

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH “F”, NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER

	ITA NO. 4063/Del/2024		
	A.YR. : 2018-19		
RAJESH KUMAR GUPTA, C/O RAJ KUMAR & ASSOCIATES, L-7A, LGF SOUTH EXTENSION, PART-2, NEW DELHI – 49 (PAN: ABHPG7950P) (APPELLANT)	VS.	ACIT, CENTRAL CIRCLE-14, ROOM NO. 266, JHANDEWALAN EXTN., NEW DELHI – 55 (RESPONDENT)	

Appellant by : Shri Raj Kumar, CA & Shri J.P. Sharma, CA

Respondent by : Ms. Suman Malik, CIT(DR)

Date of hearing : 21.01.2025

Date of pronouncement : 06.02.2025

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal-28), Delhi dated 14.08.2024, relating to assessment year 2018-19 on the following grounds:-

1. *That under the facts and circumstances, the impugned manual asstt. order is unsustainable in law and should be deemed to never have been issued in the absence of quoting DIN No. in the body of asstt. order and for not complying with the mandatory conditions and requirements of CBDT Circular No. 19/2019*

*Dtd.14.08.19 applicable w.e.f. 01.10.19.*

2. *That under the facts and circumstances, in the absence of any DIN on demand notice U/s.156 Dtd.31.12.19, the impugned demand notice and consequentially the asstt. order Dtd.31.12.19 are nonest and unsustainable in view of non compliance of the mandatory requirements of CBDT Circular No. 19/2019 Dtd.14.08.19 applicable w.e.f. 01.10.19.*
3. *That in the absence of DIN in the communication Dtd.29.12.19 by Addl. CIT to A.O. granting approval U/S.153D, the approval as well as the resultant asstt. orders U/s. 143(3) are nonest and unsustainable in law in view of CBDT Circular No.19/2019 Dtd.14.08.19 applicable w.e.f. 01.10.19.*
4. *That in view<sup>w</sup> of the approval U/S.153D by Addl. CIT being mechanical and without application of mind, apart from without providing an opportunity of hearing, the impugned approval U/S.153D and consequential asstt. order are unsustainable in law.*
5. *That under the facts and circumstances and in view of the explanations and evidences filed. the Ld. CIT(A) erred in law and on merits in sustaining addition of Rs.90,71,755/- U/S.69A for jewellery seized during search out of total addition made by the A.O. at Rs.5,67,68,556/-. The Ld. CIT(A) should had deleted the complete addition.*

2. In this case assessment order was passed u/s. 143(3) of the Act dated 13.12.2019. AO made the addition of Rs. 1,02,00,000/- on account of undisclosed / unaccounted income and addition of Rs. 5,67,68,556/- on account of undisclosed jewellery. Upon assessee's appeal, Ld. CIT(A) partly allowed the appeal of the Assessee. Against the order of the Ld. CIT(A), assessee is in appeal before us.

3. At the time of hearing, Ld. Counsel for the assessee only pressed the ground that approval u/s. 153D of the Act by the Addl. CIT is mechanical and without application of mind. In this regard, Ld. Counsel for the assessee made the following submissions:-

*“Search on assesses on 29.11.17.*

*In this case letter by A.O. for approval in 69 No. of cases U S.153D Dtd.29.12.19 was sent to Addl. CIT on 29.12.19 (10-11). Ld. Addl. CIT granted approval on the same day in all 69 No. of cases vide approval order Dtd.29.12.19 (10-11). From the approval order it is apparent that the Ld. Addl. CIT has given a pure mechanical approval without application of mind, without going to the records and even without mentioning in the approval order that he has even gone through the “draft assessment orders”. Also, the approval in all 69 No. of cases has been given vide single approval order.*

*Hon’ble Delhi High Court in CIT Vs. Shiv Kumar Nayyar - ITA No. 285/2014 (H.C.) has recently held that such approvals which even do not mention that the Addl. CIT has gone through the draft assessment orders and also the approval in many cases being given by single approval order makes the approval mechanical, without application of mind and on the basis of such approvals, the validity of impugned asstt. cannot be sustained. The facts of the case in hand are also similar.*

#### Other Case Laws Holding Similarly

- *ACIT Vs Serajuddin & Co. -[2023] 150 taxmann.com 146 (Orissa) - Dtd. 15.03.23*
- *SLP of the revenue in above case stood dismissed by Hon’ble Supreme Court reported as (2024) 163 taxmann.com 118 (SC) (28.11.2023).*
- *Shiv Kumar Nayyar Vs. ACIT - ITA No. 1282 to 1285/Del/2020 and 1078/Del/2021 (ITAT)*
- *PCIT vs. Anuj Bansal in ITA No. 368/2023 decided on 13.07.2023 by Hon'ble Delhi High Court*
- *PCIT vs Sapna Gupta 2022 SCC Online (All.) 1294*
- *M/s Airwill Infra Ltd. -ITA 349/Del/2019 Dtd.18.12.2024 -(ITAT)*
- *Inderchand Bajaj - ITA No.2873//Del/2022 Dtd.17.01.2025 - (ITAT)”*

4. Per contra, Ld. CIT(DR) relied upon the orders of the authorities below.

5. We have carefully considered the submissions and perused the records. We find that in this case Addl. Commissioner of Income Tax, Central Range-4, Delhi had granted approval to 69 no. of cases. We can gainfully refer the same as under:-

The Asstt. Commissioner of Income Tax  
CC-14,  
New Delhi.

Sub: - Approval u/s 153D of the Income Tax Act, 1961 - Regarding-

Please refer to the subject cited above.

In this regard, draft assessment order(s) in the below mentioned case(s) submitted to this office, vide F. No. ACIT/CC-14/ **Brindavan Group of cases** /2019-20/1022 dated 29.12.2019 seeking approval u/s 153D of the IT Act, 1961:

S. No.	Name of the Assessee	PAN	Assessment Year	Draft Order u/s
1.	Shilpi Gupta (2)	AMFPS2922Q	2017-18 to 2018-19	153A/143(3)
2.	Anjali Gupta (2)	AAPPG2477C	2017-18 to 2018-19	153A/143(3)
3.	Sandhya Gupta (2)	AAQPG3084L	2017-18 to 2018-19	153A/143(3)
4.	Vani Gupta (2)	AHEPK6609P	2017-18 to 2018-19	153A/143(3)
5.	Rupika Gupta (2)	AJIPG5809J	2017-18 to 2018-19	153A/143(3)
6.	Manisha Gupta (2)	ABHPG7872J	2017-18 to 2018-19	153A/143(3)
7.	Geo Metal Resources Pvt. Ltd. (2)	AAACM8067A	2017-18 to 2018-19	153A/143(3)
8.	Chahat Exim P.Ltd. (1)	AACCC5747R	2017-18	153A/143(3)
9.	Blue Fox Farms Pvt. Ltd. (1)	AAFCB1161K	2018-19	143(3)
10.	Indopol Food Processing Machinery P.Ltd. (2)	AAACI1929D	2013-14 & 2018-19	153A/143(3)
11.	Murliwala Infrastructure P. Ltd. (2)	AAFCM4559G	2017-18 to 2018-19	153A/143(3)
12.	Giriraj Nursery P. Ltd. (1)	AAACT0538R	2018-19	143(3)

AO sent for  
Approval on 29.12.2019

(11)

13	Megha Buildwell P. Ltd.	①	AAFCM9143C	2018-19	143(3)
14	Brijesh Gupta	③	AAPPG2480H	2012-13, 2017-18 & 2018-19	153A/143(3)
15	Rajesh Gupta	②	ABHPG7950P	2017-18 & 2018-19	153A/143(3)
16	Amit Gupta	②	AAPPG1558C	2017-18 & 2018-19	153A/143(3)
17	Sumit Gupta	②	ABHPG7925N	2017-18 & 2018-19	153A/143(3)
18	Gyan Gupta	②	AAPPG2465G	2017-18, & 2018-19	153A/143(3)
19	Vijay Gupta	⑦	AFXPG7177A	2012-13 to 2018-19	153A/143(3)
20	Himanshu Gupta	②	AFLPG5450J	2017-18 & 2018-19	153A/143(3)
21	Mukund Gupta	②	ATBPG0364R	2017-18 & 2018-19	153A/143(3)
22	Mukesh Khandelwal	⑦	ABZPK3179L	2012-13 to 2018-19	153A/143(3)
23	Brindavan Enterprises Pvt. Ltd.	⑥	AAACB0067D	2008-09 to 2011-12 & 2017-18 to 2018-19	153A/143(3)
24	Brindavan Agencies Pvt. Ltd.	⑤	AAACB3167C	2012-13 to 2014-15, 2016-17 & 2018-19	153A/143(3)
25	Brindavan Finvest Pvt. Ltd.	⑦	AABCV4459N	2012-13 to 2018-19	153A/143(3)

The approval as per provisions of section 153D of the Act, in respect of draft assessment order(s) submitted in the above mentioned case(s), is hereby accorded.

*(Signature)*  
(Rajesh Kumar)  
Addl. Commissioner of Income Tax  
Central Range-4, Delhi

*Total 69 No of Cases*

Certified True Copy

*(Signature)*  
Jai Prakash Sharma  
Chartered Accountant

5.1 From the above, it is apparently clear that Addl. Commissioner of Income Tax has given approval in all 69 number of cases and the approval thereof is purely mechanical and without application of mind. In such cases, the assessment loses its validity. The case laws referred by the Ld. Counsel

for the assessee are germane and supports the case of the assessee. We further note that Delhi Bench of the Tribunal in the case of M/s Infolance Software Solutions Pvt. Ltd. vs. ACIT, CC-13, New Delhi in ITA No. 4105 to 4107/Del/2019 (Ays. 2011-12, 2013-14 & 2014-15) and ITA No. 4289/Del/2019 (AY 2013-14) & Others vide its order dated 26.11.2024 has considered the exactly similar issue and has held as under:-

*“7. From examination on record, in light of aforesaid, it is crystal clear that the core issue in the appeals is challenge to the authority to approval granted by Ld. JCIT vide order dated 29/12/2017. Learned JCIT had granted 39 approvals on 29/12/2017 itself for (Deepak Agarwal & Others group). Hon’ble ITAT Delhi Bench in case of Mysore Finlease Pvt. Ltd. & Ors. in ITA 8821/Del/2019 & Ors. decided on 10/01/2024 held under:-*

*“7. We find that the ld. JCIT granted approval of the draft assessment orders u/s 153D of the Act for 40 cases for various Asst Years in respect of assessments to be completed u/s 153A of the Act. The Ld. AR before us had raised a preliminary objection that the said statutory approval granted by the ld. JCIT u/s 153D of the Act enabling the ld. AO to complete the search assessment, was a mere mechanical approval without due application of mind on the part of the ld. JCIT. Further, the Ld. AR also submitted that the meaning of 'approval' as contemplated u/s 153D of the Act is that the ld. JCIT is required to verify the issues raised by the Ld. AO in the draft assessment order and apply his mind and ascertain whether the entire facts have been properly appreciated by the Ld. AO. The said approval proceedings is a quasi judicial function to be performed by the ld. JCIT based on sound reasoning on due examination of the seized documents, replies filed by the assessee and the draft assessment orders of the Ld. AO. Thus, it is bounden duty of the ld. JCIT to exercise this power by applying his judicious mind. The Ld. AR vehemently argued that the 40 draft assessment orders for 10 assesseees were sent for approval by the Ld. AO to the ld. JCIT on 29.12.2017 and the ld. JCIT had granted approval for all the cases on the very same day, i.e., on 29.12.2017. The Ld. AR reiterated the fact that 40 draft*

assessment orders u/s 153A of the Act were approved by the ld. JCIT u/s 153D of the Act on the single day i.e. the day on which the draft assessment orders were forwarded to the ld. JCIT by the ld. AO. Based on this, the Ld. AR submitted that the ld. JCIT had granted approval by devoting very few minutes for each case in a mechanical manner u/s 153D of the Act without due application of mind. Moreover, the approval letter granted u/s 153D by the ld. JCIT for all the seven assessment years, clearly states that the draft assessment orders per se were placed by the Ld. AO before the ld. JCIT only on 29.12.2017 and they were approved on the very same day. Accordingly, he pleaded that this type of approval cannot be treated as a valid approval contemplated u/s 153D of the Act. Further, the Ld. AR submitted that a single approval was granted by the ld. JCIT u/s 153D of the Act for all assessment years put together instead of granting approval for each of the assessment years separately as contemplated in the section. Accordingly, the Ld. AR argued that the entire search assessments framed in the hands of the various assessees listed in the cause title u/s 153A r.w.s. 143(3) of the Act dated 29.12.2017 for various Asst Years under consideration required to be quashed as void ab initio. In support of this argument, the Ld. AR placed heavy reliance on the decision of the Hon'ble Orissa High Court in ITA Nos.39 to 45 of 2022 dated 15.03.2023 in the case ACIT, Circle 1(2), Bhubaneswar vs. M/s Serajuddin & Co. and the decision of the Hon'ble Allahabad High Court in the case of PCIT vs. Subodh Aggarwal in Income-tax Appeal No.86/2022 dated 12.12.2022.

8. Per contra, the Ld. DR vehemently argued that the role of ld. JCIT, Central Range is totally different from the role of a JCIT in the normal range. He argued that in a Central Range, the ld. JCIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires to the assessee. The ld. JCIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the ld. JCIT to grant approval of the draft assessment

order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the Ld. AR has no force. Further, the Ld. DR vehemently argued that bare reading of provisions of section 153D of the Act talks only about existence of approval from the ld. JCIT. There is no mention of application of mind on the part of the ld. JCIT or the approving authority in the said section. The expression 'application of mind' is only provided by the Judicial decisions and not provided in the statute. Hence the Ld. DR argued that literal interpretation is to be given to the provisions of section 153D of the Act which does not provide for application of mind of the approving authority and hence any other interpretation contrary to the same would only result in re-writing the law.

9. We find, as per the scheme of the Act, for framing search assessments, the Ld. AO can pass the search assessment order u/s 153A or u/s 153C of the Act only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the ld. JCIT in terms of section 153D of the Act. This is a mandatory requirement of law. The said approval granting proceedings by the ld. JCIT is a quasi judicial proceeding requiring application of mind by the ld. JCIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme of the Act, it is the bounden duty of the Ld. AO to seek to place the draft assessment order together with copies of the seized documents before the ld. JCIT well in time much before the due date of completion of search assessment. The ld. JCIT is supposed to examine the seized documents, questionnaires raised by the Ld. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Ld. AO and the conclusions drawn by the Ld. AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the ld. JCIT in a judicious way after due application of mind. Even though as vehemently argued by the Ld. CIT-DR, the ld. JCIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the ld. JCIT, while granting the approval u/s 153D of the Act has to independently apply his mind de hors



*the conclusions drawn either by the Investigation Wing in the appraisal report or by the Ld. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Ld. AO and ld. JCIT are merely guidance to the Ld. AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Ld. AO to frame the assessment after getting prior approval from ld. JCIT u/s 153D of the Act. The ld. JCIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions of the Act as nowhere the Act mandates so. The scheme of the Act mandates due application of mind by the Ld. AO to examine the seized documents independently de hors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Ld. AO as well as the ld. JCIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of ld. JCIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Ld. CIT DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Ld. AO and the ld. JCIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. In our considered opinion, if the arguments of the Ld. CIT DR are to be appreciated that the ld. JCIT need not apply his mind while granting approval of the draft assessment orders u/s 153D of the Act as it is not provided in section 153D of the Act, then it would make the entire approval proceedings contemplated u/s 153D of the Act otiose. The law provides only the Ld. AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the ld. JCIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Ld. AO.*

*10. Let us now examine whether in the aforesaid background of the scheme of the Act, whether the approval in terms of section 153D of the Act has been granted by the ld. JCIT in a judicious way after due application of mind or not, in the instant case.*

11. We have gone through the approval granted by the ld. JCIT on the date mentioned in the table hereinabove u/s 153D of the Act. The said approval letter clearly states that a letter dated 29.12.2017 was filed by the Ld. AO before the ld. JCIT seeking approval of draft assessment order u/s 153D of the Act. The ld. JCIT has accorded approval for the said draft assessment orders on the very same day i.e., on 29.12.2017 for various assessment years in the case of various assessees. In any event, whether is it humanly possible for an approving authority like the ld. JCIT to grant judicious approval u/s 153D of the Act for 40 cases for various assessment years on a single day is the subject matter of dispute before us. Further, section 153D of the Act provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. JCIT has granted a single approval for all assessment years put together. We find that the reliance placed by the Ld. AR on the decision of the Hon'ble Orissa High Court in the case of ACIT, Circle 1(2), Bhubaneshwar vs. M/s Serajuddin & Co. in ITA Nos. 39 to 45 of 2022 dated 15.03.2023 is well founded. The question before the Hon'ble Orissa High Court is as under:-

*"Whether on the facts and circumstances the ITAT was correct in holding that the approving authority has not applied his mind for giving approval u/s 153D?"*

12. In the case before the Hon'ble Orissa High Court, the approval of draft assessment orders was placed by the AO before the Addl.CIT on 27/29.12.2010 for seven assessment years. The approval was granted by the Addl. Commissioner for seven assessment years u/s 153D of the Act on 30.12.2010 by merely saying that the draft orders submitted by the officer in the above case for the seven assessment years are hereby approved. The Hon'ble Orissa High Court took note of this fact and quashed the search assessment and decided the issue in favour of the assessee by holding as under:-

*"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 'seen' 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."*

*13. Further, we find that similar view was taken by the Hon'ble Allahabad High Court in the case PCIT vs. Subodh Aggarwal in Income-tax Appeal No.86/2022 dated 12.12.2022. In this case, the draft assessment order was placed for approval before the Addl. CIT on 31.12.2017. The approval u/s 153D was granted by the Addl. CIT on 31.12.2017. The final assessment order was passed by the AO on 31.12.2017. The time limit for completion of search assessment was 31.12.2017. 38 cases were approved by the Addl.CIT u/s 153D of the Act on 31.12.2017. In this background, the Hon'ble Allahabad High Court held as under:-*

*"The submission is that the substantial question of law which arises for consideration before this Court is about*

*the justification of the act of the Tribunal in ignoring the findings recorded by the Assessing Officer and setting aside the assessment order on the sole ground of defect in the approval to the draft assessment order granted by the competent Approving Authority. Learned counsel for the Assessee, however, defended the order of the tribunal for the reasoning given therein.*

*Considering the submissions of the learned counsel for the parties and having perused the order of the Tribunal, in view of the undisputed facts before us about the manner in which the approval to the draft assessment order was granted under Section 153D for the assessment proceedings, by a letter dated 31.12.2017 in 38 cases placed before the approving authority in a single day, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeal.*

*To answer the same, we are required to go through the relevant provisions of the Income Tax Act. Section 132 provides the procedure for search and seizure operations in consequence of the information in possession of the Income Tax Authorities. Section 153A prescribes assessment in case of search or requisition. Section 153A provides that in the case of a person where a search is initiated under Section 132, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years (and for the relevant assessment year or years) referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may apply accordingly as if such return were a return required to be furnished under Section 139.*

*Section 153D of the Act relevant for our purposes is to be noted*

*"Prior approval necessary for assessment in cases of search or requisition.*

*153D.-No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.*

*Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or] Commissioner under sub-section (12) of section 144BA."*

*The Tribunal while quashing the assessment order had relied upon its earlier decision in Navin Jain and Others (Supra) wherein a detailed discussion has been made with regard to the requirement of prior approval of superior authority on the draft assessment order under Section 153D, before passing the assessment order by the Assessing Officer. It was noted that the word 'approval' though has not been defined in the Income Tax Act but the general meaning of the word 'approval' in Black's Law Dictionary, 6th Edition was to be seen. The decision of the Apex Court in Vijayadev Naval Kishore Bharatia vs. Land Acquisition Officer (2003) 5 SCC 83 wherein the distinction between Approving Authority and Appellate Authority was drawn, had been noted. The decision of the High Court of Gauhati in Dharampal*

*Satyapal Ltd. vs. Union of India (2019) 366 ELT 253 (Gau.) has been noted to record that grant of approval means due application of mind on the subject matter approved which satisfies all the legal and procedural requirements. There is an exhaustive discussion on the requirement of prior approval under Section 153D of the Act and it was noted that the requirement of approval cannot be treated as mere formality and the mandate of the Act that the Approving Authority has to act in a judicious manner by due application of mind in a manner of a quasi judicial authority, has been considered.*

*It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.*



*It was noted that the obligations of the approval of the Approving Authority serves two purposes: (i) On the one hand, he has to apply his mind to ensure the interest of the revenue against any commission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year. (ii) On the other hand, superior authority is also responsible and duty-bound to do justice with the tax-payer by granting protection against arbitrary or creating baseless tax liability on the assessee.*

*The Tribunal has further noted that the provisions contained in Sections 153A to Section 153D provide for separate notice to be given to assessee for assessment for each year as specified in Section 153A of the Act; the assessee has to file separate ITR for each year as specified in Section 153A of the Act; separate assessment orders are to be passed for each year as specified in Section 153A of the Act.*

*It was observed that this is an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of the said Section. Keeping in view of this basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of Section 153D, which is "each assessment year". The reading of the provisions in Section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under Section 153D of the Income Tax Act. In its erudite judgement with the discussion on the legislative intent of Section 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India vs. CIT and Others (2008) 300 ITR 403 (SC) where the discussion on the requirement of prior approval of Chief Commissioner or*

*Commissioner in terms of provision of Section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein 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.*

*The above discussion made in the judgement of Tribunal dated 3.08.2021 in the case of Navin Jain Vs. Dy. C.I.T. (Supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under Section 153D of the Act would vitiate the entire proceedings in the instant case.*

*For the reasoning given in the case of Navin Jain (Supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of Section 153D of the Income Tax Act.*

*The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval*

*order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law 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. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of Section 153A which provides for assessment in case of search under Section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment or years), referred to in Clause (b) of sub-section (1) of Section 153A. The proviso to Section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).*

*The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A.*

*In the instant case, the draft assessment order in 38 cases, i.e. for 38 assessment years placed before the Approving Authority on 31.12.2017 was approved on same day i.e. 31.12.2017, which not only included the cases of respondentassessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent 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.*

*As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeal being in the nature of second appeal. No substantial question of law arises for consideration before us.*

*The Appeal is dismissed being devoid of merit."*

*14. Further, we find that similar issue has been addressed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Anju Bansal in ITA 368/2023 order dated 13.07.2023 wherein, under similar circumstances, the Hon'ble Delhi High Court categorically held that statutory approval given by a quasi judicial authority without due application of mind as contemplated in section 153D of the Act would be fatal to the entire search assessment proceedings. The relevant operative part of the said order is reproduced below:-*

*"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 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."*

15. *In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Id. JCIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high*

*ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Jurisdictional High Court (Delhi High Court) referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the additional grounds raised for all assessment years under consideration before us for all the assessees. Accordingly, the Additional Grounds raised by all the assessees for all the assessment years under consideration are hereby allowed.*

*16. Since, pursuant to the allowing of the additional grounds, the entire search assessment framed in the hands of all the assessees is to be declared illegal and bad in law, the other legal grounds and grounds on merits raised by the assessees for various assessment years need not be gone into as adjudication of the same would be merely academic in nature and, hence, they are left open.*

*17. In the result, all the appeals of the assessee are allowed and appeal of the revenue in ITA No. 8788/Del/2019 in the case of Brij Kishore for Asst Year 2010-11 is dismissed.*

*8. In view of above observations and respectfully following the judicial precedent, we have no hesitation in holding that the approval u/s 153D of the Act granted by Learned JCIT in the instant cases were in mechanical manner without due application of mind. Accordingly, the grounds by all the assessees for all the assessment years under consideration are allowed.”*

6. We further find that Hon'ble Delhi High Court in Pr. CIT Vs. Shiv Kumar Nayyar in ITA No. 285/2014 & CM Appl 28994/2024 vide its order dated 15.5.2024 has dealt the similar issue and held as under:-

*“...17. Notably, the order of approval dated 30.12.2020 which was produced by before us by the learned counsel for the assessee clearly signifies that a single approval has been granted for AYs. 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an*

*independent application of mind. Also, we cannot lose sight of the fact that the instant cases, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above....”*

7. Respectfully following the aforesaid precedents, we hold that the approval u/s. 153D granted by the ld. Addl. Commissioner of Income Tax, Central Range-4, Delhi in the instant case is mechanical and without due application of mind. In as much as 69 cases were approved in a single day without even mentioning that the draft assessment orders were perused much less perusal of the same with an independent application of mind. Accordingly, we quash the assessment and allow the assessee's appeal.

8. In the result, the Appeal filed by the Assessee is allowed in the aforesaid manner.

Order pronounced on 06/02/2025.

Sd/-

(VIMAL KUMAR)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SRBHATNAGAR

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)5. DR, ITAT

Assistant Registrar