein certain incriminating documents were found and seized belonging to the present assessee. Thereafter, notices u/s. 153C of the Act were issued for AY 2009-10 to 2013-14. After filing return by the assessee in response to said notice the Assessing Officer framed assessment orders by making additions u/s. 68 of the Act, and disallowances of certain expenses. The assessee

carried the matter before first appellate authority and Id. CIT(A) decided appeal in favour of the assessee on merits. Therefore the Revenue has filed appeals under consideration challenging the deletion of addition. However while adjudicating legal ground no. (v) the Id. CIT(A) dismissed contention of assessee that the assessment order has been passed by the Assessing Officer without having valid approval as per mandate of sec 153D of the Act. Against said conclusion of Id. CIT(A) the assessee has filed cross objections challenging the validity of assessment orders on account of invalid approval as well as supporting the first appellate order on the conclusion recorded in favour of the assessee on merits. As agreed by the Id. Representative both the sides, at the outset, we proceed to adjudicate cross objections of assessee.

Cross objection no. 41 to 43 & 45/Del/2023 of Assessee

5. Pressing into service ground no. 1 of cross objection of assessee the Id. Assessee Representative (AR) submitted that the identical legal ground has been adjudicated by the Tribunal by order dated 08.05.2023 in ITA No. 3693/del/2018 for AY 2014-15 in the case of a company of Apple Group i.e. MG Metalloy Private Ltd. vs. DCIT (to which Judicial Member was Co-Author) hence the issue is covered in favour of the assessee. The Id. AR, thus, submitted that the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so. The Id. AR submitted that the cosmic approval accorded without application of mind may kindly be rendered as unenforceable in law and hence the same may kindly be quashed by following the Tribunal order (supra) passed under identical facts and circumstances.

6. The Id. CIT(DR) strongly supported the conclusion drawn by the Id. CIT(A) in para 7.1 of first appellate order and submitted that granting approval in a particular date in time baring cases, only indicates the final date on which the assessment proceedings have been finalized in guidance and supervision of Range head and therefore approval granted u/s. 153D of the Act comply with the requirement of law

and thus the legal ground was rightly dismissed by the Id. CIT(A). However, she did not controvert that under identical facts and circumstances in the case of a group company of Apple Group i.e. M.G Metalloy Pvt Ltd. order dated 08.05.2023 (supra) the Tribunal has quashed the assessment orders for want of valid approval u/s. 153D of the Act.

7. For adjudication of legal contention of assessee in cross objection one we find it necessary and appropriate to reproduce relevant paras 8 to 14 of Tribunal order in case of M.G Metalloys P Ltd. (supra), which are as follows:-

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:

Office of the
Deputy Commissioner of Income Tax, Central Circle,
2nd Floor, ARTO Complex, Sector-33, Noida
Phone and Fax-0120-286433

31 DEC 2016
11:00 AM
Central Circle, Noida

F No. DCIT/CO/Noida/265/153D/2016-17/ 3623 Dated 30/12/2016

To,
The Joint Commissioner of Income Tax,
Central Range, Ayazpur Bhawan,
Bhawan Chowk, Meerut.

Sub: Draft assessment orders u/s 153A/153D/153D of the I.T. Act, 1961 in Apple Group (D.O.S. 13/11/2014) - 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 I.T. Act.

Sl. No.	Name of the assessee	PAN	A. Yr.
1	Sh. Nazimul Karim Khan	AEKFG6392A	2009-10 to 2015-16
2	Sh. Shafiq Nazimul Karim Khan	AAJPG1863P	2009-10 to 2015-16
3	Sh. Yousuf Karim Khan	ABJPG791P	2009-10 to 2015-16
4	Sh. Masud Khan	ABJPG791P	2009-10 to 2015-16
5	Sh. Masud Khan	ABJPG791P	2009-10 to 2015-16
6	Sh. Masud Khan	ABJPG791P	2009-10 to 2015-16
7	Sh. Masud Khan	ABJPG791P	2009-10 to 2015-16
8	M/s Apple Industries Ltd.	AAAC-APP60N	2009-10 to 2015-16
9	M/s Newam Steelco Pvt. Ltd.	AAAC-APP60N	2009-10 to 2015-16
10	M/s M. S. Metallurgical Pvt. Ltd.	AAAC-APP60N	2011-12 to 2015-16
11	M/s Premium Retail India Pvt. Ltd.	AAAC-APP60N	2009-10 to 2015-16
12	M/s Apple Sponges & Power Lims.	AAAC-APP60N	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.	AAAC-APP60N	2009-10 to 2015-16
14	M/s Apple Steeltech Ltd.	AAAC-APP60N	2009-10 to 2015-16
15	M/s Apple Insurance Brokers Pvt. Ltd.	AAAC-APP60N	2009-10 to 2015-16
16	M/s Zoro Global Pvt. Ltd.	AAAC-APP60N	2011-12 to 2015-16
17	M/s Apple Iron Engineering Pvt. Ltd.	AAAC-APP60N	2009-10 to 2015-16
18	M/s Metallurgical Trade-In Private Ltd.	AAAC-APP60N	2009-10 to 2015-16

31/12/2016


Draft assessment orders u/s 153A/153D/153D of the I.T. Act, 1961 in Apple Group (D.O.S. 13/11/2014) - Approval u/s 153D of the I.T. Act, 1961 - regarding.

For AO, Central Circle (Noida)

Yours sincerely,
(Ajay H. Anand)
Deputy Commissioner of Income Tax
Central Circle Noida.

18 assano

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:



**OFFICE OF THE
JOINT COMMISSIONER OF INCOME TAX
CENTRAL RANGE, BHANSHALI GROUND, MEERUT.**
Phone-0121-2403191, Fax-0121-2510082

②

F. No. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477 Date: 31-12-2016

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.

2. 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 assessee for the assessment years as mentioned below:

Sl. No	Name of the assessee	PAN	A. Yrs.
✓1	Sh. Narendra Kumar Garg,	AEKPG6295A	2009-10 to 2015-16
✓2	Smt. Shaloo Narendra Kumar Garg,	AADPG1563F	2009-10 to 2015-16
✓3	Sh. Yogender Kumar Garg,	ABIFG9791P	2009-10 to 2015-15
✓4	Smt. Madhu Garg,	ABIFG9792Q	2009-10 to 2015-16
✓5	Sh. Pulkit Garg,	AJEPG5760A	2009-10 to 2015-16
✓6	Smt. Ruchi Garg,	AAIFG1671M	2009-10 to 2015-16
✓7	Sh. Pawan Kumar Garg,	AAHFG132G	2009-10 to 2015-16
✓8	M/s Apple Industries Ltd.,	AAGCA9960N	2009-10 to 2015-16
✓9	M/s Nimran Steelco Pvt. Ltd.,	AACCN4842Q	2009-10 to 2015-16
✓10	M/s M. G. Metalloy Pvt. Ltd.,	AAOCM5789D	2011-12 to 2015-16
✓11	M/s Promart Retail India Pvt. Ltd.,	AAFCPR743B	2009-10 to 2015-16
✓12	M/s Apple Sponge & Power Linc.,	AAFCA1955L	2009-10 to 2015-16
✓13	M/s Apple Metal Industries Ltd.,	AAACD7570E	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.	AAECA5220N	2009-10 to 2015-16
✓16	M/s Zyne Global Pvt. Ltd.,	AAAC25235H	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 draft 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 AY's. 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/s 271(1)(c) 271AAB, as 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.

(Shree Singh)
Joint Commissioner of Income Tax
Central Range, Meerut

Sd/-

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 assessees 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 assessees 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 assessess'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.

8. In addition to order of the Tribunal in the case of a group company of Apple Group i.e. M.G Metalloy Pvt. Ltd. dated 08.05.2023 (supra), the Id. AR has also placed vehement reliance on the judgment of Hon'ble jurisdictional High Court of Delhi in the case PCIT vs Anuj Bansal dated 13.07.2023 in ITA No. 368/2023 to submit that when there was absence of application of mind by the ACIT in granting approval u/s. 153D of the Act then it is not an exercise dealing with in material matter which cannot be corrected by taking recourse to section 292B of the Act. The relevant part of said judgment reads as follows:-

12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed". [Emphasis is ours]

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

9. Since the copy of the letter dated 30.12.2016 of DCIT Central Circle Noida to JCIT Central Range Meerut and approval order dated 31.12.2016 issued by JCIT Meerut includes names of present assessee Smt. Ruchi Garg at serial no. 6 and M/s M.G Metalloy Pvt. Ltd. at serial no. 10, therefore, we have no hesitation to hold that the legal contention of assessee envisaged in ground of cross objection one is squarely covered in favour of the assessee leading to inevitable invalidation of assessment orders as the formal and cosmic approval accorded u/s. 153D of the Act issued without application of mind to the relevant assessment orders and records has to be rendered un-enforceable in law and hence the same is quashed. It is pertinent to mention that the said conclusion also gets strong support from the judgement of Hon'ble jurisdictional High Court of Delhi in the case of PCIT vs. Anuj Bansal (supra) as relied by the Id. AR. Our conclusion drawn for AY 2011-12 would also apply mutatis mutandis to other three appeals pertaining to AY 2012-13, 2013-14 & 2015-16 and consequently

impugned reassessment orders in other three appeals are also quashed. Accordingly, cross objection no. 1 is allowed in all four cross objections.

10. Since Id. Representative both the sides have not placed any arguments on the grounds of revenue and remaining cross objection of assessee therefore, in absence of submissions we do not find it appropriate to adjudicate the same in absence of contentions and submissions.

11. In the result, cross objection no. 1 of assessee in all four appeals (C.O) are allowed in the manner is indicate above. Appeals filed by the Revenue have not been adjudicated for the reason noted above.

Order pronounced in the open court on 13.10.2023.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 13th October, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi