

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.648/DEL/2022
(Assessment Year: 2011-12)**

**ITA No.649/DEL/2022
(Assessment Year: 2012-13)**

**ITA No.650/DEL/2022
(Assessment Year: 2013-14)**

M.G. Metalloy P. Ltd.,
b-16, Sector 2,
Noida – 201 301 (Uttar Pradesh).

vs.

DCIT, Central Circle,
Noida.

(PAN : AAGCM5789D)

**ITA No.1433/DEL/2022
(Assessment Year: 2011-12)**

**ITA No.1434/DEL/2022
(Assessment Year: 2012-13)**

**ITA No.1435/DEL/2022
(Assessment Year: 2013-14)**

DCIT, Central Circle,
Noida.

vs.

M.G. Metalloy P. Ltd.,
B-16, Sector 2,
Noida – 201 301 (Uttar Pradesh).

(PAN : AAGCM5789D)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Amit Goel, CA
Shri Pranav Yadav, Advocate
REVENUE BY : Shri Subhra Jyoti Chakraborty, CIT DR**

Date of Hearing : 06.06.2024
Date of Order : 02.09.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. These six cross appeals have been filed by the Assessee and Revenue against the orders of Learned Commissioner of Income Tax (Appeals)-4, Kanpur [“Ld. CIT(A)”, for short], all dated 14.02.2022 for Assessment Years 2011-12 to 2013-14 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.650/Del/2022 as a lead case.
3. Brief facts of the case are, a search and seizure operation under section 132 of the Income-tax Act, 1961 (for short “the Act”) was conducted on 11.11.2014 on the premises of the assessee comprising Apple Group of cases. The Group popularly known as Apple Group of Companies (AGC) is a diversified Group with multiple business interests and it was established in 2000. The Group is presently engaged in various businesses and deals in various different fields like metal, coal, construction, commodity, trading etc. at Noida, Bellary (Karnataka), Anantpur (Andhra Pradesh), Hyderabad, Mumbai etc.

4. In order to assess the income of the assessee consequent to search, a notice under section 153A of the Act was issued and served on the assessee. In response, assessee has e-filed the return of income on 30.03.2013 declaring total income of Rs.1,23,650/-. Subsequently, notices under section 143 (2) & 142 (1) were issued and served on the assessee along with questionnaire. In response, Id. AR of the assessee attended and submitted the relevant information as called for.

5. The assessment under section 153A of the Act was completed by making addition under section 68 of the Act.

6. Aggrieved with the above order, assessee preferred appeal before the Id. CIT (A) and before Id. CIT (A), assessee has raised several jurisdictional issues on the issue of scope of jurisdiction of section 153A and also raised the issue of provisions of section 153D of the Act. After considering the submissions of the assessee, Id. CIT (A) dismissed the jurisdictional issue and partly allowed the appeal for statistical purposes.

7. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1. On the facts and circumstances of the case and in law, the addition of loans of Rs.14,63,05,000/- made by the assessing officer u/s 68 of the Income Tax Act, 1961 (the Act) is beyond the scope of provisions of section 153A of the Act and the CIT(A) erred in holding so.

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

8. At the time of hearing, Id. AR for the assessee submitted as under :-

“1. 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 i53A or assessment year referred to in clause (b) of sub-section (1) of Section i53B 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/1530/20 16-17/2623 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 11111/2014)- Approval u/s 153D of the I.T. Act, 1961- regarding.

Please find herewith revised list of cases for your kind approval u/s 1530 of the IT Act.

Sl.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	ABIPG9791 P	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. Metallloy Pvt. Ltd.	AAGCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.	AAFCA8743B	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
 Beyond the time as per internal Action Plan.

Yours sincerely
 --sd--

And thus having a very little time/ almost no time for proper
 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/20 16-1711477 Dated : 31.12. 2016

To,
 The Dy. Commissioner of Income Tax.
 Central Circle, Noida.

Subject: Prior approval u/s 153D in the cases of Apple Group cases-regarding.

Please refer to your office letter F. No. DCITICC/Noidals&SII53D120 16-17/2623 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:

SL. 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	AADPGI563F	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	AAIPGI671M	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.	AAFCA8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit.	AAFCAI965L	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 A Yd. 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 LT. Act u/s27 I (1)(c)/271 AAB per facts of the case must be ensured.

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

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

Encl. : As above

-----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 31112/2016 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 appeal of the company involving the same approval u/s 153D has been considered and allowed in favour of the assessee by Hon'ble ITAT in ITA. No. 3693IDel/2018 vide order dated 08/05/2023. Therefore, the issue involved in the present appeal stands covered in favour of the assessee company by IT AT decision in assessee company's own case. Similar decisions have been given in following group cases: -

- DCIT v. MG Metalloy Pvt. Ltd. (in the matter Apple Buildtech Pvt. Ltd.) ITA No. 4461-4464IDEL/2019
- Ruchi Garg ITAT No. ITA Nos. 1436 to 1438 & 1440IDel/2022

3. 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

4. Reliance is also placed on the following case laws wherein, on similar facts as in the case of the assessee, the approval under section 153D was held to be invalid and consequently the assessment order was held to be null and void:-

The Pr. Commissioner of Income Tax Versus Smt. Shreelekha Damani 2018 (11) TMI 1563 - BOMBAY HIGH COURT

M/S Inder International Versus the A.C.I.T., Central Circle-II 2021 (6) TMI 416 - ITAT CHANDIGARH

Sh. Inder Pal Singh Arora, Sh Sunrinder Pal Singh Kohli v. Dy. CIT, Central Circle, Dehradun - 2021 (6) TMI 933 - ITAT Dehradun

Rajesh Ladhani v. Dy. CIT - Central Circle, Agra - 2019 (11) TMI 920 - ITAT Agra

Uttarakhand Uthan Samiti v. ITa, Ward -45(5), New Delhi 2020 (4) TMI878 - ITAT Delhi

Rishabh Buildwell P. Ltd., R.G.V. Fininvest P. Ltd., Shristhi Computers P. Ltd. And Aggarwal Capfin Financial Services Pvt. Ltd. Versus Dcit, Central Circle, Ghaziabad 2019 (7) TMI 365 - ITA T Delhi

Dilip Constructions Pvt Ltd. Versus Acit, Circle-1 , Bhubaneswar. And (Vice-Versa) And Shilpa Seema Constructions Pvt Ltd. Versus Acit, Circle-I, Bhubaneswar. And (Vice-Versa) 2019 (12) TMI 311 - IT AT Cuttack

Shri Tarachand Khatri, Ramnath Building, Opp. Bhawartal, Jabalpur. Versus The Acit, Central Circle, Jabalpur. 2020 (1) TMI 1027 - IT A T Jabalpur

Arch Pharmalabs Ltd. Versus ACIT Cc-32, Mumbai And (Vice-Versa) And M/S Arch Impex P. Ltd. Versus ACIT CC- 32, Mumbai 2021 (4) TMI533 -ITAT Mumbai

Sanjay Duggal, Kritika Talwar, Arun Duggal, Ratna Talwar, CA Kapil Goel, Adv, Neha Duggal, Nany Duggal, Poonam Duggal, Neeru Duggal, Rajnish Talwar, Ratnashri Buildtech Pvt. Ltd, Duggal Estate Pvt. Ltd, Duggal & Sons Buildwell P. Ltd., Versus ACIT, Central Circle-4, New Delhi 2021 (1) TMI 909 - IT A T Delhi

MG Metalloy Pvt Ltd v DCIT(Delhi ITAT)

In view of the above, it is submitted that the approval by JCIT under section 153D of the Act in this case is invalid and, accordingly, the assessment order passed by the AO is liable to be quashed. The issue involved in the ground of appeal is covered in favour of the assessee company by various decisions/ case laws of High court and tribunals.

In view of the above, it is prayed to your honour to allow the appeal in favour of the assessee.”

9. On the other hand, ld. DR for the Revenue 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.

10. Considered the rival submissions and material placed on record, we observed that the approval granted by JCIT, Central Circle, Noida dated 30.12.2016 in which the approval granted u/s 153D of the Act was 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. Metolloy Pvt. Ltd vs. DCIT, Central Circle- Noida, 2023 (10) TMI 686 (ITAT, Delhi), assessee's own case, which was also granted approval by the same letter dated 31/12/2016. In the above case, 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 153D apparently does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment order thus passed is vitiated in law which illegality cannot be cured.

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

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

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

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

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

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

11. It may be pertinent to observe, Section 153D bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirements in letter and spirit. As noted in the preceding paragraphs, it is a classic case of collective abdication of statutory responsibility assigned under Act and yet putting civil consequences of onerous nature on a tax payer. It is axiomatic from the plain reading of approval memo that the JCIT is in complete dark on facts while being called upon to grant his clearance to the draft assessment orders. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. The solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional/ Joint CIT concerned, with his experience and maturity of understanding, should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act enjoins due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. At the cost of repetition, it may be reiterated that in the instant case, the approving authority has granted a mere 'technical approval' by his own express admission in departure to a substantive approval expected in law. The JCIT rather himself fairly recorded his objections to the fag end supply of draft assessment orders by the AO in bulk for

several assessees involving multiple assessment years and effectively claimed that he had no opportunity to peruse the relevant underlying material for effective discharge of duty of supervisory nature owing to last minute supply of draft assessment orders. As discernible from the conjoint approval memo, the sanctioning authority (JCIT) has, in fact, under the force of circumstances, relegated his statutory duty to the subordinate AO, whose action the JCIT, was supposed to supervise as per the scheme of the Act. Manifestly, the JCIT, without any consideration of factual and legal position in proposed additions/disallowances and without contents of appraisal report before him or incriminating material collected in search etc. has buckled under statutory compulsion and proceeded to grant a simplicitor approval with caveats and disclaimers. This approach of the JCIT has ipso facto rendered the impugned approval to be a mere ritual or an empty formality to meet the statutory requirement and 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.”

11. Respectfully following the above decision, the facts in the present appeal are exactly similar to the above facts, 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.2 in favour of the assessee on the legal issue, ground no.1 with regard to addition u/s 68 of the Act does not survive as the assessment itself is bad in law, hence set aside. Accordingly, appeal filed by the assessee is allowed and Revenue's appeal is dismissed.

12. Since, the facts in other Assessment Years i.e., AYs 2011-12 & 2012-13 are exactly similar, the findings in Assessment Year 2013-14 are applicable *mutatis mutandis*. Accordingly, the appeals filed by the assessee are allowed and Revenue are dismissed.

13. In the result, all the three appeals filed by the assessee are allowed and all the three appeals of the Revenue are dismissed.

Order pronounced in the open court on this 2nd day of September, 2024.

Sd/-

sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

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

Dated:02.09.2024
TS

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**