

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA Nos.372 to 374/Bang/2011
Assessment Years : 2006-07 to 2008-09

M/s. MSPL, No.117, Baddota Bhawan (Annex), Maharishi Karve Road, Churchgate, Mumbai – 400 020. PAN : AABCM 1040 N	Vs.	ACIT, Central Circle – 2(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. J. D. Mistri, Senior Counsel Sri Ketan Ved, CA
Revenue by	:	Shri. Kiran D, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	31.07.2024
Date of Pronouncement	:	14.08.2024

ORDER

Per Prakash Chand Yadav, Judicial Member :

Present appeals of assessee are arising from the order of CIT(A) dated 03.02.2011 and relates to Assessment Years 2006-07 to 2008-09. We are taking AY 2006-07 as lead year for deciding the legal issue raised by Ld Senior Counsel before the Bench. Before proceedings further it is worthy to note that the appeal was filed by assessee somewhere in 2011. However, the hearing could not take place for such a long period due to the fact that assessee has filed petition before the Hon'ble High Court and then revenue has filed SLP before the Hon'ble Supreme court vis-à-vis transfer of appeals from Bangalore to Bombay Bench of the ITAT. The outcome of SLP has arrived somewhere in February 2023.

2. Facts leading to the filing of present appeals are that assessee is a company carrying on activities in mining, gas unit and various windmills to generate power. For the impugned Assessment Years the dates of the filing of returns of income is as follows.

A.Y	Date of Filing of Original Return
2006-07	27.11.2006
2007-08	31.10.2007
2008-09	30.09.2008

3. A search action was conducted at the premises of assessee on 26.10.2007. Accordingly, notice under section 153A were issued for all the impugned years before us on 06.08.2008. Thereafter, the AO framed the assessments u/s 153A read with 143(3) of the Act. Therefore, one thing is clear that on the date of search only one year was not abated i.e. AY 2006-07 and rest two years were pending on the date of search as date of issuing notice u/s 143(2) has not been expired. Be that as it may be.

3. Aggrieved with the order of the AO, assessee filed appeal before the CIT(A) and contested the matter on merits for all three years. It is relevant to observe that no legal ground challenging the jurisdiction of the AO under section 153A was raised before CIT(A). The CIT(A) dismissed the appeal of the assessee as he could not find force in arguments vis-à-vis merits of the case.

4. Aggrieved with the order of CIT(A), assessee preferred appeal before the Tribunal. Thereafter, so many events such as transferring of appeals to Mumbai Bench had happened and finally the effective hearing commenced from Feb 2023. In the meanwhile, assessee has filed an application or admission of additional grounds of appeal vide application dated 19.01.2012 read with letter dated 30th January 2019.

5. Following additional grounds were raised by the assessee.

1. *The assessment order passed under section 153A is illegal and bad in law as it deals with disallowances, not based on any incriminating material found during the course of search.*
2. *The assessment order passed under section 153A is illegal and bad in law as it has been passed in breach of section 153D.*
3. *For the above and any other reasons which may be adduced at the time of hearing, it is prayed that the Order of the Assessing officer be directed to set aside.*
4. *The Appellant craves leave to add, to alter or amend all or any of the aforesaid grounds of appeal.*

6. Before us, this matter was heard on 23.07.2024 and 31.07.2024.

7. At the outset, learned Sr. Counsel has contended that Order of Assessment is void-ab-initio as the same was passed after obtaining a mechanical approval from the JCIT in terms of section 153D of the Act. Learned Counsel for the assessee has filed following written arguments before the Bench:

1. *The said legal issue has been raised as an additional ground of appeal for the first time before the Hon'ble Tribunal and reliance in this regard is placed on the decision of the Supreme Court in the case of **National Thermal Power Co. Ltd. v/s. CIT (1998) 229 ITR 383 (SC)**. The additional ground of appeal raises purely legal issue challenging the validity of the impugned Order(s) passed in pursuance thereof and it was only during the course of preparation for the appeal that the Appellant was advised to raise these additional grounds of appeal which goes to the root of the matter and hence the same ought to be admitted by the Hon'ble Bench.*
2. *The Appellant further submits that even in the case of **Smt. Shreelekha Damani v/s. DCIT (2015) 173 TTJ 332 (Mumbai)** upheld by the Bombay High Court vide Order dated 27 November 2018 (**ITA No. 668 of 2016**), the assessee had raised this very issue by way of an additional ground of appeal which was admitted by the Tribunal since they go to the root of the issue – refer para Nos. 3 and 4 of the said decision.*
3. *Attention in this regard is invited to the provisions of section 153D of the Act which reads as under:*

“.....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 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.....”

4. *It is submitted that the provisions of section 153D are a statutory safeguard provided against an unreasonable and arbitrary exercise of power by the Assessing Officer and hence these provisions ought to be followed mandatorily.*
5. *In the instant case, the impugned Order(s) for the Assessment Years 2006-07 and 2007-08 have been passed u/s. 153A of the Act pursuant to a search conducted on the Appellant on 26 October 2007. Thus, in terms of the provisions of section 153D, the approval of the Joint Commissioner of Income-tax ought to be obtained before passing the impugned Orders. Also, the impugned Order for the Assessment Year 2008-09 has been passed u/s. 143(3) of the Act which is the year in which the search has been conducted which is also covered in terms of clause (b) of sub-section (1) of section 153B of the Act thereby mandating the approval of the Joint Commissioner of Income-tax in terms of section 153D.*
6. *Vis-à-vis the said additional ground of appeal, the Appellant had filed an application on **20 December 2011** under ‘The Right to Information Act, 2005’ [“RTI Act”] [copy of the said application is annexed at **page Nos. 569 & 570 of paperbook Volume 3 dated 21 August 2012**]. In the said application the Appellant had requested for the following documents – specific reference may be made to **page No. 570 of the paperbook – relevant snapshot is given hereunder:***

In the matter of **M/s. MSPL Limited (PAN: AABCM1040N)** by its Chairman & Managing Director **Mr. Narendrakumar A. Baldota -(PAN: AABPB4464A)**

Particulars of the information required as mentioned in Sr. No. 3 of the application:

.List of all orders for which approvals given u/s. 153D on December 31 2009, mentioning date of receipt of draft order from the respective Assessing Officer, date of granting approval, remarks or changes, if any, suggested in said cases and date of making order by the Assessing Officer u/s. 153A.

7. *The Additional Commissioner of Income-tax, Central Range – 2, Bangalore [“Additional CIT”] [who was also the Central Public Information Officer] passed an Order dated 20 January 2012 u/s. 7(1) of the RTI Act wherein a part of the aforesaid details as requested for by the Appellant were furnished as an*

annexure to the said Order – refer **page Nos. 571 to 574 of paperbook Volume 3**].

8. As is evident therefrom, on the said date i.e. 31 December 2009, the Additional CIT had granted approval(s) u/s. 153D of the Act in the case of 26 assessees including in the case of the Appellant. For each of the cases, the Additional CIT seems to have granted a consolidated approval for Order(s) passed in the case of a particular assessee for various assessment year(s).
9. The consolidated approval granted in the case of the Appellant for 4 years [i.e. Assessment Year(s) 2005-2006 to 2008-2009] is listed at **Sr. No. 10 on page No. 573** of the paper book Volume 3, all bearing Reference No. **F. No.51(2)/Addl. CIT/CR-2/2009-10/20**. This is evident from the fact that the very same Reference No. has been mentioned by the Assessing Officer in the **last sentence of the impugned Order(s) passed for all the said three years**. First and the last page of the said Order(s) are attached herewith for ready reference – refer “**Appendix – B**” to this Note.
10. As evident from the aforesaid, in the instant case, the date of receipt of the draft Order from the Assessing Officer, the date of granting the approval by the Additional CIT and the date of passing the Order is the same i.e. 31 December 2009. Clearly it is not humanly possible to go through, scrutinise the materials relied on by the Assessing Officer, consider the issues arising and approve all the orders on one day.
11. While the Appellant in its application dated 20 December 2011 made under the RTI Act had requested to provide the **list of all orders for which approval u/s. 153D was given by the Additional CIT on 31 December 2009, however, in terms of the Annexure to the Order dated 20 January 2012, details have been provided only vis-à-vis the number of cases for which approvals were granted on 31 December 2009 and hence exact number of Assessment Order(s) approved may not be available, but presuming that the block assessment proceedings for each of the cases (other than the Appellant) involved 6 Assessment Year(s) total number of Order(s) approved by the Additional CIT works out to 154 [4 Order(s) in the case of the Appellant plus 25 x 6 in other cases]**.
12. Further, in the column ‘Remarks or changes if any suggested in the said case’, the Additional CIT has stated ‘No’ for all the 26 cases including the case of the Appellant which also indicates non-application of mind while granting the approval mechanically, as not a single suggestion appears to have been made when approving 154 orders.
13. In view of the foregoing, the Appellant submits that the Additional CIT has granted approval u/s. 153D of the Act in its case in a mechanical manner and consequently the impugned Order(s) passed in the case of the Appellant for the captioned years are bad in law and ought to be struck down.

14. Reliance in this regard is placed on the following decisions wherein the Hon'ble Court(s) have held that **granting approval u/s. 153D by the approving authority in a mechanical manner without proper and independent application of mind to the material produced before him would vitiate the entire proceedings including Orders passed pursuant to such invalid approvals :**

Name of the case	Citation	Relevant paragraph Nos.
PCIT v/s. Sapna Gupta	(2023) 147 taxmann.com 288 (Allahabad)	Para Nos. 5, 9, 12 to 14 and 16 to 23
PCIT v/s. Shiv Kumar Nayyar	(2024) 163 taxmann.com 9 (Delhi)	Para Nos. 7, 12, 13, 16 and 17
ACIT v/s. Serajuddin & Co.	(2023) 454 ITR 312 (Orissa)	Para Nos. 2, 6, 13, 14 and 22
ACIT v/s. Serajuddin & Co.	SLP(C) Diary No. 44989/2023	Para No. 1
Smt. Shreelekha Damani v/s. DCIT	(2015) 173 TTJ 332 (Mumbai)	Para Nos. 3, 4 and 12
PCIT v/s. Smt. Shreelekha Damani	ITA No. 668 of 2016 (Bombay High Court)	Para Nos. 6 and 7

15. In the said decisions, the High Courts have held that in order that approval u/s. 153D of the Act is validly passed, all the relevant materials gathered by the Assessing Officer should be before the approving authority (the Joint Commissioner of Income-tax) with sufficient time provided so that the approving authority may consider the same in detail for each assessment year. Further, the Central Board of Direct Taxes has issued guidelines to the same effect when explaining the procedure to be followed in the case of section 158BG (earlier provisions in identical terms to those of section 153D). Since all these well settled legal conditions precedent to passing valid orders u/s. 153A and 143(3) r.w.s. 153B(1)(b) have not been complied with the orders of assessment are clearly non-est, void and bad in law and must be struck down.
16. Further, the Revenue has not indicated what were the materials placed before the approving authority in all the cases for each assessment year. The orders do not even contain a line as to what was before the approving authority or what application of mind, if any was undertaken before granting the approval.

17. *Broad propositions vis-à-vis granting of approval u/s. 153D of the Act as explained in the aforesaid cases are as under:*

- a. *Mechanical approval granted by the Additional CIT without application of mind would vitiate the entire proceedings including the Orders passed pursuant thereto; and*
- b. *Separate approvals for each assessee for each assessment year is required to be obtained u/s. 153D of the Act.*

18. *Applying the said propositions to the Order(s) passed in the case of the Appellant for the year(s) under consideration, it is submitted that the approval granted by the Additional CIT u/s. 153D of the Act is invalid and consequentially the impugned Order(s) passed ought to be struck down as invalid and bad in law.*

8. The learned DR appearing on behalf of the Revenue has also filed written submissions before the Bench on 26.07.2024. For the sake of convenience, arguments of the learned DR are reproduced hereunder:

“We refer to the captioned appeals which have been heard by the Bangalore Bench ‘B’ on 23 July 2024. As directed by the Hon’ble Bench during the course of hearing, we give hereunder a note on the additional ground of appeal raised by the Appellant challenging the validity of the impugned Orders being passed in violation of section 153D of the Income Tax Act, 1961.

Each point of submission is to be considered in its individuality without prejudice to the other points of submission.

1. The question of admissibility of Additional ground raised by the Appellant

1.1 *It is submitted that the additional ground is not to be entertained at this stage of Appeal, it is a mere after thought of the appellant to get away with the case, without considering the merits of the case. The decision relied by the Appellant in the case of **National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC)** by this Hon’ble Bench in the case of **New Mangalore Port Authority v. JCITITA Nos.755 - 757/Bang/2023&C.O. Nos. 6 to 8/Bang/2023** wherein the Department has raised a cross objection on the legal issue and the Ld.DR relied on **National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC)** but this Hon’ble Bench has given the following findings by merely rejecting it:*

*“.....Since these were consideration and deliberation made by the authorities below, **we do not find any reason to entertain cross***

objection filed by the Revenue particularly when eligibility of the assessee to claim the deduction u/s 80IA of the Act has not been referred by the ld.AO in the remand report filed by the ld.AO. In that view of the matter, we do not find any reason to allow to raise new issues which are not at all mentioned in the assessment orders passed. With the aforesaid observations, we, therefore, dismiss the cross objections field by the revenue as the same are found to be devoid of any merit.”

1.2 It is submitted that this Hon'ble Tribunal has itself considered the case of National Thermal Power Co. Ltd. vs. CIT (supra) and has given a finding that when the grounds were not at all raised before the lower authorities then it is clear there is no reason to allow to raise new issues which are not all mentioned in the assessment orders and CIT(A). Thus, it becomes amply clear that this Tribunal will not be inclined to entertain the same now.

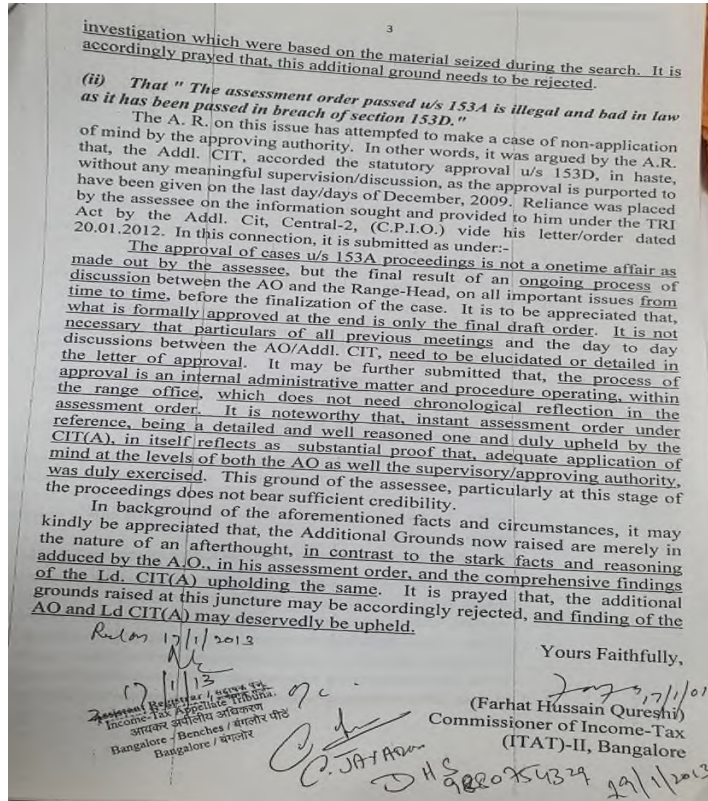
2. **Whether the mandatory approval u/s. 153D is obtained or not?**

2.1 There is no doubt and question on the above issue that approval was granted and it is clear from the information on record that approval was granted by complying proper law and procedure established by the law. Neither the appellant is challenging that the approval was against law or in contravention to the procedure established by the law. It is seen from the RTI information that approval was granted on 31.12.2009. The Appellant argument is completely subjective that there was non-application of mind by the Addl. CIT.

3. **Whether the relevant details are on record to adjudicate on this additional ground?**

3.1 The Ld. AR is challenging a very subjective matter and making assumption that there was non-application of mind with no official records. The only thing which is being emphasised and harped upon by the Appellant is that the RTI information sought by him u/s.7(1) of Right to Information Act, 2005 other than this the Appellant has not furnished any other information on the issue. The only basis of Appellant's argument is that the approval was made by the Addl. CIT CR - 2, on the very same day when the receipt of draft order from respective Assessing Officer and subsequently with other cases. It is due to this fact the Ld. AR is submitting that this Hon'ble Bench should hold that, the Addl. CIT, had accorded the statutory approval u/s.153D, in haste, without any meaningful supervision/discussion, as the approval is purported to have given on the last day/days of December, 2009. This Hon'ble Bench has no factual material on record other than RTI information to decide the issue.

3.2 It is submitted that a written submission has been already filed by this office on 17.01.2013 on this additional ground. The relevant page is reproduced below and the same enclosed as Annexure -1:



3.3 It is reiterated that the approval of cases u/s.153A proceedings is not a one time affair as made out by the assessee, but the final result of an ongoing process of discussion between the AO and the Range Head, on all important issues from time to time, before finalization of case. The approval letter is itself not on record to decide whether it is illegal. Further, it is not necessary that particulars of all previous meetings and day to day discussions, need to be elucidated or detailed in the letter of approval. An example to substantiate my point, this Hon'ble bench adjourns the cases on the request of Appellant, whether the complete reasons recorded for each time or a mere noting is done, "adjourned at the oral request of Appellant."To complete a draft assessment order itself there will be a lot of discussion which takes place between the officers and it is not practically possible to make documentation of each and every communication and instruction takes place with the bulk of work. If this RTI information is considered as sole basis to decide the issue, then it will be great prejudice, travesty of facts and hardship to the department. The issue regarding the facts pertaining to the information to enquire any prior communication taken place between the concerned officers, prior to according the approval has not been subject matter of presentation made by the appellant. The actual

question comes forth before this Hon'ble Bench is whether a mere information on the date of receipt of order and the date of granting of approval can it be decided that the same was by non-application of mind and without having any information on record to substantiate the same. Here it is relevant to mention that when the assessment in central circle are framed, then day to day discussion & minutes are recorded in master folder which remains in the custody of investigation wing. Therefore, it cannot be said that the concerned officers has approved without application of mind.

4. Whether the decision relied by the appellant to be considered?

4.1 The Para 15 of note submitted by the Appellant, relies on various decision of different judicial forums and not on the jurisdictional High Court decision. It is submitted that the reliance is placed on judgment of the Hon'ble High Court of Karnataka in *CIT vs. Smt. Annapoornamma Chandrashekar [2012] 204taxman 158 (Mag.)(Kar.)* which is the binding and relevant decision to be taken place on record and the relevant para(Annexure-2) is reproduced below:

12. Black's Law Dictionary, 6th Edition, defines 'approval' to mean, an act of confirming, ratifying, assenting, sanctioning or consenting some act or thing done by another. In the context of an administration act, the word 'approval' in our opinion does mean anything more than confirming, ratifying, assenting, sanctioning or consenting.

13. The Apex Court in the case of *Ashok Kumar Sahu v. Union of India AIR 2006 SC 2879*, explaining the meaning of approval, held as under:

"The expression approval presupposes an existing order. Acceptance means communicated acceptance. A distinction exists between the expressions 'approval' and 'acceptance'. Whereas in the latter, an application of mind on the part of the competent authority is sine qua non, approval of an order only envisages statutory entitlement. Approval of an order is required as directed by the statute. It can be given a retrospective effect. Even valid contract comes into being only after the offer is accepted and communicated. Whereas services of an employee are dispensed with, the order takes effect from the date when it is communicated and not from the date of passing of the order. We are however, not oblivious of the fact that under certain circumstances, the expression, "approval" would mean to accept as good or sufficient for the purpose of intent. "Approve" means to have or express a favourable opinion of to accept as satisfactory."

14. Therefore, it is clear approval means to agree with full knowledge of the contents of what is approved and pronounce it as good. In other words confirm authoritatively. When the power of such approval is vested in a higher authority, when such higher authority approves an order of the lower authority, which means he has gone through the order of the lower authority, he has no reason to disagree he finds no fault with that order and therefore he confirms the order by his approval. It is to be seen that the statute has not used merely the word 'approval'. The word used is 'previous approval'. Therefore, unless the approval is previously taken, the assessment order would have no value at all. Therefore, when previous approval is a condition precedent and approval means to 'agree', i.e., to concur, to give mutual assent, to come into harmony, it is possible only after application of mind by the authority according approval.

4.2 Further the appellant has relied on the case of **ACIT v. Serajuddin & Co. SLP(C) Dairy No.44989/2023** in which the Hon'ble SC, has not decided on merits and were not inclined to interfere in the matter (Annexure-4). It is well settled that the Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. It is also not correct to assume that principle of law has been decided by implication in a case where SLP is dismissed in limine. The dismissal of SLP in limine by a non-speaking order does not close the door to move before other forum such as before High Court under Article 226. The reference may be made to the following judgements **Indian Oil Corpn. Ltd. v. State of Bihar AIR 1986 SC 1780 (Annexure 6)**; and **Yogendra Narayan Chowdhury v. Union of India [1996] 7 SCC 1 (Annexure 7)**

5. Whether the Appellant submission can be accepted on the basis of RTI information submitted by the appellant?

5.1 It is submitted that Appellant relied on the judgment of Hon'ble High Court of Orissa in the case of **ACIT v. Serajuddin & Co.**, if it is taken into consideration the following aspects may have to be taken into consideration. In the said case of **Serajuddin & Co.**, it is to be highlighted that the relevant document of seeking approval has brought on record, which is reproduced below(Annexure-5):

21. It is seen that in the present case, the AO wrote the following letter seeking approval of the Additional CIT:
 GOVERNMENT OF INDIA
 OFFICE OF THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1(2),
 BHUBANESWAR
 No. ACIT/C-1(2)//Approval/2010-11/5293 Dated, Bhubaneswar,
 the 27/29th December, 2010

To

The Addl. Commissioner of Income-tax, Range-1, Bhubaneswar.
Sub: Approval of draft orders u/s 153D of the I.T. Act 1961 in the case of M/s. Serajuddin & Co. 19A, British India Street, Kolkata (in Serajuddin Group of Cases)- matter regarding.

Sir,

Enclosed herewith kindly find the draft orders u/s 153A of the I.T. Act, 1961 along with assessment records in the case of M/s Serajuddin & Co., 19A, British India Street, Kolkata for kind perusal and necessary approval u/s.153D.

No.	Name of the Assessee	Section under which order passed	Asst. year
1.	M/s. Serajuddin & Co., 19A, u/s 153A/143(3)/144/145(3) British India Street, Kolkata.		2003-04
2.	- do-	-do-	2004-05
3.	- do-	do-	2005-06
4.	- DO -	-DO-	2006-07
5.	- DO -	-DO-	2007-08
6.	- DO -	-DO-	2008-09
7.	- DO -	U/s.143(3)/144/153B(B)/145(3)	2009-10

The above cases will be barred by limitation on 31-12-2010.

Encl : As above Yours faithfully,

Sd/-

Asst. Commissioner of Income-tax,
Circle-1(2), Bhubaneswar
of the Tribunal itself Government of India
OFFICE OF THE ADDL. COMMISSIONER OF INCOME TAX,
3 Floor, Range-1, Bhubaneswar
No. Addl. CIT/R-1/BBSR/SD/2010-11/5350

Dated, Bhubaneswar, the 30th December, 2010

To

The Assistant Commissioner of Income Tax, Circle-1(2), Bhubaneswar.

Sub: Approval u/s 153D-in the case of M/s Serajuddin & Co., 19A, British India Street, Kolkata-Matter regarding.

Ref: Draft Orders u/s 153A/143(3)/144 for the A.Y. 2003-04 to 2008-09 u/s.143(3)/153B (b)/144 of the A.Y.2009-10 in the case of above mentioned assessee.

Please refer to the above

The draft orders u/s 153A/143(3)/144 for the A.Y. 2003-04 to 2008-09 and u/s. 143(3)/153B(b)/144 for the A.Y. 2009-10 submitted by you in the above case for the following assessment years are hereby approved:

<i>Assessment Year</i>	<i>Income Determined (Rs)</i>
<i>2003-04</i>	<i>11,66,22,771</i>
<i>2004-05</i>	<i>36,46,80,016</i>
<i>2005-06</i>	<i>65,70,12,805</i>
<i>2006-07</i>	<i>60,02,65,791</i>
<i>2007-08</i>	<i>130,03,13,307</i>
<i>2008-09</i>	<i>274,68.87,069</i>
<i>2009-10</i>	<i>301,17,05,952</i>

You are requested to serve these orders expeditiously on the assessee, submit a copy of final order to this office for record.

Sd/-

Addl. Commissioner of Income Tax, Range-1, Bhubaneswar

5.2 But in the present case, there is only a document of information received through the RTI. The contention of the Appellant was to be accepted, weighed and reckoned then the same would not therefore be sufficient to consider the issue in proper perspective without bringing the relevant document on record, Before this final fact finding authority, the Appellant is persuading the Hon'ble Tribunal to decide the case on the basis of RTI information. The dates alone cannot dictate that the order was passed in haste manner and non-application of mind. As stated above, the cited case laws clearly brings out that the letter of the authority concerned according approval u/s.153D has actually been brought on record and then only the Hon'ble Court has proceeded

to decide the issue. The same is an indisputable fact as evident from the plain reading of the case law brought on record. It therefore assumes significance, relevance and indispensable so that the Hon'ble ITAT can be able to comment upon the manner and nature of approval accorded by the authority concerned u/s.153D of the Act. It may be mentioned that the consolidated list of approvals thus does not bring out the exact nature or manner that weighed in the mind of the authority concerned who accorded such approvals u/s.153D of the Act. Since, this is an additional ground raised by the Appellant before the Hon'ble Tribunal, obviously the First Appellate Authority did not have the occasion to consider, evaluate and decide the issue on the approval accorded u/s.153D of the Act. It may kindly be appreciated that without seeing the letter according approval u/s. 153D by the authority concerned, the department or the Hon'ble Tribunal may not be able to comment upon or decide on the order of the First Appellate Authority and the additional ground of appeal now raised by the Appellant on the approval accorded u/s.153D."

9. After considering the case laws cited at Bar, as well as written submissions of both the sides, we observe that in the instant case, assessee has challenged the validity of the Order passed by AO under section 153A of the Act on the ground that the prior approval under section 153D of the Act obtained by the AO was mechanical. Learned Counsel for the assessee has drawn the attention of the Bench towards the RTI filed with the Department vide application dated 22.12.2011. For the sake of convenience, we reproduce the relevant question of RTI sought by the assessee from the Revenue for the purpose of issue of 153D approval.

“approval given under section 153D of the Act on 31.12.2009 and date of making orders under section 153A”.

10. Perusal of the above question, which has been duly responded by the Revenue would clearly prove beyond doubt that the assessee has never asked for the copy of approval pertaining to its case. Neither the Counsel for the assessee requested the Bench to call for the assessment records for examining the quality/veracity of the approval given by JCIT in the instant case. What the assessee has asked from the Revenue was the number of approvals given on 31.12.2009. Similarly, in other questions mentioned in RTI application dated

22.12.2011 nowhere the assessee has asked for the specific / categorical approval with respect to the impugned assessments in the case of the assessee. Reliance placed by the learned Counsel for the assessment on the judgments of Hon'ble High Court and Co-ordinate Benches of the Tribunal are distinguishable on the grounds that in all those cases, the approval of the 153D of the Act was duly presented before the Hon'ble Courts, and only after examining the wordings of those approvals the Courts have rendered the judgments, holding that the approval granted was a mechanical approval. **For example, in the case of Sirajuddin relied upon by the assessee reported in 454 ITR 312, Hon'ble High Court has reproduced the approval granted by the AO in the case of that assessee in para 21** and then commented upon the wording expressed in approval and held that the approval was a mechanical one. **We are bound by the observations of the High Court for the proposition that if the approval of 153D is granted in a mechanical manner the consequential orders are become nullity.** However, in this present case, the Bench is handicapped, as there is no copy of approval before us. It is also not presumable that there was no approval at all in the assessee's case, as evident from the document number mentioned in the consolidate list of approval given on 31.12.2009 and also in the impugned assessment order. In simple word the document number 51(2)/Addl/CIT/CR/09-10/20 dated 31.12.2009 is not before us. In fact, the Bench has enquired twice from the Counsel for the assessee vis-à-vis copy of approval in assessee's own case. In response, Ld Counsel of the assessee relied on the document supplied by the revenue in response to the RTI application filed by assessee. In our humble opinion that sheet which the assessee has got in RTI is nothing but a consolidated statements of approval granted on 31.12.2009 Copy of the same is at **page 12**, this sheet cannot be per se cannot be construed as approval of the assessee's case. Therefore, in our view the cases relied upon by the assessee cannot be applied to the facts of the case.

11. It is also worthy to note that this plea was never raised before the CIT(A). However, being a legal plea, it can always be raised before the Tribunal at any time of the appellate proceedings, provided no fresh facts are to be looked into.

Further we find force in the contention of the learned DR in his written submissions that without seeing the copy of approval under section 153D, it is not justifiable to comment whether the same was mechanical or after due application of mind. Therefore, in the interest of justice, we remit this matter back to the file of CIT(A) with a direction that the Ld CIT(A) will call for the assessment record and observe as to the wordings of the approval (bearing number 51(2)/Addl/CIT/CR/09-10/20 dated 31.12.2009) used by authority, whether it was a consolidated approval for all years or separate etc. If this document is there, then the CIT(A) would decide the issue in accordance with law as declared by Hon'ble Orrisa High Court, Delhi High Court and Allahabad High Court. In case there is no such letter 51(2)/Addl/CIT/CR/09-10/20 dated 31.12.2009 then also the CIT(A) will also ponder on the issue as per the law. Since we have set aside the matter for reconsideration on the legal issue raised in additional ground application as ground number-2, we are not deciding the other issues raised in additional ground application as well as grounds relating to the merits of the case.

12. In view of the above, all the appeals allowed for statistical purpose.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(PRAKASH CHAND YADAV)
Judicial Member

Bangalore.

Dated: 14.08.2024.

/NS/*

Copy to:

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|---------------|------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR,ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.