

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH: DEHRADUN**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.1809/Del/2017
(ASSESSMENT YEAR 2012-13)

Raju Verma 17/1, Curzon Road, Dehradun-248001. PAN-ABIPV8176F (Appellant)	Vs.	DCIT, Central Circle, Dehradun. (Respondent)
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Assessee by	Dr. Rakesh Gupta, Advocate and Shri Somil Aggarwal, Advocate
Department by	Sh. S.K. Chatterjee, CIT-DR
Date of Hearing	14/02/2025
Date of Pronouncement	21/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is the appeal filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, ('the Ld. CIT(A)' for short) dated 17.02.2027, for Assessment Year 2012-13.

2. During the course of hearing vide letter dt. 13.11.2024, assessee filed an application under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 (ITAT Rules, in short) and raised one additional ground which reads as under:

"That having regard to the facts and circumstances of the case, the approval u/s 153D is bad in law inter-alia for the reason that there is lac of application of mind and approvals for assessment years 2006-07 to

2012-13 have been given consolidatedly contrary to the settled position of law.”

3. The ld. AR submits that the additional ground now raised is purely a legal ground and goes to the root of the matter thus the same may be admitted and adjudicated first. He placed reliance on the decision of Hon'ble Supreme court in the case of NTPC Ltd. reported in 229 ITR 383 (SC) and also on other judgements of various high courts. After considering the submission and looking to the nature of additional ground raised by the assessee, we find that in this ground the assessee has challenged the legality of approval granted by the Adl. CIT in terms of section 153D which is purely a legal ground and requires no further verification. Thus, in the interest of justice and in view of the ratio laid down by the Hon'ble Supreme court in the case of NTPC Ltd. (supra), the same is admitted and taken up for adjudication first.

4. It was submitted by the ld. AR that the assessee is challenging the assessment order on the technical ground in respect of approval granted u/s.153D of the Act by the Addl. CIT. It was the submission that the approval granted u/s.153D of the Act by the ld. Addl. CIT. The ld. AR drew our attention to copy of the approval granted by the ld. Addl. CIT on 24.3.2014 as filed by the assessee along with the prayer for the admission of the additional ground of appeal, which is as follows :-

To
The Dy. Commissioner of Income Tax,
Central Circle, Dehradun,

Dated: 24.03.2014

Subject: Submission of Draft Assessment Orders In Punjab Jewellers Group of cases, Dehradun Approval thereof - regarding

Kindly refer to your office letter F. No DCIT/CC/DFA/2013-14/2760 dated 13.03.2014 on the above mentioned subject.

2. in the following cases of Punjab Jewellers, Group of cases prior approval u/s 1530 of the Income Tax Act, 1961 is accorded for passing assessment orders u/s 153A of the I.T Act, 1961 In respect of the assesses for the assessment year as mentioned.

Sl. No.	Name & address of the assessee	PAN	Asst. Years
1	Raju Verma	ABIPV8176F	2006-2007 To 2012-13
2	Sumit Verma	AEKPV4635E	2006-2007 To 2012-13
3	Poonam Verma	ACQPD3112N	2006-2007 To 2012-13
4	Ritu Verma	AAOPV3196Q	2006-2007 To 2012-13
5	Ganpati Builders	AAEFG6241R	2006-2007 To 2012-13

3. You are directed to pass necessary order, In the above cases for all the relevant years. This office letter approving the draft orders shall invariably be mentioned in the final orders. A copy of final order passed in these cases shall be sent to this office for record

4. Further, In the case of Sh. Satish Chander Kapoor, further enquires need to be conducted in respect of cheques mention in the agreement, as discussed with you. You shall resubmit the same for approval after completion of enquires. This will have Impact in the case of Mohd Ilyas as well.

5. Case records submitted in the cases of above assesses are being returned.”

5. It was submitted that there were total 5 cases and this approval is for the assessment years from 2006-07 to 2012-13 in all the five cases thus, approval was granted for total 35 assessment years. The approval in all the cases was sought vide letter dated 13.3.2014 by the DCIT, Central Circle, Dehradun and approval was granted by a single order on 24.3.2014 by the Addl. CIT, Range Central, Meerut. It was the submission that a perusal of the approval granted clearly shows that the same is given in mechanical manner where ld. Addl. CIT granted the approval for various assessment years and for five different assessee's was granted by a single order. He placed reliance on the judgement of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Shiv Kumar Nayyar in ITA No. 285/2024 wherein the Hon'ble jurisdictional high court vide order dt. 15.05.24 in para 09-18 has held as follows:

9. We have heard the learned counsels appearing on behalf of the parties and perused the record.

10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying intent of the relevant provision of the Act i.e., [Section 153D](#), which is culled out as under:-

"153-D. Prior approval necessary for assessment in cases or requisition.--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 153-A](#)] or the assessment year referred to in clause (b) of sub-section (1) of [Section 153-B](#), 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 144-BA](#)."

11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under [Section 153D](#) of the Act has to be granted for "each assessment year" referred to in clause (b) of sub-section (1) of [Section 153A](#) of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of *PCIT v. Sapna Gupta* [2022 SCC OnLine All 1294] which captures with precision the scope of the concerned provision and more significantly, the import of the phrase-"each assessment year" used in the language of [Section 153D](#) of the Act. The relevant paragraphs of the said decision are reproduced as under:-

"13. 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.

19. 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](#)."

[Emphasis supplied]

12. It is observed that the Court in the case of *Sapna Gupta* (supra) refused to interdict the order of the ITAT, which had held that the approval under [Section 153D](#) of the Act therein was granted without any independent application of mind. The Court took a view that the approving authority had wielded the power to accord approval mechanically, inasmuch as, it was humanly impossible for the said authority to have perused and appraised the records of 85 cases in a

single day. It was explicitly held that the authority granting approval has to apply its mind for "each assessment year" for "each assessee" separately.

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of *Asst. CIT v. Serajuddin and Co.* [2023 SCC Online Ori 992] to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads 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 Commissioner of Income-tax. 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 Assessing Officer 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."

[Emphasis supplied]

14. During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of *Serajuddin* (supra), came to be dismissed by the Supreme Court vide order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.

15. A similar view was taken by this Court in the case of *Anuj Bansal* (supra), whereby, it was reiterated that the exercise of powers under [Section 153D](#) cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval under [Section 153D](#) of the Act cannot be merely a ritualistic

formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

16. In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-

"10. We have gone through the approval granted by the ld. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. **It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar.** The remaining cases may belong to some other assessee, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

17. Notably, the order of approval dated 30.12.2020 which was produced 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 in the instant case, 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.

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration.

19. Consequently, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

He also placed reliance to the decision of hon'ble jurisdictional high court in following cases:

- PCIT Vs. M/s MDLR Hotels Pvt. Ltd. In ITA No. 593/2023 dt. 30.07.2024
- PCIT Vs. Anuj Bansal in ITA No. 368/2023 dt. 13.07.2023

Reliance is also placed on the decision of Hon'ble Orrisa High court in the case of Serajuddin and Co. reported in [2023] 150 taxmann.com 146 (Orissa), wherein the Hon'ble High Court has quashed the assessment order due to mechanical approval given without application of mind. It was the submission that the decision of the Hon'ble Orrisa High Court has been approved by the Hon'ble Supreme Court as reported in [2024] 163 taxmann.com 118 (SC) by dismissing the SLP filed by the revenue. It was the submission that the approval granted in assessee's case was similar to the approval granted in the case of Shiv Kumar Nayyar and on this ground the approval being vitiated consequently the assessment order is required to be annulled.

6. In reply, ld. CIT-DR vehemently supported the order of the lower authorities and drew our attention to the approval accorded by the ld. Addl. CIT. It was the submission that the impugned year was the search year. It was the submission that the Addl. CIT has gone

through the assessment records available before him in the case. It was the submission that the Addl. JCIT has applied his mind before making the approval and the same is liable to be upheld.

7. We have considered the rival submissions. In the instant case from the perusal of the approval it is seen that the approval was granted conditionally with certain directions. The approval so given has been reproduced herein above. Another aspect which needs to be considered is that the AO in the instant case is at Dehradun and the Addl. CIT who has granted approval is from Central Range, Meerut thus for obtaining the approval entire records needs to be carried to Meerut from Dehradun and the Addl. CIT has to examine all the material including the assessment folders, appraisal report and seized material before granting the approval which cannot be humanly possible in such a short period of time of few days. As mentioned earlier by the ld. AR that there are 35 cases in this group. It is surprising that Addl. CIT has been able to go through the assessment orders, appraisal reports and other related materials for a minimum of 35 cases within such a short period of time more particularly looking to the fact that the entire records must have been shifted from Dehradun to Meerut for the perusal of the Addl. CIT. We use the word “minimum of 35 cases” because this group alone contains 35 cases and the Addl. CIT could avail his other files also before him. The assessment orders, in the instant case is of 6 pages, appraisal reports was also to be quite a few pages and the submissions of the assessee would be innumerable. We are not aware

about the nature and issues involved in the other cases and other assessment years. This is physically impossible task which has been admitted to by the ld. Addl. CIT. Consequently, the approval granted in this case is without application of mind. This being so, by respectfully following the principle laid down by the Hon'ble Jurisdictional High Court in the case of Shiv Kumar Nayyar, reported supra, and also in the other cases of Hon'ble Delhi high court and in case of Hon'ble Orrisa High court which has also been approved by the Hon'ble Supreme Court by dismissal of the SLP, the approval u/s.153D of the Act granted in the impugned appeal by the Addl. CIT, is held to be invalid and the consequential assessment order is hereby annulled. As the appeal of the assessee is allowed by allowing the legal grounds of appeal, other grounds taken on merits by the assessee become academic and not adjudicated upon. Thus, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on 21st February, 2025.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 21/02/2025

PK/PS

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT DEHRADUN