

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
Sh. M. Balaganesh, Accountant Member**

**ITA Nos. 1373 to 1377 & 1701/Del/2020
(Asstt. Years : 2012-13 to 2016-17)**

Arvind Kumar Jain Prop. Researchco Book Centre, 81, Shyam Lal Road, Near Hindi Park, Daryaganj, New Delhi-110006	Vs	ACIT Central Circel-26, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAFPJ2474G		

**ITA Nos. 1524 to 1528/Del/2020
(Asstt. Years : 2012-13 to 2016-17)**

DCIT Central Circel-26, New Delhi-110055	Vs	Arvind Kumar Jain Prop. Researchco Book Centre, 81, Shyam Lal Road, Near Hindi Park, Daryaganj, New Delhi-110006
(APPELLANT)		(RESPONDENT)
PAN No. AAFPJ2474G		

**ITA Nos. 1378 to 1383 & 1702/Del/2020
(Asstt. Years : 2012-13 to 2017-18)**

Jaya Jain Prop. H. J. Book Agency, 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002	Vs	ACIT Central Circel-26, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAGPJ2714C		

**ITA Nos. 1529 to 1531/Del/2020
(Asstt. Years : 2012-13 to 2016-17)**

DCIT Central Circel-26, New Delhi-110055	Vs	Jaya Jain Prop. H. J. Book Agency, 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAGPJ2714C		

**ITA Nos. 1384 to 1387/Del/2020
(Asstt. Years : 2012-13, 2014-15 to 2016-17)**

Star Educational Books Distributor Pvt. Ltd., 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002	Vs	ACIT Central Circel-26, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAMCS3470R		

**ITA Nos. 1532 to 1534/Del/2020
(Asstt. Years : 2012-13, 2014-15 & 2015-16)**

DCIT Central Circel-26, New Delhi-110055	Vs	Star Educational Books Distributor Pvt. Ltd., 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAMCS3470R		

**ITA Nos. 1388 & 1389/Del/2020
(Asstt. Years : 2012-13 & 2014-15)**

M/s STM Traders Pvt. Ltd. 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002	Vs	ACIT Central Circel-26, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAQCS0864F		

**ITA Nos. 1523/Del/2020
(Asstt. Year : 2012-13)**

DCIT Central Circle-26, New Delhi-110055	Vs	M/s STM Traders Pvt. Ltd. 4736/23, Plot No. 2-3, Ground Floor, Ansari Road, Darya Ganj, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAQCS0864F		

**Assessee by : Sh. Salil Agarwal, Sr. Adv., Sh. Shailesh Gupta,
Sh. Sh. Uma Shankar, Sh. Madhur Agarwal &
Sh. Mahir Agarwal, Advs.**

**Revenue by : Sh. Javed Akhtar, CIT-DR &
Sh. Poojan Rana, Sr. DR**

Date of Hearing: 18.11.2024

Date of Pronouncement: 26.11.2024

ORDER

Per Bench:

The instant batch of thirty one appeals pertains to four assessee namely Sh. Arvind Kumar Jain, Ms. Jaya Jain, M/s Star Educational Books Distributor Pvt. Ltd. and STM Trader Pvt. Ltd. All other relevant details thereof stand tabulated as under:

Sl. No.	ITA Nos.	Appellant	Respondent	A.Y.	Order passed against
1.	1373/Del/2020	Arvind Kumar Jain	ACIT	2012-13	CIT(A)-31, Appeal No. 298/19-20/345/18-19 dated 11.02.2019
2.	1374/Del/2020	Arvind Kumar Jain	ACIT	2013-14	CIT(A)-31, Appeal No. 299/19-20/346/18-19 dated 11.02.2019
3.	1375/Del/2020	Arvind Kumar Jain	ACIT	2014-15	CIT(A)-31, Appeal No. 300/19-20/347/18-19 dated 11.02.2019
4.	1376/Del/2020	Arvind Kumar Jain	ACIT	2015-16	CIT(A)-31, Appeal No. 301/19-20/348/18-19 dated 11.02.2019
5.	1377/Del/2020	Arvind Kumar Jain	ACIT	2016-17	CIT(A)-31, Appeal No. 302/19-20/349/18-19 dated ...08.2020

ITA Nos. 1373 to 1389, 1523 to 1534,
1701 & 1702/Del/2020
Arvind K. Jain, Jaya Jain, Star Edu. Book
Distri. Pvt. Ltd. And STM Traders Pvt. Ltd.

6.	1701/Del/2020	Arvind Kumar Jain	ACIT	2012-13	CIT(A)-31, Appeal No. 298/19-20/346/18-19 dated 11.02.2019
7.	1524/Del/2020	DCIT	Arvind Kumar Jain	2012-13	CIT(A)-31, Appeal No. 298/19-20/345/18-19 dated 11.02.2020
8.	1525/Del/2020	DCIT	Arvind Kumar Jain	2013-14	CIT(A)-31, Appeal No. 299/19-20/346/18-19 dated 11.02.2020
9.	1526/Del/2020	DCIT	Arvind Kumar Jain	2014-15	CIT(A)-31, Appeal No. 300/19-20/347/18-19 dated 11.02.2020
10	1527/Del/2020	DCIT	Arvind Kumar Jain	2015-16	CIT(A)-31, Appeal No. 301/19-20/348/18-19 dated 14.02.2020
11	1528/Del/2020	DCIT	Arvind Kumar Jain	2016-17	CIT(A)-31, Appeal No. 302/19-20/349/18-19 dated 11.02.2019
12	1378/Del/2020	Ms. Jaya Jain	ACIT	2012-13	CIT(A)-29, Appeal No. 359/18-19 dated 11.02.2020
13	1379/Del/2020	Ms. Jaya Jain	ACIT	2013-14	CIT(A)-29, Appeal No. 360/18-19 dated 11.02.2020
14	1380/Del/2020	Ms. Jaya Jain	ACIT	2014-15	CIT(A)-29, Appeal No. 361/18-19 dated 11.02.2020
15	1381/Del/2020	Ms. Jaya Jain	ACIT	2015-16	CIT(A)-29, Appeal No. 362/18-19 dated 11.02.2020
16	1382/Del/2020	Ms. Jaya Jain	ACIT	2016-17	CIT(A)-29, Appeal No. 363/18-19 dated 11.02.2020
17	1383/Del/2020	Ms. Jaya Jain	ACIT	2017-18	CIT(A)-29, Appeal No. 364/18-19 dated 11.02.2020
18	1702/Del/2020	Ms. Jaya Jain	ACIT	2017-18	CIT(A)-29, Appeal No. 363/18-19 dated08.2020
19	1529/Del/2020	DCIT	Ms. Jaya Jain	2013-14	CIT(A)-29, Appeal No. 360/18-19 dated 11.02.2020
20	1529/Del/2020	DCIT	Ms. Jaya Jain	2014-15	CIT(A)-29, Appeal No. 361/18-19 dated 11.02.2020
21	1529/Del/2020	DCIT	Ms. Jaya Jain	2015-16	CIT(A)-29, Appeal No. 362/18-19 dated 11.02.2020
22	1384/Del/2020	M/s Star Educational Books Distributor Pvt. Ltd.	ACIT	2012-13	CIT(A)-29, Appeal No. 353/18-19 dated 11.02.2020
23	1385/Del/2020	M/s Star	ACIT	2014-15	CIT(A)-29,

		Educational Books Distributor Pvt. Ltd.			Appeal No. 354/18-19 dated 11.02.2020
24	1386/Del/2020	M/s Star Educational Books Distributor Pvt. Ltd.	ACIT	2015-16	CIT(A)-29, Appeal No. 355/18-19 dated 11.02.2020
25	1387/Del/2020	M/s Star Educational Books Distributor Pvt. Ltd.	ACIT	2016-17	CIT(A)-29, Appeal No. 370/18-19 dated 11.02.2020
26	1532/Del/2020	DCIT	M/s Star Educational Books Distributor Pvt. Ltd.	2012-13	CIT(A)-29, Appeal No. 353/18-19 dated 11.02.2020
27	1533/Del/2020	DCIT	M/s Star Educational Books Distributor Pvt. Ltd.	2014-15	CIT(A)-29, Appeal No. 354/18-19 dated 11.02.2020
28	1534/Del/2020	DCIT	M/s Star Educational Books Distributor Pvt. Ltd.	2015-16	CIT(A)-29, Appeal No. 355/18-19 dated 11.02.2020
29	1388/Del/2020	STM Traders Pvt. Ltd.	ACIT	2012-13	CIT(A)-29, Appeal No. 350/18-19 dated 11.02.2020
30	1389/Del/2020	STM Traders Pvt. Ltd.	ACIT	2014-15	CIT(A)-29, Appeal No. 352/18-19 dated 11.02.2020
31	1523/Del/2020	DCIT	STM Traders Pvt. Ltd.	2012-13	CIT(A)-29, Appeal No. 350/18-19 dated 11.02.2020

We are informed that relevant proceedings in all these thirty one cases are u/s 153C r.w.s. 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard all the assessee represented by Sh. Salil Agarwal, Sr. Adv., Sh. Shailesh Gupta, Sh. Uma Shankar, Sh. Madhur Agarwal & Sh. Mahir Agarwal, Advocates and Sh. Javed Akhtar

(CIT-DR) with Sh. Poojan Rana (Sr. DR) at length. Case was perused.

3. It transpires during the course of hearing that all the instant thirty one appeals, involving Section 153C r.w.s. 153A r.w.s. 143(3) proceedings, emanate from the department's section 132 search action dated 17.12.2015 carried out in Sh. Anand Kumar Jain, Sh. Naresh Kumar Jain and Others cases. We further informed by both the parties that the learned lower authorities thereafter initiated u/s 153C proceedings against these four assessee's based on the alleged incriminating material AJ and AJ-1, found/seized during the course of the said search. It is further noticed that the learned assessing authority of the said search assessee's and these four taxpayers happened to be different ones who recorded their respective satisfactions u/s 153C of the Act.

4. Next come the twin fundamental issues between the parties i.e. validity of all the impugned assessments since not confirming to the settled law that the corresponding additions have to be based on the incriminating material found/seized during the course of search as well as for want of valid section 153D approvals to be obtained from the prescribed authority in these appeals.

5. There could be hardly any dispute between the parties as per the relevant facts emerging from the case files that the corresponding satisfaction(s) had been recorded in the "lead" case ITA No. 1373/Del/2020 on 29.12.2017 and therefore, all

the relevant assessment years in his case happen to be "unabated" ones right up to A.Y. 2016-17 since no proceedings could be stated to be pending as on the date of the foregoing satisfaction as per u/s 153C(1) (1st Proviso) as the date of search in such an instance has to be construed as that of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction in case of such other person. We thus, construed the date of search in the instant "lead" case as that of the cognizance taken by Sh. Jain's Assessing Officer while recording satisfaction on 29.12.2017 and therefore, all assessment years involved in his case A.Y. 2012-13 to A.Y. 2016-17 are "unabated". Hon'ble apex court recent landmark decision in PCIT vs. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 has admittedly settled the issue in assessee's favour and against the department that any addition in course of a search assessment involving an unabated assessment year must be based on the incriminating/seized material only.

6. We keep in mind this settled legal proposition and proceed to deal with the relevant facts in assessee Sh. Arvind Kumar Jain "lead" case ITA No. 1373/Del/2020. A perusal of the case file suggests that although the learned Assessing Officer had assumed jurisdiction on the basis of the seized material AJ and AJ-1, it is however evident from his detailed discussion at pages 14 & 15 in paragraphs 12 & 13 that he ended up adding net of bogus purchases/sales amounting to Rs.1,91,27,082/- representing the difference between payments made of

Rs.3,82,27,082/- and receipts of Rs.1,91,00,000/-, in the relevant previous year.

7. When we pointed out this clinching fact to the department, learned CIT-DR vehemently argued that the same is based on Sh. Anand Kumar Jain statement recorded on 17.12.2013. The assessee at this stage submits that first of all such a statement; so that in search or survey, hardly carries any evidentiary value as per the CBDT's landmark circulars issued on 10.03.2003 as reiterated on 18.12.2014. Coupled with this, learned Sr. counsel clarifies that once the Assessing Officer ended up in only netting the corresponding sales/purchases which never formed part of any incriminating material, such an assessment itself is not sustainable.

8. We find merit in the assessee's instant first and foremost legal ground since the learned lower authorities have failed to make any addition in his hands based on the relevant seized material during the course of search in question in light of Abhisar Buildwell Pvt. Ltd. (supra) as all these are "unabated" assessment only.

9. Coupled with this, we are of the considered view that the assessee's latter legal plea challenging validity of the impugned assessment once again for want of Section 153D valid approval(s) also deserves to be accepted. This is for the precise reason that Mr. Agarwal has taken us to the assessee's paper book-III pages 1 to 4 wherein the learned Additional Commissioner, Central Range-7, New Delhi had not only granted

his assessee wise common approval but also he had not examined the earlier case records, which had never been sent to him. Learned counsel invited our attention to various judicial precedent i.e. PCIT Vs. Shiv Kumar Nayyar (163 taxmann.com 9), PCIT Vs. Anuj Bansal (165 taxmann.com 2), PCIT Vs. Sapna Gupta (147 taxmann.com 288) and ACIT Vs. Serajuddin & Co (454 ITR 312) to buttress the point that such Section 153D approval is not a mere mechanical exercise.

10. Learned CIT-DR, on the other hand, submits that there is no provision in the Act which prescribing any approval to be granted in a particular manner. And that even if a combined approval is granted assessee wise qua all the relevant corresponding assessment year, it could not be held as bad in law.

11. We find no merit in the Revenue's foregoing objections once it has come on record that the learned Additional CIT's corresponding four approvals had not been granted after examining the entire assessment records and that too, separately for each and every assessment year, as per the foregoing case laws. We thus, accept the assessee's instant Section 153D approval ground as well in very terms. This lead appeal ITA No. 1373/Del/2020 as well as all other assessee's identical appeals succeed on the instant twin legal issues and therefore, the corresponding assessments herein forming subject matter thereof are hereby quashed.

11.1 All other pleading on merits in the instant thirty one appeals stand rendered academic.

12. To sum up, these four assessee's nineteen appeals i.e. Sh. Arvind Kumar Jain's cases ITA Nos. 1373 to 1377, 1701/Del/2020, second assessee Ms. Jaya Jain's appeal ITA Nos. 1378 to 1383 & 1702/Del/2020, third assessee M/s Star Educational Books Distributor Pvt. Ltd.'s four cases i.e. ITA Nos. 1384 to 1387/Del/2020 and last assessee M/s STM Trader Pvt. Ltd.'s twin appeals ITA No. 1388 & 1389/Del/2020; respectively are allowed and Revenue's corresponding 12 appeals hereinabove stand dismissed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 26/11/2024.

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Satbeer Singh Godara)
Accountant Member

Dated: 26/11/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR