

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI  
BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2908/Del/2018  
(ASSESSMENT YEAR 2012-13)**

**ITA No.2909/Del/2018  
(ASSESSMENT YEAR 2013-14)**

**ITA No.2910/Del/2018  
(ASSESSMENT YEAR 2014-15)**

**ITA No.2911/Del/2018  
(ASSESSMENT YEAR 2015-16)**

Yogender Kumar Garg 9-A & 10-A, New Mandi Muzaffar Nagar Uttar Pradesh-251001 PAN-ABIPG 9791P	Vs.	DCIT Central Circle Noida
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Amit Goel, CA & Shri Pranav Yadav, Adv.
Department by	Ms. Nimisha Singh, CIT-DR

Date of Hearing	22/05/2024
Date of Pronouncement	26/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN,AM:**

1. These four appeals have been filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)-IV,

Kanpur [“Ld. CIT(A)”, for short], dated 28/03/2018 for Assessment Years 2012-13 to 2015-16 respectively.

**2.** All these appeals are interconnected having common issues. All these appeals are heard together and disposed off by this common order. We are taking ITA No.2908/Del/2018 as a lead case.

**3.** In all the above appeals, the assessee has raised similar grounds of appeal in all the Assessment Years under consideration. The relevant grounds raised by the assessee in Assessment Year 2012-13 are as under:-

*“1. On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue/ services of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed and the CIT(A) erred in not holding so.*

*2 On the facts and circumstances of the case and in law, the addition of Rs 12,35,18,351/- made by the assessing officer on account of alleged unexplained cash credit u/s. 68 of the Income Tax Act 1901 beyond the scope/jurisdiction of provisions of section 153A of the Income Tax Act, 1961 and CIT(A) erred in not holding so.*

*3. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition Rs.12,35,18,554/- made by the assessing officer on account of alleged unexplained cash credit u/s 68 of the Income Tax Act, 1961.*

*4. On the facts and circumstances of the case and in law, the various alleged adverse inference drawn/reasons given by the assessing officer /*

*CIT(A) for making/ confirming addition are erroneous and not sustainable in law.*

*5. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of Income Tax Act, 1961 and CIT(A) erred in not holding so. The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.*

*The aforesaid grounds of appeal are without prejudice of each other.”*

**4.** At the time of hearing, even the assessee has raised other grounds of appeal on merit, however, the Ld. AR submitted his arguments relating to ground No.5 raising the issue of 153D approval process not followed by the Assessing Officer.

**5.** In this regard, he submitted that date of search was on 11/11/2014 and, with regard to approval process, he submitted as under:-

*"I. The assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Act. The provisions of section 153D are as under:-*

*"no order of assessment or reassessment shall be passed by the assessing officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of Section 153A or assessment year referred to in clause (b) of sub section (1) of Section 153B except with the prior approval of Joint Commissioner.”*

1.1. *Whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. The approval has to be statutory nature after due application of mind, it should be neither technical nor proforma approval.*

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

*F. No. DCIT/cc/Noida/S&S/153D/2016-17/2623 Dated: 30/12/2016*

To,

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

Sir,

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

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

SI. No.	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg,	AEKPG6296A	2009-10 to 2015-16
2	Smt. Shaloo Narender Kumar Garg,	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg,	ABIPG9791P	2009-10 to 2015-16
4	Smt. Madhu Garg,	AB1PG9792Q	2009-10 to 2015-16
5	Sh. Pulkit Garg,	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg	AA1PG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garg,	AAHPG8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd.,	AAGCA9960N	2009-10 to 2015-16
9	M/s Nirman Stelco Pvt. Ltd.,	AACCN4842Q	2009-10 to 2015-16
10	M/s M.G. Metallloy Pvt. Ltd.,	AAGCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.	AAFCP8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power. Limit.	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.,	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd.,	AAFCA8106K	2009-10 to 2015-16
15	M/s Apple Insurance Brokers Pvt. Ltd.,	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd.,	AAACZ5235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd.,	AAHCA8642G	2010-11 to 2013-14
18	M/S Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

Draft assessment order received Late i.e. on 31/12/2016

Yours sincerely

Beyond the time as per internal Action Plan.

And thus having a very little time/ almost no time for proper —sd .....

Examination of facts of the case/ further enquiries etc.

Deputy Commissioner

of Income Tax

Central Circle Noida

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

1.3. The letter addressed by the JCIT to CIT granting his approval is reproduced as  
under:-F. No. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477  
2016

Dated: 31-12-

To,

The Dy. Commissioner of Income Tax.

Central Circle, Noida.

Subject: Prior approval u/s 1531) in the cases of Apple Group cases-regarding.

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

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

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

3. A technical approval is accorded to pass assessment orders in the above cases on the basis of the drafts assessment orders submitted for the assessment years in reference years You are directed to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to AYs. The fact of initiation of penalty proceedings, wherever applicable, must also be incorporated in the last para of the order. The initiation of correct penalty provisions of I.T. Act u/s271 (I)(c)/271AAB per facts of the case must be ensured

4. This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should should sent to this office for record immediately on passing the assessment orders.

5. It must also be ensured that if any document in this case, pertains to any third party assessed with a different AO, the necessary information for taking necessary action must be sent to concerned AO immediately.

Encl.: As above sd

Joint Commissioner of Income Tax

Central Range, Meerut

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

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

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

2. It may also be submitted that in the appeals of following group assessee involving the same approval u/s 153D has been considered and allowed in favour of the assessee by Hon'ble ITAT:-

- DCIT v. MG Metalloy Pvt. Ltd. (in the matter Apple Buildtech Pvt. Ltd.) ITA No. 4461-4464/DEL/2019
- Ruchi Garg ITAT No. ITA Nos. 1436 to 1438 & 1440/Del/2022
- DCIT, Central Circle -II Versus Zync Global Pvt. Ltd., Noida 2024 (21 TMI 690 - ITAT DELHI
- DCIT, Central Circle II, vs. M.G. Metalloy Pvt. Ltd. Formerly Apple Iron Enterprises Pvt. Ltd.), ITA No. 3632/Del/2019
- M.G. Metalloy Private Limited Versus DCIT Central Circle, Noida 2023 (10) TMI 686 - ITAT Delhi (A.Y. 2014-15)
- MG Metalloy Pvt. Ltd. Versus DCIT, Central Circle, Noida 2021 (8) TMI 998 - ITAT Delhi (A.Y. 2015-16)

Therefore, the issue involved in the present appeal stands covered in favour of the assessee.

Reliance is also placed on the following decisions of Hon'ble

Jurisdictional Allahabad High Court:-

PCIT v Sapana Gupta - 2022 (12) TMI 887 - Allahabad High Court PCIT v Siddharth Gupta - 2022 (12) TMI 1021 - Allahabad High Court PCIT v Subhodh Agarwal - 2023 (2) TMI 1072 - Allahabad High Court

In view of the above, it is prayed to your honour to allow the appeal.

6. On the other hand, the Ld. DR objected to the above submissions and submitted that the approval was granted by following proper approval process and he stressed that the approval is only an internal arrangement and submitted that the approval granted by JCIT is proper.

7. Considered the rival submissions and material placed on record, we observed that the approval granted by DCIT, Central Circle, Noida dated 30/12/2016 in which the approval granted u/s 153 of the Income Tax Act ('the Act' for short) were granted to the eighteen assessees including the case of the assessee. Letter granting of such approval is placed on record at page-2 of the Paper Book. In the case of M.G. Metalloy Pvt. Ltd vs. DCIT, Central Circle- Noida, 2023 (10) TMI 686 (ITAT, Delhi), is one of the assessee, who was also granted approval by the same letter dated 30/12/2016. In the case of M.G. Metalloy Pvt. Ltd. (supra), the Co-ordinate Bench in ITA No.3693/Del/2018 dated 08/05/2023 held as under:-

*“9.5 In the instant case, it is a matter of record by the own admission of JCIT that the approval granted is merely technical and without appraisal of evidences or enquiries. Thus fact thus need not be traversed any further. In the backdrop of the unequivocal observations made by the JCIT,*

*approval granted under Section 1530 apparently does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment order thus passed is vitiated in law which illegality cannot be cured.*

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

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

*(ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 5 assessment years admittedly a symbolic exercise to meet the requirement of law. The JCIT himself has made such fact abundantly clear without any demur.*

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

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

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

*11. It may be pertinent to observe, Section 153D bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated*

superior authority is thus expected to confirm to the statutory requirements in letter and spirit. As noted in the preceding paragraphs, it is a classic case of collective abdication of statutory responsibility assigned under Act and yet putting civil consequences of onerous nature on a tax payer. It is axiomatic from the plain reading of approval memo that the JCIT is in complete dark on facts while being called upon to grant his clearance to the draft assessment orders. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. The solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional/ Joint CIT concerned, with his experience and maturity of understanding, should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act enjoins due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. At the cost of repetition, it may be reiterated that in the instant case, the approving authority has granted a mere 'technical approval' by his own express admission in departure to a substantive approval expected in law. The JCIT rather himself fairly recorded his objections to the fag end supply of draft assessment orders by the AO in bulk for several assesseees involving multiple assessment years and effectively claimed that he had no opportunity to peruse the relevant underlying material for effective discharge of duty of supervisory nature owing to last minute supply of draft assessment orders. As discernible from the conjoint approval memo, the sanctioning authority (JCIT) has, in fact, under the force of circumstances, relegated his statutory duty to the subordinate AO, whose action the JCIT, was supposed to supervise as per the scheme of the Act. Manifestly, the JCIT, without any consideration of factual and legal position in proposed additions/disallowances and without contents of appraisal report before him or incriminating material collected in search etc. has buckled under statutory compulsion and proceeded to grant a simplicitor approval with caveats and disclaimers.

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

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

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

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

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

*16. In the result, the appeal of the Assessee is allowed.”*

**8.** Respectfully following the above decision, the facts in the present appeal is exactly similar to the above case, therefore, we do not see any reason to defer from the above conclusions reached by the Co-ordinate Bench. Accordingly, ground raised by the assessee in this regard is allowed. Since, we have decided ground

No.5 and with regard to other grounds of appeal are not adjudicated at this stage. Accordingly, appeal filed by the assessee is partly allowed.

**9.** In the result, the appeal filed by the assessee is allowed.

**10.** Since, the facts in other Assessment Years i.e., AYs 2013-14, 2014-15 and 2015-16 are exactly similar, the findings in Assessment Year 2012-13 are applicable *mutatis mutandis*. Accordingly, the appeals filed by the assessee are partly allowed.

**11.** In the result, all the four appeals filed by the assessee are partly allowed.

Order pronounced on 26<sup>th</sup> June, 2024.

Sd/-

**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 26/06/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI