

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.621/Del/2012
(ASSESSMENT YEAR-2005-06)

ITA No.968/Del/2012
(ASSESSMENT YEAR-2006-07)

ITA No.622/Del/2012
(ASSESSMENT YEAR-2007-08)

ITA No.969/Del/2012
(ASSESSMENT YEAR-2008-09)

ITA No.970/Del/2012
(ASSESSMENT YEAR-2009-10)

ACIT Central Circle-22 New Delhi	Vs.	M/s Janak Raj Gupta & Co. 2, Avenue, Cassia Westend Greens Rajokari, New Delhi-110038 PAN-AAEFJ5208P
(Appellant)		(Respondent)

Cross Objection No.110/Del/2023
Arising out of ITA No.621/Del/2012, AY 2005-06

Cross Objection No.111/Del/2023
Arising out of ITA No.968/Del/2012, AY 2006-07

Cross Objection No.112/Del/2023
Arising out of ITA No.622/Del/2012, AY 2007-08

Cross Objection No.113/Del/2023
Arising out of ITA No.969/Del/2012, AY 2008-09

Cross Objection No.114/Del/2023
Arising out of ITA No.970/Del/2012, AY 2009-10

M/s Janak Raj Gupta & Co. 2, Avenue, Cassia Westend Greens Rajokari, New Delhi-110038 PAN-AAEFJ5208P	Vs.	ACIT Central Circle-22 New Delhi
(Cross Objector)		(Respondent)

ITA No.5213/Del/2011
(ASSESSMENT YEAR-2009-10)

DCIT Central Circle-22 New Delhi		Sh. Brij Mohan Mahajan 2, Avenue, Cassia Westend Greens Rajokari, New Delhi-110038 PAN-AKDPM1320J
(Appellant)		(Respondent)

Cross Objection No.109/Del/2023
Arising out of ITA No.5213/Del/2011, AY 2009-10

M/s Brij Mohan Mahajan 2, Avenue, Cassia Westend Greens Rajokari, New Delhi-110038 PAN-AKDPM1320J	Vs.	DCIT Central Circle-22 New Delhi
(Cross Objector)		(Respondent)

Assessee by	Sh. Salil Kapoor, Adv. Sh. Vibhu Jain, Adv. and Sh. Manoranjan Nayak, Adv.
Respondent by	Sh. Waseem Arshad, CIT-DR

Date of Hearing	09/10/2023
Date of Pronouncement	15/12/2023

ORDER**PER YOGESH KUMAR U.S., JM:**

The captioned five Appeals in ITA No. 621, 968, 622, 969/970/Del/2012 are filed by the Revenue and the Cross Objections No. 110, 111, 112, 113 & 114/Del/2023 filed by the Assessee Janak Raj Gupta for the Assessment Years i.e. AY 2005-2006 to 2009-10 by challenging the order dated 30.11.2011, 30.11.2011, 13.11.2011 and 05.12.2011 respectively. The Revenue filed ITA No. 5213/Del/2011 for the AY 2009-10 and the Cross Objection No. 109/Del/2023 filed by the Assessee Shri. Brij Mohan Mahajan on the order of the Ld. CIT(A) dated 08.09.2011.

2. The grounds of appeal raised by the Revenue and in the grounds in Cross Objections of the Assesseees are as under.

“ITA No.621/Del/2012 for AY 2005-06

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.3,44,62,567/- made by the Assessing Officer on account of undisclosed income on the basis of documents obtained from bank.*

2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the AO was not correct in rejecting the books of accounts of the assessee.*

3. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

ITA No.968/Del/2012 for AY 2006-07

1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.5,32,85,338/- made by the Assessing Officer on account of undisclosed income on the basis of seized document.

2. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

ITA No.622/Del/2012 for AY 2007-08

1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.3,41,93,530/- made by the Assessing Officer on account of undisclosed income on the basis of documents obtained from bank.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the AO was not correct in rejecting the books of accounts of the assessee.

3. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

ITA No.969/Del/2012 for AY 2008-09

1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.2,78,76,370/- made by the Assessing Officer on account of undisclosed income on the basis of seized document.

2. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

ITA No.970/Del/2012 for AY 2009-10

1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.2,51,00,000/- made by the Assessing Officer on account of undisclosed income on the basis of seized document.
2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.1,51,21,958/- made by the Assessing Officer on account of undisclosed income by holding that the seized documents was dumb in nature.
3. The order of the CIT(A) is erroneous and is not tenable on facts and in law.
4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

C.O.No.109/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.
2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.
3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.
4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing.

C.O.No.110/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.
2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.

3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.

4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing.

C.O.No.111/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.

2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.

3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.

4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing.

C.O.No.112/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.

2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.

3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.

4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing.

C.O.No.113/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.

2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.

3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.

4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing.

C.O.No.114/Del/2023

1. That the assessment order dated 30.12.2010 passed u/s 153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions made therein are illegal, bad in law and without jurisdiction and the same are liable to be deleted.

2. That the assessment order passed under section 153A of the Act and the additions made are illegal, bad in law and without jurisdiction as no incriminating material was found from the assessee at the time of search. The additions are not made on the basis of incriminating material and as such the same are illegal, bad in law, and without jurisdiction.

3. That in view of the facts and circumstances of the case, and in law, the approval u/s 153D of the Income Tax Act, 1961 is mechanical and without any application of mind and is not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed.

4. That the assessee/Respondent seeks permission to raise additional grounds at the time of hearing."

3. The brief facts of the case are that, a search and seizure operation was conducted u/s 132 of the Income Tax

Act, 1961 ('Act' for Short) on 06/11/2008 in respect of M/s Nimitaya Croup of Companies. Consequent to search, proceedings u/s 153A of the Act was imitated for AY 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 in the case of Janak Raj Gupta & Co. by issuing notice u/s 153A of the Act which was duly served on the assessee and in response to notice, the assessee furnished return of income declaring the income at Rs.4,94,778/-, Rs. 4,98,897/-, Rs. 5,28,658/-, Rs. 4,73,845/- and Rs. 1,59,835/- respectively for AY 2005-06 to 2009-10. The assessment orders came to be passed u/s 153A r/w/s.143(3) of the Act on 30/12/2010 by making additions in all the assessment years (2005-06 to 2009-10) in the case of Janak Raj Gupta and Company.

4. In the case of Shri Brij Mohan Mahajan, consequent to the very same search and seizure action dated 06/11/2008, notice u/s 142(1) of the Act was issued and questionnaire u/s 143(2) and 142(1) of the Act were also issued. In response, the assessee filed copy of return

declaring income of Rs. 9,38,315/- for A.Y. 2009-10. The assessment order came to be passed on 30/12/2010 against the said Sh. Brij Mohan Mahajan by making additions.

5. Aggrieved by the respective assessment orders dated 30/12/2010, both the Assessees have approached the Ld. CIT(A) by challenging the same. The Ld. CIT(A) allowed all the appeals of the Assessees by deleting the addition made by the Assessing Officer by adjudicating the issues involved on merit. The details of the same are as under:

Appeal No.	Party Name	Asst. Years	Date of Order of CIT(A)
ITA No.621/D/2012	Janak Raj Gupta & Co.	2005-06	30.11.2011
ITA No.968/D/2012	-Do-	2005-06	02.12.2011
ITA No.622/D/2012	-Do-	2006-07	30.11.2011
ITA No.969/D/2012	-Do-	2007-08	13.12.2011
ITA No.970/D/2012	-Do-	2008-09	05.12.2011
ITA No.5213/D/2011	Brij Mohan Mahajan	2009-10	08.09.2011

6. As against the order of the Ld. CIT(A) in deleting the additions made by the AO, the Department of Revenue filed above captioned six Appeals on the grounds mentioned

above. The Assessee M/s Janak Raj Gupta & Co. also filed Five Cross Objections No. 110 to 114/Del/2023 for AYs 2005-06 to 2009-10 and C.O. No.109/Del/2023 has been filed by the assessee Brij Mohan Mahajan for AY 2009-10 respectively challenging the legitimacy of approval u/s 153D of the Act. Considering the fact that all the appeals and the C.O.s are having similar question of law emerging from very same search and seizure action and having similar grievance and identical legal issue involved in the cross objections of the assessees, all the matters are heard together and being disposed off by this consolidated order.

7. The Assesseees have filed Applications seeking condonation of delay in filing Cross Objections contending that the Assesseees through their Authorized Representative verbally raising the issue of validity of assessments and the additions made u/s 153A of the Act under Rule 27 of the ITAT Rules on various dates of hearing. However, the Appeals were not decided, in order to bring more clarity to

the issues raised by the Assessee. Further submitted that the Assessee has also filed applications under Rule 27 of the ITAT Rules wherein raised the issue of validity of assessments and additions in view of the provisions of Section 153A and 153D of the Act. The Ld. Authorized Representative further submitted that the said issue of validity of assessment order being purely question of law, which goes to the root of the matter, which can be raised for the first time in the Cross Objection before the Tribunal and present C.Os have been filed only to avoid technicalities in deciding the said issue. Thus, submitted that delay caused in filing the captioned C.Os are not intentional but for the bona-fide reasons mentioned in the application coupled with the affidavit.

8. For the reasons stated in the applications seeking for condonation of delay in filing the Cross Objections and considering the fact that the issue raised in the Cross Objections are being a legal one, the delay in filing the above captioned Cross Objections are condoned.

9. The Ld Counsel for the Assessee submitted that the approvals granted under S. 153D of the Act 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 Orders thus passed are vitiated in law which illegality cannot be cured. In support of non-est approval, following contentions have been raised by the Ld. AR:

(i) The approval accorded under section 153D of the Act is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind.

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

(iii) Total lack of objectivity 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.

(iv) The mundane action of Addl. CIT under S. 153D in a cosmetic manner gives infallible impression of approval on dotted line and thus defeats the purpose of supervision of search assessments.

(v) Initiated draft assessment orders not available in office records.

Thus the Ld. AR submitted that in view of non nest of the Assessment order due to defective and erroneous approval under section 153D of the Act, the Assessment orders are deserves to be quashed.

10. Per Contra Ld. DR submitted that the approvals were granted by the Addl. CIT in accordance with law and the said approval being internal communications of the Department, the Assesseees cannot challenge the same and plead that the Assessment Orders are nullity before the Tribunal, thus submitted that the contentions of the Ld. AR is devoid of merits.

11. We have carefully considered the rival submissions and material placed on record and case laws cited. On perusal of the above assessment orders and the material produced before us, it is found that in the case of Janak Raj Gupta for AY 2005-06 to 2009-10 and in case of Brij Mohan Mahajan for AY 2009-10, a mandatory approval u/s 153D of the Act were accorded by Additional Commissioner of Income Tax on 30.12.2010 vide collective approval letter for the AY 2005-06 to 2009-10 and the details are as under:-

(a) approval u/s 153D in the case of M/s Janka Raj Gupta and Co.: No.F.No.Addl.CIT/CR- 5/approval/2010-11/834 dated 30/12/2010.

(b) approval u/s 153D in the case of sh. Brij Mohan Mahajan: No.F.No.Addl.CIT/CR-5/approval/2010-11/843 dated 30/12/2010.

12. The legal objection of transgression of requirements of approval under section 153D of the Act is in controversy. Pursuant to search carried out on 06/11/2008 on M/s. Nimtaya group of

Companies, the assessment proceedings u/s. 153A of the Act carried out. The Assessing officer forwarded the draft assessment orders for 5 years (AY 2005-06 to AY 2009-10) in both the cases of the Assesseees for endorsement and approval of the superior authority at the fag-end of the limitation period on 30/12/2010 to meet the legal requirement imposed by section 153D of the Act. The Addl. CIT i.e. the superior authority, in turn, granted a combined and consolidated approval for all 5 assessment years in promptly on 30/12/2010 itself. For passing such assessment orders, the Assessing Officer is governed by S.153D of the Act, whereby the Assessing Officer should complete the assessment proceedings and prepare a draft assessment order which need to be placed before the approving authority i.e. Joint/Addl. Commissioner (designated authority giving approval to search assessments u/s. 153D of the Act). 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. The AO is obligated to pass the

assessment order exactly, as per approval/directions of the designated authority. Inevitably, this evaluation is to be made on the basis of material gathered at time of search as well as obtained in the course of the assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

13. As observed, Section 153D of the Act bestows a supervisory jurisdiction 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 conform to the statutory requirement in letter and spirit. It is evident from the communication of AO and consequent approval thereon under S. 153D of the Act, that no assessment record for any assessment years in question or any seized material had travelled to the authority concerned for his objective consideration of the same qua the draft assessment orders. No reference in this regard is made in the approval note either which may discard such allegation as untrue. No other materials were placed before us by the Revenue to establish otherwise.

14. The solitary communication from AO to the ACIT dated 30/12/2010 in the case of Janak Raj Gupta and Co. seeking approval of draft assessment orders is reproduced hereunder under:-

OFFICE OF THE
ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE- 22, ROOM NO. 324,
E- 2, JHANDEWALAN EXTN. ARA CENTRE,
NEW DELHI.

F. No: ACIT/CC-22/Approval/2010-11/644

Dated: 30/12/2010

To

The Addl. Commissioner of Income Tax,
Central Range- 5,
New Delhi.

Sir,

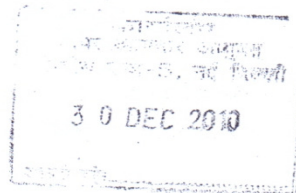
Sub: Approval u/s 153D of the I.T. Act, 1961 in case of of M/s Janak Raj Gupta & CO (Nimitava Group), PAN-AAEFJ5208P-reg.

Kindly refer to the above mentioned subject.

The draft assessment order/s in the following cases are sent herewith for approval u/s 153D of the I.T. Act.

Sr. No.	Name of the Assessee	Assessment Year	Assessed Income (Rs.)
1	M/s Janak Raj Gupta & CO	2005-06	3,49,57,345/-
2	M/s Janak Raj Gupta & CO	2006-07	5,37,84,235/-
3	M/s Janak Raj Gupta & CO	2007-08	3,47,22,188/-
4	M/s Janak Raj Gupta & CO	2008-09	2,83,50,215/-
5	M/s Janak Raj Gupta & CO	2009-10	4,03,81,793/-

The draft order is being submitted after verifying entire seized material including computer media, panchnamas and its annexures, statements recorded and inquiries conducted. All the issues mentioned in the Appraisal Report and arising out of seized material have been examined. The inquiries wherever necessary have been carried out. The return of income has also been verified w.r.t. the Balance Sheet, Profit & Loss Account, books of accounts, bank statements and other relevant details.



(B. R. Mishra)
Asstt. Commissioner of Income Tax
Central Circle-22, New Delhi

15. The approval memo of the designated authority Addl. CIT dated 30/12/2010 on such draft assessment orders, which are under challenge is produced hereunder:

OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-5, ROOM NO. 329,
E- 2, JHANDEWALAN EXTN. ARA CENTRE,
NEW DELHI.

F. No.: Addl.CIT/GR-5/Approval/2010-11/834

Dated: 30/12/2010

To

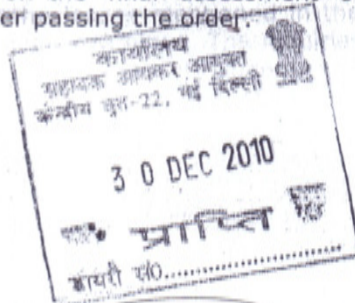
The Asstt. Commissioner of Income Tax,
Central Circle - 22,
New Delhi

Sub: Approval u/s 153D of the I.T. Act, 1961 in case of M/s Janak Raj Gupta & CO. (Nimitaya Group), PAN-AAEFJ5208P -reg.

Please refer to your office letter F. No. ACIT/CC-22/Approval/2010-11/644, dated 30/12/2010 on the above mentioned subject. In view of your letter, approval is hereby granted to the draft assessment orders in the following cases:-

Sr. No.	Name of the Assessee	Assessment Year	Assessed Income (Rs.)
1	M/s Janak Raj Gupta & CO	2005-06	3,49,57,345/-
2	M/s Janak Raj Gupta & CO	2006-07	5,37,84,235/-
3	M/s Janak Raj Gupta & CO	2007-08	3,47,22,188/-
4	M/s Janak Raj Gupta & CO	2008-09	2,83,50,215/-
5	M/s Janak Raj Gupta & CO	2009-10	4,03,81,793/-

A copy of the final assessment order should be forwarded to this office immediately after passing the order.



(S.K. Jain)
Addl. Commissioner of Income Tax,
Central Range-5, New Delhi

Note:

1. Information of all share capital, unsecured loan/ICDs etc. shown to have been received by the assessee should be passed on to the concerned A.O. immediately
2. Information regarding any document / undisclosed income belonging to any third person as indicated from the seized material/ statement etc. should be passed on to the respective A.O. immediately.

16. Even in the case of Sh. Brij Mohan Mahajan as per the order sheets note for AY 2005-06 to 2009-10 a single approval u/s 153D of the Act for all the Assessment Years have been accorded vide F. No. Add. CIT/CR-5/Approval/2010-11/843 dated 30/12/2010 and the Order u/s 143(3) of the Act passed on the very same day. Though the Department of Revenue has not placed the copy of the approval u/s 153D of the Act to prove that there were separate approval for all the Assessment Years in the case of Sh. Brij Mohan Mahajan, based on the Order Sheets for A.Y 2005-06 to 2009-10 and on going through the Assessment Order and other records it is found that a single Approval u/s. 153D of the Act has been accorded covering all the Assessment Years. The Ld. DR has also submitted that the similar collective approval order has been issued in the case of Sri. Brij Mohan Mahajan also.

17. Thus, there is nothing else before us to prove the facts differently. A bare glance at the approval so accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the 5 assessment years. Apparently, the approval has been

granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record which allegation has not been rebutted. The draft assessment orders showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw some light on objectivity applied owing to total silence on any delineation on these aspects in the approval memo.

18. Based on solitary communication placed before us, it is ostensible that draft assessment orders were placed before the Addl. CIT on 30.12.2010 for the first time. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to

30.12.2010. 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 of the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search case is that the Additional CIT, 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 should necessarily reflect 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.

19. At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that the above approval letter issued by the Addl. Commissioner merely says that the approval has been granted in view of the letter of the A.O. The letter of approval issued under Section 153D reads as under:

“Please refer to your office letter F. No. ACIT/CC/22/Approval 2010-11/644, dated 30/12/2010 on the above mentioned subject. In view of your letter, approval is hereby granted to the draft assessment orders in the following cases:-

<i>Sr. No</i>	<i>Name of the Assessee</i>	<i>Assessment Year</i>	<i>Assessed Income (Rs.)</i>
1	M/s Janak Raj Gupta & Co.	2005-06	3,49,57,345/-
2	M/s Janak Raj Gupta & Co.	2006-07	5,37,84,235/-
3	M/s Janak Raj Gupta & Co.	2007-08	3,47,22,188/-
4	M/s Janak Raj Gupta & Co.	2008-09	2,83,50,215/-
5	M/s Janak Raj Gupta & Co.	2009-10	4,03,81,793/-

”

20. Plain reading of the letter of approval granted by the Addl. Commissioner, clearly depicts that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of letter of the Ld. A.O. without any application of mind and the seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the Draft Assessment Orders were approved, solely relying upon the implied undertaking obtained from the Assessing Officers in the form of draft assessment orders that AO has taken due care while framing respective draft assessment orders and that all the observations made in the

appraisal report relating to examination/investigation of seized material and issues unearthed during search have been stately considered by the AO seeking approval. Thus, the sanctioning authority had in effect abdicated its statutory functions and delightfully relegated its statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed additions with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and cannot be countenanced in law.

21. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the

eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) which has been approved by jurisdictional High Court subsequently, reported in 307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held as under:-

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

*2. Following question was argued before us for our consideration:
"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"*

3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007- 08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.

4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional

CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :

"To, The DCIT(OSD)1, Mumbai Subject: Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg.

Ref: No. DCIT (OSD)1/ CR7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted u/s 153D of the I. T. Act, 1961."

7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law.

We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.

8. Accordingly, the Tax Appeal is dismissed."

22. In the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023 dismissed the Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act.

23. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assesseees in the Cross Objections against maintainability of hollow approval under S. 153D of the Act totally devoid of any application of mind. In our opinion the approvals so granted under the shelter of section 153D of the Act does not pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the

impugned assessments relatable to search in captioned appeals are non-est and a nullity and hence liable to be quashed.

24. To sum up, in the case of both the Assesseees i.e. M/s Janak Raj Gupta and Co. and Sh. Brij Mohan Mahajan, the approval of the draft order sent to Additional CIT u/s 153D of the Act only on 30.12.2010 and the same was approved by Additional CIT on 30.12.2010 and the final assessment order was also passed on the very same day ie: 30.12.2010, which has been mentioned in the sheet dated 30.12.2010 of both the assesses. Since all the order sheet entries for each assessment proceedings are identical the order sheet of one of the assessment years of the Assesseees are reproduced for ready reference:

M/s Janak Raj Gupta and Co:

-3-	
	Reg. Janak Raj Gupta & Co. R.F AY. 09-10
14/12/10	show case notice issued to the assessee firm.
27/12/10	Reply of show case notice received.
30/12/10	Draft order sent for approval. Approval ds. 153D received vide F.No. Add. CIT / CR-5 / Approval / 2010-11 / 834 dt. 30/12/10. Order ds. 143C3D passed 30/12/10.

Sh. Brij Mohan Mahajan

-3-

Reg. B. M. Mahajan (and.) A.Y. 2009-10

14/12/10 show cause notice issued to the assessee.
D

27/12/10 Reply of show cause notice received.
D

30/12/10 Draft order sent for approval.
Approval ds. 153D received vide F.No. Addl. CIT /CR-5/Approval/2010-11/843 dt. 28/12/10.
Order ds. 143(3) passed.
D
28/12/10.

25. Hence, there was not enough time left to examine the issues raised in the draft assessment orders on its merit by Additional CIT. Therefore, the orders were approved as it was submitted by the A.O. Therefore, for want of time, Additional CIT could not examine any issue arising out of the draft impugned order. Further, Additional CIT has granted the approval for all the

five assessment years commencing from assessment year 2005-06 to assessment year 2009-10 in a consolidated manner, which cannot be permitted. The Additional CIT should individually apply mind on each issue raised in each assessment year in a separate and distinct manner and should not be in a consolidated manner, which amounts to miscarriage of justice. After going through the records sent to him by ACIT, Central Circle-22, he should have arrived subjective satisfaction on each issue in each assessment year independently and should have approve it u/s 153D of the Act. In the present cases, on perusing the approval granted by the Additional CIT, it shows that Additional CIT has not independently applied his mind on the issue raised by ACIT Central Circle-22 in each assessment year commencing from assessment year 2005-06 to 2009-10. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft assessment order. Clearly, these are the cases in which the higher authorities had

granted the approval without consideration of relevant issues. In our opinion, validity of the approval goes to the root of the matter. In these cases, it is a clear case of non-application of mind by Additional CIT while granting approval of draft assessment order in these assessment years, which cannot be said that there is a valid approval of draft assessment order in these assessment years. Accordingly, the Ground No. 3 of the Assessee raised in the respective Cross Objections are allowed and the Assessment Orders passed in the respective years are quashed.

26. In view of prima facie merits found in the legal objections raised in the Cross objections filed by the Assessee, we do not consider it expedient to look into the aspects on merits of additions/disallowance as the legal objections on Section 153D of the Act has been answered in favour of the assessee. The other Grounds raised in the respective cross objections of the assessee have rendered in-fructuous, which do not need any separate adjudication.

27. In view of allowing the Ground No. 3 in the Cross Objections No. 110/Del/2023, 111/Del/2023, 112/Del/2023, 113/Del/2023, 114/Del/2023 and 109/Del/2023 filed by the Assesseees by quashing the Assessment Orders as non-est on the ground of invalid approval u/s. 153D of the Act, the Appeals of the Revenue in ITA No 621/Del/2012, 968/Del/2012, 622/Del/2012, 969/Del/2012, 970/Del/2012 & 5213/Del/2011 are dismissed.

Order pronounced in open Court on 15th December, 2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 15/12/2023

Pk/R.N Sr.ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

