

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA Nos.1090 to 1098/PUN/2024
Assessment Years : 2011-12 to 2019-20**

Amol Pramod Mahajan Madhur Urology and Stone Clinic, Tagore Nagar, Opp. Brooke Bond Colony, Ring Road, Jalgaon – 425001	Vs.	DCIT, Central Circle 1, Nashik
PAN: AJFPM4677F		
(Appellant)		(Respondent)

**ITA Nos.1063 to 1065/PUN/2024
Assessment Years : 2013-14 to 2015-16**

Priyanvada Amol Mahajan Madhur Urology and Stone Clinic, Tagore Nagar, Opp. Brooke Bond Colony, Ring Road, Jalgaon – 425001	Vs.	DCIT, Central Circle 1, Nashik
PAN: AJFPM4678L		
(Appellant)		(Respondent)

Assessee by : Shri Nikhil Pathak
Department by : Shri Ramnath P Murkunde
Date of hearing : 19-11-2024
Date of pronouncement : 26-11-2024

ORDER

PER BENCH :

The above batch of twelve appeals filed by the respective assesseees are directed against the separate orders dated 01.05.2024 of the Ld. CIT(A), Pune-12 relating to assessment years mentioned therein. Since identical grounds have been raised by the respective assesseees in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. First, we take up ITA No.1090/PUN/2024 for assessment year 2011-12 as the lead case. Facts of the case in brief, are that the assessee is an individual and is a Doctor by profession and has filed his original return of income u/s 139 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 23.12.2011 declaring total income of Rs.12,69,640/-. A search and seizure action u/s 132 of the Act was conducted in the premises of the assessee on 20.02.2019. In response to the notice u/s 153A of the Act, the assessee filed the return on 06.02.2021 declaring income of Rs.12,69,640/- which was originally declared. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, in response to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details. The objection of the assessee against the notice issued u/s 153A of the Act was also disposed of by the Assessing Officer by passing a speaking order.

3. During the course of assessment proceedings the Assessing Officer noted that there was evidence / document found during the course of search indicating the suppression of professional receipts. The Assessing Officer referred to some of the sample pages of the diary seized which contained certain figures by omitting the last two digits. He noted that for the impugned assessment year the total receipts of the assessee were Rs.64,92,750/- whereas the assessee has disclosed professional receipts of Rs.31,42,212/- and thus, the unaccounted receipts of the assessee remains to Rs.33,50,538/-. The assessee in his submission requested the

Assessing Officer to allow the expenses which were noted in the seized diary but not reflected in the Profit and Loss Account. It was also submitted that the assessee has incurred expenses towards anesthesia charges and medicine expenses which were not recorded in books but it should be allowed to determine the correct income. After considering the submission of the assessee, the Assessing Officer allowed the expenditure to the tune of Rs.16,97,081/- which were recorded in the seized papers but not reflected in the Profit and Loss Account. He accordingly made addition of Rs.16,53,457/-. Similar additions were made by the Assessing Officer for other years also.

4. Before the Ld. CIT(A) it was submitted that the assessee is a Surgeon and for conducting surgery, the assessee has to incur the expenditure towards Anesthesia charges. The assessee also purchases medicines and the assessee charges on lump sum basis from the patients. It was submitted that whenever the patients are covered under medi claim, all those expenses were reflected in the books of account. However, in case of non insured patients, the assessee has not maintained any such account. It was accordingly requested before the Ld. CIT(A) to allow the expenditure in case of non insured patients at the same rate at which the assessee has accounted for the Anesthesia charges and medicine expenses for patients under medi claim policies. It was also requested to allow the deduction for the operative and post-operative medicine expenses.

5. After considering the submissions made by the assessee, the Ld. CIT(A) granted part relief by allowing the deduction on account of Anesthesia charges at 10.55% of the gross receipts which is in commensurate to the patients who are covered under medi claim policies. He, however, rejected the claim of preparative medicine expenses both operative and post-operative.

6. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

The following grounds are taken without prejudice to each other-

On facts and in law,

- 1] *The assessee submits that the asst order passed u/s 143(3) rw.s. 153A is bad in law since the approval u/s 1530 granted by learned JCIT was without proper application of mind and accordingly, the asst order passed in consonance of the said approval be declared null and void.*
- 2) *The learned CIT(A) erred in confirming the addition of Rs 33,43,635/- on account of alleged unaccounted expenditure incurred on construction on hospital building without appreciating that no such addition was warranted on the facts of the case.*
- 3) *The learned CIT(A) erred in not appreciating that there was no concrete evidence that the assessee had actually incurred unaccounted expenditure on construction of hospital building and hence, the addition made may kindly be deleted*
- 4] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal*

7. The assessee has also raised the following additional grounds:

The appellant in the above referred appeal requests for admission of the following Additional Grounds of Appeal which are raised without prejudice to the original ground of appeal :-

- 1] *The assessee submits that the asst. order passed u/s 143(3) r.w.s. 153A is bad in law since the approval granted u/s 153D by the learned JCIT was without proper application of mind and accordingly, the asst. order passed in consonance of the said approval may be declared null and void.*
- 2) *The assessee submits that approval granted u/s 153D was invalid in law since it was a conditional approval subject to the compliances stated therein and accordingly, the asst. order passed on the basis of the said invalid approval may kindly be held to be null and void.*
- 3) *The assessee submits that the asst. order passed u/s 143(3) r.w.s. 153A dated 27.09.2021 invalid in law since the said order does not contain DIN and hence, the asst. order passed without DIN may kindly be declared null and void.*

The appellant submits that the additional grounds raised are legal in nature and as all the facts are on record, the assessee requests for admission of the above grounds.

8. The Ld. Counsel for the assessee at the outset did not press the additional ground No.3, for which the Ld. DR has no objection. Accordingly, the same is dismissed as not pressed.

9. So far as the additional grounds of appeal No.1 and 2 are concerned, the Ld. Counsel for the assessee submitted that these additional grounds are purely legal in nature and no fresh facts are required to be investigated. Referring to the decision of the Hon'ble Supreme Court in the case of the National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) and in the case of Jute Corporation Of India Ltd vs Commissioner Of Income Tax And Anr (1991) 187 ITR 688, he submitted that the additional grounds raised by the assessee should be admitted.

10. The Ld. DR on the other hand strongly opposed the admission of the additional grounds. He submitted that these grounds are never raised before the

Ld. CIT(A) and the assessee is raising this issue for the first time before the Tribunal.

11. After considering the rival arguments made by both sides and considering the fact that the additional grounds raised by the assessee are purely legal in nature and all the material facts necessary for adjudication of the issue are already available on record and no new facts are required to be investigated, therefore, in view of the decision of Hon'ble Supreme Court in the case of the National Thermal Power Co. Ltd. v. CIT (supra) and in the case of Jute Corporation Of India Ltd vs Commissioner Of Income Tax & Anr (supra), the additional grounds raised by the assessee are admitted for adjudication.

12. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to the approval granted by the JCIT, Central Range dated 26.09.2021 which reads as under:

*“GOVERNMENT OF INDIA
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX
(CENTRAL RANGE)-NASHIK*

*ROOM NO-211, 2nd FLOOR, SHAISHOBHAN COMPLEX GADKAR CHOWK
OLD AGRAROAD, NASHIK-422002
email: Nashik.addlcit.cen@incometax.gov.in
Phone:02532314867/2575611 to 13 FAX : 2538994/2583884*

No.Nsk/Jt.CIT/CR/CC-1/153D/2021-22/454

Dated: 26.09.2021

To,
The Dy. Commissioner of Income Tax,
Central Circle-1, Nashik.

Sub: Approval of draft orders u/s 143(3) r.w.s 153A of the Income Tax Act, 1961 for A.Y. 2009-10 to A.Y. 2018-19 & u/s 143(3) r.w.s 153B of the IT Act 1961 for A.Y. 2019-20 in the case of Dr. Amol Pramod Mahajan, [AJFFM4677F]-reg

Ref: No.NSK/DCIT/CC-1/Draft Approval/2021-22/1341, dated. 26.09.2021.

Please refer to the above.

2. Approval u/s. 153D of the IT Act, is granted as per documents available on records and subject to the discussion made time to time in this case on 10.08.2021, 15.09.2021, 22.09.2021 and compliance of following

- a) The order sheet is to be completed properly.*
- b) All submissions made by the assessee are to be placed in the respective folders for the respective assessment years.*
- c) A detailed office note shall be written elaborating the issues raised in the appraisal report, the additions proposed in the appraisal report, the verifications carried out on the issue and the final finding in the AO has decided not to make additions on that issue*
- d) All the office notes (not for assessee) along with the copies of the final assessment orders issued be forwarded to this office for records.*
- e) All references contemplated u/s.153C of the I. T. Act promptly be forwarded to the Assessing Officer having jurisdiction over such other person along with the respective books of accounts, documents or assets seized or requisitioned under intimation to this office.*
- f) Wherever, penalty proceedings u/s 271(1)(c)/270A are initiated, proper explanation below that section shall be invoked. In case penalties initiated u/s 271AAA/271AAB, the same should be invoked under the respective issue itself as well as at the bottom of the order.*
- g) The Computation interest u/s 234A, 234B, 234C will be a part of the assessment order itself.*
- h) Wherever, the A.O. found the provisions of the section 269SS / 269T are violated, separate proposal for initiation of penalty proceedings u/s. 271D/271E should be submitted.*
- i) Wherever necessary, A.O. should forward third party information to the A.O. of such party.*

3. *The orders along with the demand notice and penalty notices may be served on the assessee before the last date prescribed for completion of assessment and acknowledgement to that effect shall be kept on record.*

*Sd/-
[Vidya Ratna Hishore]
Joint Commissioner of Income Tax,
Central Range, Nashik”*

13. The Ld. Counsel for the assessee submitted that the Assessing Officer in the instant case wrote a letter to the JCIT on 26.09.2021 for approval of the draft assessment orders. Thereafter, the JCIT on the very same day granted approval u/s 153D of the Act in a mechanical manner and without due application of mind. He submitted that the said approval was granted subject to compliance of certain conditions. Referring to the provisions of section 153D of the Act, he submitted that as per the said provisions, the Assessing Officer has to take prior approval before passing of the final assessment order and there is no power to the Assessing Officer to alter, amend, modify or re-work the order once the approval has been granted. Referring to the approval granted by the JCIT, he submitted that a perusal of the approval so granted shows that it is subject to compliance of various conditions which clearly proves that the approval granted is a conditional approval. He submitted that the approval u/s 153D of the Act is to be given on a standalone basis after perusing the records. However, in the present case, the said approval is a conditional one given on the very same day and secondly, it is a single approval for all the years. He submitted that the said approval by the JCIT nowhere deals with the merit of the case relating to the various additions made in the draft order and it does not contain as to why such approval is being granted.

14. Referring to the decision of the Pune Bench of the Tribunal in the case of Shri Santosh S. Mukta vs. ACIT, vide IT(SS)A Nos.18, 19 & 20/PUN/2021 for assessment years 2012-13, 2013-14 and 2014-15, order dated 24.09.2024 and the decision in the case of SMW Ispat Private Limited vs. ACIT, vide IT(SS)A Nos.56 to 61/PUN/2022, for assessment years 2009-10 to 2014-15, copies of which are placed in the paper book, he submitted that under identical circumstances, the Coordinate Benches of the Tribunal have quashed the proceedings as invalid under the law on the ground that the approval granted u/s 153D of the Act is without application of mind and in a mechanical manner. He also relied on the following decisions:

- i) PCIT vs. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Delhi)*
- ii) PCIT vs. Sapna Gupta (2023) 147 taxmann.com 288 (Allahabad)*
- iii) ACIT vs. Serajuddin & Co. (2023) 150 taxmann.com 146 (Orissa)*
- iv) ACIT vs. Serajuddin & Co. (2024) 163 taxmann.com 118 (SC)*

15. He accordingly submitted that the approval granted by the JCIT is not in accordance with law and is a conditional approval, therefore, it does not comply to the mandate of the statute and therefore, all the proceedings should be quashed.

16. So far as the merit of the case is concerned, he submitted that although the Ld. CIT(A) has granted the expenditure incurred by the assessee towards Anesthesia charges, however, he has not granted any benefit on account of the medicine expenses incurred by the assessee both at the time of operation and post-

operation. He submitted that since the assessee is charging lump sum amount from the patients which includes the medicine expenses, therefore, reasonable amount of expenditure towards cost of medicine be allowed.

17. So far as the additional grounds raised by the assessee challenging the validity of the assessment order in absence of proper approval u/s 153D, the Ld. DR filed the following written submissions:

“Written submission in the above case w.r.t additional ground of the appellant i.r.o approval granted u/s 153D of the Income-tax Act, 1961-reg

1. Brief background of the case:

1.1 A search and seizure action u/s 132 of the Income-tax Act, 1961 was conducted on the doctors group at Nashik, Dhule and Jalgaon on 20/02/2019 and the assessee above-mentioned were covered in the said action. All the above assessments were completed by the AO u/s 143(3) r.w.s 153A of the Income-tax Act, 1961 by obtaining approval u/s 153D of the competent authority. The assessee /AR has raised additional grounds before the Hon'ble ITAT without prejudice to the original grounds of appeal with respect to the approval granted u/s 153D of the Income-tax Act, 1961 [herein after referred to as the Act) All the approvals in respect of the draft orders u/s 143(3) rws 153A put up before the competent authority are similar in nature and therefore a joint submission is being submitted with respect to the challenge thereto

2. Say of the Revenue:

2.1 The main grouse of the assessee is that the approval granted u/s 153D of the Act was a conditional approval subject to the compliances stated therein and accordingly, the assessment orders passed on the basis of such invalid approval should be held to be null and void.

2.2 At the outset, it needs to be understood that the approval that is granted u/s 153D is to the assessment order u/s 143 (3) rws 153A based on the documents available on record and the discussions that continuously take place in the course of the assessment proceedings between the AO and the competent authority granting approval. That is, it is a continuous process and not a one-day affair of merely granting approval on the last day or on

the day when the draft assessment order was put up to the competent authority. There is no particular format for granting such approval u/s 153D and is normally and conventionally given in the form of a letter addressed to the AO concerned. While granting such approval, the competent authority may sometimes also indicate to the AO that the necessary procedural aspects with respect to the assessment proceedings may be kept in mind. Such indication is nothing but a reiteration of the duty of the AO while completing the assessment proceedings and such indicative directions have nothing to do with the approval per se that is granted u/s 153D as envisaged by the Act.

2.3 *In the case of the assesseees, some of such directions given by the competent authority to the AO are reproduced herein below for the sake of reference:*

- (i) *The order sheet is to be completed properly.*
- (ii) *All submissions made by the assessee are to be placed in the respective holders for the respective assessment years*
- (iii) *A detailed office note shall be written elaborated in the issues raised in the appraisal report, the additions proposed in the appraisal report, the verifications carried out on the issue and the final finding if the AO has decided not to make additions on that issue.*
- (iv) *All the office notes (not for assessee) along with the copies of the final assessment orders issued be forwarded to this office for records.*
- (v) *All references contemplated u/s 153C of the Act to be promptly forwarded to the assessing officer having jurisdiction over such other person along with the respective books of accounts, documents or assets seized or requisition under intimation to this office.*
- (vi) *Wherever, penalty proceedings u/s 271 (1) (c)/270A are initiated, proper explanation below that section shall be invoked. In case penalties initiated u/s 271AAA/271 AAB, the same should be invoked under the respective issue itself as well as at the bottom of the order.*
- (vii) *The computation interest u/s 234A, 234B, 234C will be a part of the assessment order itself.*
- (viii) *Wherever, the AO found the provisions of section 269SS/269T are violated, separate proposal for initiation of penalty proceedings u/s 271D/271E should be submitted.*
- (ix) *Wherever necessary, the AO shall forward 3rd party information to the AO of such party.*
- (x) *That the orders along with the demand notice and penalty notices may be served on the assessee before the last date prescribed for completion of assessment and acknowledgement to that effect shall be kept on record*

2.4 *As can be seen from para-2.3 above, the aforesaid directions referred therein are in the nature of a reiteration of the duties which the AO carries out in the course of assessment proceedings irrespective of any approval to be granted by the competent authority. That is to say, such acts on the part*

of the AO are intrinsic to the duties to be carried out by him/her and the reiteration in the letter granting approval u/s 153D is nothing but an administrative/supervisory advice to the AO and nothing more. It has got nothing to do with the approval that is required to be granted u/s 153D as per the provisions of the Act which would necessitate the competent authority to go through the material on record placed by the AO before the competent authority and examine its relevance with the draft assessment order, as also to note any omission or superfluous addition that may have crept into the assessment order. The approval of the competent authority u/s 153D is to safeguard to the assessee as well as to the revenue to ensure that superfluous additions are not made which are not in consonance with the material on record and at the same time there are no omissions on the part of the AO to bring to tax any income which had hitherto not been subjected to assessment in the draft order. Ultimately, it needs to be appreciated that the collection of revenue is for the benefit of the public as the same goes to the public exchequer and such approval is to be seen only as a provision of check and balance which is beneficial to both ie the assessee and the revenue. The directions regarding the procedural aspect that is to be carried out by the AO has got nothing to do with the approval of the competent authority granted under section 153D of the Act and therefore it would be incorrect to say that the mention of such aspects in the letter granting approval u/s 153D renders the said approval to the realm of a conditional approval. It cannot be said that the competent authority does not wish to grant approval if such procedural aspects are missed out by the AO i.e. it cannot be held that there would be no approval u/s 153D for example if all the submissions made by the assessee are not placed in the respective folders but get mixed up. Therefore, it is humbly submitted that the letter granting approval as to be looked at from 2 aspects, one with respect to the core approval granted u/s 153D which is linked to the collection of legitimate tax based on the material of record and the 2nd is the reiteration of the procedural aspects that the AO is duty bound to carry out irrespective of whether an approval is required for an assessment order. Perhaps the confusion caused is because of the words "and compliance of the following" used in the letter granting the said approval. Accordingly, the said words may be read as to reiteration of the procedural aspects to be followed by the AO and not link it to the approval per se that is to be granted u/s 153D of the Act.

3. *In view of the above, it is humbly prayed that the approval granted by the competent authority under section 153D of the Act be upheld to be a valid approval and not a conditional approval Prayed accordingly. ”*

18. So far as the merit of the case is concerned, he submitted that the Ld. CIT(A) has already given the justifiable reasons for not allowing the expenditure towards

medicine which is a very elaborate and exhaustive. He accordingly submitted that the order of the Ld. CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

19. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. Before deciding the appeal on merit, we would first like to decide the additional grounds raised by the assessee. A perusal of the approval granted by the JCIT shows that he has given approval to the draft orders sent by the Assessing Officer on 26.09.2021 and the letter of the Assessing Officer to the JCIT reads as under:

*“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1, NASHIK*

No.Nsk/DCIT/CC-1/Draft Approval/2021-22/1341

Dated: 26.09.2021

*To,
The Joint Commissioner of Income Tax,
Central Range, Nashik.*

Sir,

Sub: Approval of draft orders u/s 143(3) r.w.s 153A of the I.T. Act, 1961 for A.Y. 2009-10 to A.Y. 2018-19 & u/s 143(3) r.w.s 153B of the IT Act 1961 for A.Y. 2019-20 in the case of Dr. Amol Pramod Mahajan, [AJFPM4677F]-reg.

Kindly refer to the above.

02. I am submitting herewith draft orders in the above mentioned case as per the provision of section 153D of the Act for approval.

03. The same has been submitted as per our discussion and verification made on 10.08.2021, 15.09.2021, 22.09.2021 & time to time and as per seized materials, documents available on records and suggestion given in the appraisal report.

Sr. No.	A.Y.	Return filed u/s 139	Return filed u/s 153A	Assessed income
1	2009-10	4,98,935/-	4,98,935/-	4,98,935
2	2010-11	9,69,682/-	9,69,682/-	9,69,682/-
3	2011-12	12,69,640/-	12,69,640/-	29,23,097/-
4	2012-13	13,66,740/-	13,66,740/-	1,69,76,421/-
5	2013-14	20,25,503/-	20,25,503/-	1,93,06,558/-
6	2014-15	23,60,587/-	23,60,587/-	1,95,20,033/-
7	2015-16	26,51,060/-	26,51,060/-	1,67,03,873/-
8	2016-17	38,98,140/-	38,98,140/-	1,16,30,697/-
9	2017-18	83,06,310/-	83,06,310/-	1,36,42,840/-
10	2018-19	76,98,570/-	76,98,570/-	2,47,87,770/-
11	2019-20	82,78,510/-	--	2,26,88,860/-

Yours faithfully,

Sd/-

[B.D. SHEGAONKAR]

Deputy Commissioner of Income Tax,
Central Circle-1, Nashik”

20. However, a perusal of the approval granted by the JCIT nowhere shows that he has gone through the draft orders and it only shows he has given certain directions to the Assessing Officer to comply, which otherwise means that the orders were not ready on that day and they are mere proposals and it is only a mechanical approval or a conditional approval subject to fulfillment of certain directions.

21. We find exactly under identical circumstances, the Co-ordinate Bench of the Tribunal in the case of SMW Ispat Private Limited vs. ACIT (supra) quashed the assessments by observing as under:

“15. Heard both the parties and perused the material available on record. Coming to the main contention of non-application of mind by the approving authority. The ld. AR placed reliance primarily on the decision of Hon’ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra). The relevant portion of the said judgment is reproduced here-in-below for ready reference :

“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 (165) E.L.T. 257 (S.C.) 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.

16. On careful reading of the above judgment, we note that the Hon'ble High Court was pleased to observe that there should be some indication that the approving authority examined relevant material in detail while granting the

approval u/s. 153D of the Act. The approval u/s. 153D is a mandatory requirement and such approval is not meant to be given mechanically. Such approval granted mechanically without application of mind by the Addl. CIT resulting in vitiating the assessment orders. We find in the present case that the AO sought approval u/s. 153D of the Act on 18-03-2016, the JCIT granted approval on 21-03-2016 and the final assessment order u/s. 143(3) r.w.s. 153A of the Act was passed on 30-03-2016 which clearly indicates that the approving authority granted approval in one day mechanically without examining the relevant material. According to the AO, the case of the assessee was covered by search action u/s. 132 of the Act conducted at Bhilwara concerning Mantri-Soni Group of Jalna/Bhilwara and their family members and business concerns at the business and residential premises of different members/associate which is evident from para 1 of the assessment order. Admittedly, the AO sought approval u/s. 153D of the Act in 49 assessment orders vide letter dated 18-03-2016 which is on record placed on by the ld. DR on 09-10-2023. The approving authority has to examine number of evidences, documents, statements of various persons etc. recorded which were necessarily to be taken into consideration while granting approval u/s. 153D of the Act by the JCIT. On an examination of the approval dated 21-03-2016 which is on record placed by the ld. DR on 09-10-2023, we find no such indication of examination of evidences, documents, statements of various persons etc. at least, no reference whatsoever made by the JCIT i.e. approving authority. Thus, we find the facts and circumstances in the present case are similar to the facts of the case before the Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra) and the ratio laid down therein is applicable to the present case. Therefore, the JCIT granted approval u/s. 153D of the Act mechanically without application of mind which resulting in vitiating the present final assessment order dated 30-03-2016 u/s. 143(3) r.w.s. 153A of the Act.

17. We find the department of Revenue filed SLP against the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra) before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to dismiss the SLP © Diary No. 44989/2023. The relevant decision is reproduced as under :

“SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 44989/2023
(Arising out of impugned final judgment and order dated 15-03-2023 in ITA No. 43/2022 passed by the High Court Of Orissa at Cuttack)

ACIT, CIRCLE 1 (2)

Petitioner(s)

VERSUS

M/S SERAJUDDIN AND CO.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.232700/2023-CONDONATION OF DELAY IN FILING and IA No.232701/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date: 28-11-2023 This petition was called on for hearing today.

**CORAM: HON'BLE MRS. JUSTICE B.V.
NAGARATHNA HON'BLE MR. JUSTICE UJJAL
BHUYAN**

*For Petitioner(s) Mr. N Venkatraman, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. Udai Khanna, Adv.
Mr. H R Rao, Adv.
Mr. Akshat Singh, Adv.*

*For Respondent(s) Mr. S. Ganesh, Sr. Adv.
Mr. Ramesh Singh, Sr. Adv.
Mr. Gaurav Khanna, AOR
Mr. Venugopal Mohapatra, Adv.
Ms. Natasha Sahrawat, Adv.
Ms. Deepali Bhanot, Adv.
Mr. Rudraksh Pandey, Adv.
Mr. Gautam Barnwal, Adv.*

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Having regard to facts and circumstances of the case, we are not inclined to interfere in the matter. The Special Leave Petition is dismissed.

Pending application(s) shall stand disposed of.

*(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS*

*(MALEKAR NAGARAJ)
COURT MASTER (NSH)*

18. *On careful reading of the above, we note that the Hon'ble Supreme Court declined to interfere in the finding recorded by the Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra) holding that the approval u/s. 153BD is mandatory requirement and such approval is not meant to be given mechanically, further, approval granted mechanically without application of mind vitiates the assessment orders.*
19. *In view of the above, let us examine the approval dated 21-03-2016 granted by the JCIT which is reproduced hereunder :*

<p><i>GOVERNMENT OF INDIA INCOME TAX DEPARTMENT</i></p>	<p><i>OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX CENTRAL RANGE, NASHIK 3rd Floor, Kendriya Rajaswa Bhawan, Gadkari Chowk, Old Agra Rd, Nashik-2 PHONE 2575611 to 13, 2314063 FAX : 2538994 / 2583884</i></p>
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No.Nsk/Jt.CIT(C)/153D/Approval/2015-16/1112

Dated: 21.03.2016

To,

*The Assistant Commissioner of Income Tax,
Central Circle-2, Aurangabad.*

*Sub: Approval of draft orders in the case of Mahalaxmi TMT, for the Assessment
Years 2008-09 to 2014-15 – regarding*

Please refer to the above.

- 2. Approval u/s. 153D of the I.T. Act, is granted subject to the compliance of following-*
 - a) The order sheet is to be completed properly.*
 - b) All submissions made by the assessee are to be placed in the respective folders for the respective assessment years.*
 - c) A detailed office note shall be written elaborating the issues raised in the appraisal report, the additions proposed in the appraisal report, the verifications carried out on the issue and the final finding if the AO has decided not to make additions on that issue.*
 - d) If the A.O. has made references on any issue in accordance with the instructions of the CBDT issued from F. No. 286/161/2006/ IT Inv.II) dated-22.12.2006. The replies received should be kept on record. A noting on all such issues should be made in the office note.*
 - e) All the office notes (not for assessee) along with the copies of the final assessment orders issued be forwarded to this office for records.*
 - f) All references contemplated u/s.153C of the L T. Act promptly be forwarded to the Assessing Officer having jurisdiction over such other person along with me respective books of accounts, documents or assets seized or requisitioned under intimation to this office.*

- g) *Wherever, penalty proceedings u/s271(1)(c) are initiated, proper explanation below that section shall be invoked. In case penalties initiated u/s. 271AAA, the same should be invoked under the respective issue itself as well as at the bottom of the order.*
- h) *The Computation interest u/s 234A, 234B, 234C will be a part of the assessment order itself.*
- i) *Wherever, the A.O. found the provisions of the section 269SS / 269T are violated, separate proposal for initiation of penalty proceedings u/s. 271D / 271E should be submitted.*
- j) *Wherever necessary, A.O. should forward third party information to the A.O. of such party.*

3. *The orders alongwith the demand notice and penalty notices may be served on the assessee before the last date prescribed for completion of assessment and acknowledgement to the effect shall be kept on record.*

*[Dr. Vivek Aggarwal]
Joint Commissioner of Income Tax,
Central Range, Nashik*

20. *On an examination of the above, we find that approving authority i.e. JCIT having received the alleged draft orders for approval from AO, Aurangabad on 18-03-2016 and accorded his approval on 21-03-2016. The ld. AR vehemently contended the 19th and 20th March, 2016 were Saturday and Sunday holidays, respectively, there is no time left to JCIT to apply his mind in giving approval. On a close examination of the said approval from (a) to (j), we find the same are procedural in nature, but nowhere we find application of his mind with regard to facts and circumstances of the case, number of evidences, documents, statements of various persons etc. The provision u/s. 153D of the Act provides the prior approval of the JCIT is not required merely for direction but over all approval of draft assessments framed by the AO. We are unable to subscribe the arguments of ld. DR that the JCIT/Addl. CIT frequently goes through the seized documents and makes discussion from time to time with AO on his observations being a supervisory authority since the seized documents are running in hundreds of pages. It is not possible for JCIT/Addl. CIT to ask AO to handover the entire documents and details gathered by him for a long time to apply his mind. The requirement u/s. 153D of the Act for obtaining approval the JCIT is not procedural only, but a mandatory requirement as explained Circular No. 3 of 2008 dated 12-03-2008 issued by the CBDT. Further, the above said approval clearly shows is a conditional approval subject to compliance in (a) to (j) which clearly establishes that the approval given by the JCIT was subjected to compliance of various conditions contemplated therein, in our opinion, is invalid where the approving authority is legally required to discharge the statutory*

obligation provided under law. Further, the provisions u/s. 153D of the Act requires prior approval before passing final assessment order and there is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been granted. In the present case as discussed above, the approval was granted subjected to compliance of conditions therein.

21. *In the light of the above, we note that the AO vide paras 6.1, 6.2, 6.3 and 7 of assessment order observed that the important findings noted during the course of search u/s. 132 and the post search inquiries regarding unsecured loans relating to 49 assessments. On perusal of the letter dated 18-03-2016 vide No.ABD/ACIT/CC-1/2015-16/1702 issued by the AO requesting approval from JCIT shows that the AO requested the approval u/s. 153D of the Act in 49 assessments involving A.Ys. 2008-09 to 2014-15. The said request letter shows no proof of number of evidences, documents, statements of various persons were annexed in support of draft assessment orders. In this regard, the Hon'ble High Court of Allahabad in the case of Sapna Gupta reported in (2023) 147 taxmann.com 288 (Allahabad) held "it is humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record." Admittedly, in the present case, 49 assessments are involved from A.Ys. 2008-09 to 2014-15, therefore, in our opinion, it is humanly impossible to go through the records of 49 cases in one day i.e. on 21-03-2016. Further, it clearly shows the office of AO is located in Aurangabad and the office of JCIT is located in Nashik which is according to the ld. AR is about approximately distance 200 Kms. between Aurangabad to Nashik. Further, it shows the inward stamp receiving the said letter on 18-03-2016. The ld. DR also placed on record a copy of approval granted by the JCIT on 21-03-2016. On perusal of the said letter it is noted that the JCIT granted approval subject to the compliance of (a) to (j). On an examination of the same, we note that the JCIT directed the AO to follow the procedures and to conduct the proceedings as per law, it establishes that no discussion whatsoever made by the JCIT in the approval regarding the seized material as the case may be relating to 49 assessments in respect of number of evidences, documents, statements of various persons etc., therefore, we find force in the arguments of ld. AR that the period of time was available to Jt. CIT is only one day which is not enough to look into all the facts and details of search proceedings, the detailed and voluminous orders containing number of evidences, documents, statements of various persons etc. Thus, it clearly suggests there was no sufficient time for the JCIT to look into to all the evidences, documents, statements of various persons in one day i.e. 21-03-2016 as 19-03-2016 and 20-03-2016 being Saturday and Sunday, holidays. Therefore, the approval granted by the Jt. CIT clearly lacks any application of mind and the approval granted in mechanical manner cannot be said to be valid approval taken in the eye of law. Therefore, the JCIT as being approving authority without application of mind and without verifying details, granted approval u/s. 153D of the Act in a most mechanical manner, of which, in our opinion, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act is vitiated for want of non-application of mind.*

22. The ld. AR placed on record the decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. reported in (2015) 56 taxmann.com 390 (Madhya Pradesh) which is at Page No. 160 of case laws paper book. On a careful examination of the same, we note that in pursuance of search, the assessments processed u/s. 143(1) of the Act were reopened by issuing a notice u/s. 148 of the Act on the basis of certain reasons recorded. The assessee objected to the same before the Assessing Officer, which was rejected. The Assessing Officer completed the assessment u/s. 143(3) r.w.s. 147 of the Act. The CIT(A) quashed the said reassessment by holding the action of JCIT in according sanction was without application of mind which was done in a mechanical manner. The ITAT upheld the order of CIT(A). The Hon'ble High Court of Madhya Pradesh dismissed the appeal of Revenue by observing no question of law involved warranting reconsideration. The relevant extract of the said decision as under for ready reference :

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

11. The appeals are, therefore, dismissed."

23. *We find the Department of Revenue filed SLP before the Hon'ble Supreme Court against the decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. (supra). The Hon'ble Supreme Court dismissed the SLP in favour of the assessee which reported in (2015) 64 taxmann.com 313 (SC) which is at page No. 162 of the case laws paper book. We find the facts and circumstances relating to challenging the approval granted by the JCIT on 21-03-2016 are similar to the facts in the case of S. Goyanka Lime & Chemicals Ltd. (supra) before the Hon'ble High Court of Madhya Pradesh. Therefore, the ratio laid down by the Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. (supra) which was confirmed by the Hon'ble Supreme Court is applicable to the facts on hand, therefore, the approval granted by the JCIT on 21-03-2016 is invalid, consequently, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act is liable to be quashed.*
24. *Further, the Hon'ble Supreme Court in the case of Sahara India (Firm) reported in 300 ITR 403 (SC) at page No. 142 of the case laws paper book, while discussing the requirement of prior approval, opined that the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. The Hon'ble Supreme Court was pleased to hold 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.*
25. *In view of our discussion made here-in-above, considering the submissions of ld. AR, ld. DR, case laws relied on and respectfully following the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (supra) which was confirmed by the Hon'ble Supreme Court vide order dated 28-11-2023 in SLP(C) No. 026338/2023, we hold that the approval dated 21-03-2016 granted by the JCIT u/s. 153D of the Act is without application of mind, therefore, invalid under law. Consequently, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act fails and quashed.*
26. *In view of our decision in ground No. 1 in quashing final assessment order dated 30-03-2016, ground Nos. 2 to 4 becomes academic, requiring no adjudication.*
27. *In the result, the appeal of the assessee is allowed.”*

22. We find following the above decision, Pune Bench of the Tribunal again in the case of Shri Santosh S. Mukta vs. ACIT (supra) has quashed the proceedings being not sustainable in law.

23. We find the Hon'ble High Court of Delhi in the case of PCIT vs. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Delhi) has held that where approval under section 153D for relevant assessment year was granted by Addl. Commissioner for 43 cases on a single day without perusing draft assessment order at all and without an independent application of mind, impugned assessment order was rightly declared to be illegal by Tribunal.

24. We find the Hon'ble High Court of Allahabad in the case of PCIT vs. Sapna Gupta (2023) 147 taxmann.com 288 (Allahabad) has held that where Approving Authority approved draft assessment order in 85 cases including that of assessee in one day in a mechanical manner without applying independent mind to appraise material before it, Tribunal rightly concluded that approval so granted under section 153D vitiated entire proceedings.

25. Since the JCIT in the instant case has given his approval in a mechanical manner without due application of mind and nowhere has mentioned that he has gone through the draft assessment orders while giving the approval, therefore, respectfully following the decisions cited above, we hold that the approval given

by the JCIT u/s 153D is not in accordance with law. Accordingly, the order passed by the Assessing Officer is liable to be quashed. We accordingly quash the assessment order for want of due approval u/s 153D as per law. The additional grounds raised by the assessee are accordingly allowed.

26. Since the assessee succeeds on the additional grounds, the grounds challenging the addition on merit become academic in nature and therefore, are not being adjudicated. The appeal filed by the assessee is accordingly allowed.

27. Identical grounds have been raised by the assessee as well as Mrs. Priyanvada Amol Mahajan (spouse of the assessee) in the remaining appeals. Following similar reasonings given above, the additional grounds raised by the assessee and his spouse in these appeals are also allowed.

28. In the result, all the appeals filed by the respective assesseees are allowed.

Order pronounced in the open Court on 26th November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 26th November, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	21.11.2024		Sr. PS/PS
2	Draft placed before author	22.11.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			