

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM**

ITA No. 1269/Mum/2022
(Assessment Year: 2014-15)

ITA No. 1271/Mum/2022
(Assessment Year: 2013-14)

ITA No. 1272/Mum/2022
(Assessment Year: 2017-18)

ITA No. 1273/Mum/2022
(Assessment Year: 2015-16)

ITA No. 1274/Mum/2022
(Assessment Year: 2012-13)

ITA No. 1275/Mum/2022
(Assessment Year: 2016-17)

ITA No. 1277/Mum/2022
(Assessment Year: 2018-19)

SVP Southwest Industries
Ltd.
(Formerly, Platinum Textile
Ltd.)
97/99, 9th floor, Maker
Tower ‘F’,
Cuff Parade, Mumbai-400
005

(Appellant)

Vs.
The Deputy Commissioner
of Income Tax
Room No.658, 6th Floor,
Aaykar Bhavan,
Mumbai-400 020

(Respondent)

PAN No. AABCN1537H

ITA No. 1592/Mum/2022



(Assessment Year: 2012-13)

ITA No. 1593/Mum/2022

(Assessment Year: 2013-14)

ITA No. 1594/Mum/2022

(Assessment Year: 2014-15)

ITA No. 1595/Mum/2022

(Assessment Year: 2016-17)

ITA No. 1596/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1597/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1598/Mum/2022

(Assessment Year: 2018-19)

The Deputy Commissioner
of Income Tax

Room No.658, 6th Floor,
Aaykar Bhavan,
Mumbai-400 020

(Appellant)

PAN No. AABCN1537H

ITA No. 1738/Mum/2022

(Assessment Year: 2014-15)

ITA No. 1739/Mum/2022

(Assessment Year: 2012-13)

ITA No. 1740/Mum/2022

(Assessment Year: 2013-14)

ITA No. 1741/Mum/2022

(Assessment Year: 2016-17)

ITA No. 1742/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1743/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1744/Mum/2022

SVP Southwest Industries
Ltd.

(Formerly, Platinum Textile
Ltd.)

Vs. 97/99, 9th floor, Maker
Tower 'F',
Cuff Parade, Mumbai-400
005

(Respondent)



(Assessment Year: 2017-18)

The Assistant Commissioner
of Income tax
Central Circle 8(2)
Room No. 658, 6th Floor,
Aaykar Bhavan
M.K. Road,
Mumbai-400 020
(Appellant)

Vs.

M/s Helios Mercantile
Limited
97 Maker Tower F, Cuffe
Parade,
Mumbai-400 005
(Respondent)

PAN No. AACCH3797G

ITA No. 1300/Mum/2022
(Assessment Year: 2014-15)

ITA No. 1301/Mum/2022
(Assessment Year: 2013-14)

ITA No. 1302/Mum/2022
(Assessment Year: 2017-18)

ITA No. 1303/Mum/2022
(Assessment Year: 2015-16)

ITA No. 1304/Mum/2022
(Assessment Year: 2012-13)

ITA No. 1305/Mum/2022
(Assessment Year: 2018-19)

ITA No. 1306/Mum/2022
(Assessment Year: 2016-17)

M/s Helios Mercantile
Limited
97 Maker Tower F, Cuffe
Parade,
Mumbai-400 005
(Appellant)

Vs.

ACIT
Central Circle 8(2)
Room No. 658, 6th Floor,
Aaykar Bhavan
M.K. Road,
Mumbai-400 020
(Respondent)

PAN No. AACCH3797G

ITA No. 1266/Mum/2022
(Assessment Year: 2013-14)

ITA No. 1267/Mum/2022
(Assessment Year: 2015-16)



ITA No. 1268/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1270/Mum/2022

(Assessment Year: 2012-13)

ITA No. 1276/Mum/2022

(Assessment Year: 2014-15)

Citron Infra Projects
Limited
97, 9th Floor, Maker Tower
F,
Cuffe Parade, Mumbai-400
005

Dy. CIT
Central Circle-6(1)
Dy. Commissioner of
Income Tax, Central Circle
7(2)
Mumbai-400 020,

(Appellant)

(Respondent)

PAN No. AADCC3735C

ITA No. 1559/Mum/2022

(Assessment Year: 2012-13)

ITA No. 1569/Mum/2022

(Assessment Year: 2014-15)

ITA No. 1570/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1571/Mum/2022

(Assessment Year: 2016-17)

ITA No. 1572/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1573/Mum/2022

(Assessment Year: 2018-19)

Dy. CIT
Central Circle-6(1)
Dy. Commissioner of
Income Tax, Central Circle
7(2)
Mumbai-400 020,

Citron Infraprojects
Limited.
97, 9th Floor, Maker Tower
F,
Cuffe Parade, Mumbai-400
005

(Appellant)

(Respondent)

PAN No. AADCC3735C



ITA No. 1745/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1746/Mum/2022

(Assessment Year: 2016-17)

ITA No. 1747/Mum/2022

(Assessment Year: 2014-15)

ITA No. 1748/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1749/Mum/2022

(Assessment Year: 2018-19)

Asst. Commissioner of

Income Tax,

Central Circle 6(1),

Room No.658, 6th Floor,

Aaykar Bhavan ,

M.K. road,

Mumbai-400 020

(Appellant)

M/s Shreevallabh Pittie

Industries Limited

Vs. 97, Maker Tower F, Cuffe

Parade, Mumbai-400 005

(Respondent)

PAN No. AAKCA8820H

ITA No. 1307/Mum/2022

(Assessment Year: 2016-17)

ITA No. 1308/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1309/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1310/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1311/Mum/2022

(Assessment Year: 2012-13)

ITA No. 1312/Mum/2022

(Assessment Year: 2014-15)

ITA No. 1313/Mum/2022

(Assessment Year: 2013-14)

SVP Global Textiles Ltd.

Formerly SVP Global

Ventures Ltd.

97, 9th Floor, Maker Tower

DCIT

Central Circle 6(1)

Room No.658, 6th Floor,

Aaykar Bhavan, M.K. Road,



F, Cuffe Parade,
Mumbai-400

(Appellant)

PAN No. AACCS2582C

Mumbai-400 020

(Respondent)

ITA No. 1725/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1726/Mum/2022

(Assessment Year: 2018-19)

DCIT
Central Circle 6(1)
Room No.658, 6th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai-400 020

(Appellant)

PAN No. AACCS2582C

SVP Global Textiles Ltd.
Formerly SVP Global
Ventures Ltd.
Vs. 97, 9th Floor, Maker Tower
F, Cuffe Parade,
Mumbai-400

(Respondent)

ITA No. 1335/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1336/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1337/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1338/Mum/2022

(Assessment Year: 2016-17)

Shrivallabh Pittie Industries
Ltd
97, 9th Floor, Maker Tower
F,
Cuffe Parade, Mumbai-400
005

(Appellant)

PAN No. AAKCA8820H

DCIT
Central Circle 6(1)
Room No.658, 6th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai-400 020

(Respondent)

ITA No. 1331/Mum/2022



(Assessment Year: 2017-18)

ITA No. 1332/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1333/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1334/Mum/2022

(Assessment Year: 2016-17)

Helios Exports Limited
97, Maker Tower F, Cuffe
Parade, Mumbai-400 005

Vs.

Asst. Commissioner of
Income Tax,
Central Circle 6(1),
Room No.658, 6th Floor,
Aaykar Bhavan ,
M.K. road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AALCA8531C

ITA No. 1734/Mum/2022

(Assessment Year: 2018-19)

ITA No. 1735/Mum/2022

(Assessment Year: 2017-18)

ITA No. 1736/Mum/2022

(Assessment Year: 2015-16)

ITA No. 1737/Mum/2022

(Assessment Year: 2016-17)

Asst. Commissioner of
Income Tax,
Central Circle 6(1),
Room No.658, 6th Floor,
Aaykar Bhavan ,
M.K. road,
Mumbai-400 020

Vs.

Helios Exports Limited
97, Maker Tower F, Cuffe
Parade, Mumbai-400 005

(Appellant)

(Respondent)

PAN No. AALCA8531C

Assessee by

: Shri Vijay Mehta CA
Shri Varun Chaturvedi, AR



Revenue by : Mr. Manish Sareen, CIT DR

Date of hearing: 12.02.2024

Date of pronouncement : 30.04.2024

ORDER

PER BENCH :-

01. These are 65 cross appeals of the rival parties, involving similar issues, common grounds, common arguments and identical facts and circumstances, therefore, all these appeals are disposed of by this common order.
02. At the request of the parties ITA number 1275/M/2022 filed by SVP Southwest industries Ltd (formerly Platinum textiles Ltd) (the assessee/appellant) and ITA number 1595/M/2022 filed by the Deputy Commissioner of Income Tax, Central Circle – 8 (2), Mumbai (the learned assessing officer/AO) for assessment year 2016 – 17 filed against the appellate order passed by The Commissioner of Income Tax (A) – 54, Mumbai (the learned CIT – A) dated 31/3/2022 wherein appeal filed by the assessee against the assessment order passed by The Deputy Commissioner Of Income Tax, Central Circle – 6 (1), Mumbai passed under section 144 section 153A of The Income Tax Act, 1961 (The Act) dated 26/2/2021 was partly allowed by consolidated appellate order passed for assessment year 2012 – 13 to 2018 – 19, Therefore, both the parties are aggrieved and are in appeal before us, so is taken as lead appeal.

03. All these appellant group companies are engaged in manufacturing of yarn and trading in the yarns and fabrics.

04. Facts for assessment year 2016 – 17 in case of assessee are noted which are common to all the appeals. A search and survey action were conducted in the case of Shrivallabh Pettie group (SVP) on 22 August 2017. During the course of the search under section 132 of the act at the office premises of the assessee located at 97 and 99, ninth floor maker Tower F, Cuffe Parade, Mumbai – 05 several incriminating documents were seized in the case of the assessee. Further incriminating documents were also found which are related to an entity, namely Subhkanchi Trading Private Limited [STPL] . Therefore, a survey action was also conducted on that company on 28/3/2017. Based on the incriminating material found in the case of the assessee, notice under section 153A was issued to the assessee on 18/6/2018 for assessment year 2012 – 13 to assessment year 2017 – 18 and subsequently notice under section 143 (2) was issued for assessment year 2018 – 19. Subsequently the assessee filed an application before The Income Tax Settlement Commission [ITSC] on 14/10/2019 which was disposed of vide order dated 14/12/2020. Before the settlement commission assessee submitted that the statement of several persons has been recorded and they are mentioned in the show cause to the assessee as well as in order. Additionally details of the premises searched and the papers seized were also submitted. Settlement commission as per order under section 245D (4) of the Act passed its order disposing of the assessee's application and has not accepted the terms of settlement of the assessee group. Therefore, the terms of settlement were not accepted.



05. The assessee filed its return of income on 2/11/2018 in response to notice under section 153A (1) of the act issued on 18/6/2018. The learned AO issued a notice dated 10/2/2021 stating that the return of income filed by the assessee in response to notice under section 153A is 'non est', because assessee failed to file return of income in the time given in that notice. Assessee objected to the same. Such objections were rejected. The assessee also raised several other technical issues before the learned assessing officer regarding time barred assessment etc. Same are also not accepted. Assessee also objected that notice under section 143 (2) of the act was not issued to the assessee within the prescribed time limit, the learned AO held that there is no legal requirement to issue notice under section 143 (2) in case of assessment under section 153A of the act. Thus, all the objections were disposed of by order dated 25 February 2021.
06. Thereafter the learned AO noted the fact that during the course of search and based on the statement recorded of directors of Subhkanchi trading private limited [STPL] proved to be a mere paper entity and was being controlled and managed by Mr. Chirag Pittie the main promoter of SVP group of companies. During the course of search on SVP group all the documents pertaining to that company were found at the premises of the assessee and not at the premises of that company at 301 Golden Rock Cross Road, Bandra West, Mumbai which is the residence of friend of the promoter of the company MS Mrinal Chablani. She stated in a statement recorded under section 131 that she is appointed to be a director of that company by the promoter of SVP group from number 2011 to February 2012 and since then all the correspondence relating to that company received at this residential address used to be handed over



to the promoters of the SVP group. The learned AO reproduced her statement. Other directors of that company were also confronted, and they did not express any knowledge of the day-to-day functioning of that company. The statements are never challenged by the SVP group. The statement of Mr. Chirag was also recorded under section 131 of the act on 24/8/2017 and confronted with the statement of the directors of that company, he sought time to give the explanation which was never given. The learned assessing officer found that sales and purchases made by that company are bogus accommodation entries proved by the investigation wing to the assessee, the outstanding creditors in that company's books of account remained unpaid for many years. That company had provided corresponding amount as a loan to various SVP group of companies to the tune of ₹ 456.69 crores as per the financial statement of assessment year 2018 – 19. Thus, it was clear that the amount received by STPL is given to SVP group entities as an unsecured loan. STPL has no net worth or creditworthiness to claim the creditors of Rs. 456 crores in its books of accounts for assessment year 2018 – 19. The balance sheet of that company clearly shows that it is merely a paper company and just to collect bogus creditors for the purpose of advancing the money to SVP group of companies. It has a meager share capital of ₹ 1 lakh and creditors of ₹ 456 crores. The learned assessing officer analyzed the audited balance sheet of that company. He noted that the company has diverted the money to another company Citron Infra Projects Limited, as unsecured loan. The learned assessing officer tabulated the year wise unsecured loan given by that company to the assessee group companies. He further noted that the settlement commission in its order has clearly recorded that it is the admission of the assessee

that SVP group companies had entered into accommodation transaction for purchase and sale of fabric and capital expenditure. In this regard, funds were transferred from bank accounts of SVP group companies to broker entities and also funds were transferred from bank accounts of broker entities to SVP group companies. Out of the funds transferred by SVP group companies to broker entities are part of the funds were transferred by them through banking channel , acting as intermediary of SVP group companies On account of accommodation transaction entered into with the broker entities. The funds so received were eventually transferred back to SVP group companies. Additionally, AO also computed 0.5% on these accommodation sales as additional income offered before the settlement commission on bogus sales. Therefore, it was clear that as STPL as an integral part of the SVP group of companies by its own admission before the settlement commission.

07. Thereafter the learned assessing officer extracted the statement of various persons recorded and held that it is now conclusively proved that the sale and purchase of the STPL are nothing but accommodation entries on behalf of SVP group including the assessee. Thereafter the learned assessing officer held that there is an addition under section 69C of the act being unexplained expenditure on account of commission paid on accommodation entries of sales and purchases is taxable in the hands of the assessee. The learned assessing officer noted that as the assessee has disclosed an amount of ₹ 6,125,446/- as additional income on account of commission on accommodation entries, the learned AO noted that the total of accommodation sales and purchases in the hands of the assessee is ₹ 23,778,802,359/- and ₹ 2375,81,75,403/- respectively. As the

assessee has failed to provide sufficient details, the learned AO made an addition to the extent of 3% of accommodation entries of sales and purchases amounting to ₹ 713,364,070/- as total income of the assessee under section 69C of the act. Accordingly, the assessment order under section 144 read with section 153A of The Income Tax Act was passed on 26/2/2021 determining total income of the assessee at ₹ 790,768,059/- against the return of income filed by the assessee on 17/10/2016 of ₹ 7,80,22,797/-. Thus, the addition of ₹ 712,745,262/- is the addition under section 69C of the act as an unexplained expenditure on account of commission paid on accommodation entries of sales and purchases of the assessee at the rate of 3% was also made taxable under section 115BBE of the Act.

08. Assessee challenged the assessment order before the learned CIT – A for this assessment year. As identical additions were also in challenge before the learned CIT – A for assessment year 2012 – 13 to AY 2018 – 19, the learned CIT(A) passed a consolidated appellate order on 31/3/2022. The assessee challenged the assessment order on several grounds including (i) treating the return of income as invalid, (ii) nonissue of notice under section 143 (2), (iii) addition made only on account of statements, (iv) addition made in absence of any incriminating material, (v) addition made only on the basis of the statement etc. and (vi) then challenging the addition on the merits/quantum of the addition. The learned CIT – A on legality of the assessment was confronted with the ground that the approval granted by the learned approving authority is bad in law, not proper, mechanically granted, without application of mind. The fact was stated that the impugned assessment order was passed under section 153A of the act by the Deputy Commissioner of income tax



which is below the rank of joint Commissioner of income tax and therefore the prior approval of joint Commissioner of income tax was required. It was stated that in the assessment order it is mentioned that approval of additional Commissioner of income tax was obtained on 26/2/2021 i.e., on the date of passing of the assessment order dated 26/2/2021. The assessee also relied upon several judicial precedents. The learned CIT – A considered the argument of the assessee and decided in paragraph number 5.2 of the order holding that the assessment order under section 153A read with section 144 of the act has been passed by the assessing officer by taking approval from authority competent to grant such approval under section 153D of the act. Thus, this ground was dismissed. The assessee also contested that the assessment order has been passed without issuance of notice under section 143 (2) of the act within the prescribed time limit. The learned CIT – A after considering the explanation of the assessee decided this issue as per paragraph number 6 of the order holding that assessment order is passed without issuing notice under section 143 (2) of the act in case of assessment order under section 153A of the act is not at all required before completing the assessment and therefore this ground has no legs to stand in view of the decision of the honourable Delhi High Court in case of 20 taxmann.com 387 in case of Ashok Chadha versus ITO. He also upheld that as the return of income is not filed by the assessee in time in conformity with the time provided under the notice under section 153A of the act, the return was correctly treated as not valid i.e. ‘non est’.. With respect to the addition on the merits, he held that the assessee has questioned estimate of commission at the rate of 3% in absence of rejection of books of account by the AO. The assessing officer has made the addition of



commission payment by taking rate of commission at the rate of 3% based on the statement of various accommodation entry providers and same is added under section 69C of the act. He further noted that the assessing officer has not rejected books of account before making any such addition. He examined the statement of the various persons in paragraph number 10.3.4 of his order and held that that the statement of the various persons confirms that the commission income is ranging from 0.05%, 0.01% and 0.15% for providing accommodation entries of sales and purchases to SVP group. Therefore, there is evidence available with the revenue about receipt of commission on providing accommodation entries of sale and purchase to the assessee group. He found that the average rate of commission admitted by the various brokers is 0.07%. Therefore, he found that there is no evidence of charging commission at the rate of 3% but the rate of commission on the basis of the statement of the brokers is available which is having an average rate of 0.07%. Therefore, he confirmed the addition to the extent of 0.07% on purchases and sales. Therefore, he restricted the addition under section 69C of the act to that extent amounting to ₹ 16,630,723/- against the addition of ₹ 712,745,262.

09. Thus, assessee is aggrieved challenging the appellate order raising following grounds in ITA number 1275/M/2022:-
- i. Learned CIT – A has erred in law and on facts in not holding that the initiation of the proceedings under section 153A of the act and assessment order passed under section 144 read with section 153A of the act, by the learned AO is without jurisdiction and without proper authority and approval, therefore deserves to be quashed.



- ii. The learned CIT – A erred in law and on facts in confirming the action of the learned AO in treating the return of income filed by the appellant under section 153A of the act as Non est.
- iii. The learned CIT – A erred in law and on facts in holding that the assessment order under section 144 read with section 153A of the act passed by the learned AO without issuance of the statutory notice under section 143 (2) of the act within the time limit prescribed therein, is bad in law.
- iv. The learned CIT – A erred in law and on facts in confirming the addition under section 69C of the act of ₹ 16,630,722/- on account of alleged commission paid at the rate of 0.07% on alleged accommodation entries of purchase and sales transaction.
- v. The learned CIT – A ought to have held that the learned AO has wrongly applied the provisions of section 115BBE of the act in respect of the addition made on account of alleged commission paid on alleged accommodation entries of purchases and sales.
- vi. The learned CIT – A erred in law and on facts in holding that the addition in the assessment order under section 144 read with section 153A of the act cannot be sustained in absence of any incriminating material found in the search.
- vii. The learned CIT – A erred in law and on facts in not holding that the assessment order under section 144 read with section

153A is passed without following the principles of natural justice, and hence, deserves to be quashed.

010. The learned AO is aggrieved challenging the appellate order raising following grounds in ITA number 1595/M/2022:-

- i. on the facts and circumstances of the case and in law, the learned CIT – A erred in restricting the addition made under section 69C of the act on account of alleged commission paid on accommodation sales and purchases of ₹ 712,745,262/- to ₹ 16,630,723/- without considering the facts of the case.
- ii. on the facts and in the circumstances of the case and in law, the learned CIT – A erred in restricting the addition made under section 69C of the act on account of commission paid on alleged accommodation entries of purchases and sales transactions from 3% to 0.07% although the assessing officer has rightly computed commission at the rate of 3% which is fair and reasonable, by placing reliance on various judicial pronouncement which is in the range of 5% to 6%
- iii. on the facts and in the circumstances of the case and in law the learned CIT – A erred in deleting ₹ 6,125,446/- as undisclosed income on account of alleged accommodation entries of sales without considering the facts of the case.

011. Coming 1st to the appeal of the assessee, the learned authorized representative challenged that the approval granted by the approving authority is invalid, without application of mind, and therefore on this ground itself the order deserves to be quashed.

012. He first referred to the assessment history and stated that he is challenging the approval granted by the approving authority. He submitted that the learned CIT – A dealt with this argument at page number 94 of 136 in Para number 62 of his appellate order. He referred to the appellate order and stated that the approval granted is challenged on several counts.

013. His main arguments are as under:-

- i. Inadequate time available to JCIT The same is very well evident from the information available on record, he submitted a chart showing the details of approval as under:

Details of approval and Assessment Order:

Sr. No.	Name of entity	A.Y.	Date of Approval	Date of Assessment Order	No. of pages	No. of pages in the Draft Assessment order
1. Approval granted on 25.02.2021						
1.	Citron	2012-13	25.02.2021	26.02.2021	58	58
2.	Infraprojects Ltd.	2013-14	25.02.2021	26.02.2021	56	56
3.		2014-15	25.02.2021	27.02.2021	73	73
4.			25.02.2021	27.02.2021	78	78
5.			25.02.2021	26.02.2021	65	65
6.			25.02.2021	27.02.2021	70	70
7.			25.02.2021	26.02.2021	64	64
2. Approval granted and Assessment Order passed on 26.02.2021						
8.	SVP Southwest	2012-13	26.02.2021	26.02.2021	58	58
9.	Ind Ltd (Formerly Platinum Textiles Ltd)	2013-14	26.02.2021	26.02.2021	64	65
10.		2014-15	26.02.2021	26.02.2021	58	59
11.		2015-16	26.02.2021	26.02.2021	59	60
12.		2016-17	26.02.2021	26.02.2021	48	53
13.		2017-18	26.02.2021	26.02.2021	99	102
14.		2018-19	26.02.2021	26.02.2021	88	90
15.		Helios Exports Ltd.	2014-15	26.02.2021	26.02.2021	23
16.	2015-16		26.02.2021	26.02.2021	76	77
17.	2016-17		26.02.2021	26.02.2021	60	60
18.	2017-18		26.02.2021	26.02.2021	88	81
19.		2018-19	26.02.2021	26.02.2021	56	51
20.	Helios Mercantile Ltd.	2012-13	26.02.2021	26.02.2021	72	72
21.		2013-14	26.02.2021	26.02.2021	75	75
22.		2014-15	26.02.2021	26.02.2021	74	79
23.		2015-16	26.02.2021	26.02.2021	74	74
24.		2016-17	26.02.2021	26.02.2021	74	79
25.		2017-18	26.02.2021	26.02.2021	76	82
26.		2018-19	26.02.2021	26.02.2021	76	76
27.	Shrivallabh Pittie Ind Ltd.	2013-14	26.02.2021	26.02.2021	23	23
28.		2015-16	26.02.2021	26.02.2021	73	74
29.		2016-17	26.02.2021	26.02.2021	73	73
30.		2017-18	26.02.2021	26.02.2021	92	92
31.		2018-19	26.02.2021	26.02.2021	108	108
32.	SVP Global Textiles Ltd.	2013-14	26.02.2021	26.02.2021	59	59
33.		2016-17	26.02.2021	26.02.2021	60	60
34.		2017-18	26.02.2021	26.02.2021	84	84
35.		2018-19	26.02.2021	26.02.2021	82	82
36.	Shubhkanchi	2012-13	26.02.2021	26.02.2021	51	51
37.	Trading Pvt. Ltd.	2013-14	26.02.2021	26.02.2021	49	49



38		2014-15	26.02.2021	26.02.2021	47	47
39		2015-16	26.02.2021	26.02.2021	47	47
40		2016-17	26.02.2021	26.02.2021	49	49
41		2017-18	26.02.2021	26.02.2021	47	47
42		2018-19	26.02.2021	26.02.2021	47	47
3. Approval granted on 26.02.2021 and Assessment Order passed on 27.02.2021						
43	Shrivallabh Pittie Ind Ltd.	2014-15	26.02.2021	27.02.2021	67	67
44	SVP Global	2012-13	26.02.2021	27.02.2021	57	57
45	Textiles Ltd.	2014-15	26.02.2021	27.02.2021	59	59
46		2015-16	26.02.2021	27.02.2021	59	59

- ii. The total no. of cases where Approval by Addl. CIT and Assessment Order has been passed on the same date i.e., 26.02.2021: 35 cases (out of 46 cases).
- iii. The total no. of cases where Order disposing objections of the assessee, Approval by Addl. CIT and Assessment Order has been passed on the same date i.e., 26.02.2021: 18 cases (out of 46 cases)
- iv. It is also imperative to note that in Platinum Textiles Ltd AY 2016-17 to AY 2018-19 and Helios Mercantile Ltd AY 2017-18 and AY 2018-19, certain information was received from DDIT(Inv.), Unit 7(2) regarding transactions with One World group. The Ld. AO received an email from the investigation wing on 26.2.2021 at 05.02 PM. In Platinum Textiles Ltd, Ld. AO has mentioned of this email in the Assessment Order which Order itself is passed on 26.02.2021. Hence, it is apparent that the Assessment Order itself was finalized after 5.02 PM in the evening on 26.02.2021, thereafter, having proper approval of the competent authority on the orders and computation annexed thereto after due perusal of seized material, application of mind on the additions made, is not only unrealistic but clearly mechanical. Therefore, according to him, the above factual positions clearly show that the Ld. Additional Commissioner granted approval is mechanical and final order passed on the basis of mechanical approval is bad in law.
- v. On mistakes committed by the A.O approved by Additional Commissioner, he submits that there were several mistakes committed by the Ld. AO while passing the Assessment Orders, which clearly points out that the assessment was



framed in haste and the approval on the same was merely mechanical:

- a. Section 115BBE was invoked in the assessment orders of A.Y. 2012-13 on various additions. However, the section itself came into existence from A.Y. 2013-14 onwards.
- b. The tax rate applied while computing the demand on total income for A.Y. 2013-14 to A.Y. 2016-17 u/s 115BBE was 60% although as per Section 115BBE, the tax rate for the aforementioned years was the normal tax rate and not 60%. The assessing officer has specifically mentioned the applicability of section 115BBE and calculation of tax accordingly on the last page of the Assessment Order. Furthermore, the assessing officer has referred to Section 115BBE(b) for calculation of tax on addition made u/s 68, 69C and 69A of the Act. However, assuming (b) pertains to sub-section (1) is to be noted that the clause 'b' to section 115BBE was applicable for assessment years prior to AY 2017-18 as new provisions came into force from 01.04.2017 i.e., for AY 2017-18 onwards.
- c. All the tax calculations in the computation sheet annexed to the Assessment Order have been done manually and not through system. This would mean that the tax calculation was available along with the Draft Assessment Order as there was no time available for manual tax calculation after the approval was granted. If the tax calculation was available along with the Draft Assessment Order, the Addl. CIT has failed to note that



- the assessing officer has calculated tax while applying incorrect section or the incorrect rate of tax.
- d. The assessing officer has relied upon the decision of the Hon'ble Supreme Court in the case of Devendranath Chaturvedi to hold that the delayed return has to be treated as non-est and there would not be any requirement of issuing notice u/s 143(2). On perusal of the judgment of the Hon'ble Supreme Court, nowhere has the same been mentioned or referenced to.
 - e. In the proceeding sheet in the case of Platinum Textiles Limited for AY 2016-17, nowhere has it been recorded that the Draft Assessment Order was forwarded to Addl. CIT and Addl. CIT has granted its approval for the same.
 - f. The forwarding letter of the Draft Assessment Order does not mention the seized materials or that any case records were enclosed along with it.
 - g. The penalty has been initiated under the incorrect section in the Assessment Order. Further, Addl. CIT has not applied his mind and directed the Assessing Officer to look into the matter and initiate penalty proceedings under the correct section.
 - h. In the case of Shrivallabh Pittie Southwest Industries, for AY 2013-14, in reference to the addition made in case of Jambo Trading. The notice was issued on 23.02.2021 in response to which the appellant made a request for adjournment on 25.02.2021. The Assessing Officer ignored the request of the appellant and vide Page 61 of the Assessment Order, the assessing officer has stated



that the appellant did not respond to the notice and subsequently the assessing officer made the addition.

- i. In the case of Shrivallabh Pittie Southwest Industries, for AY 2013-14, vide notice dated 12.02.2021, the assessing officer enquired about payment made to Arson Trading Co. and Jeevan Impex. The appellant furnished a reply to the same on 24.02.2021, requesting the assessing officer to specify the section under which the addition was proposed. No other opportunity was provided to the appellant and the addition was made u/s 69C of the Income Tax Act, 1961 when the payment was made to the above-mentioned parties through proper banking channels.
- j. In the case of Shrivallabh Pittie Southwest Industries, for AY 2018-19, addition u/s 69C on account of disallowance of expenditure incurred on booking bogus capital expenditure was discussed about and eventually made in the Assessment Order. However, the assessing officer erroneously did not add the same to the total income of the appellant in the final computation.
- k. Additions pertaining to disallowance of roll back of depreciation, investment allowance & additional depreciation has erroneously been made u/s 69C of the Act instead by way of disallowance u/s 32 and 32A in the case of Shrivallabh Pittie Southwest Industries, Shrivallabh Pittie Industries Limited and SVP Global Limited in AY 2017-18 and AY 2018-19.
- l. In the case of Platinum Textiles Limited, Shrivallabh Pittie Industries Limited, and SVP Global Textiles



- Limited, for AY 2017-18, returned loss has been set off against additions u/s 68,69A and 69C while computing tax.
- m. The appellant for AY 2017-18 and AY 2018-19, retracted the statements made by Bhupendra Singh, Mahendra Singh Chouhan and Shobit Nandvana during the search proceedings by way of an affidavit submitted on 17.02.2021. The affidavit stated that the statements were made under coercion, yet the statements of the above-mentioned people were reproduced in the Assessment Orders and assessing officer has not discussed the affidavit filed by the assessee.
- n. In the case of Shrivallabh Pittie Industries Limited, for AY 2013-14, in the final assessment order passed, no addition was made. Yet, the Ld. AO has mentioned tax is calculated u/s 115BBE for addition made u/s 68. Further, the Ld. AO has also initiated penalty u/s 271AAB(1A) in the instant case where no additions were made and, in a year, where the section was non-existent.
- o. In the case of Citron Infraprojects Ltd, for AY 2012-13 to AY 2018-19, the approval number granted by the Addl. CIT has not been mentioned in the Assessment Orders.
- p. In the case of SVP Global Textiles Ltd, for AY 2012-13, the approval number granted by the Addl. CIT has not been mentioned in the Assessment Orders.
- q. In the case of Platinum Textiles Limited, for AY 2013-14, the Draft Assessment Order contains the heading 'Assessment Order' and also has mention of an approval number.



						t Ind. Ltd (Formerly , Platinum Textiles Ltd)	s Ltd.
2012 -13	1	8	15	22	29	36	43
2013 -14	2	9	16	23	30	37	44
2014 -15	3	10	17	24	31	38	45
2015 -16	4	11	18	25	32	39	46
2016 -17	5	12	19	26	33	40	47
2017 -18	6	13	20	27	34	41	48
2018 -19	7	14	21	28	35	42	49

- u. The Draft Assessing Officer was sent for approval before the Addl. CIT in cases where the companies were not incorporated i.e., Helios Exports Limited in AY 2012-13 and AY 2013-14 and Shrivallabh Pittie Industries Limited in AY 2014-15.

Thus, he submits that All of the above clearly points at the fact that the ld. AO passed assessment orders without obtaining the valid approval u/s. 153D of the Act and, hence, the Assessment Orders are bad in law.

014. The learned authorized representative relied upon the several judicial precedents to support his case.

- i. ACIT V Sirajuddin & Co. [2023] 150 taxmann.com 146 (Orissa)/ where in it has been held that Where assessment orders passed in case of assessee were

totally silent about Assessing Officer having written to Additional Commissioner seeking his approval or of Additional Commissioner having granted such approval, Tribunal was correct in holding that in present cases such approval was granted mechanically without application of mind by Additional Commissioner resulting in vitiating assessment orders.

- ii. PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 V Anuj Bansal ITA 368/2023 Date of decision:13.07.2023 where There were two additions made by the AO. The first addition was made qua cash deposited in the bank, amounting to Rs. 15,04,35,000/-. The second addition was made with regard to cash introduced via an entry operator i.e., one, Mr. Vipin Garg. The amount added qua this aspect was pegged at Rs. 1,54,07,100/-. Despite these additions, which would have taken the assessed income Digitally Signed well beyond what was crystallized by the AO i.e., 1,65,07,560/-, the ACIT failed to notice the error. The Tribunal notes that all that was looked at by the ACIT was the draft assessment order. The approval was granted without examining the assessment record or the search material. The Tribunal was right that there was absence of application of mind by ACIT in granting approval under Section 153D. It is not an exercise dealing with an immaterial matter which could be corrected by taking recourse to Section 292B of the Act.



- iii. Decision in case of coordinate bench of Lucknow bench Naveen Jain and Others ITA number 639 – 641/LKW/2019 dated 3/8/21 where the approval was granted on the same day was held to be invalid.
 - iv. Decision of the honourable allowable High Court in case of PCIT versus Sidharth Gupta 450 ITR 534
 - v. Decision of coordinate bench in case of Inder international versus ACIT 213 TTJ 251
 - vi. Decision of Delhi bench of the ITAT in case of MDLR hotels private limited ITA number 3076/del/2016 dated 8/2/2023.
 - vii. Decision of Delhi bench in case of Subhash Dabas ITA number 2399/del/2016 dated 25/11/2021 holding that there is no application of mind by the approving authority because the addition has been approved which are opening balances for the year and same were added in the preceding assessment years also.
 - viii. He also relied on decision of the Delhi bench in case of Sanjay Duggal versus ACIT in ITA number 1813/del/2019 dated 19/1/2021.
015. The learned departmental representative vehemently submitted that when there is a jurisdiction which is not under challenge, searches held to be valid, proper authority is exercised by the learned assessing officer and approving authority, the order is passed by the competent authority and the approval is also proper. He submits that section 153D is only prior approval which is properly granted in the

present case by the approving authority. He submits that there is no evidence of non-application of mind and to support his case he puts on record report of range head and the AO in the month of January 2023. He supports this by letter dated 5/1/2023. He referred to paragraph number 2 (a) of that letter stating that the additional Commissioner of income tax was fully aware of the proceedings and also the proceedings before the income tax settlement commission. He states that he is the same person who submitted the report before the settlement commission under rule 9 on 9/12/2020 and therefore it cannot be said that the approving authority was not at all aware about all the issues involved in the assessment proceedings. Therefore, when the approving authority is fully aware about all the issues and none of the issues on merits is challenged by the assessee, it cannot be said that the approval granted by the approving authority was without application of mind. He submits that the learned authorized representative has failed to show that where non application of mind by the approving authority is.

016. He relied upon the office manual, procedure contained therein and also CBDT instruction number 286/161/2006 – 07 dated 22/12/2006 and submitted various paragraphs showing that there is no scope for nonapplication of mind to be alleged by the assessee. He stated that assessment in such case is passed with proper appreciation of facts by all the authorities, continuous discussion of all the issues between the assessing authority and approving authority, therefore the approval cannot be said to be passed or given without any application of mind.
017. In Rejoinder , The learned authorized representative submitted that that the rule 9 report submitted by the additional CIT before income

tax settlement Commission was different person and not the same additional CIT who granted the approval. Therefore, the argument that the approving authority was aware about all the issues which were before the settlement commission is devoid of merit. He submits that the challenges to the application of mind by the approving authority of the assessment order and not to the officer who submitted report under rule 9 before the settlement commission. He submits that rule 9 report was sent by Mr. Ashwin Sopra. whereas the approval is granted by Mr. R Senthil Kumar.

018. He otherwise submitted that assuming while denying that assessment procedure is carried out properly, The process of approval is altogether different from the assessment order. Here the issue is approval of order under section 153D of the act. He submits that all errors are pointed out in assessment order which are not looked into by the additional Commissioner of income tax at the time of approval of the order therefore assessee challenges that the approval is granted without application of mind.
019. He submits that application of mind cannot be presumed but it has to be demonstrated. If such demonstration is missing but non-application of mind is evident by the various errors shown here in. He submits that the approval has been made a mere formality by the approving authority and assessing authority.
020. He further submitted that there may be innumerable instructions issued by the Central Board Of Direct Taxes or any other regulatory authority over the assessing authority and approving authority. It is not a matter of question by anybody including this assessee but assessee questions that such instructions are followed or not.

Assessee submits that those instructions are not at all followed by the approving authority and therefore assessee challenges that such approval granted is invalid. He submits that it is nobody's case that if instruction followed by the approving authority and assessing authorities the assessment order can at all be challenged as invalid. However, the situation in these cases is completely reverse.

021. He further stated that none of the errors pointed out by the assessee are rebutted by the learned departmental representative and therefore these errors in the approval, or in the assessment remain completely uncontroverted. Therefore, the Learned DR accepts these errors also. Hence now it is undisputed that these errors do exist in the assessment order which has been approved by the approving authority. Therefore, erroneous order approved by the approving authority clearly shows non application of mind.
022. He submits that there is no answer from the side of the revenue that how the draft orders can contains the date of approval, and number of approval letter. He submits that in the draft assessment order the learned assessing officer mentions when the final order is approved stating the date and the letter number. This fact has neither been controverted by the learned departmental representative nor the assessing officer at any of the stage. This is the clinching evidence which clearly shows that approval of the assessment order is merely mockery of the procedure and instructions of CBDT as before sending draft assessment order and relevant search material, the learned assessing officer has recorded by which date the draft assessment order would be approved and by which communication. This clearly shows that the approving authority has merely signed

the approval letter. There is no answer or explanation from the other side.

023. He categorically stated that how an approval can be granted in case of an assessee who is not at all in existence. In this case such approval is granted by the approving authority. The companies which are not in existence, which are not even formed, where assessments are passed and such assessment orders are approved by the approving authority, this if does not demonstrate the extreme standard of non-application of mind then what it can be.
024. He also stated that in many cases the approval is granted on the draft assessment order but the assessment order itself are not passed. Then what for the approval is obtained on the draft assessment order. There is no answer from the departmental representative.
025. We have carefully considered the rival contentions and perused the orders of the lower authorities. Before the learned CIT – A, assessee challenged that there is no valid approval granted by the approving authority of all these assessment orders. The learned CIT – A held as under:-

“5.2 the facts recorded in the assessment order and the submission made by the appellant has been considered.

The appellant has challenged the assessment order under section 153D read with section 144 of the act is bad in law. The appellant submitted that as per the provisions of section 153D, an assessment order is to be passed under section 153A (1) (b) or under section 153B (1) (b) after taking prior approval of joint Commissioner of income tax. In the



present case, such approval was obtained from the additional Commissioner of income tax and not the joint Commissioner of income tax. Further, the approval of assessment order was granted by the additional CIT mechanically without application of mind. The appellant has relied upon the decision of our grab bench of ITAT in case of Rajesh Ladhani V DCIT in ITA numbers 107 to 109/Agra/2019 dated 6/11/2019 and the judgment of Mumbai ITAT in case of Smt. Sreelekha Damani V Ducat 173 TTJ 332.

5.2.1 the facts of the case are that the AO obtained approval of the additional Commissioner of income tax of draft assessment order under section 153A read with section 144 of the act. The approval was granted under section 153D of the act wide letter number Addl. CIT-CR-6/Approval U/s 153D/2020 – 21/36 dated 26/2/2021 a question has been raised by the appellant that the additional CIT is not a competent authority to grant approval under section 153D of the act. In answer to this question lies in provisions of section 2(28C) of the IT act provides that the “joint Commissioner “means a person appointed to be joint Commissioner of income tax or any additional Commissioner of income tax under subsection (1) of section 117 of the IT act. The definition of the joint Commissioner is inclusive definition and it includes additional Commissioner. This inclusive definition of the joint Commissioner has been approved in number of judicial pronouncements.

The honourable High Court of Allahabad in case of Vikram Singh V Cit (2019) 111 taxmann.com 119 (All) is held that the joint Commissioner includes an additional Commissioner as well.

The relevant Para of the judgment are reproduced as under:

—

“ 14. The only contention raised by the learned counsel for the appellant-assessee is that the notice was not issued with the prior sanction of the Joint Commissioner, but sanction was accorded by the Additional Commissioner and, therefore, notice under Section 148 of the Act issued by the A.O. was without jurisdiction.

15. Section 2 of the Act is Definitions Section. Clause (28C) of Section 2 of the Act defines the word "Joint Commissioner" and explains it means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-section (1) of Section 117.

16. Thus, the Joint Commissioner includes an Additional Commissioner as well. The issue is otherwise covered by the judgments of various High Courts, which are as follow:—

.	Dharam Pal Singh Rao v. ITO [2004] 271 ITR 223 (All);
I.	Arun Kumar Maheshwari v. ITO [2006] 285 ITR 179 (All); and
II.	Smt. Maya Rastogi v. CIT [2010] 8 taxmann.com 253/[2011] 196 Taxman 283/331 ITR 116 (All.)

17. In view of the aforesaid discussions, we find no merit in this appeal and other connected appeals which are, thus, dismissed.”

An SLP filed by the assessee against the judgment of the honourable allowable High Court has been dismissed by the honourable Supreme Court, which is reported in *Vikram Singh V CIT (2019)* and 111 taxmann.com 120 (SC)

Further clause 9 of manual of office procedure, volume II (technical) February 2003 issue by the directorate of income tax on behalf of central board of direct taxes, Department of revenue, government of India reads as under: –

“9. Approval for assessment: in assessment order under chapterXIV B can be passed only with the previous approval of the range JCIT/additional CIT (for the period from 30/6/1995 to 31 December 1996 the approving authority was the CIT).”

Thus, the additional CIT is a competent authority to grant the approval under section 153D of the act of the draft assessment order under section 153C of the act.

5.2.2 the appellant has also submitted that the replies of the appellant were submitted to the AO on 11/2/2021 and 25/2/2021 and the approval under section 153D was granted by the additional CIT on 26/2/2021. Therefore, the additional CIT has given the approval mechanically without applying his mind. The appellant has relied upon the decision in case of *Rajesh Ladhani V DCIT (supra)* and *Smt. Sreelekha Damani V DCIT (supra)*. Ongoing through this decision it is seen that in case of *Rajesh Ladhani V DCIT (supra)* the proposal for approval was put up before the additional CIT on 27/3/2015 at 3.50 p.m. and at the same

time it was granted. In the case of Smt Sreelekha Damani V DCIT (supra), the proposal for approval was submitted only on 31/10/2010. Hence, there was not enough time left to analyze the issue of draft order on merit. Therefore, the order was approved as it was submitted.

Thus, the case laws relied upon by the appellant is of no help as in the case of the appellant, the additional CIT has approved the draft assessment order well before the due date. In view of the above discussion, the assessment order under section 153A read with section 144 of the act has been passed by the AO by taking approval from authority competent to grant approval under section 153D of the act.”

026. From the above decision of the learned CIT – A, it is apparent that he has not decided whether approving authority has granted such approvals without application of mind or not. Before us the assessee has relied upon several judicial precedents supporting the case that the approval granted is mechanical and without application of mind, hence, assessment orders deserve to be quashed.
027. We first refer to the provisions of section 153D of the act introduced by The Finance Act, 2007 with effect from 1/6/2007, which provides that the prior approval is necessary for assessment in case of search or requisition. This section provides that:-

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

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the

rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of ⁴⁷[sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:]

⁴⁸[**Provided** that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the ⁴⁹[Principal Commissioner or] Commissioner under sub-section (12) of section 144BA.]

[extracted from taxmann.com]

028. The above provisions came to be examined by the honourable Orissa High Court in ACIT V Serajuddin & Co.[2023] 150 taxmann.com 146 (Orissa) where the question of law for consideration was:-

“Whether on the facts and circumstances of the case, the ITAT was correct in holding that the approving authority has not applied his mind for giving approval under section 153D?”

029. The honourable High Court in paragraph number 11 has analyzed the provisions of section 153D of the act inserted by the finance act 2007 and also the CBDT circular dated 12 March 2008 thereon as under:-

“**11.** Among the changes brought about by the Finance Act 2007 was the insertion of Section 153D of the Act.



The CBDT circular dated 12th March 2008 refers to the various changes and inter alia also to the change brought about by the insertion of a new section 153D of the Act. Paragraph 50 of the said circular is relevant and reads as under:

"50. Assessment of search cases—Orders of assessment and reassessment to be approved by the Joint Commissioner.

50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment.

50.2 A new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B

in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

50.3 Applicability—These amendments will take effect from the 1st day of June, 2007."

030. Honourable High Court drew an analogy that the requirement of approval was also under section 158BG of the act which was there even prior to introduction of section 153D of the act which provided for obtaining the previous approval by submitting a draft assessment order following a search and seizure operations. These provisions were similar to the requirement under section 158BG of the act and the only difference being that section 158BG occurs in chapter XIV B relating to “ Special procedure for assessment of search cases” and section 153D is part of chapter XIV. The honourable High Court in paragraph number 13 also looked at Manual of office procedure (February 2003) in exercise of powers under section 119 of the act wherein in paragraph number 9 of chapter 3 of volume II (Technical) of the manual was stated to be as under:-

"9. *Approval for assessment*—An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be

docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself."

031. Thereafter in paragraph number 16 it has been held that such an approval of the superior officer cannot be a mechanical exercise as plain reading of section 153D makes it abundantly clear that the legislative intent was to be obtaining of "prior approval" by the AO when he is below the rank of a joint Commissioner, before he passes an assessment order or reassessment order under section 153A (1) (b) or 153B (2) (b) of the act. After considering the decision of the honourable Supreme Court in case of Rajesh Kumar versus DCIT (2007) 2 SCC 181 the honourable High Court held that it is not correct on the part of the revenue to contend that the approval itself is not justiciable. The Honourable High Court further held that where the approval is granted mechanically, it would vitiate the assessment order itself.



032. Thereafter in paragraph number 21 the honourable High Court looked at the approval granted in that case and held that there is not even a token mention of the draft orders having been perused by the Additional Commissioner Of Income Tax. The letter simply grants approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was missing in the aforementioned approval order. Though elaborate reasons need not be given, there has to be some indication that the approving authority examined the draft order and finds that it meets the requirement of the law. After that in Para number 22 – 25 honourable High Court held as under:-

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.

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 taxmann.com 1061 (SC)/2004 (165) E.L.T. 257 (SC) 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."

033. Thus, it is apparent that approval under section 153D should be granted by the authority after showing the thought process involved in such approval. Though it is not required that elaborate reasons are to be given but there has to be some indication that the approving

authority has examined the draft order and finds that it meets the requirement of the law. It is based on a manual of office procedure which is as good as instruction under section 119 of the act and therefore is binding. It cannot be merely a mechanical exercise. In the appeal before the honourable High Court there was no mention that draft orders are perused and then approved. Thus, there has to be some indication from the approval that approving authority has applied his mind to the order. Even if that is missing, the approval cannot be said to be with application of mind.

034. Honourable Allahabad High Court in case of Principal Commissioner of Income-tax V Subodh Agarwal[2023] 149 taxmann.com 373 (Allahabad)it has held that:-

“18. 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)."

035. Further in case of PCIT versus Sidharth Gupta 350 ITR 534 honourable Allahabad High Court has held that :-

"12. 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 omission 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.

“16. 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.”

036. Thus, from the above guiding principles available pronounced by the honourable High Courts, it is clear that the approval has to be after perusal of the relevant material, based on which the assessment orders have been framed and on due application of mind of the approving authority. It is not merely a formality, but the approving authority must ensure the safeguarding of the interest of revenue against any leakage of revenue as well as supervise the assessment proceedings so that a protection is available to the taxpayer of fair play and justice.
037. Therefore, request for approval and approval are required to be tested in all these cases on the above stated principle. If it satisfies the above principles, then approval is validly granted and does not hamper the validity of Assessment order.
038. The request for approval was sent by the learned assessing officer to the learned Additional Commissioner Of Income Tax, Central range – 6, Mumbai on 26/2/2021 is as under:-

No. DCIT-Central Circle-6(1)/Platinum Textiles Ltd./u/s 153D

Dated 26.02.2021.

To
The Addl. Commissioner of Income Tax
Central Range-6
Mumbai

Sir,



Sub: Request for approval u/s.153D in the case of Platinum Textiles Ltd.
PAN: AABCN1537H- Shri Vallabh Pittie Group Search case –Reg.

Kindly refer to the above.

Kindly find enclosed draft assessment orders in the above mentioned case for the following Assessment Years.

Sr. No.	A.Y.	Order u/s
1.	2012-13	144 r.w.s. 153A
2.	2013-14	144 r.w.s.153A
3.	2014-15	144 r.w.s.153A
4.	2015-16	144 r.w.s.153A
5.	2016-17	144 r.w.s.153A
6.	2017-18	144 r.w.s.153A
7.	2018-19	143(3)

Approval u/s 153D may kindly be given.

Thanking you.

Yours faithfully,

Sd/-

(PRIYANKA THOMAS)

Dy. Commissioner of Income Tax,
Central Circle-6(1), Mumbai

Encl: Draft Assessment Order

On the basis of above request, the learned Additional Commissioner Of Income Tax granted approval as under:-

No. Addl.CIT-CR-6/Approval U/s 153D/2020-21

Date 26.02.2021

To
The DCIT-Central Circle-6(1)
Mumbai

Sub:	Approval of draft assessment orders u/s 153D of the I.T. Act, 1961 in the case of M/s Platinum Textiles Ltd. (PAN: AABCN1537H)-reg.
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Ref:	No. DCIT-Central Circle-6(1)/Platinum Textiles Ltd./ 153D/2020-21 Dated 26.02.2021
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Please refer to the above.

2. The draft assessment order, submitted by you in the following case of M/s Platinum Textiles Ltd. for Assessment Year as mentioned below, is approved u/s 153D of the Income Tax Act, 1961 based on the perusal of records submitted along with the submissions of the assessee.

Sr.	Name of the Assessee	A.Y.	Order	Approval given vide Sr. No.
1.	Platinum Textiles Ltd.	2016-17	144	40

3. You are advised to ensure the following:

(a) To place on record, a suitable office note elaborating that the directions contained in the Appraisal Report have been carried out, and that the seized material has duly been examined and its implications duly considered for assessment in relevant hands in relevant assessment years. Among other things, the office note should give your findings on the important documents, assets found/ seized; bank accounts demat accounts etc. and the implications thereof having been considered in the assessment.

(b) The office note should also elaborate that the earlier assessed income and audit objection if any relating to regular assessments has duly been linked up and considered in these assessments and the deductions/ claims made by the assessee examined.

(c) To ensure that each folder contains proof of timely service of all notices and order.

(d) Penalty proceedings should be properly initiated under Section 271AAA, 271 (1)(c) and 271 AAB (1A) of the I.T. Act as applicable, computation of income should be rechecked before passing the orders and correct rate of tax to be applied on the disallowance made under Section 68, 69 of the Act.

(e) Remedial/ consequential action in the form of passing on the relevant information to other Assessing Officer/ agencies (if any) is taken expeditiously in each case.

Sd/-



(S. Senthil Kumaran)
Addl. Commissioner of Income Tax,
Central Range-6, Mumbai

039. Thus, the approval granted by the learned additional Commissioner of income tax is identically worded as approval considered by the honourable Orissa High Court in case of Seerajuddin & co (Supra) as per paragraph number 22 of that decision, where there was not even a token mention of the draft orders having been pursued by the Additional Commissioner Of Income Tax. The letter simply grants approval. The bare minimum requirement of the approving authority having to indicate what thought process involved is also missing in the aforementioned approval order.
040. All such approvals in case of all the assesseees involved in this appeal are placed at serial number 39 of paper book number 3 at page number 225 – 261, the request for approval by the AO and approval of the approving authority are also similar.
041. Further glaring example of Non application of mind is that in case of Platinum textiles limited for assessment year 2016 – 17 to assessment year 2018 – 19 and in case of Helios mercantile Limited for assessment year 2017 – 18 and assessment year 2018 – 19 some information is received from The Deputy Director Of Income Tax (investigation) regarding transaction with ‘one-word group’ through email on 26/2/2021 at 5.02 PM, the email is also referred to in the assessment order which was passed on 26/2/2021. Thus, natural corollary is that such assessment order is passed after 5.0 2 PM on 26/2/2021 and approval is also granted on 26/2/2021 in that case. This itself shows that approval so granted is without application of mind.



042. In most of the cases for assessment year 2012 – 13 provisions of section 115BBE was invoked whereas such section was inserted by The Finance Act 2012 with effect from 1/4/2013. Further for assessment year 2013 – 14 to assessment year 2016 – 17 the normal tax rate would have been charged for this assessment year but the learned assessing officer in the draft assessment order applied tax rate at the rate of 60%. Therefore, for assessment year 2012 – 13 such provisions could not have been invoked and it takes rate at the rate of 60% could not have been levied for assessment year 2013 – 14 to assessment year 2016 – 17 under that section. The draft assessment order invoked such provision to which approval has been granted. Thus, the provisions which are not applicable for respective assessment year and the learned assessing officer mention such provisions of law in the assessment order and if same is approved by the approving authority, there cannot be more glaring example of non application of mind by the approving authority.
043. It is more glaring that in some of the draft assessment orders, the approval number, and the date on which the approval was granted by the Additional CIT is also mentioned. The assessee has produced a list of such draft assessment order and for number of assessment years in case of different companies it is mentioned. We failed to understand how in draft assessment orders, details of approval number and date on which the draft assessment order is approved can be mentioned. We failed to visualize any such situation to justify it.
044. In case of where assessee was not at all in existence, return was also not filed, the assessment proceedings were carried out, the learned



assessing officer treated the return filed by the assessee as 'non est' and even then, the approvals were granted by the additional CIT.

045. The more glaring example is that the draft assessment order is presented for approval before the additional CIT in case where Helios exports Ltd for assessment year 2012 – 13 and assessment year 2013 – 14 and in case of Shreevallabh Pittie industries Ltd in assessment year 2014 – 15 when such companies were not at all incorporated. Approvals were granted.
046. The learned authorized representative has given us a chart for each of the above situations mentioned; none of the charts were controverted by learned departmental representative.
047. We are not on the issue that how the learned approving authority would approve all such orders on one day on 26/2/2021 because it may be possible for a person to approve all such orders if he is in know of things since the stage of commencement of the assessment proceedings. However, we are unable to understand and appreciate the situation where the glaring mistakes in the assessment order as stated above and also fact of approval with approval number and date of approval is mentioned in the draft assessment order itself which is sent for approval of the approving authority. This itself forces us to state that all such approval granted under section 153D of the act by the approving authority in all these appeals are without application of mind. Neither the interest of revenue, nor the principle of fair play and natural justice were taken care of while approving draft orders of the assessing officer.
048. In view of above cumulative facts and respectfully following the decision of the honourable Orissa and Allahabad High Court as well



as the decision of the coordinate benches placed in paper book number 4, we hold that the approval granted under section 153D of the act in assessment orders in all such appeals are without application of mind and therefore the assessment made by the learned assessing officer are quashed.

049. Thus, ground number 1 in appeal of the assessee is allowed in all these 34 appeals filed by the assessee holding that approval granted under section 153D of the act is without application of mind and hence the assessment orders are annulled.
050. Thus, all other grounds of appeal in appeal of the assessee, additional grounds raised by assessee in all these 34 appeals are not required to be adjudicated, hence dismissed.
051. As 31 appeals filed by the learned assessing officer are also dismissed in view of our decision in ground number 1 in case of 34 appeals filed by the assessee wherein we have quashed the assessment order itself.
052. Accordingly, all these 65 appeals are disposed of by this common order allowing 34 appeals of the assessee and dismissing 31 appeals of the learned AO.

Order pronounced in the open court on 30.04. 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.04. 2024
Sudip Sarkar, Sr.PS/ Dragon



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai