

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No. 1579/DEL/2022 (AY 2013-14)

ITA No. 1580/DEL/2022 (AY 2014-15)

ITA No. 1581/DEL/2022 (AY 2015-16)

ITA No. 1582/DEL/2022 (AY 2016-17)

DALIP JINDAL,
LU-11, PITAMPURA,
DELHI
(PAN:- AAAPJ3957F)
(APPELLANT)

Vs.

DCIT, CC-08,
NEW DELHI

(RESPONDENT)

AND

ITA No. 1583/DEL/2022 (AY 2014-15)

ITA No. 1584/DEL/2022 (AY 2015-16)

ITA No. 1585/DEL/2022 (AY 2016-17)

FAQIR CHAND DALIP KUMAR,
LU-11, PITAMPURA,
DELHI
(PAN:- AADFF8073B)
(APPELLANT)

vs.

DCIT, CC-08,
NEW DELHI

(RESPONDENT)

AND

ITA No. 1586/DEL/2022 (AY 2015-16)

ITA No. 1587/DEL/2022 (AY 2016-17)

SG POLYPLAST PVT. LTD.
LU-11, PITAMPURA,
DELHI
(PAN:- AAMCS9393R)
(APPELLANT)

vs.

DCIT, CC-08,
NEW DELHI

(RESPONDENT)

AND

ITA No. 1588/DEL/2022 (AY 2014-15)
ITA No. 1589/DEL/2022 (AY 2015-16)
ITA No. 1590/DEL/2022 (AY 2016-17)

JINDAL GREEN CROP INTL. PVT. LTD. vs. DCIT, CC-08,
LU-11, PITAMPURA, NEW DELHI
DELHI
(PAN:- AADCJ1028K)
(APPELLANT) (RESPONDENT)

AND

ITA No. 2040/DEL/2021 (AY 2013-14)

DCIT, CC-08, vs. DALIP JINDAL, PROP.
NEW DELHI JINDAL AGRO INTERNATIONAL
4055, 1ST FLOOR, NAYA BAZAR,
DELHI – 6
(PAN:- AAAPJ3957F)
(APPELLANT) (RESPONDENT)

Assessee by: Shri Ved Jain, Adv., Shri Aman Garg, CA,
Ms. Ishika Dua, CA
Revenue by: Ms. Amisha S. Gupta, CIT(DR)

Date of hearing: 19.05.2025
Date of pronouncement: 04.06.2025

ORDER

PER BENCH :

The assessees have filed their respective 12 appeals and Revenue has filed one appeal. Since common and identical issue has been involved in all these appeals, hence, these appeals are taken up together for adjudication and are being decided by this common order.

2. For the sake of convenience, the Appeal of the assessee in ITA No. 1579/Del/2022 (AY 2013-14) is taken up as lead case.

ITA NO. 1579/DEL/2022 (AY 2013-14)

3. The Assessee has filed this appeal against the Order of the Ld. CIT(Appeal-24), New Delhi dated 19.07.2021, relating to assessment year 2013-14 on as many as 15 grounds, but he only argued the ground No. 11, which reads as under:-

“That on the facts and in the circumstances of the case, the statutory approval so granted u/s. 153D of the Act is merely mechanical, without application of mind, without considering and perusing the material on record and thus bad in law thereby making the assessment proceedings u/s. 153A r.w.s. 153D void ab initio.”

4. At the time of hearing, Ld. AR for the assessee submitted that section 153D of the Act bestows a supervisory jurisdiction on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirements in letter and spirit. It is further submitted that in the present case Additional Commissioner of Income Tax has granted approval under section 153D of the Act in a mechanical manner and without due application of mind, because approval has to be granted separately for each assessment year and for each assessee and in the absence of it approval granted is not accordance to the law, whereas in the present case, Additional Commissioner of Income Tax has granted approval under section 153D of the Act in respect of multiple assessment years by a single letter.

4.1 It was further contended that approval for atleast 24 cases granted within span of 24 hours. In this case Additional Commissioner of Income Tax has received requisition from AO for grant of approval under section 153D of the Act in respect of atleast 15 cases, which included different assessee and multiple assessment years and the approval under section 153D of the Act for all the cases was granted by the Additional CIT on the same day i.e. approval under section 153D for atleast for 15 cases has been granted in a single day, hence, the

approval under section 153D of the Act has been granted in mechanical manner without due application of mind.

4.2 It was further submitted that approval under section 153D of the Act has been granted without examination assessment record, seized matter, notices issued by AO and reply filed by assessee in response of such notices. However, it is a settled position of law that approval under section 153D of the Act should be granted after due examination of assessment record and incriminating material, if any seized. It is also evident from the approval granted u/s. 153D of the Act that the same has been granted without examination of assessment record and incriminating material, if any seized. Additional CIT in his approval has not referred to examination of any assessment record and incriminating material, if any seized and further, he has not referred to any objective reasoning that led to reach his conclusion.

4.3 In view of the aforesaid discussions, it was submitted that in the present case approval under section 153D of the Act has been granted in mechanical manner and without due application of mind and thus assessment order in consequence of such inexplicable approvals lacks legitimacy and are liable to be quashed and this contention of assessee is supported by the Hon'ble Delhi High Court judgement in the case of PCIT vs. Shiv Kumar Nayyar 2024 (6) TMI 29 dated 15.05.2024.

5. Keeping in view of the above facts and circumstances, it is prayed that in the absence of valid approval u/s 153D, the assessment order passed by the Assessing Officer is liable to be quashed.

6. Per contra, Ld. CIT(DR) relied upon the orders of the authorities below. Subsequent to hearing, the Revenue has also filed Affidavits from the AO and the Range Head for the proposition that they have duly applied their mind.

7. We have carefully considered the rival submissions and perused the records. We find considerable cogency in the contention of the Ld. AR for the assessee that in this case the approval u/s. 153D is invalid as it is a consolidated

approval for various years, however, the said approval was required to be given for “each year”. We further note that AO/ACIT, CC-08, New Delhi sent a common letter dated 07.12.2018 for approval u/s. 153D of the Act for the assessment years 2013-14 to 2016-17 to the Addl. Commissioner of Income Tax and the Addl. Commissioner of Income Tax granted approval for all the assessment years from AY 2013-14 to 2016-17 by a common letter dated 08.12.2018 i.e. on the very next day. It is observed that the approval granted by the Additional CIT u/s 153D of the IT Act on the very next day for all the assessment years i.e. from AY 2010-11 to 2016-17 by way of single letter was without application of mind and mechanical in nature. Furthermore, the Additional CIT failed to consider any seized material which have been relied upon by the AO while framing the draft assessment orders in the case of the assessee. A bare perusal of the letter dated 08.12.2018 of the Additional CIT of approval would show that the Additional CIT has simply mentioned that ***"Approval u/s. 153D of the I.T. Act, 1961 is accorded in the above mentioned cases with the direction to ensure that the orders should be passed well before the limitation"***, which clearly establishes that the Additional CIT has given approval in a mechanical manner. Even otherwise, the Assessing Officer has passed the assessment order on the very next date i.e. on 09.12.2018 u/s. 153A read with section 143(3) of the Act, which is not practically feasible. We further note that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of

mind. The approval of Additional CIT should reflect application of mind, which is absent in this case. The requirement of approval cannot be treated as mere formality and the mandate of the Act is that the Approving Authority has to act in a judicious manner by due Application of mind in a manner of a quasi judicial authority. It is settled law that if the approval has been granted by the approving authority in a mechanical manner, the very purpose of obtaining approval u/s. 153D of the Act and the mandate of the enactment by the legislature will be defeated. However, Additional CIT without any consideration of merits in proposed additions failed to consider any seized material which have been relied upon by the AO while framing the draft assessment orders in the case of the assessee has proceeded to grant a simplicitor approval. This approach of the Additional CIT has rendered approval be a mere formality and cannot be countenanced in law. In view of the peculiar facts and circumstances of the case, we are of the considered view that approval granted by Additional CIT is not valid in the eyes of law. It is apparently clear that Additional Commissioner of Income Tax has given approval which is purely mechanical and without application of mind. In such cases, the assessment loses its validity, hence, the same deserve to be quashed. The case laws referred by the Ld. Counsel for the assessee are germane and supports the case of the assessee. To fortify our aforesaid decision, we draw support from the decision of the Hon'ble Delhi High Court in the case of PCIT

vs. Shiv Kumar Nayyar 163 taxmann.com 9 wherein the Hon'ble Court has observed as under:-

- Principal Commissioner of Income tax v. Shiv Kumar Nayyar 163 taxmann.com 9 (High Court of Delhi) [15 May 2024]

** Search and seizure action under section 132 conducted on Nayyar group of cases on 18.11.2016. Accordingly notices u/s 153A were issued for block assessment years. Assessment orders were subsequently passed by the AO u/s 153A r.w.s 143(3).*

** Common approval under section 153D was granted by the JCIT.*

** Approval u/s 153D was challenged before the competent authorities.*

HELD

** A plain reading of the provision of section 153D evinces an uncontrived position of law that the approval under section 153D has to be granted for each assessment year' referred to in clause (b) of sub-section (1) of section 153A. it is beneficial to refer to the decision of Allahabad High Court in the case of PCIT v. Sapna Gupta 147 taxmann.com 288 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 153D.*

** 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.*

** A similar view taken by High Court of Delhi in the case of PCIT v. Anuj Bansal [IT Appeal 368/2023], it was reiterated that the exercise of powers u/s*

153D cannot be done mechanically. Thus, the salient aspect which emerges from the above-mentioned decisions is that grant of approval u/s 153D cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

** In the present case, the Tribunal has specifically noted that the approval was granted on the same day when the draft assessment orders were sent.*

** Notably, the order of approval dated 30.12.2020 which was produced by the assessee clearly signifies that a single approval has been granted for AYs 2011-12 to 2017-2018 in the case of 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, one 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 Tribunal.”*

8. In the background of the aforesaid discussions and by respectfully following the aforesaid binding precedent, we hold that the approval dated 08.12.2018 granted u/s. 153D of the Act granted by the Additional Commissioner of Income Tax, Central Range-02, New Delhi in the instant case is mechanical and without due application of mind. The affidavits of Revenue submitted by the AO and the Range Head cannot replace the evidences quite clear on record. Accordingly, we quash the assessment and allow the ground no. 11 raised by the assessee. Since we have quashed the assessment, the other grounds, have become academic, hence, need not be adjudicated upon.

9. In the result, the appeal of the assessee being ITA No. 1579/Del/2022 (AY 2013-14) is allowed in the aforesaid manner.

10. As regards other remaining captioned appeals of the assesseees are concerned, our aforesaid decision given in assessment year 2013-14 (Dalip Jindal vs. DCIT in ITA no. 1579/Del/2022) will apply *mutatis mutandis* to these assessment years as well, being this legal ground, is identical in all the appeals of the assessee. Resultantly, the remaining 11 appeals of the assessee also stand allowed on the aforesaid similar directions.

11. As regards, Revenue's appeal is concerned, since we have already allowed all the 12 appeals of the assesseees, as aforesaid, the Revenue's appeal has become infructuous and dismissed as such.

12. To sum up: all the 12 appeals of the assesseees stand allowed and Appeal of the Revenue stand dismissed.

Order pronounced on 04.06.2025.

Sd/-

Sd/-

**(VIMAL KUMAR
JUDICIAL MEMBER**

SRBhatnagar

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Copy forwarded to:-

1. Appellant 2. Respondent 3. CIT 4. CIT(A) 5. DR, ITAT

Assistant Registrar