

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMEBR**

**ITA No. 3993, 3994 & 3995/DEL/2024
Asstt. Yrs. 2017-18, 2018-19 & 2019-20**

Naveen Narang, 291, Gujarawala Town, Part-III, Delhi-110009. PAN- AADPN 0344D	<u>Vs</u>	DCIT, Central Circle-29, Delhi.
APPELLANT		RESPONDENT
Assessee represented by		Shri Amit Goel, CA & Shri Pranav Yadav, Adv.
Department represented by		Ms. Amisha S. Gup, CIT(DR)
Date of hearing		05.05.2025
Date of pronouncement		16.05.2025

ORDER

PER MS. MADHUMITA ROY, JM:

These instant appeals, filed by the assessee, are directed against separate orders all dated 31.07.2024 passed by the learned Commissioner of Income-tax (Appeals)-30, New Delhi, arising out of separate assessment orders all dated 31.03.2022 for A.Y. 2017-18, 2018-19 & 2019-20 respectively passed by the Assessing Officer, DCIT, CC-29, Delhi U/s 153A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). Facts and issue involved for adjudication in all the three assessment years being identical (excepting quantum of addition) these appeal were heard together and are being disposed of by a common order for the

sake of convenience. ITA No. 3993/Del/2024 for A.Y. 2017-18 is made the lead case and our finding therein shall follow mutatis mutandis in ITA Nos. 3994 & 3995/Del/2024 for A.Yrs. 2018-19 & 2019-20.

ITA No. 3993/Del/2024(A.Y. 2017-18):

2. Grounds of appeal raised by the assessee are as under:

“1. On the facts and circumstances of the case and in law, the initiation of assessment proceedings and the issue/service of notice(s) are not in accordance with the provisions of the Act and therefore, the assessment order passed by the assessing officer is liable to be quashed and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the notice issued under section 153A is bad in law and without jurisdiction and accordingly the said notice and the assessment order passed on the foundation of such notice are liable to be quashed and CIT(A) erred in not holding so.

3. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is bad-in-law, without jurisdiction and barred by limitation and CIT(A) erred in not holding so.

4. On the facts and circumstances of the case and in law, the addition of Rs. 32,63,879/- made by the assessing officer on the account of alleged Commission Income u/s 69A r.w.s 115BBE of the Act is beyond the scope of provisions of section 153A of the Act and, therefore, the addition made by the AO is liable to be deleted and CIT(A) erred in not holding so.

5. On the facts and circumstances of the case and in law, the assessing officer erred confirming the addition made by the assessing officer of Rs. 32,63,879/- on the account of alleged Commission income u/s 69A r.w.s 115BBE of the Act.

6. On the facts and circumstances of the case and in law, the assessing officer erred in applying provisions of section 115BBE of the Act and CIT(A) erred in not holding so.

7. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.”*

3. Facts of the case, in brief, are that for A.Y. 2017-18 the assessee filed his original return of income on 30.07.2017 declaring income of Rs. 81,55,210/- which was processed u/s 143(1) of the Act on 13.11.2017 at the same income as returned by the assessee. Subsequently, on the basis of a search and seizure action under Section 132 of the Act carried out on 14.10.2020 in the case of one Sh. Manoj Kumar Singh and on the finding thereon that Sh. Manoj Kumar Singh had entered into unaccounted cash transactions with various persons/entities including the assessee, accordingly, proceedings u/s 153A of the Act were initiated in the case of the assessee by issuance of notice dated 04.06.2021. In response, the assessee filed his return of income on 12.07.2021 at the same income as originally returned at Rs. 81,55,210/-. Thereafter, in response to statutory notices issued under Section(s) 143(2)/ 142(1) of the Act, the assessee filed requisite submissions through ITBA portal on various dates. The AO completed the assessment u/s 153A of the Act at Rs. 1,14,19,089/- as against returned income of Rs. 81,55,210/-, by adding Rs. 32,63,879/- under Section 69A of the Act.

4. Being aggrieved by and/or dissatisfied with the same the assessee preferred appeal before the Ld. CIT(A) who affirmed the action of the AO. Hence, the instant appeal before us.

5. Before us the assessee has challenged the initiation of proceedings u/s 153A of the Act mainly on two counts – firstly, in the absence of incriminating material found during the course of search in the case of the assessee the addition is not sustainable invoking Section 153A of the Act; and secondly, the approval granted by the JCIT, Central Range-8, New Delhi is bad in law in view of the fact of examination of documents before approval upon application of mind by the said authority is not depicting from the same, moreso the approval is a conditional one which is evident from the second part of the approval dated 30.03.2022 granted by JCIT, Central Circle-8, New Delhi, as placed before us.

6. Apart from that it is the case of the assessee that the addition on the basis of whats App, if at all to be accepted the same is not pertaining to the years under consideration. In this regard he has relied upon the judgment passed in the case of PCIT v. M/s SMC Power Generation Ltd. [2019 (7) TMI 1393 – Delhi High Court].

7. On the other hand, the Ld. DR relied on the orders passed by the authorities below.

8. We have heard the rival submissions made by the respective parties and have perused the relevant materials available on record. We find that while making addition the Ld. AO observed that one of the seized documents (pendrives) was

seized from the residence of Devesh Singh, key employee of Sh. Manoj Kumar Singh; laptop found and seized from the residence of Devesh Singh; another pen drives seized from possession of Sh. Chander Prakash, employee of M/s Singh & Associates; server disk forensically imaged and seized from the office of M/s Singh & Associates; printouts found and seized from residence of sh. Devesh Singh; and the dairies impounded from the office of M/s Singh & Associates. Thus, admittedly no incriminating material had been found during the course of search in the case of the appellant. Under this fact and circumstance of the matter addition cannot be made in the hands of the assessee relying upon the searched material in case of a third party by invoking the provision of Section 153A of the Act, which could have been permissible under Section 153C only as argued by the Ld. AR. Reliance was placed on the judgment of Hon'ble Delhi High Court in ACIT v. Anand Kumar Jain (HUF), reported in 2021 (3) TMI 8-Delhi High Court.

9. Further that the whats App chat as relied by the Ld. AO dated 27.7.2019 is having no relevance to the instant case as the same pertains to A.Y. 2020-21 and not the year under consideration before us as also argued by the Ld. AR. In this regard he has relied upon the judgment passed by the PCIT v. M/s SMC Power Generation Ltd. (supra), wherein it has been clearly held that correlation with the document qua the assessment year is necessary to proceed against the assessee in the absence of which such document will not have any manner of application in

proceeding against the assessee in making addition thereon. Considering the ratio laid down in the above case we find force in such submission made by the Ld. AR.

10. Apart from that the Ld. AO relied upon the statement of Shri Naveen Narang which was admittedly deposed in the post search period dated 27.7.2019 as reproduced at page 14 of the Ld. CIT(A)'s order. Having regard to the facts available before us we find that the order under reference is squarely applicable to the case in hand. The addition made under Section 153A of the Act on this basis of searched material in the case of third person does not survive.

11. So far as statement of Naveen Narang is concerned the Ld. DR relied upon the judgment passed by the Hon'ble Supreme Court in the case of K. Krishnamurthy [2025] 171 taxmann.com 413 (SC), which is totally out of context and not applicable to the facts of the instant case as it related to levy of penalty under Section 271AAA of the Act where addition on account of undisclosed income arising out of search was made based upon the own admission of the assessee during the course of search and such addition was not even challenged in appeal as submitted by the Ld. Counsel for the assessee is found to be acceptable. Needless to mention that the assessee in this case before us has not admitted any undisclosed income during search. Per contra the Ld. AR relied upon the judgment passed by the Coordinate Bench in the case of DCIT v. Som Hari Infrastructure

Pvt. Ltd. - ITA No. 1516/Del/2020 dated 30.04.2025, wherein identical issue was raised and the DR relied upon the judgment passed in the case of K. Krishna Murthy (supra) and with the following observation the same has been discarded by the Ld. Bench:

“9. In so far as, the Judgment of Hon'ble Supreme Court relied by the Ld. Departmental Representative in the case of K. Krishna Murthy (supra), the subject matter of the said case was penalty u/s 271AAA of the Act, wherein the addition has been made on account of undisclosed income arising out of search and the said addition has been made based upon own admission of the Assessee during the course of the search and since a quantum was confirmed, the penalty u/s 271AAA was upheld. Therefore, the said Judgment is not applicable to the case in hand.”

Having regard to the facts of the matter of K. Krishna Murthy (supra) the same is not found to have any relevance in the case in hand.

12. Apart from Ld. AR has drawn our attention to the approval dated 30.03.2022 in each of the years issued by the JCIT, Central Range-8, New Delhi under Section 153D of the Act, the contents thereof are as follows:

“2 Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.

S. No.	Name of the assessee	PAN	A.Y.	U/S	Returned Income (In Rs.)	Addition (Rs.)	Assessed Income (in Rs.)
I.	Sh. Naveen Narang	AADPN0344D	2019-20	153A r.w.s. 143(3)	3,17,39,700/-	1,88,670/-	3,19,28,370/-

3. *Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal for retention of seized material should also be forwarded to this office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the interest of revenue, permission u/s 281B from Pr. CIT(C)-3, New Delhi should be taken. Office note indicating additions in relevant assessment years should be indicated in all Assessment Years. You have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/pen drives/mobile data & any other electronic data. You have also certified to the undersigned that all information available in AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment order.*

4. *Please ensure that penalty is levied under proper section of the Income Tax Act, 1961, if applicable.”*

13. On this aspect it was further submitted by the Ld. AR that such approval under Section 153D was granted without making any reference on the order-sheet and therefore the same is a mechanical one. The approval granted under Section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. Moreso, the third para of the approval is a conditional one. The same has been granted in a blanket manner without referring the year under consideration. In fact, it is nothing but the verbatim copy of the approval granted in the case of Veena Singh which was assailed before the ITAT and the Coordinate Bench in the case of Veena Singh v. ACIT CC-25, Delhi dated

24.4.2024 [2024 (4) TMI 1025 –ITAT Delhi], quashed the entire assessment on account of approval under Section 153D having been granted in a mechanical manner; a product of non-application of mind and therefore, the same is invalid and entire proceedings initiated as void ab initio, copy thereof has been duly submitted before us. Relevant observation of the Bench is as follows:

“8. We have heard both the parties and perused the material available on record and gave out thoughtful consideration. For the purpose of adjudicating the issue in hand and for the ready reference the approval accorded by the Additional Commissioner of Income Tax, Central Circle, Range-7, New Delhi dated 21/12/2018 is reproduced as under:

New Delhi

F. No. Addl. CIT/CR-7/2018-19/10440 Dated: 21.12.2018

*To
The Assistant Commissioner of
Income Tax Central Circle-25,
New Delhi*

Sub: Approval u/s 153D of the IT Act, 1961 in case of Ms. Veena Singh (PAN: AXJPS9588H) Mohnish Kumar Mohan Mukkar Group-A.Y. 2011-12 to 2017- 18 reg '

Please refer to your letter F. No, ACIT/CC-25/2018-19/ dated 27.12. 2018 on the above subject

2. Approval is hereby accorded- u/s 153D of the Income Tax Act, 1961 to the draft assessment orders as amended In the following, .cases, on the basis of the detailed discussion with you time-to time, information available on-record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.

8.	Name of the	PAN	KY.	Returned	Assessed
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No	assesses			Income	Income
1	Ms. Veena Singh	AXJPS9588H	2011-12	7,31,890/-	14,11,393/-
2	Ms. Veena Singh	AXJPS9588H	2012-13	17,77,440/-	37,27,440/-
3	Ms. Veena Singh	AXJPS9588H	2013-14	25,57,350/-	57,87,350/-
4	Ms. Veena Singh	AXJPS9588H	2014-15	10,99,220/-	52,29,220/-
5	Ms. Veena Singh	AXJPS9588H	2015-16	7,47,730/-	33,69,650/-
6	Ms. Veena Singh	AXJPS9588H	2016-17	13,18,830/-	182,31,454/-
7	Ms. Veena Singh	AXJPS9588H	2017-18	1165,510/-	2,52,33,8201/-

3. Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal -tor retention of seized- material, should also be forwarded to this, office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the- interest of revenue, permission u/s 281B from Pr. CIT(.C)3, New Delhi should be taken: Office notice indicating additions in relevant assessment years should be indicated In all Assessment Year, A.0 to certify about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data, You have also certified to the undersigned that all Information available In AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment.

(Vivek Gupta)

Additional Commissioner of Income Tax
Central Range -7, New Delhi

9. On plain reading of the above appeal, it is found following:-

(i) A common and consolidated approval has been granted for AY 2011-12 to 2017-18 and there is no year wise reasoning in the said approval granted u/s 153D of the Act.

(ii) There is only a reference of a letter F No. ACIT/CC-25/2018- 19 dated 21.12.2018 of Assistant Commissioner of Income Tax, Central Circle-25, but there is no reference regarding the draft assessment order being sent for approval of the Additional Commissioner of Income Tax.

(iii) *The letter requesting accord of approval u/s 153D of the Act has been returned by the Assistant Commissioner of Income Tax on 21.12.2018, the Additional Commissioner of Income Tax granted the approval u/s 153D of the Act on the very same date i.e. on 21.1.2018 and the impugned assessment order has also been passed on 21.12.2018.*

(iv) *The approval dated 21.12.2018 was not absolute, while granting the approval u/s 153D of the Act, the Additional Commissioner of Income Tax in Para 3 mentioned as under:-*

“Office notice indicating additions in relevant assessment years should be indicated In all Assessment Yean,. A.0 to certify about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data.”

(v) *The impugned approval passed u/s 153D of the Act was apparently issued in mechanical and hurried manner without mentioning the reasons and the same has been issued without application of mind.*

10. The above mentioned approval accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of 5 assessment years. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record as no such draft Assessment order has been referred while according the approval u/s 153D of the Act.

11. The provision of Section 153D of the Act envisages prior approval of JCIT before passing the assessment order, for the purpose of ready reference the provisions of Section 153D of the Act is reproduced as 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 [subsection (1) of] section 153A or the assessment year referred to in clause (b) of subsection (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.] Rectification of mistake."

12. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.

13. 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 the above approval letter issued by the Addl. Commissioner says that the approval has been granted subject to certain conditions.

14. Plain reading of the letter of approval granted by the Addl. Commissioner, clearly depicts that the Addl. CIT had routinely given

approval to the AO to pass the order only on the basis of letter of the Ld. A.O. without any application of mind. From the said approval, it can be easily inferred that the approved has been accorded with certain conditions. Thus, the sanctioning authority had in effect abdicated its statutory functions and delightfully relegated its statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The said approach of the Additional CIT, Central has rendered the Approval to be a mere formality and cannot be sustained in the eyes of law.

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. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time 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 analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted 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 Aditonal 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.”

14. Thus, having regard to the entire aspect of the matter we do not find any reason to deviate from the stand taken by the Coordinate Bench on each of the issues discussed hereinabove holding the initiation of assessment proceedings bad in law particularly having regard to the approval under Section 153D of the Act being issued in a routine manner without application of mind and without making any reference to the draft assessment order being sent for approval by the JCIT;. the same is found to have been issued by the JCIT, Central Range-8, New Delhi in a mechanical manner and thus not sustainable in the eyes of law. Hence quashed. This finding is followed mutatis mutandis in ITA Nos. 3994 & 3995/Del/2024 for A.Yrs. 2018-19 & 2019-20.

15. In the result, assessee's appeals in ITA Nos. 3933, 3994 & 3995/Del/2024 for A.Yrs. 2017-18, 2018-19 & 2019-20 are allowed.

Order pronounced in open court on 16.05.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMEBR

Sd/-

(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 16.05.2025.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI