

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

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

ITA No.2163/Del/2017
(ASSESSMENT YEAR 2008-09)

Shri Ramesh Batta 81/210, Kaulagarh Road, Rajendra Nagar, Dehradun-248001. PAN-ABGPB1527N	Vs.	ACIT, Central Circle, Dehradun.
(Appellant)		(Respondent)

ITA No.3137/Del/2017
(ASSESSMENT YEAR 2008-09)

Dy. CIT, Central Circle, Dehradun.	Vs.	Shri Ramesh Batta 81/210, Kaulagarh Road, Rajendra Nagar, Dehradun-248001. PAN-ABGPB1527N
(Appellant)		(Respondent)

ITA No.4901/Del/2016
(ASSESSMENT YEAR 2008-09)

Shri Ramesh Batta, As agent of Smt. Kavita Ahuja, 81/210, Kaulagarh Road, Rajendra Nagar, Dehradun-248001. PAN-ABGPB1527N	Vs.	ACIT, Central Circle, Dehradun.
(Appellant)		(Respondent)

ITA No.4854/Del/2016
(ASSESSMENT YEAR 2008-09)

Dy. CIT, Central Circle, Dehradun.	Vs.	Shri Ramesh Batta, As agent of Smt. Kavita Ahuja, 81/210, Kaulagarh Road, Rajendra Nagar, Dehradun-248001. PAN-ABGPB1527N
(Appellant)		(Respondent)

Assessee by	Shri Salil Kapoor, Adv. Shri Tarun Chanana, Adv. Ms. Ananya Kapoor, Adv.
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:

These cross appeals are filed by Assessee and Revenue against the orders passed by the CIT(A), Dehradun dated 03.12.2017 for the Assessment Year 2008-09.

2. Since all the appeals related to one assessment year, therefore, they are tagged together and disposed-off by this consolidated order. First, we shall decide appeal of Shri Ramesh Batta wherein assessee has challenged the assessment order on legal grounds that the notice issued u/s 153A is without jurisdiction and further notice u/s 143(2) was not served within the prescribed period. During the course of

hearing vide letter dt. 09.03.2024, 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:

Ground 7: *“That, the assessment order dt. 28.12.2010 passed under section 153A r.w.s. 143(3) of the Act by the Assistant Commissioner of Income Tax, Central Circle, Dehradun is illegal & bad in law as the same is passed without valid statutory approval in terms of Section 153D of the Act as the same was granted mechanically and without application of mind.”*

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). After considering the submission and looking to the nature of additional ground No. 7 raised by the assessee, we find that in this ground the assessee has challenged the legality of approval granted by the Addl. 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 30.12.2010 as filed by the assessee along with the prayer for the admission of the additional ground of appeal, which is as follows:-

“To

*The Assistant Commissioner of Income Tax,
Central Circle, Dehradun.*

Subject: Prior approval u/s 153D in the cases of M/s. Batta Group regarding-

Please refer to your letter F. No. ACIT/Central Circle/DDN/2010-11/621 dated 28th December, 2010 on the above subject.

2. In the following case of Batta Group of cases, notices u/s 153A/ 142(1) of the Income Tax Act, 1961 were issued for the assessment years 2003-04 to 2009-10:

<i>Srl. No.</i>	<i>Name of the assessee</i>	<i>PAN</i>	<i>Approval for orders u/s 153D A. Yrs.</i>
<i>1</i>	<i>Shri Ramesh Batta as agent of Mrs. Kavita Ahuja</i>	<i>-</i>	<i>2003-04 to 2009-10</i>
<i>2</i>	<i>Mrs. Kavita Ahuja</i>		<i>2003-04 to 2009-10</i>

3. You are directed to pass necessary orders as amended in the above cases for all the relevant assessment years in the hands of Shri Ramesh Barta as agent of Mrs. Kavita Ahuja after taking into account the seized documents/papers and comments in the appraisal report pertaining to the assessee. This may be treated as prior approval in accordance with section 153D. Approval is also accorded for filing notices under section 153A issued to Mrs. Kavita Ahuja.

4. This office letter approving the draft orders may invariably be quoted in the final order. A copy of final order passed in these cases may be sent to this office for record.”

4.1 It was submitted that there were total 2 cases and this approval is for the assessment years from 2003-04 to 2009-10 in both the cases thus, approval was granted for total 14 assessment years. The

approval in both the cases was sought vide two separate letter dated 27.12.2010 and approval was granted by a single order on 30.12.2010.

4.2 It was the submission that a perusal of the approval granted clearly shows that the same is given on conditional basis where the ld. Addl. CIT directed the assessee to make sure whether additions on account of specified marriage expenses were made in AY 2009-10 or not. It was the submission that such approval is mechanical and ld. Addl. CIT even has not refer the draft assessment orders otherwise he himself could have found that whether any addition towards marriage expenses were proposed in AY 2009-10 or not since he was also supposed to grant approval for AY 2009-10. Further the approval for various assessment years and for two 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 assessees, 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.

4.3 He further relied upon the decision of the coordinate bench of ITAT Delhi in the case of Rishabh Buildwell in ITA No. 2122/Del/2018 wherein the Hon'ble bench vide order dt. 10.06.2019 has quashed the assessment order as the approval was conditional. 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 (supra) and also in the Rishabh Buildwell (supra) and on this ground the approval being vitiated consequently the assessment order is required to be annulled.

5. 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 approval letter refers to the records submitted in 7 volumes which was returned by the Addl. CIT along with approval. It was the submission that the Adl. 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.

6. 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. From the perusal of the same it appears that though the Addl. CIT has granted approval for

Assessment Years. 2003-04 to 2009-10, still in para 3 of the approval letter, he has directed the AO to verify whether any addition is proposed on account of specific expenditure incurred on wedding on 4th March, 2009 in the assessment year 2009-10. This clearly shows that either the draft orders were not available with the Adl. CIT or he has not even bothered to go through the same though he was giving approval for AY 2009-10 also. If the draft assessment order for AY 2009-10 was available with him, there was no need to give such directions and he himself could take a note of this fact. In the case of Rishabh Buildwell, the observations of the tribunal shows that the approval granted [u/s 153D](#) in the said case was similarly worded wherein JCIT has directed the DCIT to ensure the seized material and the findings of the appraisal report to be incorporated in the final assessment order. ITAT Delhi has observed that such directions clearly proves that the approval given by the JCIT is not a final approval as required [u/s 153D](#) of the Act but a conditional approval subject to modifications by the DCIT after receiving of the approval which makes it invalid, qualified, uncertain approval against the mandate of the Act. The categorical observations of the tribunal in the case of [Rishabh Buildwell](#) (supra) are extracted as under:

11. We have heard the arguments of both the parties and gone through the record and documents filed before us. For ready reference the entire part of the letter of approval dated 30.12.2016 is reproduced as under:

Subject: Prior approval [u/s 153 D](#) in the cases of Cloud-9 & Sethi Group regarding.

Please refer to your office letter F. No. DCIT/ CC/ GZB/ S&S/153D 2016- 17/2904, 2908 & 2911 dated 28-12-2016 & 30-12-2016 on the above mentioned subject.

2. In the following cases of Cloud-9 & Sethi Group, prior approval w/s 153D of the IT Act, 1961 accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:

S. No.	Name of the assessee	PAN	A. Yrs.
1	M/s Risabh Buildcon Pvt. Ltd.	AACCR7502F	2009-10 to 2015-16
2	M/s R.G.V. Fininvest Pvt. Ltd.	AAACR4383G	2009-10 to 2015-16
3	M/s Aggarwal Capfin Financial Services P. Ltd.	AABCA0925E	2009-10 to 2015-16
4	M/s Arihant Info Solutions P. Ltd.	AADCA5015H	2009-10 to 2015-16
5	M/s Sethi Estate P. Ltd.	AABCS7643B	2009-10 to 2015-16
6	Sh. Chander Mohan Sethi	AASPS1246A	2009-10 to 2015-16
7	Sh. Gulshan Sethi	AASPS1248Q	2009-10 to 2015-16
8	M/s East View Developers P. Ltd.	AABCE5324R	2009-10 to 2015-16
9	Sh. Desh Bhushan Jain	AAFPJ6467R	2009 10 to 2015-16
10	M/s Max City Developers Pvt. Ltd.	AAECM5401A	2009-10 to 2015-16
11	Sh. Sanjeev Jain	ACFPJ3817P	2009-10 to 2015-16
12	M/s Sethi Buildwell Pvt. Ltd.	AAICS9/42C	2009-10 to 2015-16
13	Sh. Satpal Nagar	AAFPN6467M	2009 10 to 2015-16
14	M/s Risabh Buildwell Pvt. Ltd.	AACCR9776R	2009-10 to 2015-16
15	Srnt. Magan Jain	AIMPJ8085G	2009-10 to 2015-16
16	M/s Angel Buildcon Pvt. Ltd.	AAFCAI968H	2009-10 to 2015-16

2. A technical approval is accorded to pass assessment orders in the above cases on the basis of the drafts assessment orders submitted for the assessment years in reference years. You are directed to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to AYs. The fact of initiation of penalty proceedings, wherever, applicable, must also be incorporated in last para of the order. The initiation of correct penalty provisions of I.T. Act u/s 271 (1)(c)/ 271AAB, as per facts of the ease, must be ensured.

3. This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should be sent to this office for record immediately on passing the assessment orders.

4. It must also be ensured that if any document in this case, pertains to any third party assessed with a different AO, the necessary information for taking necessary action must be sent to concerned AO immediately.

12. *The salient points of the approval letter is as under:*

1. *It is a technical approval*
2. *The AO was directed to ensure that the comments in the appraisal report are duly ensured.*
3. *The penalty proceedings should be mentioned wherever applicable for the initiation of correct penalty provisions must be ensured.*
4. *After taking into consideration, the above points, a copy of the final orders passed be sent to the JCIT.*

13. *[The Income Tax Act](#) envisages prior approval of the JCIT before passing the assessment order. The provisions read as under: "no order of assessment or reassessment shall be passed by the 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 assessment year referred to in clause (b) of sub-section (1) of [Section 153B](#) except with the prior approval of Joint Commissioner."*

14. *When the approval given by the JCIT, Meerut is juxtaposed against the directions and provisions of the [Income Tax Act](#) pertaining to completion to assessment [u/s 153B\(1\)](#) of the Act, it can be said that the approval given by the JCIT is invalid. [The Act](#) envisages that the JCIT's approval before passing of the final order. There is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been accorded. The approval to be given is statutory in nature and legally binding. In the instant case, the approving authority has clearly mentioned that the approval given is a technical approval. Moreover, he has directed the DCIT to ensure the seized materials and the findings of the appraisal report to be incorporated in the final assessment order. This clearly goes to prove that the approval given by the JCIT is not a final approval as required [u/s 153D](#) of the Act but a conditional approval subjected to modifications by the DCIT after receiving of the approval which makes it an invalid, qualified, uncertain approval. This is not the mandate of the Act. It has also been laid down that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. The approval has to be statutory nature after due application of mind, it should be neither technical nor proforma approval which is envisaged [u/s 153D](#) of the Act. Reliance is placed the*

judgment of Coordinate Bench in the case of M3M India Holdings (ITA 2691/2018). And the judgment of Hon'ble High Court of Bombay in the case of [Pr CIT vs. Smt. Shreelekha Damani \[ITA no 668 of 2016 Dated: 27th November, 2018 \]](#) is as under:

1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August 2015.
2. Following question was argued before us for our consideration: -
"Whether on the facts and circumstances of the case and in law, the tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"
3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under [Section 153A](#) of the Income Tax Act, 1961("the Act" for short) for Assessment Year 1 of 4 Uday S. Jagtap 668-16- ITXA- 15=.doc 2007-08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from [Section 153D](#) of the Act, before passing the order of assessment, was not complied with.
4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.
5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time 2 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc

before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks:-

"To, The DCIT(OSD)-1 Mumbai Subject : Approval s/ 153D of draft order s/ 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg.

Ref: No. DCIT (OSD)-1/CR-7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval s/ 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted.

Approval to the above said draft order is granted s/ 153D of the I.T. Act, 1961."

7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st 3 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted, or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of

relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.

8. Accordingly, the Tax Appeal is dismissed."

15. Hence, keeping in view the facts and circumstances of the case and peculiarities of the instant case, owing to the judgment of the Hon'ble High Court, we hereby hold that the assessments completed by the DCIT do not stand in the eyes of law. Since the orders have been treated as null and void, any adjudication on other issues would be academic in nature only, hence refrained to do so.

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. As mentioned earlier by the ld. AR that there are 14 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 14 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 14 cases" because this group alone contains 14 cases and the Addl. CIT could avail his other files also before him. The assessment orders, in the instant case is of 14 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 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 case of Hon'ble Orrisa High court in the case of Sierajuddin & Co., which has also been approved by the Hon'ble Supreme Court by dismissal of the SLP and further following the decision in the case of Rishabh Buildwell (supra) of the coordinate bench of Delhi, ITAT delivered under similar facts, 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 and by the revenue become academic and not adjudicated upon. Thus, the appeal of the assessee is allowed and of the revenue is dismissed.

7. Since, we have already annulled the assessment framed by the AO in the case of Ramesh Batta, while dealing with the appeal in ITA Nos.2163/Del/2017 & 3137/Del/2017 for A.Y. 2008-09, by holding the approval u/s.153D of the Act granted by the ld. Addl. CIT as invalid, therefore, the remaining two cross appeals filed by the assessee and revenue in the case of Ramesh Batta as Agent of Kavita Ahuja as mentioned in the cause title above, which also come under the invalid approval of the Addl. CIT, having identical facts thus the by following the observation made in ITA Nos.2163/Del/2017 &

3137/Del/2017 appeal of the assessee is hereby allowed and of the revenue is dismissed.

8. In the result, appeal of the Assessee in both the cases are allowed and appeal filed by the Revenue in both the cases are dismissed.

Order pronounced on 21st February, 2025.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated: 21/02/2025

PK/Ps

Copy forwarded to:

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

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, DEHRADUN