

**THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 8533 to 8537/Del/2019
(Assessment Years: 2010-11 to 2014-15)**

M/s AKN Developers Pvt. Ltd, C/o Lall & Company Chartered Accountants 31, Sirifort Road New Delhi – 110049	Vs.	ACIT, CC-26, New Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AADCA7428G		
Appellant	..	Respondent

Appellant by :	Sh. Rajesh Malhotra, CA & Ms. Shivangi Kumar, Adv.
Respondent by :	Mr. Javed Akhtar, CIT (DR)

Date of Hearing	01.10.2024
Date of Pronouncement	19.12.2024

ORDER

PER MADHUMITA ROY, JM:

The bunch of appeals filed by the assessee are directed against the common order dated 06.09.2019 passed by Ld. CIT(A)-31, New Delhi arising out of the order dated 31.03.2016 passed by Ld. ACIT, New Delhi under Section 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) for Assessment Years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively. The assessee in each matter has filed an

application for admission of additional grounds challenging the approval obtained under Section 153D of the Act by the Ld. A.O. and consequent approval given by the Ld. Additional Commissioner of Income-tax in a mechanical manner, without application of mind and hence the assessment order passed in consequences thereof is bad in law. He has relied upon the judgment passed by the Hon'ble Apex Court in the case of *National Thermal Power Corporation Vs CIT*, reported in {229 ITR 383(SC)} as for the first time this ground has been raised. He has further submitted that since this ground involves the question of law and no new facts are required to be brought on record and further that this is a jurisdictional ground raised by the assessee goes to the root of the matter, the additional ground of appeal be admitted and adjudicated. The Ld. DR has not been able to controvert such submissions made by the Ld. AR.

Having regard to the entire aspect of the matter and relying upon the judgment passed by the Hon'ble Apex Court in the case of NTPC Vs. CIT (supra) this ground of appeal is admitted.

ITA No. 8533/Del/2019 AY: 2010-11

2. The facts of the case are that a search and seizure operation under Section 132 of the Income Tax Act, 1961 was carried out on 11.09.2013 and 17.09.2013 in the case of AKN Group and the assessee before us was also covered. During the course of search carried out in different premises located in India in AKN Group, documents and data storage devices etc., belonging to the

assessee company were found and seized. The case thereafter was centralized with Central Circle-26 (pre restructuring Central Circle-2), New Delhi, by the CIT-1, New Delhi by and under the order under Section 127 of the Income Tax Act, 1961 dated 20.06.2014. A notice under Section 153A of the Act was issued to the assessee on 01.07.2014 directing the assessee to furnish the return of income for Assessment Year 2010-11 whereupon return of income was filed by the assessee on 30.03.2015 declaring loss of Rs. 32,89,251/- which is same as was declared in the original return filed under Section 139 of the Act by the assessee.

3. Thereafter notice under Section 143(2) of the Act was issued on 03.08.2015 followed by notice under Section 142(1) of the Act along with the questionnaire to the assessee. The assessee was served upon the assessment order dated 31.03.2016 on the last date of permissible date mentioning that the said order has been passed after due approval of the Ld. ACIT, Central Range-7, New Delhi, under Section 153D of the Act dated 31.03.2016.

4. The assessee thereafter obtained the certified true copy of the order sheet. However, there is no mentioning as to when the Ld. AO has forwarded the note along with the draft assessment orders and requisite seized documents, appraisal report, the notices issued by the Ld. Assessing Officer during the course of search proceeding, the reply filed by the assessee. A copy of the said approval letter has duly been annexed to the paper book filed by the assessee the contents whereof is as follows:

**Office of the
Additional Commissioner of Income Tax
Central Range-7, Room No. 329
E-2, Jhandewalan Extension
New Delhi**

F. No. Addl. CIT/CR-7/2015-16/1363
To

Dated: 31.03.2016

The Asstt. Commissioner of Income Tax
Central Circle-26,
New Delhi

**Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of
M/s AKN Developers Pvt. Ltd. for the A.Ys. 2008-09 to 2014-15 - req.-**

Please refer to your letter F. No. ACIT/CC-26/2015-16/2047 dated 30.03.2016 on the above subject.

2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order in the following case, on the basis of the detailed discussion with you, information available on record, facts mentioned in the Appraisal Report and relevant seized documents.

S. No	Name of the assessee	PAN	A.Y.	Returned Income	Assessed Income
1	AKN Developers Pvt. Ltd.	AADCA7428G	2008-09	Rs. 8,07,565/-	Rs. 8,42,565/-
2	AKN Developers Pvt. Ltd.	AADCA7428G	2009-10	Rs. 56,08,644/-	Rs. 68,48,644/-
3	AKN Developers Pvt. Ltd.	AADCA7428G	2010-11	(-)32,89,251/-	(-)19,70,931/-
4	AKN Developers Pvt. Ltd.	AADCA7428G	2011-12	Rs. 1,06,13,710/-	Rs. 2,00,56,059/-
5	AKN Developers Pvt. Ltd.	AADCA7428G	2012-13	Rs. 1,61,82,020/-	Rs. 3,63,20,147/-
6	AKN Developers Pvt. Ltd.	AADCA7428G	2013-14	Rs. 2,71,79,084/-	Rs. 33,22,86,346/-
7	AKN Developers Pvt. Ltd.	AADCA7428G	2014-15	Rs. 7,63,67,306/-	Rs. 14,05,15,214/-

Copies of the final assessment orders should be forwarded to this office immediately after passing the orders.

(Neeraj Kumar)
Additional Commissioner of Income Tax
Central Range -7, New Delhi

CERTIFIED TRUE COPY

TEJASVI SINGH
Dy. Commissioner of Income Tax
Circle-1(11) Room No. 329
E-2, R Building New Delhi

31 MAR 2016
RECEIVED
Dy. No

Certified True Copy

5. Relevant to mention that the order of assessment in each year was passed on 31.03.2016, the day when the approval was granted by the Addl.CIT, Central Range 7, New Delhi. Moreso, the approval is a consolidated approval in respect of Assessment Years 2008-09 to 2014-15.

6. The case of the assessee before us is this that the approval has been given without any application of mind, on a single day

i.e. on 31.03.2016 in respect of all Assessment Years 2010-11 to 2014-15 and such approval was sought for from the Addl.CIT, Circle Range-7, New Delhi for passing orders under Section 153A of the Act only on 30.03.2016. The said approval has been given in a single letter dated 31.03.2016. The contents of such approval does not depicts any application of mind by the Addl.CIT while granting approval rather it is a mechanical approval. Since, no record was forwarded to the Senior Officer while seeking approval under Section 153D of the Act, without examining those documents, the approval cannot be said to be a valid one. As the approval has been granted within a day upon receiving the letter seeking approval and the approval since a consolidated one in respect of all the Assessment Years 2010-11 to 2014-15, the same is granted mechanically without application of mind. In that view of the matter the approval is invalid and deserves to be quashed as was the ultimate submission made by the Ld. AR.

7. On the other hand, the Ld. DR relied upon the order of approval dated 31.03.2016 passed for Assessment Year 2009-10 to 2015-16.

8. The Ld. Counsel appearing for the assessee relied upon the following judgments :-

1. *(i) Principal Commissioner of Income-tax Vs. Anuj Bansal, reported in 165 taxmann.com 3*
2. *(ii) Principal Commissioner of Income-tax (Central)-2 Vs. Bansal, reported in ITA 368/2023 (Hon'ble High Court of Delhi) [13.07.2023]*

3. (i) *Principal Commissioner of Income-tax Vs. Shiv Kumar Nayyar*, reported in 163 taxmann.com 9 (Hon'ble High Court of Delhi) [15.05.2024]
(ii) *Shiv Kumar Nayyar Vs. ACIT*, reported at 1282 to 1285/Del/2020; 1078/Del/2021 and *ACIT Vs. Shiv Kumar Nayyar* reported in 1867/Del/2021 (Hon'ble ITAT, Delhi 'H' Bench) [26.07.2023]
4. *ACIT Vs. M/s. Serajuddin & Co.*, reported in ITA Nos. 39 to 45 of 2022 (Hon'ble High Court of Orissa at Cuttack [25.03.2023]
5. *Principal Commissioner of Income-tax Vs. Sapna Gupta*, reported in 147 taxmann.com 288 (Hon'ble High Court of Allahabad) [12.12.2022]
6. *Principal Commissioner of Income-tax Vs. Siddarth Gupta*, reported at 147 taxmann.com 305 (Hon'ble High Court of Allahabad [12.12.2022]
7. *Principal Commissioner of Income-tax Vs. Subod Agarwal*, reported in 86/2022 (Hon'ble High Court of Allahabad) [12.12.2022]
8. *Veena Singh Vs. ACIT*, reported in ITA No.294/Del/2022 (AY 2016-17) & ITA No.295/Del/2022 (A.Y 2017-18) (Hon'ble ITAT, Delhi F Bench) [24.04.2024]
9. *Shri Gurvinder Singh Duggal Vs. ACIT*, reported in ITA 860 to 863/Del/2021 (Hon'ble ITAT, Delhi 'C' Bench [06.06.2024]

9. We have heard the rival submissions made by the Ld. Counsels appearing for the respective parties and we have further perused the orders passed by the authorities below including the certified true copies of the order sheets for Assessment Years 2010-11 to 2014-15 which are annexed to the paper book filed before us at pages 49 to 63. Upon careful perusal of the above records, it appears that in the order sheets for Assessment Years 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15, there is no entry for sending the draft orders along with the seized materials and other records to the Ld. Addl. CIT for grant of approval under Section 153D of the Act. At the same time there is no entry for

receiving the seized materials and other records from the Ld. Addl. CIT. From the above coupled with the fact that after recording of order sheet date 23.03.2016 to this effect that the assessee attended and final submission, relevant documents are placed on record, case discussed, further only entry in respect of issuance of show cause dated 08.06.2016 under Section 274 r.w.s 271 was issued fixing the date of hearing on 29.04.2016, clearly establishes the fact that while granting approval, the Ld. Addl. CIT did not verify the documents those were never placed before him and the approval so granted is, therefore, does not prove application of mind by the Ld. Addl. CIT rather the same has been granted in a mechanical manner. Moreso, the approval has been granted by the Addl. CIT on 31.03.2016 as a consolidated one.

10. In a search matter before the order of assessment or reassessment is passed, requirement of prior approval of superior officer is a mandatory requirement in term of the provisions of law particularly under Section 153D of the Act.

11. The same equally must contain the reasons for such approval and further that reflection of due application of mind made by the approving authority on the draft assessment orders in respect of search and seizure operation as placed before him is also necessary, in the absence of which the approval is nothing but a mechanical approval, vitiates the entire assessment proceeding.

12. In this regard, we have considered the judgment passed by the Hon'ble Apex Court as relied upon by Ld. A.R in the case of ACIT Vs. Serajuddin And Co. (supra) and also the order passed by the Hon'ble Orissa High Court dated 15.03.2023 against which the said appeal was preferred by the Revenue department before the Hon'ble Supreme Court. Quashing the assessment order due to approval under Section 153D having being found mechanical, the SLP was dismissed upholding the order passed by the Hon'ble Orissa High Court.

13. In this regard the relevant observation of the Hon'ble Orissa High Court is as follows:

"2. While admitting the present appeals on 4th August 2022, the following question was framed for consideration:

"Whether on the facts and circumstances of the case, the ITAT was correct in holding that the Approving Authority has not applied his mind for giving approval under [Section 153D](#)?"

3. The background facts are that a search and seizure operation under [Section 132](#) of the Act was conducted in the case of the Assessee and various persons and concerns of the Assessee on 28th May, 2008. Notice dated 11th March 2010 under [Section 153A](#) of the Act was served on the Assessee. Notices under [Section 142 \(1\)](#) of the Act dated 19th May 2010 and reminders dated 1st July and 21st July 2010 were also issued. On 30th December 2010, the Assistant Commissioner of Income Tax (ACIT) Circle-1(2), Bhubaneswar (hereafter, the Assessing Officer-AO) passed assessment orders under [Section 143\(3\)/144/153A](#) of the Act making various additions/disallowances.

4. The Assessee then filed appeals before the CIT (A). One of the grounds for challenge was the non-compliance with [Section 153D](#) of the Act which requires prior approval of the Additional Commissioner of Income Tax (Additional CIT). The stand of the Revenue was that such approval had been sought by the AO and granted by the Additional CIT prior to the passing of the assessment order.

5. By an order dated 28th February 2013, the CIT (A) partly allowed the appeals. The CIT (A), however, held that it is not necessary that the fact of approval of the Additional CIT was required to be mentioned in the body of the assessment order. The CIT (A) observed that there was a consolidated

approval order dated 30th December 2010 given by the Additional CIT for AYs 2003-04 and 2009-10 and therefore, this ground had no merit.

6. The Assessee filed further appeals before the ITAT contending that the guidelines contained in Circular No.3 of 2008 dated 12th March 2008 issued by the Central Board of Direct Taxes (CBDT) had not been followed. It was further contended by the Assessee that the so-called approval of the Additional CIT under [Section 153D](#) of the Act had been granted in a mechanical manner without application of mind. Reference was made to the letter dated 29th December 2010 of the AO addressed to the Additional CIT Range-1 seeking approval under [Section 153D](#) of the Act and the letter dated 30th December 2010 of the Additional CIT addressed to the AO communicating the approval. Reference was also made to the decision dated 29th November 2019 of the ITAT in IT (SS) A Nos. 66 to 71/CTK/2018 ([Dillip Construction Pvt. Ltd. v. ACIT](#)) which held the guidelines contained in the aforementioned Circular to be mandatory and binding on the Department.

7. The ITAT has, in the impugned order, referred to the decision of the Bombay High Court in Akil Gulamali Somji and other decisions of the ITAT to come to the conclusion that the approving authority did not apply his mind to the relevant assessment records or to the draft assessment orders prior to granting approval to the AO under [Sections 143\(3\)/144/153A](#). The assessment orders were accordingly set aside. As a result, the cross appeals of the Revenue were held to be infructuous and disposed of as such.

8. Mr. T.K. Satapathy, learned Senior Standing Counsel for the Revenue made the following submissions:

- (i) In the present case, prior approval had in fact been taken by the AO from the Additional CIT and there was no illegality in that regard.
- (ii) The approval of the superior officer was distinct from the assessment order. It was a mere administrative order and not open to challenge before a court of law. In other words, it was submitted that the approval granted by the Additional CIT was not justiciable and could not form the basis for challenging the assessment order.
- (iii) What could only be challenged is want of sanction. Reliance was placed on the decision of the ITAT, Mumbai in ITA No.3874/ Mumbai/2015([Pratibha Pipes & Structural Limited v. DCIT](#) dated 10.04.2019)
- (iv) There was no requirement for any hearing to be given to the Assessee by the supervisory officer prior to giving approval although Clause-9 of the Manual of Office Procedure stipulates it. This, therefore, cannot be said to be mandatory. Reliance was placed on the decisions of the Karnataka High Court in [Gopal S. Pandit v. CIT](#) 96 taxmann.com 233 and [Rishab Chand Bhansali v. DCIT](#) 267 ITR 577 and of the Madras High Court in [Sakthivel Bankers v. ACIT](#) 255 ITR 144 which were all in the context of Section 158 BG of the Act.

- (v) The mere irregularity in granting approval in the context of [Section 158BG](#) of the Act was held not to be fatal to the assessment order. Reliance was placed on the orders of the Kolkata ITAT in [Shaw Wallace & Co. Ltd. v. ACIT](#), 68 ITD 148 and of the Delhi ITAT in [Kailash Moudgil v. DCIT](#), 72 ITD 97. Reliance was also placed on the decision of the Karnataka High Court in [Gayathri Textiles v. CIT](#), 111 taxman 123 where it was held that for the purpose of [Section 271 \(1\) \(c\)](#) of the Act, the failure to obtain prior permission from the IAC for imposing penalty was only a procedural error and not fatal to the order of penalty.
- (vi) Since the entire documents were already available to the Additional CIT in the file sent for approval, there was no need for exchange of the said documents prior to the grant of formal approval under [Section 153D](#) of the Act.
- (vii) Lastly, it was submitted that even if there had been a violation of the principles of natural justice, unless prejudice were shown by the Assessee, no interference with the assessment orders was warranted. Reliance was placed on the decisions in [Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise Gauhati](#) (2015) 8 SCC 519; [Managing Director, ECIL v. B. Karunakar](#) (1993) 4 SCC 727; [Haryana Financial Corporation v. Kailash Chandra Ahuja](#) (2008) 9 SCC 31; [State Bank of Patiala v. S.K. Sharma](#) (1996) 3 SCC 364; [P.D. Agrawal v. State of Bank of India](#) (2006) 8 SCC 776 and [State of U.P. v. Sudhir Kumar Singh](#). It was then submitted that where initiation was valid but completion was not correct, the order may not be invalid but only irregular because the intervening irregularity is a curable one. Reliance was placed on the decision of the Kerala High Court in [Panicker \(CGG\) v. CIT](#), (1999) 237 ITR 443 and [CIT v. M. Krishnan \(N\)](#) (1999) 235 ITR 386. It was submitted that mere technicality should not defeat justice.

9. On behalf of the Assessee submissions were made by Mr. Ramesh Singh, Senior Advocate; Mr. Sidhartha Ray, Senior Advocate; Mr. Ashok Kumar Parija, Senior Advocate as well as Mr. S. Ganesh, Senior Advocate. They drew attention of the Court to the relevant clauses of the CBDT Circular dated 12th March 2008 and the decisions in [Sahara India \(Firm,\) Lucknow v. Commissioner of Income Tax](#) (2008) 14 SCC 151; [Rajesh Kumar v. Deputy CIT](#), (2007) 2 SCC 181 and the decisions of the Delhi High Court in [ESS Advertising \(Mauritius\) v. Assistant Commissioner of Income Tax](#), (2021) SCC OnLine Del 3613; [Principal Commissioner of Income Tax-6 v. M/s. N.C. Cables Ltd.](#), 2017 SCC OnLine Del 6533; [Yum ! Restaurants Asia Pte. Ltd. v. Deputy Director of Income Tax](#), (2017) 397 ITR 665; [Syfonia Tradelinks Private Limited v. Income Tax Officer](#); 2021 SCC OnLine Del 2692 and [German Remedies Limited v. DCIT 2006](#) (1) Maharashtra Law Journal 517.

10. At the outset, it requires to be noticed that many of the decisions referred to both on the side of the Revenue as well as the Assessee do not directly refer to [Section 153D](#) of the Act which was inserted with effect from

1st June, 2007. There is no doubt about the applicability of the said provision since the proceedings under [Section 153A](#) of the Act was initiated in the present case after that date.

11. Among the changes brought about by the [Finance Act 2007](#) was the insertion of [Section 153D](#) of the Act. The CBDT circular dated 12th March 2008 refers to the various changes and inter alia also to the change brought about by the insertion of a new [Section 153D](#) of the Act. Paragraph 50 of the said circular is relevant and reads as under:

“50. Assessment of search cases--Orders of assessment and reassessment to be approved by the Joint Commissioner.

50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under [section 132](#) or requisition is made under [section 132A](#), does not provide for any approval for such assessment.

50.2 A new [section 153D](#) has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of [section 153A](#) in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#). The provision has also been made applicable to orders of assessment passed under clause (b) of [section 153B](#) in respect of the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisitioned is made under [section 132A](#).

50.3 Applicability- These amendments will take effect from the 1st day of June, 2007.”

12. It must be noted at this stage that even prior to the introduction of [Section 153D](#) in the Act, there was a requirement under [Section 158BG](#) of the Act, which was substituted by a [Finance Act 14](#) of 1997 with retrospective effect from 1st January 1997, of the AO having to obtain a previous approval of the JCIT/Additional CIT by submitting a draft assessment order following a search and seizure operation.

13. The CBDT issued the Manual of Office Procedure in February 2003 in exercise of the powers under [Section 109](#) of the Act. Para 9 of Chapter 3 of Volume-II (Technical) of the Manual reads as under:

“9. Approval for assessment: An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should

be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself.”

14. The requirement of prior approval under [Section 153D](#) of the Act is comparable with a similar requirement under [Section 158BG](#) of the Act. The only difference being that the latter provision occurs in Chapter-XIV-B relating to "special procedure for assessment of search cases" whereas [Section 153D](#) is part of Chapter-XIV.

15. A plain reading of [Section 153D](#) itself makes it abundantly clear that the legislative intent was to be obtaining of "prior approval" by the AO when he is below the rank of a Joint Commissioner, before he passes an assessment order or reassessment order under [Section 153A\(1\)\(b\)](#) or [153B\(2\)\(b\)](#) of the Act.

16. That such an approval of a superior officer cannot be a mechanical exercise has been emphasized in several decisions. Illustratively, in the context of [Section 142 \(2-A\)](#) which empowers an AO to direct a special audit. The obtaining of the prior approval was held to be mandatory. The Supreme Court in [Rajesh Kumar v. Dy. CIT \(2007\) 2 SCC 181](#) observed as under:

“58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/ or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given.”

17. It is therefore not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the approval is granted mechanically, it would vitiate the assessment order itself. In [Sahara India \(Firm\) Lucknow v. Commissioner of Income Tax](#) (supra), the Supreme Court explained as under:

“8. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the

special auditor. Similarly, 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. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case.”

18. The contention of the Revenue in those cases that the non-compliance of the said requirement does not entail civil consequences was negated. Reiterating the view expressed in [Rajesh Kumar](#) (supra), the Supreme Court in [Sahara India \(Firm\) Lucknow v. Commissioner of Income Tax](#) (supra) held as under:

“29. In [Rajesh Kumar](#) (2007) 2 SCC 181 it has been held that in view of [Section 136](#) of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. [Section 136](#) of the Act, stipulates that any proceeding before an Income Tax Authority shall be deemed to be judicial proceedings within the meaning of [Sections 193 and 228](#) of Indian Penal Code, 1860 and also for the purpose of [Section 196](#) of I.P.C. and every Income Tax Authority is a court for the purpose of [Section 195](#) of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in [Rajesh Kumar](#)'s case (supra), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of [Section 136](#) of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: [Maneka Gandhi v. Union of India](#) (1978) 1 SCC 248 and [S.L. Kapoor v. Jagmohan](#) (1980) 4 SCC 379).

30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under [Section 142 \(2A\)](#) does entail civil consequences, the rule audi alteram partem is required to be observed.”

19. To the same effect, are the decisions of the Delhi High Court in [Yum! Restaurants Asia Pte. Ltd. v. Deputy Director of Income Tax](#) (supra) which dealt with the requirement under [Section 151 \(2\)](#) of the Act for initiating proceedings under [Section 147](#) read with 148 of the Act. It was observed as under:

“11. The purpose of Section 151 of the Act is to introduce a supervisory check over the work of the AO, particularly, in the context of reopening of assessment. The law expects the AO to exercise the power under Section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the AO, then the law expects the superior officer to be able to correct that error. This explains why Section 151 (1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the AO where the return originally filed was assessed under Section 143 (3) of the Act. Further, where the reopening of an assessment is sought to be made after the expiry of four years from the end of the relevant AY, a further check by the further superior officer is contemplated.”

20. The non-compliance of the requirement was held to have vitiated the notice for reopening of the assessment. Likewise, in *Syfonia Tradelinks Private Limited v. Income Tax Officer* (supra) the Delhi High Court disapproved of the rubber stamping by the superior officer of the reasons furnished by the AO for issuance of the sanction.

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:

Assessment Year	Income Determined (Rs)
2003-04	11,66,22,771
2004-05	36,46,80,016
2005-06	65,70,12,805
2006-07	60,02,65,791
2007-08	130,03,13,307
2008-09	274,68,87,069
2009-10	301,17,05,952

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

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.

26. The question of law framed is therefore answered in the affirmative i.e., in favour of the Assessee and against the Department.

27. The appeals are accordingly dismissed, but in the circumstances, with no order as to costs.”

14. The SLP was dismissed with the following observations:

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

15. The contention made by the Ld. D.R. in that matter that since the entire documents were already available to the Additional CIT in the file sent for approval, there was no need for exchange of the said document prior to the grant of formal approval under Section 153D of the Act as also made before us by the Ld Dr was ultimately not accepted by the Court.

16. We have further considered the judgment passed by the Hon’ble Apex Court in the case of PCIT Vs. Anuj Bansal whereby

and whereunder the order passed by the Hon'ble Delhi High Court quashing the assessment order on the ground of mechanical approval granted under Section 153D of the Act has been upheld. The Hon'ble Delhi High Court passed orders in the following manner:

- “6. The appellant/revenue via this appeal seeks to assail the order dated 29.04.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]
7. The Tribunal has via the impugned order set aside the additions made qua the income of the respondent assessee inter alia, on the ground that there was no application of mind by the Additional Commissioner of Income Tax (In short, "ACIT") in granting approval under Section 153D of Income Tax Act 1961 [in short, the Act].
8. To be noted, an assessment order was framed qua the respondent/assessee under Section 153A, read with Section 143(3) of the Act.
 - 8.1. This order was carried in appeal by the respondent/assessee, right up till the Tribunal.
9. Insofar as the Assessing Officer (AO) was concerned, he made certain additions against the returned income.
 - 9.1 The respondent had declared an income amounting to Rs 87,20,500/- However, while making the additions, strangely, the AO noted that the returned income was Rs. 11,00,460/-.
10. There were two additions made by the AO. The first addition was made qua cash deposited in the bank amounting to Rs. 15,04,35,000/-. The second addition was made with regard to cash introduced via an entry operator i.e. one, Mr. Vipin Garg The amount added qua this aspect was pegged at Rs.1,54,07,100/-.
11. Despite these additions, which would have taken the assessed income well beyond what was crystallised by the AO i.e. 1.65,07,560, the ACIT failed to notice the error.
12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal thus concluded there was a complete lack of application of mind, inasmuch as the ACIT who granted approval, failed to notice the said error.
 - 12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.
13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The

relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

“17.1 However, in the present case, we have no hesitation in stating that there is complete non application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs.16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1.65,07,560 had he applied his mind The addition of Rs.15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra) In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed”

[Emphasis is ours]

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.
15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.
16. We are not inclined to interdict the order of the Tribunal.”

17. The SLP preferred by the revenue, was dismissed by the Hon'ble Apex Court.

18. Upon considering the entire aspect of the matter, we find that the approval has been granted not separately for each assessment year for the assessee whereas as per the provision of Section 153D of the Act the stipulated condition is this that no order of assessment or reassessment shall be made by an Assessment Officer below the rank of Joint Commissioner in respect of each assessment year referred to in Clause (b) of Sub Section (1) of Section 153A of the Act or the assessment year referred to in Clause (b) of Sub Section 153B of the Act except the prior approval of the Joint Commissioner. It further appears from the approval dated 31.03.2016 that the same was a common and composite order whereas the Addl. Commissioner is required to verify and approve that each of assessment year is complied with as well as procedural formalities laid down under the statute. Such fact clearly reveals non-application of mind on the part of the Learned Addl. Commissioner of Income Tax, Central Range-7, New Delhi. Thus granting approval for all the common years instead of approval for each assessment year separately de hors the rules. The said approval is found to have been given in a mechanical and routine manner. We find that the order issuing authority has not discharged its statutory duties cast upon him even by assigning cogent reasons in respect of the issues involved in the matter. Thus granting approval in the absence of due application of independent mind to the materials on record for each assessment year in respect of the assessee's case separately vitiates the entire proceedings; the same is found to be arbitrary and erroneous and therefore, liable to be quashed. We are also

inspired by the ratio laid down in the Judgment narrated hereinabove passed by the Hon'ble Jurisdictional High Court.

19. Having heard the Ld. Counsels appearing for the parties, having regard to the facts and circumstances of the case, the order of approval issued by the Additional Commissioner of Income Tax appearing at page 2 of the paper book filed before us found to be invalid in view of this particular fact that the said approval does not speak of movement of any file. Neither given approval for each year separately nor assigned any reason for such approval; the same is nothing but a product of total non-application of mind by the order approving authority. Further that the impugned order of approval dated 31.03.2016 has been issued on the next day when the draft assessment orders in respect of these assessment years have been placed before him and in hot haste the approval has been granted. The same does not establishes review of the assessment records and search materials by the Additional CIT too; the same is, thus, a mechanical approval and hence the judgments relied upon by the Ld AR as discussed above are found to be rightly applicable. Respectfully relying upon the ratio laid down by the Hon'ble Apex Court in these matters mentioned above, in the case in hand the approval since granted mechanically, without application of mind by the Additional Commissioner that too without assigning any reason, in our considered view is invalid and thus deserves to be quashed.

20. With the aforesaid observation we, therefore, quash the impugned approval dated 31.03.2016. The assessment orders are

also, therefore, vitiated and thus, quashed. The assessee's appeal, is, therefore, allowed. As the appeal is allowed on this ground all other grounds taken by the assessee become academic and no order needs to be passed.

21. In the result, all the appeals preferred by the assessee on this common ground are allowed.

Order pronounced in the open court on 19.12.2024.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 19.12.2024

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI