

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.337/DEL/2019  
(Assessment Year: 2015-16)**

Manoj Kumar Chaudhary, vs. DCIT, Central Circle,  
B – 30, Sector Gamma – 1, Noida.  
Greater Noida – 201 306 (U.P.).  
**(PAN :ADJPC6140K)**

**ITA No.353/DEL/2019  
(Assessment Year: 2011-12)**

**ITA No.354/DEL/2019  
(Assessment Year: 2012-13)**

Manoj Kumar HUF, vs. DCIT, Central Circle,  
B – 30, Sector Gamma – 1, Surajpur, Noida.  
Greater Noida – 201 306 (U.P.).  
**(PAN : AAHHM3816M)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sandeep Jain, CA  
REVENUE BY : Shri Sunil Kumar Yadav, CIT DR

Date of Hearing : 22.04.2025  
Date of Order : 21.05.2025

**ORDER**

**PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. This appeal is filed by the assessee, Manoj Kumar Chaudhary, against the order of Id. Commissioner of Income-tax Appeals-IV, Kanpur [hereinafter referred to as 'Id. CIT (A)] dated 19.11.2018 for Assessment Year 2015-16.

and the appeals filed by the assessee, Manoj Kumar HUS are against the order of Id. Commissioner of Income-tax Appeals-IV, Kanpur [hereinafter referred to as 'Id. CIT (A)] dated 12.07.2018 for Assessment Years 2011-12 & 2012-13.

2. Since the issues are common and the appeals are connected, hence the same are heard together and are being disposed off by this common order. We take ITA No.337/Del/2019 for AY 2015-16 in the case of Manoj Kumar Chaudhary as lead case.

3. The assessee has taken the following revised and additional grounds of appeal :-

“1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CITA) has erred both on facts and in law in confirming an addition of Rs.3,22,51,009/- on account of Bogus long term capital gain despite assessee fulfilling the burden cast on him.

3. On the facts and circumstances of the case, the learned CITA) has erred both on facts and in law in confirming addition of Rs.15,60,782/- on account of exempt income despite assessee fulfilling the burden cast on him.

4. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition of Rs.14,65,000/- on account of cash deposit in banks despite assessee fulfilling the burden cast on him u/s 68 of the Income Tax Act, 1961.

4.1. On the facts and circumstances of the case, the learned CITIA) has erred both on facts and in law in confirming addition Rs.14,65,000/- on account of cash deposit in bank account u/s 68 as pass book is not treated as book of accounts for the purpose of section 68.

4.2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition Rs.14,65,000/- by ignoring the detailed cash book submitted during appellate proceedings and failed to point out any defect in that.

5. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition by ignoring the submission and evidences submitted during appellate proceedings & not accepting them under rule 46A.

6. The appellant craves leave to add, amend or alter any of the grounds of appeal.

#### **Additional Ground**

It was pleaded that assessee may be permitted to raise the additional ground which goes to the root of the matter and clearly transpires from the proceedings before the lower authorities with complete facts on record:

1. The learned CIT-A has erred both in law and in facts in confirming addition on account of unsecured loan despite the fact that no incriminating material or no undisclosed income or any evidence has been found during the search at the premises of the Appellant and therefore the addition under Section 153A is not sustainable.

2. The learned CIT-A has erred in law and in facts as the approval to be taken under Section 153D is mechanical, The approval for Section 153D of the Income Tax Act, 1961 has to be separate for each assessment year and cannot be a common approval, Further, the approval under Section 153D is mechanical in nature.

3. The learned CIT-A has erred in law and in facts as it failed to recognise that the search conducted under Section 132 is invalid as there was no ground to initiate search and the necessary ingredients were not satisfied to initiate search under Section 132 of the Income Tax Act, 1961.

4. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making addition without mentioning the precise provision of law in respect of addition of Exempt Income as mentioned in ground no.3 above.”

4. At the outset of the hearing, ld. AR for the assessee submitted that that assessee has filed additional grounds of appeal which are purely legal issue. Since the above additional grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, ld. AR of the assessee prayed that the same may be admitted in view of decision of

Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).

5. On the other hand, ld. DR for the Revenue has no objection of admitting the additional grounds of appeal being purely legal issue.
6. Considered the rival submissions and material placed on record by both the parties. We observed that the issues raised by the assessee in additional grounds go to the root of the matter challenging the jurisdictional issue. In the light of Hon'ble Supreme Court in the case of NTPC, Limited vs. CIT (1998) 229 ITR 383 (SC), we are inclined to admit the additional grounds and take up the same for adjudication herein below.
7. First we take up legal issues raised by the assessee in the additional grounds of appeal.
8. At the time of hearing, ld. AR of the assessee submitted that the approval taken by the lower authorities u/s 153D is mechanical and the approval for section 153D of the Act has to be separate for each assessment year and cannot be a common approval. He submitted that a common approval was taken in respect of 19 different assesseees for different assessment years, hence the specified authority has not granted approval in accordance with the mandate of section 153D of the Act, the details of which are reproduced below :-





9. Ld. AR further submitted 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 u/s 153D of the Act and mandate enacted by the legislature will be defeated. He further submitted that for granting approval u/s 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.
10. Further, Ld. AR of the assessee filed a Paper Book containing pages 1 to 90 wherein, plethora of case laws have been referred and also relied on the case laws other than the paper book, whereby the legal issue in dispute has been decided in favour of the assessee. However, more particularly, ld. AR drew our attention towards the decisions viz. Hon'ble jurisdictional Allahabad High Court in the case of PCIT Central vs. Siddharth Gupta reported in 450 ITR 534, which was upheld by Hon'ble Supreme Court in SLP (Civil) Diary No.43280/2023 dated 09.08.2024, Hon'ble Delhi High Court decision in the case of PCIT vs. Shiv Kumar Nayyar in ITA No. 285/2024 (Del) dated 15.05.2024 and ITAT Delhi Bench in M/s Millenium Vinimay (P) Ltd. vs. ACIT, ITA No.458/Del/2022 dated 31.5.2024 and submitted that by following the ratio of the aforesaid case laws, the legal issue involved in the instant appeal may be allowed.
11. Per contra, ld. DR of the Revenue relied upon the orders of the authorities

below and objected to the submissions of the ld. AR. He submitted that the approval u/s 153D of the Act is administrative approval. The procedure to approval process has no relevance to the assessee and his proceedings.

12. Considered the rival submissions and material placed on record. We have especially perused the details of approval granted u/s. 153D of the Act and the case laws cited by the ld. AR of the assessee.
13. We find that Hon'ble jurisdictional Allahabad High Court in the case of PCIT Central vs. Siddharth Gupta (supra) has decided the similar legal issue in favour of the assessee and against the Revenue, which was upheld by Hon'ble Supreme Court in SLP (Civil) (supra) and Hon'ble High Court held as under :-

“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](#).

14. We further find that Hon'ble Delhi High Court in the case of PCIT vs. Shiv Kumar Nayyar (supra) has decided the similar legal issue in favour of the assessee and against the Revenue. The relevant findings of the Hon'ble Delhi High Court are reproduced as under:-

"15. A similar view was taken by this Court in the case of Anuj Bansal (supra), whereby, it was reiterated that the exercise of powers under Section 153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval under Section 153D of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

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

"10. We have gone through the approval granted by the Id. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at

21:34:51 that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assessee, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

17. Notably, the order of approval dated 30.12.2020 which was produced before us by the learned counsel for the assessee clearly signifies that a single approval has been granted for AYs 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration."

15. We also find that ITAT Delhi Bench in the case of M/s Millenium Vinimay (P) Ltd. vs. ACIT, (supra) has dealt the similar legal issue and decided the same in favour of the assessee. The relevant findings of the Coordinate Bench are reproduced as under:-

“15. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) which has been approved by jurisdictional High Court subsequently, reported in 307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held as under:-

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

2. Following question was argued before us for our consideration:  
"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"

3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007- 08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.

4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks : "To, The DCIT(OSD)1, Mumbai Subject: Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg. Ref: No. DCIT (OSD)1/ CR7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyze the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted u/s 153D of the I. T. Act, 1961."

7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.

8. Accordingly, the Tax Appeal is dismissed."

16. In the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act.

17. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the arguments advanced by the Ld. the Assessee's

Representative on the Additional Ground of Appeal. In our considered opinion the approvals so granted under the shelter of section 153D of the Act does not pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments orders in the captioned appeals are non-est and a nullity and hence the same are quashed.

18. In view of prima facie merits found in the legal objections raised in the Addl. Grounds of the Assessee, we do not consider it expedient to look into the aspects on merits of additions/disallowance as the legal objections on sanction granted under Section 153D of the Act has been answered in favour of the Assessee. Thus the other Grounds raised in the Appeals of the Assessee in both the Appeals have rendered in- fructuous, which do not need any separate adjudication.

19. In the result, the Appeals filed by the Assessee in ITA Nos. 294/Del/2022 and ITA No. 295/Del/2022 are allowed.

11. Upon considering the entire aspect of the matter, we find that the approval has been granted not separately for each assessment year for the assessee whereas the provision of Section 153D of the Act stipulates conditions that no order of assessment or reassessment shall be made by an Assessment Officer below the rank of Joint Commissioner in respect of each assessment year referred to in Clause (b) of Sub Section (1) of Section 153A of the Act or the assessment year referred to in Clause (b) of Sub Section 153B of the Act except the prior approval of the Joint Commissioner. It further appears from the approval dated 08.06.2018 that the same was a common and composite order whereas the Addl. Commissioner is required to verify and approve that each of assessment year is complied with as well as procedural laid down under the Act.

Such fact clearly reveals non-application of mind on the part of the Learned Addl. Commissioner of Income Tax, Central Range-7, New Delhi. Thus granting approval for all the common years instead of approval under Section 153B for each assessment year separately de horse the rules. The said approval is found to have been given in a mechanical and routine manner. We find that the order issuing authority has not discharged its statutory duties cast upon him even by assigning cogent reasons in respect of the issues involved in the matter. Thus granting approval in the absence of due application of independent mind to the material on record for each assessment year in respect of the assessee's case separately vitiates the entire proceedings; the same is found to be arbitrary and erroneous and therefore, liable to be quashed. We are also inspired by the ratio laid down in the Judgment narrated hereinabove passed by the Hon'ble Jurisdictional High Court and respectfully relying upon the same with the above observation, we quash the entire proceeding initiated under Section 153C r.w.s 153A of the Act in the absence of a valid approval granted by the Learned Additional Commissioner of Income Tax, Central Range-7, New Delhi.

12. In the result, appeal of the assessee is allowed.”

16. Respectfully following the above precedents, we quash the entire proceedings initiated under section 153C r.w.s. 143(3) of the Act in the absence of a valid approval granted by the approving authorities.
17. We are refrained from adjudicating the other grounds of appeal and at this stage, we keep the other grounds of appeal open.
18. In the result, the appeal filed by the assessee being ITA No.337/Del/2019 for AY 2015-16 in the case of Manoj Kumar Chaudhary is partly allowed.
19. With regard to appeals being ITA Nos.353/Del/2019 & 354/Del/2019 for AYs 2011-12 & 2012-13 in the case of Manoj Kumar HUF are concerned, since the facts are exactly similar to the case of Manoj Kumar Chaudhary for AY 2015-16 our above findings in that case for AY 2015-16 are applicable *mutatis mutandis* in AYs 2011-12 & 2012-13 in the case of Manoj Kumar HUF. Accordingly, the appeals being ITA Nos. 353/Del/2019 & 354/Del/2019 for AYs 2011-12 & 2012-13 in the case of Manoj Kumar HUF are also partly allowed.
20. To sum up : all the appeals filed by the assessees are partly allowed.

**Order pronounced in the open court on this 21<sup>st</sup> day of May, 2025.**

**Sd-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 21.05.2025  
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**