

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 731/DEL/2017 Assessment Year: 2013-14

ITA No. 3719/DEL/2017 Assessment Year: 2013-14

ITA No. 4910/DEL/2017 Assessment Year: 2013-14

Chandra Kant Sharma, 8/2C, 3 rd Floor, Civil Lines, Opp. Mehsoni Club, New Delhi- 1100 54 PAN No. AAUPS4700K	Vs.	Assistant CIT, CC-26, New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri Sandeep Goel, Advocate
Department by:	Shri Rajesh Kumar Dhanesta, Sr. DR & Shri Surender Pal, CIT DR
Date of Hearing:	04.03.2025
Date of pronouncement:	23.05.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

This bunch of three appeals, by the assessee, are against order passed by learned Commissioner of Income Tax (Appeals)-31, New Delhi. Since, the appeals relate to the same assessee, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

ITA No.731/Del/2017

2. The appeal is against order dated 30.12.2016 of Learned Commissioner of Income-Tax (Appeals)-31, New Delhi (hereafter referred to as “Ld. CIT(A)”) under Section 250(6) of the Income-Tax Act,1961 (hereinafter referred to as “the Act”) arising out of assessment order dated 13.05.2015 of Assistant Commissioner of Income Tax, Central Circle-26, New Delhi (hereinafter referred to as “the AO”) under Section 153A, 144 and 143(3) of the Act for assessment year 2013-14.

ITA No.3719/Del/2017

3. The appeal is filed against order dated 28.04.2017 of Ld. CIT(A) arising out of penalty order dated 25.11.2016 under Section 271(1)(c) of the Act of the ACIT, Central Circle-26, New Delhi for the assessment year 2013-14.

ITA No.4910/Del/2017

4. The appeal is against order dated 05.05.2017 of Ld. CIT(A) arising out of penalty order dated 25.11.2016 under Section 271 AAB of the Act for the assessment year 2013-14.

5. Brief facts of ITA Nos.371/Del/2017 are that a search and seizure operation under Section 132 of the Act was carried out on 11.09.2013 and 17.09.2013 in case of AKN Group of Cases. The case of assessee was also covered in the search. During search carried out at the different premises located in India, documents and data storage devices etc. belonging to the assessee

company were found and seized. The case, was centralized with Central Circle-26, New Delhi by the Learned PCIT-16, New Delhi vide order date 18.09.2015 under Section 127 of the Act. The assessee filed return of income under Section 139(4) of the Act for assessment year 2013-14 on 03.02.2015, declaring income of Rs.55,05,000/- whereas the time limitation for filing of return was on 30.09.2013. Consequent upon search and seizure operation, notice under Section 153A of the Act dated 22.09.2015 was issued. The assessee was required to furnish true and correct return of income for assessment year 2013-14 within 15 days from the receipt of notice. In response thereto, return of income under Section 153A of the Act was filed by the assessee on 11.12.2015 declaring income of Rs.11,03,94,950/- after making an surrender of Rs.10.5 crores received in cash over and above the registered price of property sold in Sultanpur and Rs.10,31,250/- received interest income. However, taxes were not paid by the assessee on the said amount. Since, the undisclosed transactions were found during search and seizure operation which has not been recorded by the assessee on or before the date of search in its books of account, penalty proceeding under Section 271AAB of the Act was initiated separately. Subsequently notices under Section 143(2) and under Section 142(1) of the Act along with questionnaire were issued to the assessee on 07.01.2016. Sh. Chandrakant Sharma, assessee and Sh. Rajiv Agarwal, CA/AR, of the assessee attended the proceedings from time to time and filed details. A reference under Section 142A Tax Act was made to the DVO vide letter dated 16/19.10.2015

for fair market valuation of land held by the assessee. The report was submitted by the DVO vide letter dated 22.02.2016. Subsequently, another letter was issued to the DVO vide letter dated 14.03.2016 was issued to re-submit the fair market valuation as important evidences found during search were not considered by the DVO. Thus, because of the above reference the limitation period for completion of assessment got extended.

6. Ld. AO vide order dated 13.05.2016, made additions of Rs.12,60,858/-, Rs.3,00,00,000/- and Rs.3,60,95,500/-, the details are as follows:

Income from Business (As discussed in para 4)	Rs.12,60,858/-
Income from house property (As discussed in return)	Rs. 3,00,00,000/-
Long Term Capital Gain	Rs.3,60,95,500/-
Claim of deduction U/s.54F	Rs.1,86,44,062/-

7. In ITA No.3719/Del/2017 in pursuance to assessment order dated 13.05.2016 Ld. AO's order in penalty proceedings vide order dated 25.11.2016 under Section 271(1)(c) of the Act, penalty of Rs.74,35,694 was imposed.

8. In ITA No.4910/Del/2017, vide penalty order dated 25.11.2016 under Section 271 AAB, penalty of Rs.3,18,00,375/- was imposed.

9. Against assessment order dated 13.5.2016 and penalty orders dated 25.11.2016, appellant/assessee preferred separate appeal before the Ld. CIT(A)

which were dismissed vide separate orders dated 30.12.2016, 05.05.2017 and 28.04.2017.

10. Being aggrieved, appellant/assessee has preferred above captioned three appeals.

11. Learned Authorised Representative for the appellant/assessee in ITA No.731/Del/2017, submitted that additional legal ground raised under Rule 11 of the Income Tax Appellate Rules is as under:

"That impugned assessment order passed u/s. 1534/144 of 1961 Act by Ld AO (ACIT CC 26 Delhi) dated 13.05.2016 as sustained by Ld CIT-A are void ab initio and is jurisdictionally flawed as said assessment order is based on invalid /illegal "purported" approval u/s 153D by Add CIT-Central Range 7 Delhi (dated 13.05.2016) and therefore impugned asst order and first appeal order may please quashed for want of valid approval u/s 153D of 1961 Act"

12. Learned Authorised Representative for the appellant/assessee submitted that the sequence of events impugned approval dated 13.05.2016, the day when Ld. AO sought approval and it was mentioned that case was discussed with assessee by the Ld. Assessing Officer. As noted in the case of order sheet, important facts notable draft order for approval and approval obtained are nowhere recorded on case of order sheet. The three documents now received from the Office of the Ld. AO, are in his order (relevant is 13.05.2016 noting); forwarding letter of AO dated 13.05.2016 and approval under Section 153D of 13.05.2016 for adjudication of additional ground under Rule 11 of ITAT Rules.

Reason for taking additional ground on validity of approval under Section 153D at this stage is as per decision of a Co-ordinate Bench of ITAT, Delhi in ITA Nos. 1282 to 1285/Del/2020 titled as 'Shiv Kumar Nayyar Vs. ACIT decided on 26.07.2023 by referring to judgment of Orissa High Court in case of ACIT vs. Seerajuddin 454 ITR 212. Hon'ble High Court of Delhi in case of Principal Commissioner of Income Tax Vs. Shiv Kumar Nayyar reported as 163 Taxman.com. 9 has held as under:

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

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

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

11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under [Section 153D](#) of the Act has to be granted for "each assessment year" referred to in clause (b) of sub-

section (1) of [Section 153A](#) of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of **PCIT v. Sapna Gupta [2022 SCC OnLine All 1294]** which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- "each assessment year" used in the language of [Section 153D](#) of the Act. The relevant paragraphs of the said decision are reproduced as under:-

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

19. The careful and conjoint reading of [Section 153A\(1\)](#) and [Section 153D](#) leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the

Assessing Officer on the draft assessment order before passing the assessment order under [Section 153A](#).

[Emphasis supplied]

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

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of *Asst. CIT v. Serajuddin and Co.* [2023 SCC OnLine Ori 992] to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

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

158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein,

(i) the Assessing Officer should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind ; (ii) the final approval must be in writing ; (iii) the fact that approval has been obtained, should be mentioned in the body of the assessment order."

[Emphasis supplied]

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

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

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

*"10. We have gone through the approval granted by the ld. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. **It is also***

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

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

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through 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.

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

13. Reliance was placed on decisions of in ITA No.368/Del/2023 titled as “PCIT vs. Anuj Bansal” decided on 13.07.2023 and in ITA No.243/Del/2023 titled as “PCIT vs. Subhash Dabad & Anr.” decided on 15.03.2023.

14. Learned Authorised Representative for the appellant/assessee further submitted that along with quantum appeal in ITA No.731/Del/2017 penalty appeals i.e. ITA No.3719/Del/2017 and ITA No.4910/Del/2017 may be decided in favour of the assessee keeping in view the decision of the ITAT, Delhi in ITA Nos.8533 to 8537/Del/2019 in the case of M/s. AKN developers Pvt. Ltd., New Delhi for the assessment years 2010-11 to 2014-15.

15. Learned Authorised Representative for the Department in written submissions, prayed that additional ground was filed by assessee on 01.08.2023 after a gap of 6 years since filing the appeal in the ITAT. The issue raised in the GOAs were not raised before the Ld. CIT(A). Therefore, the same may not be admitted before the ITAT at this stage as the Ld. CIT(A) has not adjudicated on the issue. Learned Authorised Representative for the Department further in addition to the oral arguments submitted that the legal issues/legal submissions, relevant to section 153D, approval and two vital judgments of the Hon'ble Supreme Court, on the legality and legal requirements of the Administrative Orders of Government or Executive Authorities may be considered.

15.1 The word/phrase "written approval" is not mentioned in the section 153D of the Income tax Act, 1961. The only phrase used is "the prior approval". Therefore, the contents of the written order of the JCIT/Addl. CIT are legally not required to be examined or considered, for meeting the legal or factual requirements of the approval under section 153D.

15.2 The order by the Addl. CIT/JCIT under section 153D is an Administrative Order, by the higher authority i.e. JCIT/Addl. CIT to the lower authority, i.e. AO. Such an order is not a quasi-judicial or judicial order. Therefore, the legal requirements and benchmarks regarding the principles of "the application of mind" and "the speaking order" are not as strict or high, as they are in the case of quasi-judicial or judicial order.

15.3 In respect of the legal requirements and the benchmarks regarding the administrative orders, the Hon. Supreme Court has given many comprehensive judgements, which are enclosed and the relevant portions/parts are quoted as under:-

(i) Decision of Hon'ble Supreme Court in the case of Municipal Council Neemuch vs Mahadeo Real Estate, dated 17 September, 2019, AIR 2019 SC 4517, 2019 (10) SCC 738; &

(ii) In the case of West Bengal Central School Service Vs. Abdul Halim dated 24 July 2019, AIR, 2019, AIR 2019 SC 4504, AIRONLINE 2019 SC 2188 AIR 2020 SC (CIV) 82.

16. From the examination of record in light of aforesaid submissions, it is crystal clear that in ITA No.731/Del./2017, appellant/assessee through additional legal ground has challenged approval dated 13.05.2016 under Section 153D of the Act. Order sheet dated 13.05.2016, forwarding letter of Ld. AO and approval under Section 153D dated 13.05.2016 have been annexed.

17. Approval letter dated 13.05.2016 mentioned the approval to the draft assessment order on basis of detailed discussion, copy of the same letter is affixed as under:

3

**Office of the
Additional Commissioner of Income Tax
Central Range-7, Room No. 329
E-2, Jhandewalan Extension
New Delhi**

F. No. Addl. CIT/CR-7/2016-17/195 Dated: 13.05.2016

To

The Asstt. Commissioner of Income Tax
Central Circle-26,
New Delhi

**Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of
- req.-**

Please refer to your letter F. No. ACIT/CC-26/2016-17/181 dated 13.05.2016 on the above subject.

2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment orders in the following case, on the basis of the detailed discussion with you, information available on record, facts mentioned in the Appraisal Report and relevant seized documents.

S. No	Name of the assessee	PAN	A.Y.	Return Income	Assessed Income
1.	Sh. Chandra Kant Sharma	AAUPS4700K	2013-14	Rs. 11,03,94,750/-	Rs. 16,65,20,273/-

Copies of the final assessment order should be forwarded to this office immediately after passing the order.

13 MAY 2016

RECEIVED

337

(Signature)

(Neeraj Kumar)
Additional Commissioner of Income Tax
Central Range -7, New Delhi

18. Hon'ble High Court of Delhi in PCIT vs. Anuj Bansal's case has held as under:

"10. This order was carried in appeal by the respondent/assessee, right up till the Tribunal.

11. Insofar as the Assessing Officer (AO) was concerned, he made certain additions against the returned income.

12. The respondent had declared an income amounting to Rs. 87,20,580/- . However, while making the additions, strangely, the AO noted that the returned income was Rs. 11,00,460/-.

13. There were two additions made by the AO. The first addition was made qua cash deposited in the bank, amounting to Rs. 15,04,35,000/- The second addition was made with regard to cash introduced via an entry operator i.e., one, Mr. Vipin Garg. The amount added qua this aspect was pegged at Rs. 1,54,07,100/-.

14. Despite these additions, which would have taken the assessed income well beyond what was crystallised by the AO i.e., 1,65,07,560/-, the ACIT failed to notice the error.

15. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

16. More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

17. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind.

The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

18. *In this appeal, we are required to examine whether any substantial question of law arises for our consideration.*

19. *Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.*

19. In view of above material facts in light of well settled legal principles, respectfully following the judicial precedents, the approval under Section 153D dated 13.05.2016 is declared as illegal. Consequently, the impugned assessment orders of Ld. AO and Ld. CIT(A) are unsustainable and are set aside.

20. Likewise, the penalty order being consequential challenging ITA No.3719/Del/2017, and ITA No.4910/Del/2017 are set aside.

21. In the result, all the three appeals of the appellant/assessee are allowed.

Order pronounced in the open court on 23/05/2025.

**Sd/- (M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/- (VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 23/05/2025

Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR
ITAT, New Delhi**