आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA Nos: 111, 112, 113, 114, 115 & 116/RPR/2025

(**निर्धारण वर्ष** Assessment Years: 2008-09, 2009-10, 2010-11,2011-12, 2012-13, 2014-15)

Sharda Steel Traders, Near Dena Bank, Jawahar Nagar, Raipur- 492 001, Chhattisgarh	v s	Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax, Central Circle 2, 8th Floor, Sector 21, Naya Raipur, C.G. 492 101
PAN: AAKFS2592K		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Praveen Jain, CA & Shri Divyavijay Singh Vaid, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	22.04.2025
घोषणा की तारीख/Date of Pronouncement	:	21.05.2025

आदेश / O R D E R

Per Bench:

The captioned appeals by the assessee are instituted to assail the orders of Commissioner of Income Tax (Appeals), Raipur-3 [in short "Ld. CIT(A)"], passed under section 250 of the Income Tax Act, 1961 (in short "the Act") Assessment Years (AY) from 2008-09 to 2014-15, which in turn arises from the common order passed by Assistant Commissioner of Income Tax (Central)-2, Raipur u/s 153A/143(3) of the Act, dated 15.03.2016 for all the referred AY's.

2. The details of impugned orders assailed before us, are as under:

Appeals No.	AY's	Dates of impugned orders passed by Ld. CIT(A)	Common order passed by Ld. AO
ITA No. 111/RPR/2025	2008-09	12.12.2024	ACIT, Central-2, Raipur, u/s 153A/143(3) of the I.T. Act, 1961, dated 15.03.2016
ITA No. 112/RPR/2025	2009-10	12.12.2024	
ITA No. 113/RPR/2025	2010-11	12.12.2024	
ITA No. 114/RPR/2025	2011-12	13.12.2024	
ITA No. 115/RPR/2025	2012-13	16.12.2024	
ITA No. 116/RPR/2025	2014-15	09.01.2025	

3. At the outset, it is apprised by the Ld. Counsel of the assessee that the issues involved in the present appeals are common, interconnected and interwoven, *inter alia* arises from common order passed by Ld. AO, having identical facts for the years under consideration. Accordingly, for the sake of brevity all these matters are taken up together for hearing and are disposed of under this common order.

4. In order to adjudicate the issues involved in the aforesaid appeals, ITA No. **111/RPR/2025** for the AY 2008-09 has been taken up as the lead matter, wherein our observations and decision shall apply *mutatis mutandis* to the remaining appeals, i.e., ITA No. **112 to 116/RPR/2025**.

5. The grounds of appeal raised by the assessee in **ITA No. 111/RPR/2025 For AY 2008-09**, challenging the impugned order, are extracted as under:

1. ***Ground 1***: *That Ld. AO erred in making adhoc addition of Rs. 56,500/- under various heads without properly appreciating the submission of the Assessee and CIT(A) erred in sustaining the same. The disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.*

2. ***Ground 2***: *That Ld. AO erred in making an addition of Rs. 80,660/- as Commission income on the basis of presumptions without properly appreciating the submission of the Assessee and CIT(A) erred in sustaining the same. The addition is bad in law, against law of natural justice and uncalled for and may kindly be deleted.*

3. ***Ground 3***: *That Ld. AO erred in making an addition of Rs. 800/- on account of difference in purchase from Prakash Industries Ltd. on the basis of presumptions without properly appreciating the submission of the Assessee and CIT(A) erred in sustaining the same. The addition is bad in law, against law of natural justice and uncalled for and may kindly be deleted.*

4. ***Ground 4***: *That on the facts and on the circumstances of the case, disallowance/ addition made in Assessment Order passed by the Ld. AO is opposed to facts and law on several grounds without Proper application of Mind. The disallowance/ addition is bad in law, against law of natural justice and uncalled for and may kindly be deleted.*

5. ***Ground 5***: *That AO issuing the notice and AO making the assessment did not had proper jurisdiction. Thus, entire assessment is bad in law and CIT(A) erred in dismissing the case.*

6. ***Ground 6***: *That Assessment has been done without proper approval, hence entire assessment is bad in law.*

7. ***Ground 7***: *That on the fact and on the circumstances of the case, Ld. AO erred in initiating penalty proceedings u/s 271(1)(c).*

8. ***Ground 8****: The assessee craves leave to add, urge, alter or withdraw any ground/s before or at the time of hearing of this appeal.*

6. The brief facts of the case are that the assessee is a partnership firm, engaged in trading of Iron and Steel items. During the financial year 2013-14, a Search & Seizure Action u/s 132 of the Income Tax Act was conducted on the business premises of the assessee firm on 29.03.2014. After completion of Search & Seizure procedure, notices u/s 153A for the subjected AY's are issued on 01.06.2015, in response to which assessee filed returns of income for the subject AY's, detailed as under:

A.Ys.	*Date of filing of return u/s 139(1)*	*Returned Income (Rs.)*	*Date of filing of return by the assessee against notice u/s 153A*	*Income declared in return u/s 153A(Rs.)*	*Income voluntarily disclosed during the search (Rs.)*	*Additional Income offered by the assessee (Rs.)*
2008-09	*29.09.2008*	*523240*	*20.10.2015*	*523240*	*Nil*	*Nil*
2009-10	*30.09.2009*	*856060*	*20.10.2015*	*856060*	*Nil*	*Nil*
2010-11	*27.09.2010*	*923110*	*20.10.2015*	*923110*	*Nil*	*Nil*
2011-12	*29.09.2011*	*1270150*	*20.10.2015*	*1270150*	*Nil*	*Nil*
2012-13	*30.09,2012*	*6984210*	*20.10.2015*	*6984210*	*Nil*	*Nil*
2013-14	*27.09.2013*	*17597520*	*20.10.2015*	*17597520*	*Nil*	*Nil*
2014-15	*30.11.2014*	*25060*	-	-	-	-

7. Subsequently, statutory notices u/s 143(2) and u/s 142(1) along with detailed questionnaire are issued. In compliance, counsel of the assessee attended the office of Ld. AO from time to time and have furnished written submission with supporting documents, which were perused and placed on record by the Ld. AO. After deliberating upon the submissions of assessee, Ld.

AO observed certain discrepancies and have pointed out certain issues *qua* the returned income of the assessee, therefore, have made following additions:

(i) Sustained the additions made in the regular assessment u/s 143(3), which were not assailed by the assessee by way of an appeal before the First Appellate Authority,

(ii) Addition on account of mismatch of the figures in the ledger account of Prakash Industries Limited (PIL) viz-a-viz amounts furnished by the assessee in its books of accounts,

(iii) Addition on account of difference in physical cash found during the Search & Seizure Action and recorded cash as per books of accounts,

(iv) Addition on account of loose paper sheet (LPS) seized from the business premises of the assessee, treated as incriminating documents by the Ld. AO, and

(v) Interest reflecting in Form 26AS.

8. Specifying all the aforesaid reasons / disputes, the additions are made in the returned income of the assessee for different assessment years, the same have been summarised in the assessment order, as follows:

12. In view of the discussion made in the preceding paras, the income of the assessee firm for A. Ys. 2008-09 to 2014-15 is computed as under:

A.Y.	Section	Returned Income (Rs.)	Addition (Rs.)	Para discussed (Rs.)	Assessed Income (Rs.)	Round off (Rs.)
2008-09	153A/143(3)	523240	56,500 80,660 800	6 11.3 11.4.1	6,61,200	6,61,200
2009-10	153A/143(3)	856060	10,10,152 8,84,472	11.3 11.4.1	27,50,684	27,50,680
2010-11	153A/143(3)	923110	25,000 20,17,968	6 11.3	29,66,078	29,66,080
2011-12	153A/143(3)	1270150	5,49,292	11.11	18,19,442	18,19,442
2012-13	153A/143(3)	6984210	18,19,953 6,952	11.3 11.10	88,11,115	88,11,120
2013-14	153A/143(3)	17597520	16,25,000 5,88,421	11.12 11.9	1,98,10,941	1,98,10,940
2014-15	143(3)	25060	17,91,475 3,07,790 69,33,535 65,00,000 71,07,198	11.3 11.5 11.6.1 11.7.1 11.8	2,26,65,058	2,26,65,060

9. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), however, the submissions / contentions / explanations furnished by the assessee could not found to be satisfactory or convincing by the First Appellate Authority, therefore, the appeals of assessee are dismissed and the additions made by the Ld. AO are sustained.

10. Being dissatisfied with the decision of Ld. CIT(A), assessee preferred to avail the further remedial course of action available, therefore, had filed the appeals before us, which are under consideration in the present matters.

11. While initiating the arguments, Shri Praveen Jain, C.A. representing the assesse (in short "Ld. AR"), submitted and requested to first deliberate upon the legal / technical ground raised by the assessee i.e., ground no. 6 of the appeal which is common for all the years that the assessment was completed without obtaining proper / valid approval u/s 153D. To explain the issue, Ld. AR furnished a copy of approval u/s 153D along with synopsis regarding aforesaid technical ground. The submissions of assesse are extracted hereunder for the sake of completeness and to deliberate upon the issue:

OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX (Central), RAIPUR
(CAMP AT BHOPAL)

F.No.Addl.CIT/Central/ Prakash Industries Group/RPR/2015-16/78 Dated: 14/03/2016

To,

The Asstt. Commissioner of Income Tax (Central)-II,
Raipur

Sub: - Approval u/s 153D of the Income Tax Act.1961 in assessment proceedings of Prakash Industries Group of cases covered u/s 153A-- reg

Please refer to assessment orders submitted by you vide letter dated 14.03.2016 seeking approval in draft assessment orders of various persons of the group as detailed in the letter.

I have gone through the draft assessment orders within the limited time available. The cases have also been discussed with you from time to time.

The assessment orders submitted by you are hereby approved as under:-

S.No.	Name of the Assessee	A.Y	Assessed Income (In Rs.)
1	M/s Sharda Steel Traders (AAKFS2592K)	2008-09	6,61,200/-
		2009-10	27,50,680/-
		2010-11	29,66,080/-
		2011-12	18,19,440/-
		2012-13	88,11,120/-
		2013-14	1,98,10,940/-
		2014-15	2,26,65,060/-
2	M/s Ashok Steel Rolling Mills (P) Ltd. (AACCA0882D)	2008-09	7,68,140/-
		2009-10	8,65,750/-
		2010-11	10,03,950/-
		2011-12	10,22,450/-
		2012-13	14,54,740/-
		2013-14	25,59,990/-
		2014-15	17,17,750/-

You may act accordingly. A copy of the final orders passed may be sent to this office for records.

(Muneesh Kumar)
Addl. Commissioner of Income-tax (Central),
Raipur

Sharda Steel Traders
ITA 111 to 116/RPR/2025
Synopsis- Technical Ground
Date of Hearing – 22/04/2025

1. **Chronology of Events:**

Sno.	Particulars	Date
1	**Survey Action u.s 133A**	27.03.2014
2	Conversion to Search & Seizure Action u/s 132	29.03.2014
3	Notice u/s 153A issued on	01.06.2015
4	Submission of Draft Assessment Order	14.03.2016
5	Approval by Addl. CIT	14.03.2016

2. **Peculiar features of Approval u/s 153D by Addl. CIT in the present case:**

2.1. As per Para 1, **Only Draft Assessment Order was submitted** by AO for Approval. Thus, Assessment Records and Incriminating documents were not submitted along with Draft Assessment Order.

If Assessment Records and Incriminating documents are not submitted along with Draft Assessment Order, **getting Approval will be merely a mechanical formality which is not at all permissible**.

2.2. As per Para 2, for granting Approval, **only Draft Assessment Order was gone through**, there is no mention of any other document or Assessment Records.

2.3. As per Para 2, additional CIT has stated that he has granted approval on the basis of Draft Assessment Order in **Limited available time**. This shows approval has been granted in most mechanical manner.

The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and cannot be countenanced in law. Arch Pharmalabs Ltd Vs ACIT -Pg 10

2.4. If the approval has been granted merely on going through Draft Assessment Order, there cannot be **proper application of mind**. In the present case, there is blanket approval of assessee's case with others without even mentioning single word about the satisfaction in any case.

2.5. Approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. (Ref. Case Arch Pharmalabs Ltd Vs ACIT- Pg 10)

2.6. That the **approval has been granted on the immediate same date** when the AO sought approval from Addl CIT i.e on 14.03.2014, whereas the Assessment was getting time barred on 31.03.2014

2.7. That the AO seeking approval was stationed at Raipur, whereas Addl. CIT granting approval was stationed at Bhopal on the date of seeking/ granting Approval.

2.8. That approval has been granted vide same approval letter to other Assessees's also.

3. 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, which is missing in the present case. (Pr.CIT v. Subodh Agarwal in I.T. Appeal No.86 of 2022 (Date of Judgment12.12.2022) (Allahabad HC) – Page 8

4. Amongst other Reliance is placed in the case of Ritanjali Khatai & Ors. v. ACIT, CC-1, Bhubaneswar in IT(SS) A.No.51 to 53/CTK/2019 (Date of Order: 08.04.2022) (ITAT Cuttack), wherein the Tribunal has held that:

35. In our considered and humble opinion, no procedure for grant of approval has been provided u/s.153D of the Act and the Income tax Rules, 1962. However, when legislature has enacted some provision to be exercised by a higher revenue IT(SS)A No.09/RPR/2018 authority enabling the AO to pass assessment or reassessment orders in the search cases, then, it is the duty of the approving authority to exercise such power by applying his judicious, vigilant and cautious efforts. We are of the view that the obligation on the approval granting authority is of two folds, one the one hand, he has to apply his mind to secure inbuild for the department against any omission or negligence by the AO in taxing right income in the hands of right person in the right assessment year and on the other hand he is also responsible and

duty bound to do justice with the taxpayer/assessee by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO crating baseless tax liability on the assessee and thus he has to discharge his duties as superior authority. Thus, granting approval u/s.153D of the Act is not merely an official formality but it is a supervisory act which requires proper application of administrative and judicial skill by the authority on the application of mind and this exercise should be discernible from the order of approval u/s.153D of the Act.

36. In our humble understanding the provisions of section 153D of the Act has been introduced by the legislature in its cautious wisdom to make it mandatory on the supervisory authority/approving authority to discharge the duty towards both the assessee as well as revenue to follow the proper procedure and to apply his mind on the material, relevant evidences and other documents including materials found during search & post search investigations and explanation & supporting documents of the assessee to the issue show caused to him by the AO, on the basis of which the AO wants to pass or frame assessment or reassessment orders and after such exercise by perusing and going through the relevant assessment folders/files alongwith proposed draft orders and also by applying his mind has granted approval u/s.153D of the Act. This is the minimum required exercise by the approving authority before granting approval u/s.153D of the Act. The approving authority has undertaken any such exercise should be discernible from the order of the approval and the subsequent internal correspondence between the lower authorities have no relevance and the defects or omissions or non-application of mind cannot be cured or rectified by any other exercise or working undertaken by the approving authority after grant of approval and after passing the assessment orders u/s.153A of the Act by the Assessing officer.

37. The provisions of section 153D of the Act was inserted by the Finance Act, 2007 w.e.f. 1.6.2007. In our humble understanding of said provision, the legislative intent for insertion of said provision is clear inasmuch as prior to insertion of provision u/s.153D, there was no provision for taking approval in cases of assessment or reassessment where search and seizure operation was conducted u/s.133A of the Act. Therefore, in our considered view, the legislature wanted the assessment/reassessment of search and seizure cases should be made and orders should be passed with the prior approval of superior authority, which also means that the superior authority should apply his mind on the materials on the basis of which the AO is making or passing assessment orders and after due application of mind to material in the hands of department while initiating search proceedings, material found & seized during the course of search and also material or information unearthed or

gathered during post search investigation and enquiry alongwith explanation, documentary evidence and other relevant material or information submitted by the assessee during search and assessment proceedings, the superior authority has to grant the approval u/s.153D of the Act for passing assessment/reassessment orders in the search cases.

38. Further, in our considered view, the approval u/s.153D of the Act cannot be treated as an official formality but the provision has been inserted by the legislature with some specific and useful purpose. It is apparent that the purpose behind enactment of the said provision in the Statute by the legislature are of two folds viz (i) before approval, the Sr. Authority will ensure that the assessee should be protected against undue or irrelevant addition & disallowances in the assessment and (ii) the approving granting authority will also ensure that proper enquiry investigations are carried out by the Assessing Officer on all the relevant materials including material in hands of the department at the time of initiating search proceedings, material or documents found and seized during search operation and materials found and unearthed during post search investigations and enquiries. Therefore, said provision provides and requires application of mind by the approving authority of the department which, in turn, provides safeguard to the both the parties i.e. revenue and the assessee. Therefore, the provisions of section 153D of the Act cannot be treated as a mere formality and mandate therein required to be followed by the approving authority in a judicious manner by due application of mind in a manner of cautious judicious or quasi judicial authority. This view has also been expressed by Pune Bench of the ITAT in the case of Akil Gulamali somji, in ITA Nos.455 to 458(Pune) of 2010 vide order dated 30.3.2012, wherein, it was held that when the approval was granted without proper application of mind, the order of assessment will be bad in law. We also take respectful cognizance of the fact that the Hon'ble Bombay High Court in the case of Akil Gulamali Somji (supra) has concurred with the said findings and view taken by the Pune IT(SS)A No. 09/RPR/2018 Tribunal that not following the provisions of section 153D of the Act will render the related order of assessment void.

39. In view of foregoing discussion, we reach to a logical conclusion that it is the duty of the approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment folders/files and draft assessment orders while granting approval u/s.153D of the Act. This is not a formality but a statutory duty of the approving authority with a corresponding obligation on him to examine relevant record and assessment orders and

thereafter grant the approval. We are cautious about that the reasons for granting approval may not be a subject matter of challenge or are not required to be mentioned in the order of approval but the manner and the material on the basis of which approval has been granted can be challenged by the assessee and following proper procedure and application of mind by the approving authority should be discernible from the order of approval. No other evidence or documents is required to be considered or appreciated as the approval should be self-speaking that it has been granted by the ld JCIT by following due procedure and due application of mind to the relevant records and orders. The scope and issue agitated by the assessee by way of legal ground in the present case is not that of grant of hearing or representation to the assessee at the time of granting approval but the main grievance and legal objection of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized materials and investigation report and draft assessment/reassessment orders and this fact should be clearly discernible from the approval order and no other extraneous material/document can be seen in this regard.

40. In view of above, we are inclined to hold 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 of approval u/s.153D and mandate of enactment by the legislature will be defeated.

5. Other Case Laws relied as per Case Law Compilation.

6. In our considered and humble opinion, Approval granted by the Addl. CIT, Central in the case of the assessee is merely technical approval just to complete the formality and without application of mind as there was no examination of the seized documents, only on the presumption the approval cannot be granted.

7. In our considered and humble opinion, it can be said that Search Assessment Order framed under section 153A r.ws. 143(3) of the Act on the strength of purported approval granted by the Ld. Addl Commissioner of Income -Central is void ab initio, invalid, illegal and bad in law, hence, entire Assessment may kindly be quashed.

12. Ld. AR on the aforesaid issue have placed reliance on the following judgments and have read out the observations of Hon'ble Courts therein, the relevant part from the judgments referred to is extracted hereunder for the sake of testing the applicability of the ratio laid down, on the facts in the present case:

- ***Assistant Commissioner of Income Tax VS M/s Serajuddin Co. Kolkata (2023) 454 ITR 0312 (Orissa),*** wherein Hon'ble Orissa High Court in the present context have referred to the judgments by Hon'ble Apex Court in the case of (i) ***Rajesh Kumar vs DCIT (2007) 2 SCC 181 (SC)*** and (ii) ***Sahara India (Firm) Lucknow v. Commissioner of Income Tax (2008) 300 ITR 403 (SC)*** and have observed as under:

15. A plain reading of Section 1530 itself makes it abundantly clear that the legislative intent was to be obtaining of "prior approval" by the AO when he is below the rank of a Joint Commissioner, before he passes an assessment order or reassessment order under Section 153A(1)(b) or 153B(2)(b) of the Act.

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

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

required to consider the matter and not at a subsequent stage, viz., after the approval is given."

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

"8*. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."*

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

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

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

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

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

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

22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of Section 1588G 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 378 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.

- ***M/s Akshata Realtors Private Limited vs ACIT, Central Circle-2, Raipur in IT(SS)A No. 09/RPR/2018 dated 27.03.2023,*** wherein the coordinate bench of ITAT, Raipur has decided this very issue after discussing various judgments of the Hon'ble Courts and have observed as under:

14. We have considered the rival submissions and perused the record carefully. The issue before us is to decide as to whether the assessment framed by the AO u/s.153A r.w.s.143(3) of the Act after getting approval from the JCIT, Range-Central, Raipur in view of the provisions of Section 153D of the Act, is valid and sustainable or not, as has been raised by the ld. AR of the assessee during the course of hearing in the form of additional ground. On perusal of the assessment order we found that the AO has made addition u/s.56(2)(vii) of the Act under the head income from other sources as the assessee could not explain the source and details of the investment made by the assessee in M/s Crest Steel and Power Ltd. and Topworth Pipes and Tubes Pvt. Ltd. in different financial years. Before passing the assessment order, the AO has sought approval from the JCIT, Range-Central, Raipur vide letter dated 03.11.2016 in the case of the assessee along with other assessees. The JCIT, Range- Central, Raipur has approved the draft assessment orders u/s.153A r.w.s.143(3) of the Act vide letter dated 08.11.2016. Consequently, the AO has passed assessment order on 08.11.2016. On perusal of the approval given by the JCIT, Range-Central, Raipur, we found that the JCIT has given approval only on the basis of presumption that the AO after giving proper opportunity to the assessee, thoroughly verified the seized material and proposed for making addition, which in our opinion, without looking into the complex facts of the search assessment has been approved in a mechanical manner. Even the CIT(A) has also overlooked this technical error in the assessment order. Further, it is not clarified as to whether the assessment record in the case of the assessee has been seen by the JCIT or not. Therefore, the approval granted by the JCIT, Range-Central, Raipur in the case of the assessee is merely technical approval just to complete the formality and without application of mind as there was no examination of the seized documents, only on the presumption the approval cannot be granted. Thus, we hold the approval under section

153D of the Act has been granted in the case of the assessee was without application of mind, the same is invalid, bad in law and liable to be quashed.

15. *Reliance can be placed on the case law relied on by the ld. AR of the assessee, in the following cases :-*

(i) Pr.CIT v. Subodh Agarwal in I.T.Appeal No.86 of 2022 (Date of Judgment: 12.12.2022) (Allahabad HC):

"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 year 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 respondent-assessee 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 mind 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.

(ii) Pr.CIT v. Sapna Gupta in I.T.Appeal No.88 of 2022 (Date of Judgment: 12.12.2022) 2022 (12) TMI887 (Allahabad HC)*, wherein the similar findings were offered by the Hon'ble High Court of Allahabad as in the case of Subodh Agrawal (supra) and held as under :-*

Search and seizure-Assessment under s. 153A-Approval under s. 153D-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 approving authority before preparing the draft assessment order-In the instant case, the draft assessment orders in 123 cases placed before the approving authority on 30th Dec., 2017 and 31st Dec., 2017 were approved on 31st Dec., 2017, which not only included the cases of assessee but the cases of other groups as well-It is humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the approving authority-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-No substantial question of law arises for consideration

(iii) M/s.Goyal Energy & Steel Pvt. Ltd. v. ACIT, CC-2, Raipur in ITA No.240 to 243/RPR/2019 (Date of Order : 17.09.2021) (ITAT Raipur), wherein the approval granted by the JCIT was identical to the approval granted in the case of the present assessee, held as under :

22. On careful perusal of the approval order of JCIT, we find that the JCIT while granting approval on 22.12.2018 recorded that " it is presumed that the AO has - given proper

opportunity of hearing to the assessee, thoroughly verified the seized material and that there is no adverse finding, satisfy himself that all issues emanating from the record have been verified and additions wherever required have been proposed."

23. Before us, the ld AR for the assessee vehemently argued that JCIT has granted approval under section 153D in a casual and mechanical manner and without any application of mind and that from the communication made to the JCIT by AO vide letter dated 14.12.2018, the AO had not made any iota of reference as to what are the seized materials nor furnishes any assurance with respect to approval and appraisal of all evidences and corresponding reply by the assessee. And that ld. JCIT approved the assessment order by presuming that the necessary opportunity has been given to the assessee and all the records, evidences and materials have been thoroughly verified. The JCIT granted bulk approval of 95 assessment orders which clearly defeats the intent and purpose behind insertion of section 153D brought in the statute by the Finance Act, 2007.

24. We find that the ld. JCIT while granting approval, presumed that Assessing Officer has given proper hearing to the assessee and thoroughly verified seized material and there are no adverse findings, satisfied himself that all the issues emanating from the records have been verified and additions wherever required have been proposed. We further find that there is no independent application of mind on the part of ld.JCIT while granting the approval.

25. We find that coordinate bench of Mumbai Tribunal while considering the similar ground of appeal in granting bulk approval of the assessment under section 153A, in case of Arch Pharmalabs Ltd Vs ACIT (supra) held that the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind. The relevant part of the order is extracted below;

> *"11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment*

orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and ca not be countenanced in law.

26. Similar view was taken by Coordinate bench of Delhi Tribunal in Sanjay Duggal & others (supra).

27. So far as the contention of ld CIT-DR that the assessment under section 153A is passed under the supervision of JCIT and that JCIT granted approval of the draft assessment after considering the material placed before him. We do not find any such satisfaction in the approval order that draft assessment after considering the material placed before him, rather the ld JCIT recorded that it is presumed that the AO granted proper opportunity to the assessee etc...

28. In view, of aforesaid discussion and respectfully following the decisions of coordinate benches in Sanjay Duggal & others (supra) and Archpharma Labs & Acrh Impex P Ltd (supra), we find convincing force in the submissions of the assessee that the approval granted by JCIT suffer from non-application of mind and depends on presumption of proper

performance of duty by A.O. such per functionary approval under section 153D cannot termed as legitimate. The consequential assessment orders based on non- est approval under section 153D, thus are void-abinitio on this ground alone. Considering the facts that we have allowed the appeal on the legal issues therefore, consideration of appeal on merit have become academic.

(iv) Ritanjali Khatai & Ors. v. ACIT, CC-1, Bhubaneswar in IT(SS) A.No.51 to 53/CTK/2019 (Date of Order: 08.04.2022)*(ITAT Cuttack), wherein the Tribunal has held that the assessment framed u/s.153A/143(3) of the Act is not sustainable without proper approval u/s.153D of the Act. The relevant observations of the Tribunal are as under :-*

11. On perusal of the above two approvals given in the case of two different assessees, we found that both the approvals are similar to each other. In both the approval letter, the JCIT has simply mentioned that approval is hereby accorded as per provisions of Section 153D of the Act for passing the assessment order, therefore, the arguments of the ld. CIT-DR that facts and circumstances along with the approval given in Dilip Construction Pvt. Ltd. and in the case of Ritanjali Khatai are different, cannot be accepted. Accordingly, we are in complete agreement with the contention of ld. AR of the assessee that the issue is covered by the decision of coordinate bench of the Tribunal in the case of Dillip Construction Pvt. Ltd.(supra), wherein the relevant observations of the Tribunal are as under :-

> *31. Before we proceed, we find it appropriate to consider the contention of ld CIT DR wherein, he submitted that as per letter dated 19.12.2018, the JCIT, the approving authority had given approval for passing order u/s.153A r.w.s 143(3) in both the cases after satisfying himself with the draft assessment orders. This letter has been written to the JCIT (Central) by approving authority i.e. JCIT (BPU) pertaining to the office communication regarding additional ground of appeal, which are being adjudicated but in view of approval order dated 23.11.2017, thus we are inclined to accept the contention of ld A.R. that this submission of approving authority is mere an attempt to fill the gaps and procedural lacunas occurred in the procedure adopted by JCIT while granting approval under section 153D of the Act and, therefore, the contention of ld A.R. in this regard hold the field.*
>
> *32. Similarly letter dated 4.1.2019 issued by JCIT (Central), Bhubaneswar to the CIT (Audit & ITAT), Bhubaneswar is merely a covering letter supplying copy of the*

approval dated 23.11.2017, which cannot be treated as an explanation to the approval dated 23.11.2019 curbing the mistake in the procedure adopted by the JCIT while granting approval u/s.153D of the Act. On these subsequent letters/correspondences, we are of the considered view that for adjudicating legal ground of assessees challenging the validity of approval u/s.153D of the Act dated 23.11.2017, we have to evaluate said approval apparently by considering the totality of facts and circumstances and the manner in which such approval has been granted. This cannot be improvised by way of subsequent exercise or correspondence between the approving authority and the AO or other officers.

33. In view of foregoing discussion, we are inclined to hold that the ld JCIT has granted approval under section 153D of the Act in a mechanical manner without application of mind to the relevant assessment records and draft assessment orders submitted before him by the AO for grant of approval u/s.153D of the Act before passing the relevant assessment orders u/s.153A r.w.s 143(3) of the Act.

34. Considering the facts and circumstances of the case in the light of above discussion, it is amply clear that the AO vide latter dated 17.11.2017 requested the Approving Authority i.e. JCIT to grant approval u/s 153D of the Act and furnished relevant assessment records and draft assessment order before him for consideration prior to grant of approval. As we have already noted above that there is no requirement of mandate of section 153D of the Act that an opportunity of hearing should be allowed to the assessee before grant of approval u/s.153D of the Act but at the same time, it is also a requirement of mandate of section 153D of the Act that the approving authority must apply his mind to the relevant assessment records and draft assessment order before granting approval u/s.153D of the Act. As the requirement of grant of approval by the Superior authority is not merely a formality but it is a mandate and requirement of provisions of the Act.

35. In our considered and humble opinion, no procedure for grant of approval has been provided u/s.153D of the Act and the Income tax Rules, 1962. However, when legislature has enacted some provision to be exercised by a higher revenue authority enabling the AO to pass assessment or reassessment orders in the search cases, then, it is the duty of the approving authority to exercise such power by applying his judicious, vigilant and cautious efforts. We are of the view that the obligation on the

approval granting authority is of two folds, one the one hand, he has to apply his mind to secure inbuild for the department against any omission or negligence by the AO in taxing right income in the hands of right person in the right assessment year and on the other hand he is also responsible and duty bound to do justice with the taxpayer/assessee by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO crating baseless tax liability on the assessee and thus he has to discharge his duties as superior authority. Thus, granting approval u/s.153D of the Act is not merely an official formality but it is a supervisory act which requires proper application of administrative and judicial skill by the authority on the application of mind and this exercise should be discernible from the order of approval u/s.153D of the Act.

36. In our humble understanding the provisions of section 153D of the Act has been introduced by the legislature in its cautious wisdom to make it mandatory on the supervisory authority/approving authority to discharge the duty towards both the assessee as well as revenue to follow the proper procedure and to apply his mind on the material, relevant evidences and other documents including materials found during search & post search investigations and explanation & supporting documents of the assessee to the issue show caused to him by the AO, on the basis of which the AO wants to pass or frame assessment or reassessment orders and after such exercise by perusing and going through the relevant assessment folders/files alongwith proposed draft orders and also by applying his mind has granted approval u/s.153D of the Act. This is the minimum required exercise by the approving authority before granting approval u/s.153D of the Act. The approving authority has undertaken any such exercise should be discernible from the order of the approval and the subsequent internal correspondence between the lower authorities have no relevance and the defects or omissions or non-application of mind cannot be cured or rectified by any other exercise or working undertaken by the approving authority after grant of approval and after passing the assessment orders u/s.153A of the Act by the Assessing officer.

37. The provisions of section 153D of the Act was inserted by the Finance Act, 2007 w.e.f. 1.6.2007. In our humble understanding of said provision, the legislative intent

for insertion of said provision is clear inasmuch as prior to insertion of provision u/s.153D, there was no provision for taking approval in cases of assessment or reassessment where search and seizure operation was conducted u/s.133A of the Act. Therefore, in our considered view, the legislature wanted the assessment/reassessment of search and seizure cases should be made and orders should be passed with the prior approval of superior authority, which also means that the superior authority should apply his mind on the materials on the basis of which the AO is making or passing assessment orders and after due application of mind to material in the hands of department while initiating search proceedings, material found & seized during the course of search and also material or information unearthed or gathered during post search investigation and enquiry alongwith explanation, documentary evidence and other relevant material or information submitted by the assessee during search and assessment proceedings, the superior authority has to grant the approval u/s.153D of the Act for passing assessment/reassessment orders in the search cases.

38. Further, in our considered view, the approval u/s.153D of the Act cannot be treated as an official formality but the provision has been inserted by the legislature with some specific and useful purpose. It is apparent that the purpose behind enactment of the said provision in the Statute by the legislature are of two folds viz (i) before approval, the Sr. Authority will ensure that the assessee should be protected against undue or irrelevant addition & disallowances in the assessment and (ii) the approving granting authority will also ensure that proper enquiry investigations are carried out by the Assessing Officer on all the relevant materials including material in hands of the department at the time of initiating search proceedings, material or documents found and seized during search operation and materials found and unearthed during post search investigations and enquiries. Therefore, said provision provides and requires application of mind by the approving authority of the department which, in turn, provides safeguard to the both the parties i.e. revenue and the assessee. Therefore, the provisions of section 153D of the Act cannot be treated as a mere formality and mandate therein required to be followed by the approving authority in a judicious manner by due application of mind in a manner of cautious judicious or quasi judicial authority. This view has

also been expressed by Pune Bench of the ITAT in the case of Akil Gulamali somji, in ITA Nos.455 to 458(Pune) of 2010 vide order dated 30.3.2012, wherein, it was held that when the approval was granted without proper application of mind, the order of assessment will be bad in law. We also take respectful cognizance of the fact that the Hon'ble Bombay High Court in the case of Akil Gulamali Somji (supra) has concurred with the said findings and view taken by the Pune Tribunal that not following the provisions of section 153D of the Act will render the related order of assessment void.

39. In view of foregoing discussion, we reach to a logical conclusion that it is the duty of the approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment folders/files and draft assessment orders while granting approval u/s.153D of the Act. This is not a formality but a statutory duty of the approving authority with a corresponding obligation on him to examine relevant record and assessment orders and thereafter grant the approval. We are cautious about that the reasons for granting approval may not be a subject matter of challenge or are not required to be mentioned in the order of approval but the manner and the material on the basis of which approval has been granted can be challenged by the assessee and following proper procedure and application of mind by the approving authority should be discernible from the order of approval. No other evidence or documents is required to be considered or appreciated as the approval should be self-speaking that it has been granted by the ld JCIT by following due procedure and due application of mind to the relevant records and orders. The scope and issue agitated by the assessee by way of legal ground in the present case is not that of grant of hearing or representation to the assessee at the time of granting approval but the main grievance and legal objection of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized materials and investigation report and draft assessment/reassessment orders and this fact should be clearly discernible from the approval order and no other extraneous material/document can be seen in this regard.

40. In view of above, we are inclined to hold 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 of approval u/s.153D and mandate of enactment by the legislature will be defeated. In the present case, the approving authority, the ld JCIT got five days time but from the order of approval, we are unable to see any exercise by the approving authority and even in the approval orders (supra), he has not mentioned that the relevant appeal folders/files alongwith assessments/reassessment orders have been perused or any discussion or consultation has been made with the AO prior to granting of approval u/s.153D of the Act. Accordingly, we are compelled to hold that the approval granted by the ld JCIT in the appeals under consideration has been granted in a mechanical manner without application of mind and that the assessments/reassessment orders passed by the AO on such approval are declared to be void and bad in law. We hold so.

41. In view of aforesaid discussion, we clearly find that approving authority has not applied his mind to the relevant assessment records and draft assessment orders prior to granting approval to the Assessing officer for passing assessment orders u/s.153A/143(3) of the Act. Therefore, the contention of ld A.R. of the assessee is justified and sustainable that the approval was granted in most mechanical manner without application of mind and respectfully following the proposition rendered by Hon'ble Bombay High Court in the case of Smt. Shreelakha Damani (supra), the order of ITAT Delhi Bench in the case of M3M India Holdings (supra) and decision of ITAT Cuttack Bench in the case of Geetarani Panda (supra), we hold that no valid approval has been sanctioned or accorded by the ld JCIT before allowing the AO to pass the relevant assessment orders. From the relevant approval orders dated 23.11.2017, it is vivid that ld JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval. These facts clearly show that the approval had been granted in a mechanical manner without application of mind and, thus, no valid approval has been granted by the ld JCIT before authorising the AO to pass assessment orders u/s.153A of the Act. Accordingly, all assessment orders are vitiated and thus same are void being bad in law. The requirement of mandate of section 153D of the Act has not been satisfied in both the cases and accordingly we

hold that the all assessment orders are vitiated and thus same are void being bad in law. We, accordingly set aside the impugned orders of lower authorities and quash the assessment orders by allowing additional ground of the assessees in all appeals filed by both the assessees having identical and similar facts and circumstances.

12. Thus, respectfully following the above observations of the Tribunal and especially the fact that the approval u/s.153D of the Act given by the JCIT for passing assessment orders in case of assessee and other group concern is without application of mind as the JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval, therefore, we hold that the impugned order passed by the CIT(A) affirming the assessment order passed by the AO, is not unsustainable. Accordingly, we allow the ground No.2 of the assessee and cancel the assessment order framed u/s.153A/143(3) of the Act.

16. In the present appeal, the JCIT, Range-Central Raipur has granted approval on the presumption basis, which in our opinion is not permissible. When the approval is not valid, then the assessment framed u/s.153A r.w.s.143(3) of the Act in the case of the assessee is not sustainable.

17. Before concluding and offering our final view on the issue, this is pertinent to mention here that the case laws relied upon by the Ld CITDR are distinguishable on facts, have no bearing on the issue under discussion in the present appeal, thus the same are not of any help to the revenue to support their contentions. The judgment in the case of Bharat Krishi Kendra Vs Union of India (supra) was decided in favour of the revenue only on the reason that where "Joint Commissioner recorded satisfaction on proposal of Assessing Officer by mentioning that it is a fit case for issuance of notice, approval under section 151 giving details of approving authority as Principal Commissioner in itself will not make approval invalid", this is altogether on different footing than the facts of the present case, where approval was granted by the Ld JCIT himself but on the basis of certain presumptions without verifying the seized material by himself, even the responsibility of satisfaction was placed on shoulders of the AO. We therefor of the view that guidance of the Hon'ble Jurisdictional High Court of Chhatisgarh in the case of Bharat Krishi Kendra Vs Union of India (supra) cannot be adopted for deciding the issue in the present appeal. Regarding the judgment in the case of Sahara Credit Cooperative Society Ltd. Vs. DCIT/ACIT (supra), Hon'ble Allahabad High Court has emphasised on the issue of communication of the approval, whether same is done physically or through uploading the same

on portal of the department makes no difference, however in the present case no such issue has been agitated, thus the same has no bearing on the issue to be decided herein.

18. In view of the above discussion and observations, respectfully following the decision of the Hon'ble High Court of Allahabad as well as orders of the coordinate benches of the Tribunal referred to above, in absence of any submission or decisions contrary to what has been emerged by the observations herein above, we do not have any reason to upheld the order of the authorities below, consequently we hold that the order of Ld CIT(A) in affirmation of the order of Ld AO u/s.153A r.w.s.143(3) of the Act is unsustainable and derives to be quashed and we do so. Accordingly, the assessment order in the case of the assessee u/s.153A r.w.s.143(3) of the Act stands cancelled. Thus, the legal ground raised by the assessee in the form of additional ground is allowed. Since, we have allowed the legal ground of the assessee, other grounds, though not argued by the ld AR, are not adjudicated upon.

13. Reliance is also placed on the following judgments by the Ld. AR, which for the sake of reference are listed as under:

Sr. No.	Particulars	Court/ Tribunal	Citation
1	Pr. CIT v. Subodh Agarwal	Hon'ble Allahabad High Court	I.T.A. No.86/Allahabad
2	M/s. Goyal Energy & Steel Pvt. Ltd. V. ACIT	ITAT, Raipur	ITA No. 240 to 243/RPR/2019
3	Arch Pharmalabs Ltd. V. ACIT	ITAT, Mumbai	(2021) 62 CCH 9
4	Mysore Bhaskara Pankaja Delhi vs ACIT Central Circle 15	ITAT, Delhi	ITA No. 3823/DEL/2023
5	PCIT v. Smt. Shreelekha Damani	ITBom.HC	2018-TIOL-2516-HC-MUMI
6	ACIT VS M S Serajuddin Co.	Hon'ble Orissa High Court	(2023) 116 CCH 0449
7	PCIT VS Anuj Bansal	Hon'ble Delhi High Court	(2023) 117 CCH 0050
8	The Pr. Commissioner of Income Tax vs Sapna Gupta	Hon'ble Allahabad High Court	I.T.Appeal No. 88 of 2022

9	Inder International v. ACIT	ITAT, Chandigarh	(2021) 35 NYPTTJ 374
10	Sh. Inder Pal Singh Arora v. DCIT	ITAT Dehradun	(2021)(6) TMI 933
11	ACIT vs. Sh. Subash Dabas	ITAT, Delhi	ITA No. 2399/Del/2016
12	Vijay Kumar Mittal HUF v. ACIT	ITAT, Jabalpur	2021-TIOL-898-ITAT-Jabalpur
13	Shri Saurabh Agarwal & Ors. V. DCIT	ITAT, Agra	ITA No.263 to 267/AGR/2017
14	Shri Navin Jain & Ors. V. DCIT	ITAT Lucknow	IT(SS)Nos. 639 to 641/LKW/2019
15	Geetarani Panda v. Asstt. CIT	ITAT Cuttack	(2018) 194 TTJ 915
16	Indra Bansal v. Asstt. CIT	ITAT Jodhpur	(22018) 1192 TTJ 968
17	Rishabh Buildwell Pvt. Ltd. Vs. Dy. CIT	ITAT Delhi	ITA No.2122/Delhi/2018
18	M/s India Holdings Vs. DCIT	ITAT Delhi	(2019) 71 ITR
19	Uttarakhand Uthan Samiti Vs. ITO	ITAT Delhi	(2021) 86 ITR (Trib.) 695
20	Dilip Constructions (P) Ltd. Vs. Asstt. CIT	ITAT Agra	(2020) 203 TTJ (Ctk)
21	Rajesh Ladhani vs. Dy. CIT	ITAT Agra	(ITA Nos. 106 to 108/AGRA/2019)
22	Shri Tarachand Khatri Vs. ACIT, Central Circle, Jabalpur	ITAT Jabalpur	ITA No. 21/Jab/2019
23	Asstt. CIT vs. C.R. Mittal & Sons (HUF)	ITAT Jabalpur	IT(SS) A No.100/Jab/2014

14. Based on aforesaid submissions, referring to the approval granted u/s 153D dated 14.03.2016, in the present cases, vide communication number *F.No. Addl.CIT /Central / Prakash Industries Group / RPR/2015-16 / 78* (copy extracted supra), it is contented by the Ld. AR that this approval was granted in

the mechanical manner without application of mind, stating the reasons that the approving authority i.e., Addl. Commissioner of Income Tax (Central), Raipur had granted the approval based on draft assessment orders submitted by the Ld. AO, without consulting the assessment records and incriminating / seized material, which is evident from the fact on record that there is no whisper about availability and deliberation of such documents by the sanctioning authority while granting the approval u/s 153D dated 14.03.2016. Ld. AR further expounded that without submission of assessment records along with incriminating / seized documents by the Ld. AO to the supervising authority, the approval was granted mechanically without thoroughly verifying such documents and incorporation of relevant information from such documents in the draft assessment order, such action of the revenue authority displays that the approval was granted merely considering the same as mechanical formality, which is not permissible under the settled principle of law emanating from the jurisprudence referred to supra. Ld. AR further emphasized on a particular noting in the letter of approval u/s 153D dated 14.03.2016, wherein the approving authority had mentioned that "*I have gone through the draft assessment orders within limited time available.",* such admission by the approving authority itself indicates, that the approval was granted half-heartedly, to which the approving authority himself was not fully satisfied, thus, the same shall be treated as mere formality, in mechanical manner and without application of mind. Ld. AR further referred to the case of

Ritanjali Khatai & Others. Vs. ACIT, CC- 1, Bhuvneshwar (supra), wherein the coordinate bench of ITAT, Cuttack, had observed that

> "*it is the duty of approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment folders / files and draft assessment orders while granting approval u/s 153D of the Act. This is not a formality but statutory duty of approving authority with a corresponding obligation on him to examine relevant record and assessment orders and, thereafter grant the approval".*

15. With the above-mentioned assertions, it was the prayer by Ld. AR that the approval u/s 153D granted in the present case was in mechanical manner, without considering the merits in proposed adjustment with reference to appraisal report, seized material collected in the Search & Seizure action, thus, it was a simpliciter approval without application of mind, which cannot be construed to be in accordance with the mandate of law. Accordingly, it is submitted that the Search assessment framed u/s 153A r.w.s. 143(3) of the Act dated 15.03.2016, on the strength of purported approval u/s 153D are void-ab-initio, invalid, illegal and bad in law, thus, are liable to be quashed.

16. Per contra, Shri S. L. Anuragi, Ld. CIT-DR representing the revenue have submitted that the issue / contention raised by the Ld. AR regarding validity of approval u/s 153D has been decided in favour of revenue by the Hon'ble Jurisdictional High Court of Chhattisgarh in the case of **Hitesh Golchha vs. ACIT, Circle-1, Raipur** in TAXC No.88/2024 dated 16.04.2024, wherein the observations of Hon'ble Court are as under:

> ***3***. *He would submit that since the right is being protected under Section 153(D) of the Income Tax Act, as per the law laid down by High Court of Orissa in the matter of Assistant Commissioner of Income Tax, (2023) 454 ITR 312 : 2023 SCC Online Ori 992: (2023) 333 CTR 228, the bare minimum requirement of said section is Approving Authority is required to indicate that what thought process was involved which should be reflected in the approval order, though the elaborate reasons need not to be given, but some indication of reason for arriving into conclusion must exist. In order to appreciate the submission, we went through the order of the ITAT as also the approval order dated 20.12.2018 (Annexure - 4). As per Section 153(D) which has covered the instant case in hand the statute mandates was to obtain a prior approval of the Joint Commissioner by the Assessing Officer. The approval of Joint Commissioner has been taken, therefore mandate of Section 153(D) has been complied.*
>
> ***4***. *The order of the Assessing officer of approval (Annexure - 4) would reflect that Joint Commissioner was satisfied on the basis of the documents on record that such approval was justified. In a given case, it can not be presumed on the mere say of the assesee that no application of mind was there while granting the approval. It is the subjective satisfaction and the*

language of the (Annexure - 4) would show that on the basis of the document produced before the Joint Commissioner, he was convinced of the fact that such approval would be necessary as the statue mandate.

***5**. From perusal of the language of the letter (Annexure - 4), we cannot presume that there was no application of mind as the approval need not be a detailed assessment order. The presumption under Section 114 of the Evidence Act would follow when such official Act has been done in accordance with official procedure and will lead to presumption that due diligence was followed. Even otherwise, the order of the ITAT would reflect that the case of appellant was remanded back to the Assessing Officer for fresh adjudication of the issue. Further the liberty was given to the assessee to raise all such issues before the Revenue Authorities and furnish necessary information/evidences in support of his contention. When such right has already been reserved in favour of the assessee, to raise grounds, we do not find that any prejudice has been caused and in fact the ITAT has principally accepted the contention of the appellant and in furtherance to advance the rules of natural justice, opportunity is given to appellant assessee.*

17. Taking support from the aforesaid judgment, it was the submission by Ld. CIT-DR that as per observations of Hon'ble Chhattisgarh HC, once the approval is granted u/s 153D, it can not be presumed that there was no application of mind as the approval need not be a detailed assessment order. It is further submitted by Ld. CIT-DR that in approval Ld. Approving Authority had mentioned that the case has also been discussed with the Ld. AO from time to time, therefore, it cannot be said that the draft assessment orders are approved

without proper appreciation of the documents such as assessment records, seized material, appraisal report etc. In view of such facts and circumstances, it was the submission that the approval accorded in present matters was with due application of mind, cannot be construed to be merely a mechanical formality, therefore, the same deserves to be upheld and the issue raised by Ld. Counsel of the assessee is liable to be rejected.

18. We have considered the rival submissions, perused the material available on record and the judicial pronouncements referred to by both the parties. In present matter, a combined approval is granted for assessment year 2008-09 to 2014-15 for the assessee "M/s Sharda Steel Traders", as well as one another assessee namely "M/s Ashok Steel Rolling Mills (P) Ltd". Admittedly, on perusal of approval nothing is arising to reveal that the assessment record and other relevant documents like seized material, appraisal report etc. are submitted to the approving authority and such documents are gone through by him while granting the approval. The declaration by the Ld. Approving Authority that the approval is granted after going through the draft assessment orders within a limited time available, impliedly demonstrates that a thorough examination of the draft assessment orders could not have been exercised by the approving authority due to paucity of time. The mandate of section 153D, which is further elaborated and enlightened by the various Hon'ble Courts that

the intent of legislature was that the superior authority should apply his mind on the materials based on which the Ld. AO is making or passing the assessment orders. It is expected from the approving authority to grant the approval after due application of mind to the material in the hands of department while initiating such proceedings, material found and seized during the course of search and also material or information unearthed or gathered during post search investigation and inquiry along with explanation, documentary evidence and other relevant material or information submitted by the assessee during the search and thereafter during the assessment proceedings. However, the revenue is squarely failed in substantiating this crucial aspect of the issue that the sanctioning authority had the opportunity or access to such documents while the draft assessment orders are approved, therefore, verification of relevant documents along with draft assessment orders whereas such documents are not submitted to the approving authority, cannot be think of. Therefore, the claim of revenue regarding application of mind by the sanctioning authority while examining the Draft Assessment Orders cannot be believed, as the relevant material was not available to him at the time of granting of approval.

19. Adverting to the judgment of Hon'ble Chhattisgarh High Court relied upon by the Ld. CIT-DR, in the case of **Hitesh Golchha (supra)**. We are unable to subscribe with the claim of the revenue based on aforesaid judgment that an

approval u/s 153D was granted following the provisions of the said section which is further enlightened by the Hon'ble Courts. We observe that, the facts of case considered in the said judgment and the appeal before us are distinguishable. From the judgment in the case of **Hitesh Golchha (supra),** as per para 4, Hon'ble High Court had observed that "*the Joint Commissioner was satisfied on the basis of the documents on record that such approval was justified*". Such observation clarifies that in the case of **Hitesh Golchha (supra)**, there was no dispute about the submission of documents and records for verification to the approving authority while granting the approval u/s 153D, whereas, the facts in the instant case have a distinguishing feature, wherein there is no evidence to show that such relevant documents are submitted or made available to the approving authority at the time of approving the draft assessment orders for his perusal, verification and deliberation, therefore, we are unable to persuade or acknowledge the contention of the Ld. CIT-DR, that the judgment of **Hitesh Golchha (supra)** have any bearing or relevance, so as to findings therein merits to be adopted in the present matters. Consequently, the judgment relied upon would not be of any help to the revenue having factual differences as against the facts of the present cases before us. We, thus, cannot approve such claim of the revenue.

20. It would be worth to note that on the issue of the validity of approval u/s 153D, under similar facts and circumstances, the coordinate bench of ITAT, New Delhi, "E" Bench, in **ITA No.1420/DEL/2023 dated 29.04.2024** in the case of **MDLR Airline (P) Ltd. vs DCIT, Central Circle-14, New Delhi,** had recently passed an order, quashing the assessment on account non application of mind as the Assessing Officer had simply sent the draft assessment orders without the assessment records and seized material to the sanctioning authority. The relevant observations of the New Delhi, Tribunal in the aforesaid case are extracted hereunder for the sake of support:

> *5. We have considered rival submissions in the light of judicial precedents relied upon and perused the materials on record. As discussed earlier, the preliminary issue arising for consideration is whether the approval granted u/s 153D of the Act is in terms with the provisions contained therein and musters judicial scrutiny.*
>
> *5.1 A reading of Section 153D of the Act makes it clear that no order of assessment or reassessment in a search-related case can be passed except with the prior approval of the Competent Authority. While interpreting the meaning of 'approval' in the context of Section 153D of the Act, it has been laid down by different courts and the Tribunal that though the word 'approval' has not been defined under the provisions of the Act, however, as per the dictionary meaning of the word and judicial interpretation, grant of approval means due application of mind on the subject matter of approval which satisfies all the legal and procedural requirements. In case of ACIT v. Serajuddin & Co. (supra), Hon'ble Orissa High Court, while interpreting*

the meaning of approval u/s 153D of the Act has observed that approval of a superior officer cannot be a mechanical exercise. His approval must indicate the thought process involved while granting approval. The approval must indicate that the Approving Authority has examined the draft assessment order and finds that it meets the requirements of law. The Approving Authority cannot act merely as a rubber stamp while granting approval.

5.2 Pertinently, the aforesaid decision of the Hon'ble Orissa High Court has attained finality due to dismissal of the SLP filed by the Revenue by the Hon'ble Supreme Court.

5.3 In case of PCIT v. Anuj Bansal (supra), the Hon'ble Jurisdictional High Court has approved the view of the Tribunal in holding that where the approval is granted without examining the assessment records and seized material, that too a single approval in case of various assessees and multiple assessment years, it does not meet the requirement of Section 153D of the Act. It is worth mentioning, the approval dated 21.03.2013, which is the subject matter under consideration in the present appeals was also under challenge before the coordinate Bench in case of MDLR Hotels Pvt. Ltd. & ors. Vs. Assistant Commissioner of Income Tax & ors. (supra). While dealing with the validity of the very same approval, the Coordinate Bench has held the approval to be invalid qua the assessment orders. The following observations of the Coordinate Bench in this context are of paramount importance:

> "*13. We have given thoughtful consideration to the orders of the authorities below and have carefully perused all the relevant documentary evidences brought on record. We have*

also gone through each and every approval granted by the Additional Commissioner of Income tax, Central Range 2, New Delhi vis-a-vis, each and every proposal made by the DCIT, Central Circle-15, New Delhi.

14. The issue which we have to decide is, can these approvals be treated as fulfilling the mandate of provisions of section 153D of the Act vis-à-vis legislative intent of the said section in the statute. Section 153D of the Act reads as under:

> *"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 section 1534 or the assessment year referred to in clause (b) of sub-section (1) of section 1538, 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 Commissioner under sub-section (12) of section 144BA."*

15. The Legislative intent can be gathered from the CBDT Circular No. 3 of 2008 dated 12.3.2008 which reads as under:

> *"50. Assessment of search cases Orders of assessment and reassessment to be approved by the Joint Commissioner.*
>
> *50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under 6 ITA. No.4061/Mum/2012 section 132 or requisition is made under section 132A. does not provide for any approval for such assessment.*
>
> *50.2 A new section 1530 has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) section 153B in respect of the assessment year relevant to*

> *the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.*
>
> *50.3 Applicability- These amendments will take effect from the 1st day of June, 2007."*

16. The Legislative intent is clear from the above, in as much as, prior to the insertion of Sec. 153D of the Act, there was no provision for taking approval in cases of assessment and reassessment in cases where search has been conducted. Thus, the legislature wanted the assessments/ reassessments of search and seizure cases should be made with the prior approval of superior authorities which also means that the superior authorities should apply their minds on the material on the basis of which the officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authorities have to approve the assessment order.

17. The question before us is "has this been done in the present case". The language of the approval

18. In light of the afore-stated relevant provisions and legislative intent, approval dated 08.03.2013 is in respect of 62 assessment orders as exhibited at pages 136 and 137 of the Index to Convenience Compilation furnished by the Id. counsel for the assessee. Approval dated 15.03.2013 is in respect of 37 assessment orders as exhibited at pages 138 and 139. Approval dated 18.03.2013 is in respect of 54 assessment orders as exhibited at pages 140 and 141. Approval dated 21.03.2013 is in respect of 24 assessment orders as exhibited at pages 142 and 143 and approval dated 25.02.2013 is in respect of 69 assessment orders as per exhibits in the Convenient Compilation.

19. Thus, the worthy Additional Commissioner of Income tax, Central Range 2, New Delhi gave approval to 246 assessment order by a single approval letter U / s 153D of the Act by mentioning as under:

> *"The above draft orders, as proposed, are hereby accorded approval with the direction to ensure that the orders are passed*

> *well before limitation period. Further, copies of final orders so passed be sent to this office for record."*

20. In our considered opinion, there is no whisper of any seized material sent by the Assessing Officer with his proposal requesting the approval u/s 153D of the Act. All the requests for approval are exhibited at pages 123 to 135 of the Convenience Compilation.

21. Even the approval granted by the Additional Commissioner of Income tax, Central Range - 2, New Delhi does not refer to any seized material/assessment records or any other documents which could suggest that the Additional Commissioner of Income tax, Central Range 2, New Delhi has duly applied his mind before granting approvals.

22. At this stage, it is paramount to note that all the orders framed by the Assessing Officer are pursuant to orders of the CIT u/s 264 of the Act. Therefore, the Additional Commissioner of Income tax, Central Range - 2, New Delhi should have been more cautious since his superior authority has set aside the assessment with specific directions.

23. Now, let us consider some analogous provisions in the Act.

24. Sec. 142(2A) of the Act reads as under:

> *"If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts 7 ITA. No. 4061/Mum/2012 about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such*

> *accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.*"

25. In this section also the AO may direct the assessee to get the accounts audited by an Accountant with the previous approval of the Principal Chief Commissioner or Chief Commissioner. This provision has been elaborately considered by the Hon'ble Supreme Court in the case of Sahara India Vs CIT 169 Taxman 328 wherein at para-6, the Hon'ble Supreme Court observed as under:

> *"A bare perusal of the provisions of sub-section (2A) of the Act would show that the opinion of the Assessing Officer that it is necessary to get the accounts of assessee audited by an Accountant has to be formed only by having regard to: (i) the nature and complexity of the accounts of the assessee; and (ii) the interests of the revenue. The word "and" signifies conjunction and not disjunction. In other words, the twin conditions of "nature and complexity of the accounts" and "the interests of the revenue" are the prerequisites for exercise of power under section 142(2A) of the Act. Undoubtedly, the object behind enacting the said provision is to assist the Assessing Officer in framing a correct and proper assessment based on the accounts maintained by the assessee and when he finds the accounts of the assessee to be complex, in order to protect the interests of the revenue, recourse to the said provision can be had. The word "complexity" used in section 142(2A) is not defined or explained in the Act. As observed in Swadeshi Cotton Mills Co. Ltd. v. CIT [1988] 171 ITR 634 1 (All.), it is a nebulous word. Its dictionary meaning is: "The state or quality of being intricate or complex or that is difficult to understand. However, all that is difficult to understand should not be regarded as complex. What is complex to one may be simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it, may not be really so if one tries to understand it carefully." Thus, before dubbing the accounts to be complex or difficult to understand, there has to be a genuine and honest attempt on the part of the Assessing Officer to understand*

accounts maintained by the assessee; appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. But opinion required to be formed by the Assessing Officer for exercise of power under the said provision must be based on objective criteria and not on the basis of subjective satisfaction. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."

26. Thus, even the Hon'ble Supreme Court has clearly laid down that the approval must reflect the application of mind to the facts of the case.

27. Similarly, the Hon'ble High Court of Calcutta in the case of Peerless General Finance & Investment Co. Ltd. Vs DCIT 236 ITR 671 has made the following observations which are pertinent to the facts of the case in hand before us:

"The factual matrix of the matter clearly shows that a proposal was made on March 10, 1998, and no prior approval therefore was granted by the Chief Commissioner of Income tax but merely one G.
P. Agarwal was nominated.

An argument has been advanced to the effect that by making such a nomination, approval will be deemed to have 9 ITA. No.4061/Mum/2012 been granted. The answer to the said contention must be rendered in the negative. The Chief

Commissioner of Income tax before granting such approval must have before him the materials on the basis whereof an opinion had been formed. A prior approval can be granted only when the materials for appointment of the extraordinary procedure is required to be taken by the Assessing Officer. The Assessing Officer, therefore, was required to place all materials before the Commissioner of Income-tax or the Chief Commissioner of Income-tax, as the case may be, to show that he intends to take recourse to the said provision having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue. No such materials had been placed before the Chief Commissioner of Income-tax. It further appears that even no previous approval was sought for but merely a proposal was placed for perusal of the Chief Commissioner of Income-tax and for appointment of a special auditor. The Chief Commissioner of Income-tax, therefore, did not apply his mind at all as regards the prerequisite for grant of previous approval and mechanically appointed Sri G. P. Agarwal, as a special auditor. The said order depicts a total non-application of mind on the part of the Assessing Officer as also the Chief Commissioner of Income-tax."

28. Another section relevant to the facts in issue is Sec. 158BG which read as under:

"The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner or Deputy Commissioner or an Assistant Director or Deputy Director, as the case may be: Provided that no such order shall be passed without the previous approval of-- (a) the Commissioner or the Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; (b) the Joint Commissioner or the Joint Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets 10 ITA. No.4061/Mum/2012 requisitioned under section 132A, on or after the 1st day of January, 1997." 11.8. In this section also it is provided that the order cannot be passed without the previous approval. This

section was thoroughly scrutinized by the Tribunal Madras Bench in the case of Kirtilal Kalidas & Co. Vs DCIT 67ITD 573, at para-41 of its order the observations of the Tribunal are as under: "In these cases, the Commissioner has passed an order granting approval under section 158BG of the Act through a single order passed on 31-3-1997 without giving any reason whatsoever. As we have recorded elsewhere above, the draft assessment orders of the block period in all these cases were made on 31-3-1997 and on the very same day, i.e., on 31-3-1997 the Commissioner grants approval and that too without giving or recording any reasons whatsoever. The approval order does not disclose the points which were considered by the Commissioner and the reasons for accepting them. In our view, this is totally an unsatisfactory method of granting approval in exercise of judicial power vested in the Commissioner. 11.9. This decision of the Tribunal was considered by Allahabad Bench of the Tribunal in the case of Verma Roadways Vs ACIT 75 ITD 183 wherein also the assessee-appellant has challenged the validity of approval to the assessment order accorded by the CIT Kanpur. The Tribunal at Para-47 has held as under: "Coming to the aspect of the application of mind, while granting approval, we are of the view that requirement of approval pre-supposes a proper and thorough scrutiny and application of mind. In the case of Kirtilal Kalidas & Co. (supra), the I.T.A.T Madras Bench 'A' has observed that the function to be performed by the Commissioner in granting previous approval requires an enquiry and judicial approach on the entire facts, materials and evidence. It has been further observed that in law where any act or function requires application of mind and Judicial discretion or approach by any authority, it partakes and assumes the character and status of a judicial or at least quasi-judicial act, particularly because their Act, function, is likely to affect the rights of affected persons."

29. Similarly, u/s. 151 of the Act it is provided that no notice shall be issued u/s. 148 unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied that it is a fit case for the issue of such notice. The sanction under this section was considered by the Tribunal, Mumbai Bench in the case of Shri Amarial Bajaj in ITA No. 611/M/2004 wherein at para-8, the Tribunal has considered the decision of the Hon'ble High Court of Delhi Bench in the case of United Electrical Co. 258 ITR 317 which read as under:

"The proviso to sub-section (1) of section151 of the Act provides

that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-builts safeguards to prevent arbitrary exercise of power by an 7 ITA Nos. 534 & 611/M/04 Assessing Officer to fiddle with the completed assessment"

The Hon'ble High Court further observed that:

"what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section
(1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grane approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval."

30. The Hon'ble Allahabad High Court in the case of Siddharth Gupta ITA No. 90 of 2022 vide order dated 12.12.2-22 had the occasion to consider an identical issue. The most relevant findings /observations of the Hon'ble High Court read 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 orders on the sole ground of defect in the approval to

the draft assessment orders 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 counsels 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 orders was granted under Section 153D for the assessment proceedings, by two letters dated 30.12.2017 and 31.12.2017, in 123 cases placed before the approving authority in two days, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeals.

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 relevant for our purposes is to be noted herein under:

> *"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 orders 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 Vijayadevi 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 omission 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 year 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 orders under Section 153A.

In the instant case, the draft assessment orders in 123 cases, i.e. for 123 assessment years placed before the Approving Authority on 30.12.2017 and 31.12.2017 were approved on 31.12.2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of

123 cases in one day to apply independent mind 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 appeals being in the nature of second appeal. No substantial question of law arises for consideration before us.

The Appeals are dismissed being devoid of merit."

31. In the present batch of appeals also, the Additional CIT has given approval in batches of 69, 62, 37, 54 and 24 assessment orders. As observed by the Hon'ble Allahabad High Court [supra) it is humanly impossible to go through the records of more than 50 cases in one day to apply independent mind to appraise the material before the Assessing Officer. Therefore, we have no hesitation to hold that the approval was mechanical."

5.4 *Keeping in perspective the legal position enunciated in the judicial precedents discussed above, if we examine the facts of the present appeal, it is to be noted that the Assessing Officer, vide letters dated 21.03.2013 sent draft assessment orders in respect of six different assessees for various assessment years for approval of the Additional Commissioner in terms of section 153D of the Act. Perusal of copies of the aforesaid letters placed in the paper book reveals that the Assessing Officer has simply sent the draft assessment orders without the assessment records and seized material. Interestingly enough, on the very same day i.e. 21.03.2013 the Additional Commissioner has granted approval u/s 153D of the Act in respect of six different assessees involving multiple assessment years. Approval granted u/s 153D, a copy of which is available at page 33 of the paper book, reads as under:*

"OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-2, ROOM NO. 343, ARA
CENTRE, E-2, JHANDEWALAN, NEW
DELHI

F.NO. 153D/CC-15/MDLR/12-13/1117 *Dated: 21.03.2013*

To,
The Deputy Commissioner of Income
Tax, Central Circle-15, Delhi
New Delhi

Sub: Approval u/s 153D of the Income tax Act in the MDLR Group of cases – reg.

This is in reference to your letter no. DCIT/CC-15/153D-MDLR/12-13/3620 dated 21.03.2013 received this office 21.03.2013, letter No. DCIT/CC-15/153D-MDLR/12-13/3623 dated 21.03.2013 received this office 21.03.2013 and letter no. DCIT/CC-15/153D-MDLR/12-13/3624 dated 21.03.2013 received this office 21.03.2013, whereby you have submitted draft assessment order giving effect to order u/s 264 seeking approval u/s 153D of the IT Act, 1961 in the following cases:-

Sl. No.	*Name of the assessee company*	*PAN*	*A.Y*	*ORDER*
1	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2002-03*	*u/s 144 r.w.s. 153A consequent upon order u/s 264 passed by the CIT setting aside the original assessment*
2	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2003-04*	*-DO-*
3	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2004-05*	*-DO-*
4	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2005-06*	*-DO-*
5	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2006-07*	*-DO-*
6	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2007-08*	*-DO-*
7	*SHRI GOPAL KUMAR GOYAL*	*AEFPG4870J*	*2008-09*	*-DO-*
8	*M/S MDLR AIRLINES P LTD*	*AAECM5231C*	*2006-07*	*-DO-*
9	*M/S MDLR AIRLINES P LTD*	*AAECM5231C*	*2007-08*	*-DO-*
10	*M/S MDLR AIRLINES P LTD*	*AAECM5231C*	*2008-09*	*-DO-*
11	*M/S MM BUILDCON P LTD*	*AAECM0924E*	*2005-06*	*-DO-*
12	*M/S MM BUILDCON P LTD*	*AAECM0924E*	*2006-07*	*-DO-*
13	*M/S MM BUILDCON P LTD*	*AAECM0924E*	*2007-08*	*-DO-*
14	*M/S MM BUILDCON P LTD*	*AAECM0924E*	*2008-09*	*-DO-*
15	*M/S OMSHIV BUILDTECH P LTD*	*AAACO7989B*	*2007-08*	*-DO-*
16	*M/S OMSHIV BUILDTECH P LTD*	*AAACO7989B*	*2008-09*	*-DO-*
17	*M/S MDLR DEVELOPERS & PROMOTERS P LTD*	*AAECM0201E*	*2005-06*	*-DO-*
18	*M/S MDLR DEVELOPERS & PROMOTERS P LTD*	*AAECM0201E*	*2006-07*	*-DO-*
19	*M/S MDLR DEVELOPERS & PROMOTERS P LTD*	*AAECM0201E*	*2007-08*	*-DO-*

20	*M/S MDLR DEVELOPERS & PROMOTERS P LTD*	*AAECM0201E*	*2008-09*	*-DO-*
21	*M/S NAGESHWAR BUILDERS P LTD*	*AACCN0116B*	*2005-06*	*-DO-*
22	*M/S NAGESHWAR BUILDERS P LTD*	*AACCN0116B*	*2006-07*	*-DO-*
23	*M/S NAGESHWAR BUILDERS P LTD*	*AACCN0116B*	*2007-08*	*-DO-*
24	*M/S NAGESHWAR BUILDERS P LTD*	*AACCN0116B*	*2008-09*	*-DO-*

The above draft orders as proposed are hereby accorded approval with the direction to sure that orders are passed well before the limitation. Further, the copies of the final orders passed be sent to this office for records.

Sd/-
(Shashi Bhushan Shukla)
Addl. Commissioner of Income Tax,
Central Range-2, New Delhi."

5.5 A careful reading of the approval granted u/s 153D of the Act clearly indicates that the Approving Authority has neither examined the assessment records nor the seized materials. In fact, the letter of the Assessing Officer seeking approval also makes it clear that only draft assessment orders were sent for approval without any assessment record or seized material. It is further clear that on the very same day the letter of the Assessing Officer with draft assessment orders were received, approval u/s 153D of the Act was granted by the Approving Authority. The aforesaid facts clearly reveal that the Approving Authority, while granting approval u/s 153D of the Act has acted as a mere rubber stamp. The approval granted is completely mechanical without application of mind. Thus, in our view, the approval granted u/s 153D of the Act is not in accordance with the provisions contained u/s 153D of the Act, keeping in view the ratio laid down in various judicial precedents discussed herein above. Thus, in our view, the

> ***approval granted u/s 153D of the Act is invalid. Consequently, the assessment orders passed in pursuance to such approval are also invalid. Hence, deserves to be quashed. Accordingly, we do so. The impugned orders of learned First Appellate Authority are set aside.*** *(emphasis supplied by us)*
>
> ***6.*** *Since we have quashed the assessment orders while deciding the legal grounds raised by the assessee, the grounds raised on merits have become purely academic, hence do not require adjudication.*

21. After a careful consideration of aforesaid facts, circumstances and material on record along with the judicial pronouncements referred to supra, we find substance in the contention raised by the Ld. AR that in absence of relevant documents i.e., assessment records and seized material, the approval granted by the approval authority with a rider that the draft assessment orders are gone through within the limited time available, thus, it cannot be said that there was due application of mind by the approving authority, as the relevant documents are not available to him, nor the revenue could establish by way of any material, evidence or submission to dislodge the said fact. The approval granted u/s 153D, therefore, can be construed as mere formality and in mechanical manner.

22. In consideration of aforesaid facts and circumstances, respectfully following the ratio of law laid down under various judicial pronouncements by Tribunal, Hon'ble High Courts as well as Hon'ble Apex Court (referred to supra), we, therefore, are of the considered opinion that the approval u/s 153D dated

14.03.2016 (copy extracted supra) in the subject matters before us cannot constitute a valid approval, as per the mandate and settled position of law. Consequently, the assessment completed u/s 153A / 143(3) dated 15.03.2016 on the foundation of an invalid approval are bad in law, invalid and liable to be quashed. Resultantly, the common assessment order dated 15.03.2016 stands quashed, and the impugned orders of Ld. CIT(A) assailed before us are set aside.

23. Since, the common assessment order dated 15.03.2016 has been quashed by us in adjudication of legal ground raised by the assessee challenging the validity of approval u/s 153D, the grounds on merits have become academic, therefore, not required to be adjudicated separately.

24. Resultantly, ITA No. 111/RPR/2025 of the assessee is allowed, in terms of our aforesaid observations.

<u>ITA No. 112 to 116/RPR/2025</u>

25. As we have allowed the appeal of assessee in **ITA No. 111/RPR/2025** for AY 2008-09 by quashing the assessment order u/s 153A r.w.s. 143(3) dated 15.03.2016, the remaining appeal from **ITA No. 112 to 116/RPR/2025 for AY 2009-10 to 2014-15,** emanating from the common assessment order, having

identical facts, circumstances and grounds of appeals are also allowed on the same terms.

26. In combined result, **ITA No. 111 to 116/RPR/2025** of the assessee stands **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 21/05/2025.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 21/05/2025
Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Sharda Steel Traders
2. प्रत्यर्थी / The Respondent- ACIT/DCIT Central Circle-2, Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur