आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

IT(SS)A No.11 to 16 /PUN/2023
निर्धारण वर्ष / Assessment Years : 2014-15 to 2019-20

BVG India Limited,
Midas Tower, 4th Floor,
Rajiv Gandhi Infotech Park,
Hinjewadi, Pune – 411057

PAN : AACCB0943N

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Central Circle – 1(2), Pune

.....प्रत्यर्थी / Respondent

IT(SS)A No.10/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Asstt. Commissioner of Income Tax,
Central Circle – 1(2), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

BVG India Limited,
BVG House Premier Plaza,
Pune – Mumbai Road,
Chinchwad, Pune – 411019

PAN : AACCB0943N

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.516/PUN/2023
निर्धारण वर्ष / Assessment Year : 2020-21

BVG India Limited,
Midas Tower, 4th Floor,
Rajiv Gandhi Infotech Park,
Hinjewadi, Pune – 411057

PAN : AACCB0943N

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Central Circle – 1(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vijay Mehta & Sneha M. Padhiar
Revenue by : S/Shri Ajay Kumar Kesari & Abdhesh Kumar

सुनवाई की तारीख / Date of Hearing : 28-07-2023
घोषणा की तारीख / Date of Pronouncement : 19-10-2023

आदेश / ORDER

PER BENCH :

All these eight appeals by the assessee and Revenue against the common order dated 24-02-2023 passed by the Commissioner of Income Tax (Appeals)-11, Pune ['CIT(A)'] for above mentioned assessment years.

2. We find that these appeals were filed with a delay of 03 days. The assessee filed an application dated 15-05-2023 along with notarized affidavit dated 15-05-2023 explaining the reasons for delay. On perusal of the same and hearing both the parties, we note that the assessee mainly contended that he was travelling from 14-04-2023 to 27-04-2023 and due to which he could not give signature on the appeal memo, in support of which enclosed Air Tickets and Boarding Pass along with the delay

application showing the proof of reasons explained in the notarized affidavit. Therefore, we find that the reasons stated by the assessee are bonafide which really prevented the assessee to file the present appeals in time. Therefore, the delay of 03 days is condoned.

3. We find that the issues raised in all the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear all the appeals together and to pass a consolidated order for the sake of convenience.

4. First, we shall take up appeal of the assessee in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15 being a lead case.

5. The brief facts of the case are that the assessee is a public limited company and engaged in the business of providing building maintenance and other support services like solid waste management, office support, catering, housekeeping, etc. The assessee filed its original return of income on 31-03-2015 declaring a total income of Rs.90,06,15,010/-. A search and seizure action conducted in assessee's case on 06-11-2019 u/s. 132 of the Act, a notice u/s. 153A of the Act was issued. According to the AO, no return of income filed in response to the said notice. The AO, as emanating from the record issued notice u/s. 142(1) of the Act along with a questionnaire and the assessee filed written submissions on 29-09-2021. According to the AO, no details or explanation filed relating to the questionnaire, incriminating documents and proposed to conclude the assessment u/s. 144 of the Act. Accordingly, the AO completed the assessment to his best judgment u/s. 144 of the Act inter alia making addition on account of Direct Revenue Expenses (in short "DRE") to an

extent of Rs.84,51,136/- vide its order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act. The assessee challenged the said order before the First Appellate Authority i.e. CIT(A). The CIT(A) confirmed the addition made by the AO on account of DRE vide its order dated 24-02-2023. Having aggrieved by the same, the assessee is now before us.

6. Ground No, 1 raised by the assessee challenging the action of CIT(A) in confirming the order of AO passed u/s. 153A r.w.s. 144 of the Act which is bad in law, illegal and void.

7. The ld. AR Shri Vijay Mehta referring to above said ground submitted two propositions, firstly, *that the approval granted by Addl. CIT u/s. 153D of the Act does not contain Document Identification Number (for short "DIN") which is in contravention to CBDT Circular No. 19/2019 dated 14-08-2019 a*nd, secondly, *approval u/s. 153D of the Act granted by the Addl. CIT without application of mind.*

8. The ld. AR drew our attention to Circular No. 19/2019 at page 92 of the paper book, argued that no communication shall be issued after 01-10-2019 unless a computer generated DIN is allotted and duly reflected in the body of communication. He vehemently argued the purpose and intention for the said circular is to have proper audit trail of all the communications relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. He submits that the said circular is very much applicable to the facts on hand as the approval stated to have been taken by the AO from Addl. CIT, Central Range-1, Pune on 30-09-2021 at page No. 85 of the paper book-I does not contain DIN. Further, he

submits that the CBDT Circular specifically mentioned approvals which includes statutory approval u/s. 153D of the Act, which required to pass an order u/s. 153A of the Act. Further, he stated the intention of CBDT in issuing such circular to maintain audit trail for all the communications which are integral part of assessment proceedings. He vehemently argued the audit trail could not be said to be maintained in the absence of trail for approval granted in the present case u/s. 153D of the Act without which an order u/s. 153A of the Act cannot be proceeded with.

9. In support of his above contention, he drew our attention to the decisions of Hon'ble High Court of Chhattisgarh in the case of Jugal Kishore Paliwal reported in 446 ITR 515 (Chhattisgarh) and in the case of Bharat Krishi Kendra reported in 444 ITR 584 (Chhattisgarh) and drew our attention at pages 108 to 133 of the paper book-II. The ld. AR argued that the Hon'ble High Court of Chhattisgarh in both the above said cases held that DIN is required to be affixed on approval granted and since approval issued u/s. 151 of the Act contained DIN, the same cannot be held to be invalid. Further, he submits that the reading of above said two decisions are very much clear that the approval u/s. 151 of the Act are held to be valid approval if the same is with DIN, meaning approval without DIN is invalid.

10. Without prejudice, if it is assumed that CBDT Circular does not apply to internal communications, he submitted that the approval u/s. 153D is a statutory approval required to be obtained by the AO before passing assessment u/s. 153A of the Act, the same being statutory requirement cannot be considered as a mere internal communications. The said statutory approval required to be supplied to the assessee as and

when asked for, which clearly indicates that the said approval is not an internal communication. To support his arguments, he drew our attention to the decision of Hon'ble High Court of Allahabad in the case of Deepak Gupta reported in 422 ITR 92 (All.) at page 134 of the paper book-II. The ld. AR argued the Hon'ble High Court of Allahabad held approval u/s. 151 of the Act is a jurisdictional prerequisite and the assessee is fully entitled to have the copy of the same. He argued that the approval issued u/s. 153D of the Act by the Addl. CIT is a jurisdictional prerequisite provided under law and is not an internal communication. He vehemently contended no DIN is affixed to the approval granted u/s. 153D of the Act and the final assessment made in the present case is bad in law and void-ab-initio.

11. The ld. CIT-DR, Shri Ajay Kumar Kesari drew our attention to ITBA module in central charge and its functionality for movement of internal files or orders for approval by the competent authority. He submits that the tabs for approval u/s. 153D of the Act are available relevant to assessment proceedings u/s. 153A/153C of the Act. He vehemently argued that the assessment order is sent for approval through online mode by clicking on the radio button labeled as "submit for approval u/s. 153D of the Act" or can also be sent manually. Consequent to the approval by the Addl. CIT a noting in the "case history notings" of the work item is displayed but no separate approval letter is generated. No diversion from the same is possible and no alterations or changes can be effected by the AO as the process is already determined and setting ITBA applications.

12. He submits that there are two scenarios available for movement of internal files or orders for approval by the competent authority for orders

passed in ITBA module by central charges, *one is "to take manual approval from the concerned/specified authority and to manually upload the assessment order, to this, no noting is generated in the case history notings as the procedure of approval has been undertaken manually". Second, "to take approval through system and subsequently use functionality available in ITBA system to pass assessment order"* as the approval has been taken through ITBA system, a noting in the case history notings is generated and the approval comment of the specified/concerned authority is displayed. He vehemently argued referring to the present case that no separate DIN is generated for the approval accorded by the specified/concerned authority and the assessment order bearing DIN along with computation sheet and demand notice is generated automatically. Further, Shri Ajay Kumar Kesari vehemently contended there is no requirement of law for generation of DIN for the approval granted by the Addl. CIT under the extant provisions of the law and guidelines of the CBDT.

13. By referring to Circular No. 19/2019, he submits that the said circular mandates generation and allotment of DIN for communication to the assessee or any other person but not the intra Departmental communication. Further, that the DIN is made mandatory for all the communications issued by any Income Tax Authority to the assessee or any person (third parties) and vehemently argued that the circular is not applicable for the internal correspondence of the Department as communication from one Income Tax Authority to another Income Tax Authority. Further, with regard to submissions or internal mechanism of approval after the introduction of the above said circular, he argued that the said circular is not applicable for internal communication of the Department and requested to reject the submissions of the assessee.

Further, he submits by referring to provisions u/s. 153D of the Act, that there were no separate guidelines requiring generation and allotment of DIN for communication between AO and Addl. CIT for the purpose of approval by the Addl. CIT. Further, the assessment orders passed under manual mode bears the particulars i.e. name, designation and signature of the approving authority which is mentioned in the assessment order and the approval given by the Addl. CIT fulfills the conditions laid down in section 282(1)a) of the Act which is authenticated documents as per the said section.

14. In rebuttal, the ld. AR, Shri Vijay Mehta submits that Circular No. 19/2019 does not distinguish, that it is applicable only to external communications and not to internal communications. He argued any such distinction of internal and external communication is missing and clearly demonstrates that both the internal and external are within the ambit of said circular. Further, the said circular clearly refers approval, indication of which, that all the approvals are covered by the said circular including the approval u/s. 153D of the Act. He argued that the approval to be taken from the concerned competent authority is a statutory approval required u/s. 153D of the Act which is part of the assessment proceedings and prayed to reject the arguments of ld. DR.

15. Secondly, regarding non application of mind by the approving authority, the ld. AR submits, that the AO forwarded draft assessment orders on 30-09-2021, approval was granted on 30-09-2021 by the Addl. CIT and the final assessment order was also passed on the same day by the AO on the same day i.e. 30-09-2021. The ld. AR vehemently argued that, is clearly evident that the Addl. CIT granted approval mechanically

without application of mind. There was no opportunity for the Addl. CIT for application of mind as the draft assessment order, approval and final assessment were passed on the same day. He submits, according to the AO that the search team seized various alleged incriminating documents consisting of 8300 pages, 16 hard disks and 6 pen drives and it is impossible for the Addl. CIT for examination of such voluminous alleged material before giving approval u/s. 153D of the Act. He argued that the said approval granted by the Addl. CIT on 30-09-2021 is only mechanical in nature without application of mind within such short time. The ld. AR referred to manual of office procedure issued by the CBDT in February, 2023 laying down procedure to be followed vide para 9, and argued that at least one month before the time barring date draft assessment order should be given to Addl. CIT for approval. He referred to the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. in ITA Nos. 39, 40, 41, 42, 43, 44 of 2022 which is at page 534 of the paper book and vehemently contended there was no sufficient time for verification of voluminous seized material by the approving authority to give approval u/s. 153D of the Act which clearly infers that there was no application of mind by such authority.

16. He referred to the decision of Hon'ble High Court of Allahabad in the case of Sapna Gupta reported in (2023) 147 taxmann.com 288 (Allahabad) and argued that the purpose for having approval from Addl. CIT to ensure determination of correct tax and to protect interest of assessee by avoiding arbitrary, baseless addition.

17. Further, he drew our attention to the assessment orders for A.Ys. 2014-15, 2015-16 and 2016-17, argued that the actual taxability u/s.

115BBE is 30%, but however, the AO imposed at 60%. Further, the AO imposed interest u/s. 234A of the Act for 83 months inspite of having received e-mail stating non filing of return of income pursuant to section 153A of the Act due to COVID and technical glitches. The Addl. CIT is duty bound to examine everything in detail regarding the draft assessment order and having no sufficient time mechanically gave approval without examining the taxability u/s. 115BBE of the and also interest levied u/s. 234A of the Act. Further, he drew our attention to para 4.2 of the draft assessment order for A.Y. 2014-15 and argued that the AO mentioned clearly that there was multiple repetition of amounts mentioned under direct revenue expenses and additions were made without quantifying the actual amount. Further, the AO also denied set off of brought forward losses of demerged company inspite of having the assessee's submissions and drew our attention to para 7.6 of the draft assessment order. Further, the AO did not serve computation sheet determining the taxability for A.Ys. 2014-15 to 2020-21 on the date of assessment and it was forwarded through e-mail only on 07-10-2021 which clearly demonstrates difference as per the computation sheet and demand u/s. 156 of the Act is Rs.9,65,15,083/- and Rs.9,68,69,836/-, respectively. The ld. AR argued that the approving authority Addl. CIT has to verify everything in detail while giving approval u/s. 153D of the Act relating to section 153A of the Act assessments and no such verification has been done as the approval, draft assessment order and final assessment order was passed on the same day i.e. on 30-09-2021 which clearly shows non application of mind.

18. Regarding discrepancies between the demand notice and computation of income, the ld. DR submits that there is variation in demands exists only for A.Ys. 2015-16 and 2017-18 and have been

rectified u/s. 154 of the Act. He argued that the said variation is an error occurred in the demand notice is a rectifiable clerical mistake falls under the provisions u/s. 154 of the Act. He vehemently argued that the said mistake in the demand does not render the assessment order invalid nor indicate lack of application of mind.

19. Regarding the applicability of charging rate of tax at 60%, the ld. DR submits the provisions u/s. 115BBE are applicable which deals with taxation of income referred in sections 68, 69, 69A, 69B, 69C and 69D of the Act. He argued since the approval was granted for addition u/s. 69C of the Act and the provisions u/s. 115BBE are applicable with a charging rate at 60%, there is no discrepancy or error in the tax rate applied by the AO, it is in compliance with the provisions of the Act in respect of provisions u/s. 69C of the Act which demonstrates application of mind.

20. Regarding non-application of mind by the Addl. CIT while approving the draft assessment, the ld. CIT-DR submits that the assessment proceedings have undergone in multiple stages, involving the thorough discussions between the AO and the Addl. CIT till the completion of the order, is evident from para 4 of the approval letter dated 30-09-2021. He argued that the Addl. CIT verified meticulously all the seized material and given comprehensive consideration of all the facts, information, acquired during the search. Further, he submits that the Addl. CIT provides constant supervision and guidance, engaging in extensive deliberations with the AO. Even the drafting of questionnaires involves the role of Addl. CIT as a supervisory authority. The ld. DR vehemently contended claiming lack of application of mind by the Addl. CIT prior to granting approval u/s. 153D, lacks factual substance. Further, he submitted that the

Investigation Wing had shared the findings and analysis of the seized material with both the Range head and AO and the Addl. CIT had extensive possession of the findings and material that formed the sole basis for the draft assessment orders over a considerable period. He requested to reject the arguments of ld. AR by stating that the Addl. CIT was afforded ample time to apply her mind to the issues arising out of material gathered and diligently considered them before granting approval u/s. 153D of the Act.

21. Next issue, the ld. AR submits that the final assessment order dated 30-09-2021 passed for A.Y. 2014-15 is without approval as draft assessment order approved by the Addl. CIT was subsequently altered by the AO at the time of passing final assessment order. He submits that it was observed from the inspection as afforded by this Tribunal, that the draft assessment order for A.Y. 2014-15 forwarded by the AO to Addl. CIT on 30-09-2021 which was approved by the Addl. CIT on the same day i.e. 30-09-2021 was different than the final assessment order passed by the AO on 30-09-2021. He drew our attention to the chart showing instances of difference between draft assessment orders and final assessment orders which is on record. He argued that the final assessment order is materially changed for all the assessment years i.e. A.Ys. 2014-15 to 2019-20, which clearly indicates that the draft assessment order was altered after receiving approval from the Addl. CIT. He vehemently contended that altered final assessment order is in violation of principle that the draft assessment order on which approval is received cannot be changed subsequently without taking fresh approval, is bad in law and deserves to be quashed. The ld. AR placed on record the decision of Hon'ble High Court of Bombay in the case of Shri Akhil Gulamali Somji in batch of ITA Nos. (L) 1416 of

2012 to 1419 of 2012 vide order dated 15-01-2013 and argued that in the absence of fresh approval, the final assessment order is bad in law.

22. Heard both the parties and perused the material available on record. The ld. AR, Shri Vijay Mehta led his submissions vide ground No. 1 challenging the approval u/s. 153D of the Act is invalid for non-mentioning of DIN. Further, non-application of mind by the approving authority i.e. Addl. CIT, wherein, it is noted he divided the said challenge in two parts i.e. non-application of mind while granting approval u/s. 153D of the Act terming the same as mechanical in nature and second part is the AO passed final assessment order altering the draft assessment order without having fresh approval.

23. Let us examine the first challenge i.e. whether non-generation of DIN on approval u/s. 153D of the Act results into invalid assessment?

24. On perusal of the CBDT Circular No. 19/2019 which is placed at page 92 of the paper book-II of the assessee, we note that the said circular was issued taking into account some instances which were brought to the notice of CBDT, where, notice, order, summons, letter and any correspondence were found to have been issued manually, without maintaining a proper audit trail of such communication and in order to have greater transparency in functioning of tax administration, vide para 2 it is made mandatory on or after 01-10-2019 for all communication shall be issued by any Income Tax Authority containing DIN in order to maintain proper audit trail of such communication. Further, it has been clearly stated that no communication shall be issued by any Income Tax Authority relating to assessment, appeals, orders, statutory or otherwise,

exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to an assessee or any other person without computer generated DIN duly quoting the same in the body of such communication.

25. In the present case, the approval dated 30-09-2021 granted by the Addl. CIT u/s. 153D of the Act is at page 85 of the paper boork-II. On perusal of the same, we note that no DIN is reflecting or quoted in the body of such approval. Further, vide para 5 of such approval clearly shows that the said approval may also be taken on ITBA portal, which establishes that the said Circular No. 19/2019 is applicable to approval granted u/s. 153D of the Act. Further, para 3 of the said circular, curves out certain exceptions to para 2 by providing that under certain exceptional circumstances, which were enumerated in clause (i) to (v), the communication may be issued without a DIN but only after recording reasons in writing in the file and with the prior written approval of Chief Commissioner/Director General of Income Tax. Further, in such exceptional circumstances, the orders/communications issued without a DIN must state this fact in specific format set out there in the circular. As discussed above, in spite of direction from the Addl. CIT vide para 5 to take approval on ITBA portal, no DIN was generated in the ITBA platform. Further, no exceptional circumstances claimed nor brought to our notice in not generating the DIN in pursuance of para 3 of the said circular. The ld. DR vehemently contended that there was no requirement of law and guidance of the CBDT for generation of DIN for the approval by the Addl. CIT. We find no force in the arguments of the ld. DR as it is contrary to the guidelines contained in CBDT circular which is binding on all Income Tax Authorities. Further, para 4 of said circular provides that any

communication which is not in conformity with para 2 and 3 shall be treated as invalid and shall be deemed to have never been issued, which clearly explains any communication without DIN is invalid in the eye of law. Thus, we find approval u/s. 153D of the Act is covered by para 2 of Circular No. 19/2019. Therefore, in the present case non-mentioning of DIN on approval granted u/s. 153D of the Act by the Addl. CIT renders the assessment order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act invalid treating the same deemed to have never been issued.

26. In order to come to such conclusion, we find support from the decision of Hon'ble High Court of Chhattisgarh in the case of Jugal Kishore Paliwal (supra), is as to whether approval u/s. 153D of the Act is covered by Circular No. 19/2019 not? The relevant part at para 12 is reproduced here-in-below for ready reference :

> *"12. So far as submission of learned counsel for petitioners that there was no proper sanction/approval on the date of issuance of notice under Section 148 of the Act of 1961 is concerned, provision under Section 151 of the Act of 1961 provides for "sanction for issuance of notice". Authority prescribed for grant of sanction/approval within four years of relevant assessment year is the 'Joint Commissioner of Income Tax'. Under Section 151 (2) of the Act of 1961 the Joint Commissioner is required to record his satisfaction on the reasons recorded by Assessing Officer. Respondents along with their additional reply have placed on record copy of screen shot of ITBA web portal in which there is mention of 'print approval' against name of respective petitioner with DIN number showing status to be generated with an option to view attachments. From the screen shot placed on record by respondents along with their additional return, accord of sanction/approval with DIN number of authority showing status to be generated on 31.3.2021, prima facie it cannot be said that there was no sanction/approval for issuance of notice under Section 148 of the Act of 1961. Along with additional return respondents have further placed on record approval/sanction granted under Section 151 dated 31.3.2021 which contains similar DIN Number as is mentioned in screen shot of ITBA web portal placed on record. Petitioners have also annexed approval/sanction granted under Section 151 of the Act of 1961 as Annexure P-6 to writ petition. DIN Number is mentioned in Annexure P-6. Nothing has been brought on record by petitioners to show that any objection was raised by them to the effect that DIN number is incorrect or it was not generated on 31.3.2021, except raising objection before this Court with respect to manner in which sanction/ approval is granted, as is appearing in sanction order. In view of aforementioned facts of case, submission of learned counsel for petitioners that notice under Section 148 of the Act of 1961 is issued without there being any sanction/approval from the competent authority is not sustainable and it is hereby repelled."*

27. On careful reading of the above finding of the Hon'ble High Court of Chhattisgarh, it is noted that the assesse therein agitated that there was no proper sanction/approval u/s. 151 of the Act on the date of issuance of notice u/s. 148 of the Act. The respondent-revenue therein placed on record copy of screen shot of approval on ITBA web portal with DIN number. The Hon'ble High Court was pleased to observe that the sanction/approval u/s. 151 of the Act prima facie shows the DIN number showing status to be generated on 31-03-2021, held cannot be said that there was no sanction/approval for issuance of notice u/s. 148 of the Act and rejected the contention of the assessee. It is clear from above finding of Hon'ble High Court that the approval u/s. 151 of the Act is covered by para 2 of Circular No. 19/2019 of CBDT.

28. Furthr, we also find support from the decision of Hon'ble High Court of Chhattisgarh in the case of Bharat Krishi Kendra (supra). The relevant part at para 14 is reproduced here-in-below for ready reference :

> *"14. Third submission of learned counsel for petitioner is that approval granted under Section 151 of the Act of 1961 does not bear digital signature of authority, referring to note appended to approval (Annexure P-5), is concerned, the note appended says "if digitally signed, the date of digital signature may be taken as date of document". Submission of learned counsel for petitioner, in the opinion of this Court, is not acceptable in view of provisions of Section 282 (a) of the Act of 1961, which provides that notice or other documents to be issued for the purpose of the Act of 1961 by any income-tax authority shall be deemed to be authenticated if name and designation is provided. In approval under Section 151 of the Act of 1961, name, designation and office is printed. Hence, submission of learned counsel for petitioner that approval is not digitally signed is also not sustainable, more so when it bears DIN & Document Number."*

29. On careful reading of the above finding of the Hon'ble High Court of Chhattisgarh, it is noted that the assessee therein challenged the approval granted u/s. 151 of the Act does not bear digital signature of the authority. On an examination of the said approval as an Annexure P-5, the Hon'be High Court was pleased to observe that the approval has DIN and it is

deemed to be authenticated when it bears DIN and Document Number, name, designation and office and rejected the contention of the assessee. It is also clear from the judgment of Hon'ble High Court, when the approval has a DIN and it is authenticated meaning thereby, it is within the ambit of Circular No. 19/2019.

30. In the light of the above, we note that approval u/s. 153D of the Act is akin to the approval u/s. 151 of the Act, wherein, we find sanction/approval u/s. 151 required from prescribed authority to initiate issuance of notice u/s. 148 of the Act, likewise, in order to proceed with the assessment u/s. 153A of the Act, the Assessing Officer required to take approval u/s. 153D of the Act, which in our opinion, is a statutory requirement, falling under the ambit of Circular No. 19/2019 to generate DIN. Therefore, we hold non-mentioning of DIN on approval granted u/s. 153D of the Act vitiate the final assessment order passed u/s. 153A r.w.s. 144 of the Act.

31. The Hon'ble Jurisdictional High Court of Bombay in the case of Ashok Commercial Enterprises reported TS-506-SC-2023 (Bom.), was pleased to hold the satisfaction note will fall within the scope of para 2 of Circular No. 19/2019. The relevant part is reproduce here-in-below for ready reference :

> *"18 Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?*
>
> *(a) The CBDT, in exercise of powers under Section 119(1) of the Act, has issued a Circular No.19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income Tax Authority interalia relating to assessment orders, statutory or otherwise, inquiries,approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under :*
>
> *CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II],*
> *DATED 14-8-2019*

With the launch of various e-governance Initiatives, Income tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice. order, summons,letter and any correspondence (hereinafter referred to as "communication" were found to have been issued manually,without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry. investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer- generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as,-

(i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or

(iii) when due to delay in PAN migration. PAN is lying with non jurisdictional Assessing Officer; or

(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) when the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

"……. This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No …. dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number ….dated ….

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by

i. uploading the manual communication on the System.

ii. compulsorily generating the DIN on the System;

iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.

Paragraph 3 of the Circular sets out five exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.

Paragraph 4 of the Circular provides that any order/communication which is not in conformity with paragraphs 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.

The contents of the Circular have been re-iterated in a Press Release dated 14th August 2019;

(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in Brandix Mauritius Holdings Ltd. (Supra) where the Hon'ble Delhi High Court has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect. Paragraphs 16 to 17.1, 18 and 19 read as under :

16. The final assessment order was passed by the Assessing Officer (AO) on 15.10.2019, under Section 147/144(C) (13/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, albeit, without DIN.

16.1. Given this situation, clearly paragraph 4 of the 2019 Circular would apply.

17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph

2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in law.

17.1. It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue.

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18. The argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B of the Act, is untenable, having regard to the phraseology used in paragraph 4 of the 2019 Circular.

19. The object and purpose of the issuance of the 2019 Circular, as indicated hereinabove, inter alia, was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular.

(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021 stating that the order dated 28th September 2021 under Section 153C of the Act has a DIN, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without DIN, this can only seek to regularize the failure to generate a DIN, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;

(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no.1. The satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to any person. In the case of the satisfaction note no regularization dated 13th October 2021 has been issued;

(e) In view of the binding nature of Circular issued under Section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the Circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation there from can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;

(f) On this ground, rule ought to be made absolute in the following petitions :

A.Y. 2011-2012 - WP No.2593 of 2021
A.Y. 2012-2013 - WP No.2598 of 2021
A.Y. 2013-2014 - WP No.2847 of 2021
'A.Y. 2014-2015 - WP No.2597 of 2021
A.Y. 2015-2016 - WP No.2594 of 2021
A.Y. 2016-2017 - WP No.2588 of 2021
A.Y. 2017-2018 - WP No.2595 of 2021
A.Y. 2018-2019 - WP No.2625 of 2021
A.Y. 2019-2020 - WP No.2696 of 2021"

32. On careful reading of the above decision, we note that the assessee therein challenged notices issued u/s. 153 of the Act and also assessment orders passed pursuant thereto under writ proceedings, is invalid for non-mentioning of DIN. The main challenge was that the satisfaction note dated 13-07-2021 bears no DIN and the impugned assessment order dated 28-09-2021 does not bear a DIN. Regarding non-mentioning of DIN on satisfaction note, it was contended that the covering letter along with which the satisfaction note was provided has a DIN but the copy of satisfaction note does not bear DIN and Hon'ble High Court held the circular is applicable to the satisfaction note dated 13-07-2021 issued by the respondent-revenue and the said satisfaction note will fall within the scope of para 2 of the circular as a communication. Further, the Hon'ble Court observed impugned assessment order does not bear a DIN, does not bear the required format set out in para 3 of the said circular and held assessment orders are invalid, deemed never to have been issued, by placing reliance in the case of Brandix Mauritius Holdings Ltd. reported in (2023) 149 taxmann.com 238 (Del.).

33. Thus, in the light of above ratio laid down by the Hon'ble Jurisdictional High Court of Bombay it is clear satisfaction note shall be authenticated with a DIN, in the absence of which the assessment passed thereon becomes invalid. We find the ratio laid down by the Hon'ble High Court is clearly applicable to the facts on hand, thereby, we hold the approval dated 30-09-2021 granted by the Addl. CIT u/s. 153D of the Act is invalid and the consequential final assessment order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act is quashed.

34. Further, the Hon'ble High Court of Allahabad in the case of Deepak Gupta (supra) held that the approval u/s. 153D of the Act is a statutory approval and cannot be considered as a mere internal communication. The relevant portion of the said judgment is reproduced here-in-below for ready reference :

> *"28. Before parting, we would like to deal with another issue in the interest of justice. We have already found as a matter of fact that the recital in the order dated 28.10.2019 as well as order dated 26.11.2019 that the due approval under Section 151 of the I.T. Act, 1961 was taken from the competent authority is not liable to be interfered with in light of the insufficient pleadings. However, the nature of right of the assessee to be provided a copy of the order of prior approval under Section 151 of the I.T. Act, 1961 as understood by the authority passing the order dated 28.10.2019 has to be adverted to. The authority denied a copy of the approval granted by the competent authority under Section 151 of the I.T. Act, 1961 to the petitioner for the following reasons:*
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> > *"However, the AR of the assessee has contested that the copy of approval was not provided with the reasons recorded. In this regard, it is informed that the approvals taken from higher authorities are internal matter of the department for communication hence, the same cannot be provided. Further, the assessee has cited case law of Hon'ble Delhi High Court in support of his claim. It is hereby clarified that the case law of Hon'ble Delhi High Court is not binding on the undersigned. However, if the assessee has case laws of jurisdictional High Court or Hon'ble Supreme Court, the same may be communicated accordingly. Therefore, the above ground of the assessee is not acceptable hence rejected."*
>
> *29. The aforesaid finding of the Revenue authority is unsustainable in law. Approval under Section 151 of the I.T. Act, 1961, prior to initiation of proceedings under Section 148 of the I.T. Act, 1961 is a jurisdictional pre-requisite. In the absence of such approval the proceedings would fall to the ground for want of jurisdiction. As such, the assessee is fully entitled to a copy of the order passed under section 151 of the I.T. Act, 1961 and correspondingly, the Assessing Officer is obliged to hand-over a copy of the same, as and when the assessee seeks for it."*

35. On careful reading of the above, we note that the assessee therein contested, that the copy of approval u/s. 151 of the Act was not provided with the reasons recorded. The revenue contended that the approvals taken from higher authority are internal matter of the Department for communication and same cannot be provided. The Hon'ble High Court held that the approval u/s. 151 of the Act is a jurisdictional prerequisite

and the assessee is fully entitled to have the same. It is established that a communication by way of approval u/s. 153D of the Act between Addl. CIT and the AO is not a internal communication, is a jurisdictional prerequisite covered by Circular No. 19/2019. In view of the same, we reject the arguments of ld. DR that the circular is not applicable for internal communication between Addl. CIT and AO.

36. Coming to the second issue of non-application of mind by the approving authority. The ld. AR placed reliance on the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra). The relevant portion of the said judgment is reproduced here-in-below for ready reference :

> *"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; (ii) 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.*
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> *23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Additional CIT seeking his approval or of the Additional CIT having granted such approval. Interestingly, the assessment orders were passed on 30th December 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.*
>
> *24. The above manual is meant as a guideline to the AOs. Since it was issued by the CBDT, the powers for issuing such guidelines can be traced to Section 119 of the Act. It has been held in a series of judgments that the instructions under Section 119 of the Act are certainly binding on the Department. In Commissioner of Customs v. Indian Oil Corporation Ltd. 2004 (165) E.L.T. 257 (S.C.) the Supreme Court observed as under:*

> *"Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in Central Board of Central Excise, Vadodara v. Dhiren Chemicals Industries: 2002 (143) ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam 2003 (5) SCC 528. The principles laid down by all these decisions are: (1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.*
>
> *(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*
>
> *(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."*
>
> *25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of Section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves.*

37. On careful reading of the above judgment, we note that the Hon'ble High Court was pleased to observe that there should be some indication that the approving authority examined relevant material in detail while granting the approval u/s. 153D of the Act. The approval u/s. 153D is a mandatory requirement and such approval is not meant to be given mechanically. Such approval granted mechanically without application of mind by the Addl. CIT resulting in vitiating the assessment orders. We find in the present case that the AO sought approval u/s. 153D of the Act on 30-09-2021, the Addl. CIT granted approval on the same day and the final

assessment order u/s. 153A r.w.s. 144 of the Act was also passed on the same day i.e. 30-09-2021 which clearly indicates that the approving authority granted approval mechanically without examining the relevant material. Admittedly, according to the AO, there were around 8300 pages, 16 hard disk and 6 pend drives found and seized in the case of group which were required to be taken into consideration while granting approval u/s. 153D of the Act by the Addl. CIT. Therefore, the Addl. CIT granted approval u/s. 153D of the Act mechanically without examining the above said relevant material without application of mind which resulting in vitiating the present final assessment order dated 30-09-2021 u/s. 153A r.w.s. 144 of the Act.

38. The decision of Hon'ble High Court of Allahabad in the case of Sapna Gupta (supra) as on relied by the ld. AR for the proposition, the purpose of having approval from the Addl. CIT to ensure determination of correct tax and to protect interest of assessee by avoiding arbitrary, baseless addition. The Hon'ble High Court of Allahabad observed that there are obligations for approving authority i.e. one has to apply his mind to ensure interest of the revenue against any omission or negligence by the Assessing Officer and also responsible and duty bound to do justice with tax payer. The relevant portion of the said judgment is reproduced here-in-below for ready reference :

> *"14. It was noted that the obligations of the approval of the Approving Authority serves two purposes:*
>
> > *(i) On the one hand, he has to apply his mind to ensure the interest of the revenue against any ommission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year.*
> >
> > *(ii) On the other hand, superior authority is also responsible and duty-bound to do justice with the tax-payer by granting protection against arbitrary or creating baseless tax liability on the assessee.*

15. The Tribunal has further noted that the provisions contained in Sections 153A to Section 153D provide for separate notice to be given to assessee for assessment for each year as specified in Section 153A of the Act; the assessee has to file separate ITR for each year as specified in Section 153A of the Act; separate assessment orders are to be passed for each year as specified in Section 153A of the Act.

16. It was observed that this is an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of the said Section. Keeping in view of this basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of Section 153D, which is "each assessment year". The reading of the provisions in Section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under Section 153D of the Income Tax Act. In its erudite judgement with the discussion on the legislative intent of Section 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India vs. CIT and Others (2008) 300 JTR 403 (SC) where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of Section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein 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.

17. The above discussion made in the judgement of Tribunal dated 3.08.2021 in the case of Navin Jain Vs. Dy. C.I.T. (Supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under Section 153D of the Act would vitiate the entire proceedings in the instant case.

18. For the reasoning given in the case of Navin Jain (Supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of Section 153D of the Income Tax Act.

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.

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 sub-section (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).

20. 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.

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.

22. As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeal being in the nature of second appeal. No substantial question of law arises for consideration before us."

39. In the light of the above, we note that the Hon'ble Court was of the opinion that the granting approval on the same day is humanly impossible to go through the records of 85 cases in one day, to apply independent mind to afresh the material. The present case consists of six assessment years, consisting of 8300 pages, 16 hard disk and 6 pen drives, in our opinion, it is humanly impossible to go through such voluminous record in one day, therefore, the approval granted mechanically and the final assessment orders passed thereon are liable to be quashed.

40. On the same lines, ITAT Delhi Benches in the case of Sanjay Duggal held the assessment order passed u/s. 153A of the Act are invalid for want of valid approval u/s. 153D of the Act, consequently, deleted additions

made thereon. The relevant portion at page 514 of paper book of the said case is reproduced here-in-below for ready reference :

> *"13. In the present cases various approvals were granted by the JCIT, Central Range-1, New Delhi, and forwarding letter of the A.O. are placed on record in all the cases. In all the cases as per the forwarding letter of the A.O. only assessment records were forwarded to the JCIT, Range-1, New Delhi at the time of granting approval. Therefore, it is evident that the JCIT being the Approving Authority was neither having seized material nor the appraisal report or other material at the time of granting approval. 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 assessees after the money transferred from the account of M/s. Alfa India. No telescopic benefit have been given as it was out of the source deposited in the bank accounts of the assessees. Netting of the money left have also not been considered and even the Ld. CIT(A) without considering the same has enhanced the assessments in some of the cases of the assessee. No steps have been taken by the A.O. for rectifying their mistakes when assessee filed petition for rectification under section 154 of the I.T. Act. Thus, there was inconsistencies and double additions made by the A.O. in various assessment years. It may also be noted that in the present case the facts stated in the impugned orders are that the sales of liquor are made by M/s. JIL to M/s. MAPSCO and Singla Group of cases and that part of the sale proceeds have been transferred to the account of M/s. Alfa India instead of paying the entire sale consideration to M/s. JIL. Thus, the nature of total receipt/addition is the sale proceeds originally to be received by M/s. JIL. If the part of the sale proceeds which were to be received by M/s. JIL and when transferred to the account of M/s. Alfa India Ltd., the entire part sale receipts cannot be the income either in the hands of M/s. JIL or M/s. Alfa India or the Assessees who may be the conduit as argued before us. The A.O. has failed to consider the concept of real income for the purpose of determining the correct tax liability and correct determination of income of the assessees. We rely upon the Judgment of the Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd., 225 ITR 746 (SC). This fact is also not verified and considered by the JCIT while granting approval under section 153D of the I.T. Act. It may be noted here that entire sale proceeds when cannot be added in the hands of M/s JIL as income which is also not done in the case of M/s. JIL, rightly so, how the same sale proceeds could be added as income in the hands of assessees under section 68 of the I.T. Act is not understandable. Thus, the Approving Authority without application of mind and in a most mechanical and technical manner granted approval under section 153D even without reference to any reason in the Order under section 153D of the I.T. Act. We, even, otherwise failed to understand that in search cases how an approval can be granted to an assessment year which is required to be based only on incriminating material without verification of those material and its reference in the appraisal report. The JCIT even in approval did not mention if assessment record is seen by him.*
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> *14. Another interesting aspect that has come to the notice on the basis of various documents submitted for approval as well as request for approval by the A.O. to the JCIT. We make a specific reference to letter dated 29.12.2017 written by ACIT, Central Circle-4, New Delhi, which is placed at page-144 of*

the PB. This letter Dated 29.12.2017 is a request for obtaining approval under section 153D of the I.T. Act in the case of Shri Rajnish Talwar and family wherein the approval in the case of Shri Rajnish Talwar for A.Ys. 2010-2011 to 2016-2017 is sought for. The A.O. send the draft assessment order along with assessment records of the above named assessee. In paragraph-4 of the letter, A.O. stated as under :

> *"It is certified that all issues raised in the appraisal reports have been duly examined with reference to the seized impounded material."*

15. Thus, the JCIT acted on certificate given by the A.O. without satisfying himself to the record/seized material etc., The A.O. sent only assessment records to the JCIT for his approval. The identical is fact in the case of all the request for approval made by the A.O. but factual position noted above established that even assessment records have not been seen by the JCIT. The A.O. sent draft assessment orders for 07 assessment years on 29.12.2017 which were got approved on 30.12.2017 merely on the basis of draft assessment order. The JCIT in the approval Order Dated 30.12.2017 also mentioned that A.O. to ensure all the assessment proceedings are conducted as per procedure and Law. It would show that even JCIT was not satisfied with the assessment proceedings conducted by the A.O. as per Law and records.

16. In some of the cases the approval was granted on the date the request was made for approval by the A.O. In all those cases merely draft assessment order and the assessment folders were available with the A.O. For example in the case of Shri Sanjay Duggal family, in the case of Ms. Kritika Talwar on the same date the approval was granted and that too merely on the basis of the assessment records and draft assessment order and in most of the cases approval has been granted either on the same day or on the next day. 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. It may also be noted that even in some of the Talwar group of cases approval is granted prior to 30.12.2017 but in main cases of Shri Sanjay Duggal and Rajnish Talwar the approval is granted on 30.12.2017. Therefore, without granting approval in the main cases how the JCIT satisfied himself with the assessment orders in group cases which is also not explained. Therefore, the approval granted by the JCIT in all the cases are merely technical approval just to complete the formality and without application of mind as neither there was an examination of the seized documents and the relevance of various observations made by the Investigation Wing in appraisal report. Thus, we hold the approval under section 153D have been granted without application of mind and is invalid, bad in Law and is liable to be quashed. Since we have held that approval under section 153D is invalid and bad in law, therefore, A.O. cannot pass the assessment orders under section 153A of the I.T Act against all the assessees. Therefore, all assessment orders are vitiated for want of valid approval under section 153D of the I.T. Act and as such no addition could be made against all the assessees. In view of the above, we set aside the Orders of the authorities below and quash the assessment orders passed under section 153A of the I.T. Act as well as the impugned appellate Order. Resultantly, all additions are deleted. The additional grounds are allowed. In view of the above findings, the other issues on merits are left with academic discussion only. Accordingly, all the appeals of the Assessees are allowed."

41. In the light of the above, we note, in the present case that the AO vide para 4.2 of assessment order observed that the actual quantification

of DRE amount is a challenging process giving the multiple repetition of amount mentioned, but however, made addition on account of DRE to an extent of Rs.84,51,136/- which clearly shows that the AO failed to consider the concept of real income for the purpose of determining the correct tax liability and correct determination of income. Further, the Addl. CIT as a approving authority without application of mind and without verifying in detail granted approval u/s. 153D of the Act in a most mechanical manner, of which, in our opinion, the assessee suffered serious prejudice of non-application of mind. Therefore, the final assessment order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act is vitiated for want of non-application of mind.

42. The next issue as pointed by the ld. AR with reference to instances of difference between draft assessment orders and final assessment orders, showing the same in a tabular form is on record. The ld. AR argued that the AO cannot pass final assessment order altering the draft assessment order. He placed reliance on the order of Hon'ble High Court of Bombay in the case of Mrs. Ratnabai N.K. Dubhash reported in 230 ITR 495 (Bom.). The relevant portion of which is reproduced here-in-below for ready reference :

> *"13. In the case of CIT Vs. Ratnabai N.K. Dubhash (Mrs.) (Supra), the difference between cancellation and amendment of assessment in view of the provisions of Sections 143, 144B, 153 and 251 of the I.T. Act 1961 has been dealt with. The Hon'ble High Court has been pleased to hold as under :*
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> > *"In view of the above discussion, we are of the clear opinion that incases falling under section 144B of the Act, the quasi-judicial function of the Income-tax Officer as an assessing authority comes to an end themoment the assessee files objections to the draft order. The power to determine the income of the assessee thereafter gets vested in the Inspect-ing Assistant Commissioner to whom the Income-tax Officer is required to forward the draft order together with objections. The only thing that remained to be done by the Income-tax Officer is to pass a final order in accordance with the directions given by the Inspecting Assistant Commissioner. The function of the income-tax Officer to make the final assessment under section 144B(5) of the Act is more in the nature of a ministerial function because he can pass the*

order only in accordance with the directions of the Inspecting Assistant Commissioner. He cannot vary ordepart from the directions given by the Inspecting Assistant Commissioner. Moreover, the requirements of section 144B of the Act re mandatory. The Income-tax Officer has no option but to follow the same. He cannot make the final order on the basis of the draft order without forwarding the same to the Inspecting Assistant Commissioner along with the objections and without obtaining the directions of the Inspecting Assistant Commissioner. An assessment made by the Income-tax Officer in violation of the provisions of section 144B of the Act would be an assessment without jurisdiction. In the instant case, the admitted position is that on receipt of the draft Akil Gulamali Somji A.Y. 2001-02 to 2004-05 Page of 14 order of assessment, the assessee did file objections and the Income-tax Officer completed the assessment himself on the basis of the draft order without forwarding the draft order and the objections to the Inspecting Assistant Commissioner and obtaining directions from him. Such an order, on the face of it, is beyond the powers of the Income-tax Officer under section 143 read with section 144B of the Act and, hence, without jurisdiction. The Tribunal, in our opinion, was, therefore, justified in its conclusion that the assessment was liable to be annulled. It was right in holding that the assessment order passed by the Income-tax Officer the instant case without reference to the Inspecting Assistant Commissioner had rightly been annulled by the Commissioner of Income-tax (Appeals). In view of the above, we answer the question referred to us accordingly in favour of the assessee and against the Revenue.

This reference is disposed of accordingly with no order as to costs."

43. In the light of the above with reference to chart supplied by the showing the instances of difference between draft assessment orders and final assessment orders, we note that in A.Y.2014-15, in first para of page 4 of draft assessment order, the said para ends with the remarks *"hence, the amount is added to the total income*", whereas, we find in para 4.3 in page 4 of final assessment order, the said para ends with the remarks "*hence, the amount is added to the total income and charging to tax u/s. 115BBE of the Act*". We note that the AO failed to apply the tax rate in the draft assessment order and which was approved by the Addl. CIT, thereafter, the AO added the tax rate u/s. 115BBE of the Act in the final assessment order, which clearly shows the AO deviated from the draft assessment order and by altering the same passed final assessment order, in our opinion, the AO cannot pass final order without fresh approval from the approving authority i.e. Addl. CIT. On careful reading of the judgment

of Hon'ble High Court of Bombay above, wherein, it clearly held the AO cannot vary or depart from the directions given by the inspecting Asstt. Commissioner. Further, the ITO is to pass final order in accordance with the direction given by the inspecting Asstt. Commissioner. The function of ITO to make the final assessment order is more in the nature of a ministerial function because he can pass order only in accordance with the direction of inspecting Asstt. Commissioner. In the present case, as discussed above, the AO departed from the draft assessment order as approved by the Addl. CIT in the capacity of approving authority and pass final assessment order by altering the draft assessment order. Therefore, the ratio laid down by the Hon'ble High Court of Bombay in the case of Mrs. Ratnabai N.K. Dubhash (supra) is applicable to the facts on hand and thereby, the final assessment order dated 30-09-2021 passed u/s. 153A r.w.s 144 of the Act is liable to be quashed.

44. Further, the ld.AR placed on record the decision of Hon'ble High Court of Bombay in the case of Akil Gulamali Somji reported in Income Tax Appeal (L) Nos. 1416 to 1419 of 2012 and submits the Hon'ble High Court rejected the alternative submission of Revenue in setting aside to the file of AO for obtaining approval, the relevant portion of which is reproduced herein below for ready reference:

> *"2) The question of law as framed proceeds on the basis that the approval of the Joint Commissioner of Income Tax under Section 153D of the Income Tax Act, 1961 has not been obtained. This is factually incorrect as the impugned order dated 30/3/2012 in Para 7 records as under :*
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> > *"In an alternative submission, the learned D.R. requested to set aside the file to the A.O. or learned CIT(A), so that defect in not obtaining the approval of the Joint Commissioner of Income Tax can be cured".*

45. In the light of above, we note that, not obtaining approval is a defect and not curable, thereby, the Hon'ble High Court denied to have remand

the proceedings to the AO fresh approval. In the present case, the AO made alterations to the draft assessment order and incorporated charging rate u/sec 115BBE of the Act which was not approved by the Addl. CIT. Therefore, we find force in the arguments of the Ld.AR that the final assessment order is bad under law in absence of approval, accordingly, we hold the same.

46. Further, the Hon'ble Supreme Court in the case of Sahara India (Firm) reported in 300 ITR 403 (SC), while discussing the requirement of prior approval, opined that 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. The Hon'ble Supreme Court was pleased to hold 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.

47. In view of our discussion made here-in-above, considering the submissions of ld. AR, ld. DR, case laws relied on and respectfully following the decision of Hon'ble High Court of Bombay in the case of Ashok Commercial Enterprises (supra), we hold that the approval dated 30-09-2021 granted u/s. 153D of the Act is covered by para 2 of Circular No. 19/2019 dated 14-08-2019 and for non-generation of DIN in pursuance of the said circular, the said approval is invalid treating the same deem to have never been issued. Consequently, the final assessment order dated 30-09-2021 is fails and quashed.

48. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 5 becomes academic, requiring no adjudication.

49. In ground No. 6 the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, ground No. 6 is dismissed.

50. In the result, the appeal of the assessee is allowed.

IT(SS)A Nos. 12/PUN/2023 for A.Y. 2015-16 by the assessee.

51. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in IT(SS) No. 12/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

52. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 6 becomes academic, requiring no adjudication.

53. In ground No. 7 the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, ground No. 7 is dismissed.

54. In the result, the appeal of the assessee is allowed.

IT(SS)A Nos. 13/PUN/2023 for A.Y. 2016-17 by the assessee.

55. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in IT(SS) No. 13/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

56. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 7 becomes academic, requiring no adjudication.

57. In additional ground, the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, additional ground is dismissed.

58. In the result, the appeal of the assessee is allowed.

IT(SS)A Nos. 14/PUN/2023 for A.Y. 2017-18 by the assessee.

59. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed

the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in IT(SS) No. 14/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

60. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 7 becomes academic, requiring no adjudication.

61. In ground No. 8 the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, ground No. 8 is dismissed.

62. In the result, the appeal of the assessee is allowed.

IT(SS)A Nos. 15/PUN/2023 for A.Y. 2018-19 by the assessee.

63. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in IT(SS) No. 15/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

64. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 7 becomes academic, requiring no adjudication.

65. In ground No. 8 the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, ground No. 8 is dismissed.

66. In the result, the appeal of the assessee is allowed.

IT(SS)A Nos. 16/PUN/2023 for A.Y. 2019-20 by the assessee.

67. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in IT(SS) No. 16/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

68. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 7 becomes academic, requiring no adjudication.

69. In the result, the appeal of the assessee is allowed.

ITA No. 516/PUN/2023 for A.Y. 2020-21 by the assessee.

70. We find ground No. 1 raised in this appeal is similar to ground No. 1 raised in IT(SS)A No. 11/PUN/2023 for A.Y. 2014-15, wherein, we allowed ground No. 1 raised by the assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021. The view taken by us in ground No. 1 in IT(SS)A No. 11/PUN/2023 is equally applicable to ground No. 1 in ITA No. 516/PUN/2023. Accordingly, ground No. 1 raised by the assessee is allowed.

71. In view of our decision in ground No. 1 in quashing final assessment order dated 30-09-2021, ground Nos. 2 to 7 becomes academic, requiring no adjudication.

72. In ground No. 8 the assessee has assailed levy of interest u/s. 234A of the Act. The levy of interest u/s. 234A is consequential. Accordingly, ground No. 8 is dismissed.

73. In the result, the appeal of the assessee is allowed.

IT(SS)A No. 10/PUN/2023 for A.Y. 2019-20 by the Revenue.

74. The revenue raised three grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in directing the AO to re-compute deduction u/s. 80JJA of the Act.

75. In view of our decision in ground No. 1 raised by the assessee in IT(SS)A No. 11/PUN/2023, wherein, we allowed ground No. 1 raised by the

assessee and held approval dated 30-09-2021 is invalid for the reason of non-mentioning of DIN, consequently, quashed the final assessment order dated 30-09-2021 passed in pursuance of such invalid approval dated 30-09-2021, therefore, grounds raised by the Revenue become academic and are dismissed as such.

76. In the result, the appeal of Revenue is dismissed.

77. To sum up, all the appeals of assessee are allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 19th October, 2023.

Sd/-	Sd/-
(G.D. Padmahshali)	(S.S. Viswanethra Ravi)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th October, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune