

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.239/Nag./2022
(Assessment Year-2016-17)

ITA no.240/Nag./2022
(Assessment Year - 2017-18)

ITA no./241/Nag./2022
(Assessment Year - 2018-19)

ITA no.242/Nag./2022
(Assessment Year - 2020-21)

ITA no.243/Nag./2022
(Assessment Year - 2019-20)

Shri Umesh Sadashiv Thakre
Plot No. 53, Indira Nagar
Ajani, Nagpur - 440010 PAN - ADTPT6214BAppellant

v/s

Asst .Commissioner of Income Tax
Central Circle-2(1), Nagpur Respondent

ITA no.244/Nag./2022
(Assessment Year - 2017-18)

ITA no.245/Nag./2022
(Assessment Year - 2018-19)

ITA no.246/Nag./2022
(Assessment Year - 2019-20)

YRCE Educare Pvt. Ltd.
209, Dharampeth Tower
B/32-C, Shop no.F/6, WHC Road
Dharampeth, Nagpur 440 010
PAN - AAACY6482DAppellant

v/s

Asst. Commissioner of Income Tax
Central Circle-2(1), Nagpur Respondent

ITA no.250/Nag./2022
(Assessment Year - 2014-15)

ITA no.251/Nag./2022
(Assessment Year - 2015-16)

ITA no.252/Nag./2022
(Assessment Year - 2016-17)

ITA no.253/Nag./2022
(Assessment Year - 2017-18)

ITA no.254/Nag./2022
(Assessment Year - 2018-19)

ITA no.255/Nag./2022
(Assessment Year - 2019-20)

ITA no.256/Nag./2022
(Assessment Year - 2020-21)

Shri Atul Manoharrao Yamsanwar
Plot no.33, Manoharrao, Khare Town
Dharampeth, Nagpur 440 010
PAN – AAEPY543Q

.....Appellant

v/s

Asst. Commissioner of IncomeTax Central
Circle-2(1), Nagpur

..... Respondent

ITA no.265/Nag./2022
(Assessment Year – 2017-18)

Asst. Commissioner of Income Tax Central
Circle-2(1), Nagpur

.....Appellant

v/s

YRCE Educare Pvt. Ltd.
209, Dharampeth Tower
B/32-C, Shop no.F/6, WHC Road
Dharampeth, Nagpur 440 010
PAN – AAACY6482D

..... Respondent

ITA no.259/Nag./2022
(Assessment Year-2015-16)

ITA no.260/Nag./2022
(Assessment Year-2017-18)

ITA no./261/Nag./2022
(Assessment Year-2018-19)

ITA no.262/Nag./2022
(Assessment Year-2019-20)

ITA no.263/Nag./2022
(Assessment Year – 2020-21)

Asst. Commissioner of Income Tax Central
Circle-2(1), Nagpur

.....Appellant

v/s

Shri Atul Manoharrao Yamsanwar
33, Manoharrao, Khare Town
Dharampeth, Nagpur 440 010
PAN – AAEPY543Q

..... Respondent

Assessee by : Shri Saket Raman Bhattad, Advocate
a/w Shri Sagar Gampawar, C.A.
Revenue by : Shri Sandipkumar Salunke, CIT-DR

Date of Hearing- 18/03/2025

Date of Order – 09/06/2025

O R D E R

PER K.M. ROY, A.M.

The caption bunch of 21 appeals have been filed by the assessee and the Revenue for the assessment year 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 respectively, challenging the impugned separate orders passed by the first appellate authority, the details of which are tabulated below:-

Sr. no.	Appeal Number and Assessment Year	Date of order passed by the first appellate authority	Section under which first appellate authority has passed the Order	First Appellate Authority
1.	ITA no.239/Nag./2022 A.Y. 2016-17 - By Assessee Umesh Sadashiv Thakre	23/06/2022	153A r/w section 143(3)	CIT(A)-3, Nagpur
2.	ITA no.240/Nag./2022 A.Y. 2017-18 - By Assessee Umesh Sadashiv Thakre	23/06/2022	153A r/w section 143(3)	CIT(A)-3, Nagpur
3.	ITA no.241/Nag./2022 A.Y. 2018-19 - By Assessee Umesh Sadashiv Thakre	23/06/2022	153A r/w section 143(3)	CIT(A)-3, Nagpur
4.	ITA no.242/Nag./2022 A.Y. 2020-21 - By Assessee Umesh Sadashiv Thakre	30/06/2022	143(3)	CIT(A)-3, Nagpur
5.	ITA no.243/Nag./2022 A.Y. 2019-20 - By Assessee Umesh Sadashiv Thakre	23/06/2022	153A r/w section 143(3)	CIT(A)-3, Nagpur

6.	ITA no.244/Nag./2022 A.Y. 2017-18 – By Assessee YRCE Educare Pvt. Ltd.	23/06/2022	153C r/w section 143(3)	CIT(A)-3, Nagpur
7.	ITA no.245/Nag./2022 A.Y. 2018-19 – By Assessee YRCE Educare Pvt. Ltd.	23/06/2022	153C r/w section 143(3)	CIT(A)-3, Nagpur
8.	ITA no.246/Nag./2022 A.Y. 2019-20 – By Assessee YRCE Educare Pvt. Ltd.	23/06/2022	153C r/w section 143(3)	CIT(A)-3, Nagpur
9.	ITA no.265/Nag./2022 A.Y. 2017-18 – By Revenue YRCE Educare Pvt. Ltd.	23/06/2022	153C r/w section 143(3)	CIT(A)-3, Nagpur
10.	ITA no.250/Nag./2022 A.Y. 2014-15 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
11.	ITA no.251/Nag./2022 A.Y. 2015-16 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
12.	ITA no.252/Nag./2022 A.Y. 2016-17 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
13.	ITA no.253/Nag./2022 A.Y. 2017-18 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
14.	ITA no.254/Nag./2022 A.Y. 2018-19 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
15.	ITA no.255/Nag./2022 A.Y. 2019-20 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur

16.	ITA no.256/Nag./2022 A.Y. 2020-21 – By Assessee Atul Manoharrao Yamsanwar	29/06/2022	153A r/w section 143(3)	CIT(A)-3, Nagpur
17.	ITA no.259/Nag./2022 A.Y. 2015-16 – By Revenue Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
18.	ITA no.260/Nag./2022 A.Y. 2017-18 – By Revenue Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
19.	ITA no.261/Nag./2022 A.Y. 2018-19 – By Revenue Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
20.	ITA no.262/Nag./2022 A.Y. 2019-20 – By Revenue Atul Manoharrao Yamsanwar	29/06/2022	143(3) r/w section 153A	CIT(A)-3, Nagpur
21.	ITA no.263/Nag./2022 A.Y. 2020-21 – By Revenue Atul Manoharrao Yamsanwar	29/06/2022	153A r/w section 153A	CIT(A)-3, Nagpur

2. Since all the aforesaid appeals pertain to three different assessees of the same Group viz. Shri Umesh Sadashiv Thakre, YRCE Educare Pvt. Ltd. and Shri Atul Manoharrao Yamsanwar, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. We now proceed to decide the issues on merit.

3. For the purpose of this consolidated order, the appeal in respect of the assessee Shri Umesh Thakre, being ITA no.239/Nag./2022, for A.Y. 2016-17 is treated as the lead case.

4. Facts in Brief:- the assessee is an individual, engaged as a broker, labour contractor, cash handling agent, etc., for various persons. For the year under consideration, the original return of income under section 139(4) of the Income Tax Act, 1961 ("*the Act*") was filed on 12/04/2017, declaring total income at ₹2,69,020. On 25/06/2019, a search and seizure action under section 132 of the Act was conducted on Yamsanwar Group, of which the above assesseees were a part of the search and seizure. Subsequent to search and seizure, statutory notices dated 16/09/2020, under section 153A of the Act issued for the assessment year 2016-17 in response to which the assessee filed his return of income on 05/12/2020 and subsequently assessment order dated 22/09/2021, was passed under section 143(3) r/w section 153A of the Act for the assessment year 2016-17.

5. In the assessment order, the Assessing Officer made an addition of ₹ 1,95,770, as undisclosed business income based on some documents. When the assessee carried the matter before the first appellate authority, the learned CIT(A) deleted 90% of the addition made by Assessing Officer stating that the Assessing Officer himself concluded that the entries in the impugned documents did not belong to the assessee and that the additions have been made in cases of other parties. However, 10% of the transaction, aggregating to ₹ 19,577, was treated by the learned CIT(A) as income by way of cash handling charges of the assessee. Against the impugned order dated 23/06/2022, passed by the learned CIT(A), the assessee has preferred the present appeal before the Tribunal.

6. The assessee has raised various grounds of appeals. We, however, proceed to dispose the captioned appeals on the legal issue of legitimacy of approval granted by the Department under section 153D of the Act which involved in all the appeals here, making assessee's appeal being ITA no.239/Nag./2022, in the matter of Shri Umesh Thakre, the lead case as mentioned above, the decision of which shall apply mutatis mutandis to all the other appeals under consideration.

7. The grounds challenging the validity of approval granted by the Department under section 153D of the Act were raised by the assessee by an application dated 25/09/2024, for admission of additional grounds of appeal. Through the application, in addition to the existing grounds of appeal, the assessee has raised as many as three grounds which read as follows:-

"Ground 1: That on facts and circumstances of the case, Ld. AO has erred in passing the assessment order without getting proper approval under section 153D of the Act from learned Additional CIT.

Ground 2: That on facts and circumstances of the case, the Approval granted by Ld. Addl. CIT, Range - 2 u/s 153D of the Act is without application of mind and without jurisdiction and therefore the consequential assessment order is bad in law, arbitrary, unjustified and deserves to quashed and set aside.

Ground 3: That on the facts and circumstances of the case, neither the Ld. AO Assistant Commissioner of Income Tax (Central Circle), Range - 2, Nagpur nor the approving authority u/s 153D of the Act, Ld. Additional Commissioner of Income Tax (Central Circle), Range - 2, Nagpur had jurisdiction over the Assessee, therefore the Assessment Order passed without jurisdiction is bad in law, arbitrary, unjustified and deserves to quashed and set aside."

8. During the course of hearing, the learned Counsel, Shri Saket Raman Battad, Advocate, appearing on behalf of the assessee gracefully submitted

that he is not pressing ground no.3 above challenging the jurisdiction. Consequently, ground no.3, stands dismissed as "*not pressed*".

9. Insofar as grounds no.1 and 2, as mentioned above are considered, the same are challenging the validity of the approval granted by the Department under section 153D of the Act, contending it to be passed without application of mind, thereby making the assessment void ab initio.

10. The learned Departmental Representative, Shri Sandipkumar Salunke, Commission of Income Tax being the Departmental Representative ("*the learned D.R.*"), pointed out that this is the first time that these grounds have been raised. The learned D.R. submitted that the additional grounds must not be admitted at this stage.

11. Per contra, the learned Counsel for the assessee submitted that the issue of application of mind while granting approval by the Department under section 153D of the Act goes to the very root of the matter and being legal issue the same deserves to be admitted.

12. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find force in the submission of the assessee, as the Hon'ble Supreme Court in National Thermal Power Co. Ltd. v/s CIT, [1998] 229 ITR 383 (SC) has made it very clear that a ground based on question of law emerging from facts of a case must be admitted, even though the same being raised for the first time before the Tribunal. The issue of admission of additional

ground of appeal for the first time before Tribunal on the issue of 153D of the Act is also discussed by the Hon'ble Bombay High Court in PCIT v/s Smt. Shreelekha Damani, 307 CTR 218 (Bom). In that case, the Department challenged the order of the ITAT, Mumbai Bench, before Bombay High Court, where the issue relating to the provisions of section 153D of the Act was raised for the first time. The Hon'ble High Court held, *"Question of validity of the approval goes to the root of the matter and could have been raised at any time."*

13. Thus, respectfully following the ratio laid down by the judicial pronouncements cited supra on the present issue, we admit the additional grounds no.1 and 2, as mentioned above, through which the assessee is challenging the validity of approval so granted by the Department under section 153D of the Act, claiming the same to have been passed without *"application of mind"*.

14. To support his contention, the learned Counsel for the assessee submitted that on a bare perusal of the approval so granted by the Department under section 153D of the Act, it nowhere appears that the learned Addl. CIT (Approving Authority herein) has applied his mind before granting of approval. The learned Counsel for the assessee forcefully submitted that there are various additions made in the assessment orders passed in the matter of Yamsanwar Group by the same Assessing Officer, which prima facie are invalid additions, and the same have been duly deleted by the learned CIT(A). The learned Counsel for the assessee further

vehemently submitted that had the Approving Authority applied his mind to the draft assessment orders, such invalid additions would not have been allowed, and thus there was non-application of mind by the Approving Authority. The learned Counsel for the assessee concluding his arguments finally submitted that the approval so granted by the Department under section 153D of the Act cannot be in a mechanical manner and the fact of application of mind by the Approving Authority must be evident from the approval order itself. He submitted that Office of Manual Procedure issued by the Central Board of Direct Taxes (CBDT), requires an Approving Authority to not only pass an order under section 153D after due application of mind, rather the Approving Authority must also grant opportunity of hearing to the assessee at least one month before time barring date.

15. The learned Counsel for the assessee further strongly relied on the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, in Maheshwari Coal Benefication & Infrastructure Pvt. Ltd., reported in [2025] 171 taxmann.com 842 (order dated 26/12/2024), in which case exactly same order under section 153D has been passed by the same authority, having same format, and exhibiting similar non-application of mind by the Approving Authority. In support of his arguments, the learned Counsel for the assessee relied on the following case laws:-

i) ACIT v/s M/s. Serajuddin & Co. Kolkata (2023) 333 CTR 0228 (Ori. HC) Order dated 15/03/2023. SLP filed by the Department against the judgment of the Hon'ble Orissa High Court was dismissed on 28/11/2023;

ii) PCIT v/s Smt. Shreelekha Damani, [2018] (Bom. HC) 103 CCH 0432, order dated 27/11/2018;

iii) Arch Pharma Labs Ltd. v/s ACIT,[2021] 62 CCH 0009 (Mum Tribunal), order dated 07/04/2021.

16. Per contra, the learned Departmental Representative, Shri Salunke, vehemently argued that the contention of the learned Counsel for the assessee is ill founded. He contended that 153D approval is an internal document meant only for administrative purpose. According to the learned Departmental Representative, the Income Tax Officers of the same Range have their offices nearby, and they regularly keep each other updated about the developments in any case. Thus, the assessment order is culmination of this long drawn process, of which approval under section 153D of the Act is also a part. To support his contention, the learned Departmental Representative filed a written submission wherein he also relied on following case laws:-

- i) Usha Satish Salvi v/s ACIT (ITA no.2439/Mum./2023, order dated 23/01/2025 (Mum. Trib.);*
- ii) Pratibha Pipes & Structural Ltd. v/s DCIT, ITA no.3874 to 3876/Mum./2015, order dated 06/09/2019 (Mum. Trib.); and*
- iii) Bibhudutta Panda v/s ACIT, ITA no.76 to 81/CTK/2022, order dated 01/02/2023 (Cuttack Trib.).*

17. Per-contra, the learned D.R. furnished Affidavits of the Assessing Officer and the Approving Authority wherein they have stated that they have applied their mind to the present cases. Lastly, the learned D.R. presented document detailing "confidential" meeting between various Income Tax officers, in which deviation note with respect to appraisal report has been discussed by the officers including the Assessing Officer and the Approving

Authority. The learned D.R. finally contended that the phrase "*application of mind*" is very subjective in nature and no criteria can be laid down by the Judiciary or this Tribunal as to what constitutes "*Application of mind*".

18. We have considered rival submissions and arguments, and have thoroughly gone through various documents, written submissions and case laws relied upon by both the learned Counsel for the parties. The present case demands in depth analysis of provisions of section 153D of the Act. To examine the issue, let us consider the approval dated 22/09/2021, so granted by the Department under section 153D of the Act, which is reproduced herein below:-

**SPACE LEFT BLANK PURPOSELY
FOR ADJUSTMENT OF THIS PAGE**

Umesh Sadashiv Thakre
A.Y. 2016-17, 2017-18, 2018-19,
2019-20 & 2020-21

Scanned copy of approval so granted by the Department under section 153D
in respect of Shri Umesh Sadashiv Thakre, for the A.Y. 2016-17

GOVERNMENT OF INDIA

ITA 239/2022

ITA (239/2022)

उप/सहायक आयकर आनुवर्ती
(केन्द्रीय) वर्कल-2(1), नागपुर.
22 SEP 2021
917

**OFFICE OF THE
ADDITIONAL COMMISSIONER OF INCOME TAX**
CENTRAL RANGE -2, NAGPUR

Aayakar Bhavan, R.No.206, Telanghedi Road, Civil Lines, Nagpur - 440 001

F.No. Addl. CIT/CR-2/NGP/153D/Umesh S Thakre/2021-22

Date: 22.09.2021

To,

The Asstt. Commissioner of Income-Tax
Central Circle -2(1), Nagpur

Sub.: Approval U/s 153D of the I.T. Act in the case of Shri Umesh Sadashiv
Thakre, PAN: ADTPT6214B for A.Y. 2016-17 - reg.

Ref.: Letter F.No. ACIT CC-2(1)/NGP/AY/Draft/2021-22 dated 18.08.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case of Shri
Umesh Sadashiv Thakre, PAN: ADTPT6214B for A.Y. 2016-17 vide above referred letter.
Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the
assessment order u/s 143(3) r.w.s. 153A for A.Y. 2016-17 in respect of the following
case:

Sr.No	Name of the Assessee	Section	A.Y.
1.	Shri Umesh Sadashiv Thakre, PAN: ADTPT6214B	u/s 143(3) r.w.s. 153A of the I.T. Act. 1961	2016-17

(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-2, Nagpur

Scanned copy of approval so granted by the Department under section 153D
in respect of M/s. YRCE Educare Pvt. Ltd., for the A.Y. 2018-19

ITA 245/2022

**OFFICE OF THE
ADDITIONAL COMMISSIONER OF INCOME TAX
CENTRAL RANGE -2, NAGPUR**
Aayakar Bhavan, R.No.206, Telangkhedi Road, Civil Lines, Nagpur - 440 001

F.No. Addl. CIT/CR-2/NGP/153D/YRCE Educare/2021-22 Date: 18.08.2021

To,

The Asstt. Commissioner of Income-Tax
Central Circle -2(1), Nagpur

18 AUG 2021
757

Sub.: Approval U/s 153D of the I.T. Act in the case of M/s YRCE
Educare Pvt. Ltd., PAN: AAACY6482D for A.Y. 2018-19 - reg.
Ref.: Letter F.No. ACIT.Cen.Cir-2(1)/NGP/Yamsanwar
Gr./Draft/21-22 dated 29.07.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case of M/s YRCE Educare Pvt. Ltd., PAN: AAACY6482D for A.Y. 2018-19 vide above referred letter. Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the assessment order u/s 143(3) r.w.s. 153C for A.Y. 2018-19 in respect of the following case:

Sr.No	Name of the Assessee	Section	A.Y.
1.	M/s YRCE Educare Pvt. Ltd., PAN: AAACY6482D	U/s 143(3) r.w.s. 153C of the I.T. Act. 1961	2018-19

mipate
(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-2, Nagpur

Umesh Sadashiv Thakre
A.Y. 2016-17, 2017-18, 2018-19,
2019-20 & 2020-21

Scanned copy of approval so granted by the Department under section 153D
in respect of Shri Atul Manoharrao Yamsanwar, for the A.Y. 2014-15

MTA-250/2022

उप/सहायक आयकर आरुदत्त
(केन्द्रीय) सर्कल-2(1), नागपुर.
18 AUG 2021
760

**OFFICE OF THE
ADDITIONAL COMMISSIONER OF INCOME TAX
CENTRAL RANGE -2, NAGPUR**

Aayakar Bhavan, R.No.206, Telanghedi Road, Civil Lines, Nagpur - 440 001

F.No. Addl. CIT/CR-2/NGP/153D/Atul M Yamsanwar/2021-22 Date: 18.08.2021

To,

The Asstt. Commissioner of Income-Tax
Central Circle -2(1), Nagpur

Sub.: Approval U/s 153D of the I.T. Act in the case of Shri Atul
Manoharrao Yamsanwar, PAN: AAEPY4543Q for A.Y. 2014-15 - reg.
Ref.: Letter F.No. ACIT.Cen.Cir-2(1)/NGP/AY/Draft/21-22 dated
04.08.2021

Please refer to the above.

2. I have perused the draft assessment order submitted by you in the case of Shri Atul Manoharrao Yamsanwar, PAN: AAEPY4543Q for A.Y. 2014-15 vide above referred letter. Accordingly, an approval u/s 153D of the I.T. Act is hereby accorded to pass the assessment order u/s 143(3) r.w.s. 153A for A.Y. 2014-15 in respect of the following case:

Sr.No	Name of the Assessee	Section	A.Y.
1.	Shri Atul Manoharrao Yamsanwar, PAN: AAEPY4543Q	U/s 143(3) r.w.s. 153A of the I.T. Act. 1961	2014-15

Milind V. Patil
(MILIND V. PATIL)
Addl. Commissioner of Income-tax
Central Range-2, Nagpur

19. We Further find that exactly similar approval under section 153D of the Act have been granted by the Department for all the remaining 20 cases which are under consideration before us, but the only changes are made in the name of the assessee and the year of assessment. Apparently, accordingly to the learned Counsel for the assessee, the learned Addl. CIT has granted the approval in a mere mechanical manner in a template format, without referring to any seized material, or any observation to the findings of the Assessing Officer in the draft assessment order. No credible evidence or explanation is mentioned in the order to suggest that the Approving Authority has applied his mind before granting the approval under section 153D of the Act. But. before we discuss as to whether or not the approval so granted by the Department under section 153D of the Act without application of mind, it is imperative to mention strong apprehension of the learned Departmental Representative to even examine the issue in detail. According to the learned Departmental Representative, the order/ approval under section 153D of the Act is an internal administrative document, meant only for communication between Jt. CIT and ACIT, and by no stretch of imagination, it was open for judicial review. It is now pertinent to refer to the provisions of section 153D of the Act which are reproduced herein below:-

"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..... except with the prior approval of the Joint Commissioner."

20. The emphasis supplied in the above excerpt of section 153D above, is to highlight the intent of the legislature regarding the necessity of application of

mind to the draft order of each year of search. The same legislature has divided roles and responsibilities of Income Tax Authorities into two broad groups, one, the executory or administrative wing which broadly assesses a taxpayer, and the other is the judicial wing, which checks, balances and judiciously reviews the action taken by the executory wing. For example, powers under sections 151, 263, etc., are related to the judicial wing. In fact, the statutory authority of the learned CIT(A) [section 2(16A)] and even this Tribunal [section 252] exists, because the same are formed or defined for the “judicial wing” of the Income Tax Act, 1961.

21. In the present case, before we delve into the merits of the arguments related to “application of mind” under section 153D of the Act, we first need to address the question whether or not, while passing an order of approval under section 153D of the Act, does the Officer discharged executory function or judicial function? To answer this question, let us consider Office of Manual Procedures that has been issued by the CBDT. The CBDT issued the Manual of Office Procedure in February 2003 in exercise of the powers conferred under section 119 of the Act. Para-9 of Chapter-3 of Volume-II (Technical) of the Manual reads as under:-

“9. Approval for assessment: An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the

relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself."

22. The emphasis supplied on the above part of the Office of Manual Procedure issued by the CBDT speaks about giving opportunity to the assessee by the superior authority one month before passing of any order of approval. The requirement of prior approval under section 153D of the Act is comparable with a similar requirement under section 158BG of the Act. The only difference being that the latter provision occurs in Chapter-XIV-B relating to "*special procedure for assessment of search cases*" whereas section 153D, which was introduced in place of 158BG, is part of Chapter-XIV. Thus, the approval so granted by the Department under section 153D of the Act is neither executory nor administrative function, as the same gives rise to a "*civil consequence*", of assessment being framed against the assessee. It is, therefore, a judicial function, which grants the authority for judicial review by this Tribunal.

23. During the course of hearing, the learned D.R. further argued that as there is no format of 153D approval defined, therefore, the order under section 153D of the Act so passed by the Department, as can be seen above, must be held to be valid. However, we do not accept this understanding of learned D.R. for the reason that each assessment year is a different than the other and the facts / additions made in separate assessment years demand separate application of mind, as is the requirement of section 153D of the Act. As there is no specific format in which an assessment order is supposed to be

passed, we do not understand as to how can there be any specific format of an order under section 153D? It totally depends on the facts and findings of each case. What is mandatorily required is independent application of mind by the learned Addl. CIT while granting approval under section 153D of the Act for each separate case after thoroughly and judiciously examining the draft order as well as other relevant documents based on which the assessment is completed.

24. During the course of hearing before us, the learned D.R. very strongly opposed the arguments raised by the learned Counsel for the assessee contending the validity of order / approval under section 153D of the Act. The learned D.R. also furnished written arguments on 11/02/2025. With the written arguments, the learned D.R. also furnished Affidavits of the Asst. CIT, i.e., the Assessing Officer, as well as Addl. CIT, i.e., the Approving Authority under section 153D of the Act. Sample scanned copy of the Affidavits is being produced below for ready reference:-

**SPACE LEFT BLANK PURPOSELY
FOR ADJUSTMENT OF THIS PAGE**



महाराष्ट्र MAHARASHTRA

2024

20AB 727584



04 FEB 2025

BEFORE HONOURABLE THE INCOME TAX APPELLATE TRIBUNAL



I.T.A.T. APPEAL No. : ITA 239/NAG/2022
NAME OF THE ASSESSEE : UMESH SADASHIV THAKRE
ASSTT. YEAR : 2016-17
ORDER U/S : 153A r.w.s. 143(3)
DATE OF ORDER : 8/18/2021

1. I, Vikas Chandra Jt. CIT (OSD) Nagpur, presently posted in the O/o Pr. CCIT, Nagpur, was holding charge of DCIT Central Circle 2(1), Nagpur, during the Financial Year 2021-22. I hereby confirm that Shri Milind Patil was posted as Addl. CIT Central Range 2, Nagpur during this period. An assessment order was passed in the present case. I solemnly affirm that I am competent to file the present affidavit.

2. A copy of appraisal report in Yamsanwar group was received in this office and later various notices were issued to the assessee from time to time. The issues reported in the appraisal report were thoroughly discussed by the undersigned with Addl. CIT Central Range 2, Nagpur, before issue of notice.

3. Various notices/questionnaires, the submissions made by the assessee and seized material/other material, were discussed with the Addl. CIT Central Range 2, Nagpur continuously over an extended period of time. Thorough study was done to analyse all the issues raised in the Appraisal report. This was not a single day work but it spanned over several weeks right from receipt of appraisal report, issue of notices, discussion with Addl. CIT about the seized material, going through the submission of the assessee & discussing the same with the Addl. CIT from time to time.

4. It is further to confirm that the outcome of verification and the variation to the total income declared, if any, was discussed with Addl. CIT Central Range 2, Nagpur, issue wise as and when the same had reached finality. The issues involved in each case were reviewed periodically by Addl. CIT Central Range 2, Nagpur.

5. It is to confirm that the discussions held throughout the assessment procedure by both the officers i.e. the Addl. CIT Central Range 2 and Dy. CIT Central Circle 2(1), Nagpur were finally tallied. On culmination of this realtime process, a proposal was submitted to Addl. CIT Central Range 2, Nagpur, seeking approval under section 153D of the I.T Act as envisaged by the said section. The requisite approval was given by Addl. CIT Central Range 2, Nagpur, after confirmation on the additions proposed in the earlier periodic discussions.

6. Order u/s 153A r.w.s. 143(3) was passed by the undersigned only after approval was given by the Addl. CIT Central Range 2, Nagpur.

7. It is thus reiterated that the approval given by Addl. CIT Central Range 2, Nagpur, was culmination of the process of deliberations over a long period of time and not just a single day and it was definitely not mechanical but a culmination of a long consultative process.

[Signature]
05.02.2025

(VIKAS CHANDRA)

Jt. CIT(OSD), O/o Principal CCIT, Nagpur

VERIFICATION

Verified today 05/02/2025 at Nagpur. The contents in the above affidavit are correct to the best of my knowledge and belief. No part of this affidavit is wrong, and nothing material has been concealed therefrom.

[Signature]
05.02.2025

(VIKAS CHANDRA)

Jt. CIT(OSD), O/o Principal CCIT, Nagpur



ATTESTED

[Signature]

MOHD SHAKIR A. GHAFFAR
NOTARY
NAGPUR DIST. (M.S.) INDIA



BEFORE HONOURABLE THE INCOME TAX APPELLATE TRIBUNAL

I.T.A.T. APPEAL No. : ITA 239/NAG/2022
NAME OF THE ASSESSEE : UMESH SADASHIV THAKRE
ASSTT. YEAR : 2016-17
ORDER U/S : 153A r.w.s. 143(3)
DATE OF ORDER : 8/18/2021

1. I, Milind Patil CIT (OSD) I/c Addl. CIT (Appeal) -7, Mumbai, presently posted in the O/o CCIT-9, Mumbai, was holding charge of Addl. CIT Central Range 2, Nagpur, during the Financial Year 2021-22. I hereby confirm that Shri Vikas Chandra was posted as Dy. CIT Central Circle 2(1), Nagpur during this period. An assessment order was passed in the present case. I solemnly affirm that I am competent to file the present affidavit.
2. A copy of appraisal report in Yamsanwar group was received in this office and later various notices were issued to the assessee from time to time. The issues reported in the appraisal report were thoroughly studied by the undersigned and duly discussed with Dy. CIT Central Circle 2(1), Nagpur, before issue of notice.
3. The development in the present case i.e. the various notices/questionnaires issued, the submissions made by the assessee and seized material/other material, were discussed with the Dy. CIT Central Circle 2(1), Nagpur on real time basis. Due diligence was exercised to analyse all the issues raised in the Appraisal report. This was not a single day work but it spanned over several weeks right from receipt of appraisal report, issue of notices, discussion with DCIT about the seized material, going through the submission of the assessee & discussing the same with the DCIT from time to time. This was the continuous process spanning over several weeks.

4. It is further to confirm that the outcome of verification and the variation to the total income declared, if any, was discussed with Dy. CIT Central Circle 2(1), Nagpur, issue wise as and when the same had reached finality. The issues involved in each case were reviewed periodically.

5. It is to confirm that the discussions held throughout the assessment procedure by both the officers i.e. the Addl. CIT Central Range 2 and Dy. CIT Central Circle 2(1), Nagpur were finally tallied. On culmination of this continuous process, a proposal was received from DCIT Central Circle 2(1), Nagpur seeking approval under section 153D of the I.T Act as envisaged by the said section. The requisite approval was given only after confirmation on the additions proposed in the earlier periodic discussions.

6. Order u/s 153A r.w.s. 143(3) was passed by DCIT Central Circle 2(1) only after approval was given by the undersigned.

7. It is thus reiterated that the approval given was culmination of the process of deliberations over a long period of time and not just a single day and it was definitely not mechanical but a culmination of a long consultative process.


(Milind Patil)

CIT (OSD) i/c Addl. CIT (Appeal) -7, Mumbai



मिलिंद वि. पाटील
MILIND V. PATIL
अपर आयकर आयुक्त (अपिल)-7, मुंबई
Asst. Commissioner of Income Tax (Appeal)-7, Mumbai

VERIFICATION

Verified today 10/02/2025 at Mumbai. The contents in the above affidavit are correct to the best of my knowledge and belief. No part of this affidavit is wrong, and nothing material has been concealed therefrom.


(Milind Patil)

CIT (OSD) i/c Addl. CIT (Appeal) -7, Mumbai



मिलिंद वि. पाटील
MILIND V. PATIL
अपर आयकर आयुक्त (अपिल)-7, मुंबई
Asst. Commissioner of Income Tax (Appeal)-7, Mumbai

25. Broadly, we further find that in these Affidavits, the Approving Authority and ACIT have stated that there have been long discussions related to the

group cases, and only after due process, the approval under section 153D was given. Thus, the learned D.R. contended that approval under section 153D was granted by the Department after due application of mind. However, we are of the considered opinion that these Affidavits are not acceptable for the following reasons:-

i) Affidavit is a secondary source of evidence and not primary source. From plain reading of the approvals so granted by the Department under section 153D as enumerated above, it can be clearly inferred that there has been no application of mind while passing them, in fact they appear to be mere templates in which only name and assessment year is being changed. Now, if the Department wants to prove that there has been application of mind by the Approving Authority before granting approval under section 153D, then it cannot be done simply by filing secondary evidence, i.e., the Affidavits. The admissions made in these Affidavits must be supported by corroborative evidence that there has been application of mind on each separate year for each assessee. No such evidence is adduced which proves that there was application of mind by the Approving Authority on the draft orders prepared by the Assessing Officer and other such documents related to search.

ii) These affidavits are self-serving and also filed without application of mind in a mere template format without even noticing that Atul Yamsanwar's case for the A.Y. 2013-14 bearing ITA no.249/Nag./2022,

and Aakar Hotel's case for A.Y. 2016-17 bearing ITA no.47/Nag./2023, are not covered under 153A, rather they both are related to re-opening under 147/148 of the Act; still, both of the officers have nonchalantly stated on oath by filing Affidavit that approval under section 153D in these cases has been passed after due deliberation, when, in fact, no approval under section 153D is there in these cases and it is not required in re-opening cases. This approach raises serious questions on the conduct of the officers. Further, these Affidavits have been filed in the cases of Unique Realities (ITA no.11 & 12/Nag./2023) and Deepak Gadge (ITA no.99 & 100/Nag./2023), in which cases the issue of 153D was not even raised. This confirms that the Affidavits are mere self-serving in nature, not supported by any corroborative evidence.

iii) Vide Para-5 of the Affidavit of both the officers, it is mentioned, *"On culmination of this continuous process, a proposal was received from DCIT Central Circle 2(1), Nagpur seeking approval under section 153D of the I.T. Act as envisaged by the said section. The requisite approval was given only after confirmation on the additions proposed in the earlier periodic discussions."* There may be numerous discussions between officers throughout the search & seizure proceedings and also during assessment. Those discussions are internal matter of the Department. However, provisions of section 153D of the Act demand that before any Assessing Officer passes an assessment under section 153A/153C of the Act pursuant to search action, the same needs to be approved by superior authority. Thus, the whole point of a supervisor

(Approving Authority) being saddled with the task of approving a draft order is that the orders must be reviewed "after" they are drafted, it is irrelevant how many times the case has been discussed before preparation of draft orders. The Affidavit does not even mention that "Draft Order" was prepared or discussed or perused. In the Affidavit, the Officers also say that the "proposal was received", Proposal for what? what records were perused? How were the conclusions drawn? What suggestions were made by the Approving Authority? There is no mention of these important factors in the Affidavits. Under similar circumstances challenging the validity of approval so granted by the Department under section 153D of the Act, similar submission was made before ITAT, Mumbai Benches, in the matter of M/s Utility Supply Pvt. Ltd. v/s DCIT [ITA no.3585/Mum./2024, vide order dated 03/04/2025. The Co-ordinate Bench rejected such submissions holding as follows:-

"39. ...

And therefore, the contention of Ld. DR to the effects "that the procedure normally followed in such cases is that after centralization of the case, periodic discussions are held between the Range Head and the AO, where the appraisal report and the relevant seized material are duly discussed and submitting of the draft assessment order, is the culmination of the discussion process, not the initiation of the involvement of the Range Head, who is the approving authority", has no essence, because the Assessing Officer is an independent quasi-judicial officer and therefore he is required to act or to pass the assessment order independently and without being influenced by any interference/indulgence of/by higher Authority. May be the higher authority was involved in process of investigation or enquiry, etc., but could not have interfered in deciding the issue(s) and/or passing the assessment order by the AO, except granting or rejecting the approval u/s 153D of the Act. The Approving Authority after submitting the draft order and relevant material, is required to assess the proposed assessment order independently in the context of material available on record and to give reasons for granting the approval. Admittedly in this case, approval dated 27.12.2019, does not reflect any relevant material/

findings/ reasoning, which can substantiate the validity of such approval. Thus, the contention raised by the Ld. DR, is untenable.

Thus, on the aforesaid analyzations, we are of the considered view that in the instant case, the approval dated 27.12.2019 under consideration in not based on examining of any relevant documents and provisions of the Act in the context of the proposed addition and has been accorded in haste and time constrained pressure and, therefore lacks application of mind and hence in cumulative effects, the same suffers from perversity and impropriety and consequently un-sustainable. Thus, the approval, is declared as invalid in the eyes of law, which would entail the assessment order dated 27.12.2019 as invalid being void ab-initio."

iv) Affidavits like these should come through proper channel, i.e., the Principal Commissioner of Income Tax, and should not be handed over to this Tribunal directly. Affidavits like these can only be produced only when this Bench asks for it. This Bench never asked the officers concerned to produce Affidavits for proving "*application of mind*". Rule 29 of ITAT Rules, 1963, makes it abundantly clear that Affidavit can only be filed if the Bench asks for it. The relevant portion of the same is highlighted below:-

"Production of additional evidence before the Tribunal

29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced." [Emphasis Supplied]


v) At the outset, these Affidavits cannot be admitted in view of the provisions of Rule 29 r/w Rule-10 of ITAT Rules, 1963. But, even if we investigate the contents of the same, the whole idea of producing these

Affidavits seems rather misleading, as besides words, there is no mention or production of any cogent evidence to prove "*Application of mind*". We have our doubts if the higher authorities even aware that such an Affidavit is being filed before this Tribunal.

vi) The Affidavit says that the case was discussed with "ACIT 2(1)" at length on "*real time basis*". However, Yamsanwar Group was centralised to be assessed under "ACIT 1(1)" vide Order u/s 127(2)(a) of the Act dated 10/12/2019, and initial notices under section 153A/C as well as under sections 142(1), 143(2) of the Act were also issued by the ACIT-1(1) on various dates in the year 2020, which were duly attended by the assessee. The cases were handled by the ACIT-1(1) for good one year and then transferred to ACIT-2(1) vide order dated 22/01/2021 passed under section 127 of the Act, after which the assessments were concluded. There is no mention of this important fact of transfer of cases from ACIT-1(1) to ACIT-2(1) in the Affidavits. The officers bluntly misrepresent that the case was discussed on real time basis with the ACIT-2(1) only, when, in fact, the assessee attended and submitted case before the ACIT-1(1), mostly. Also, why Affidavit of ACIT-1(1), was not considered to be produced before us, requires serious consideration.

vii) To our utter surprise, the learned D.R. also produced a sealed envelope stating that he is relying on "*Confidential*" document to prove "*Application of mind*" by the officer. The Bench refrained from accepting and opening any such concealed document, which the other side did not

even get a chance to examine, let alone rebut. The learned D.R. later, on 17/03/2025, produced the same, which is being reproduced hereunder:-

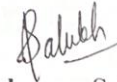
विधि और न्याय मंत्रालय Ministry of Law & Justice क्रमांक 267 दिनांक 17/03/25 आयकर अपीलिय अधिकरण, नागपुर Income Tax Appellate Tribunal, Nagpur		BC DS 17/03/2025
कार्यालय आयकर आयुक्त (लेखापरीक्षा एवं आई.टी.ए.टी). प्रथम तल, बीएसएनएल, आरटीटीसी बिल्डिंग, सेमिनारी हिल्स, बालाजी मंदिर के पास, नागपुर-440006.		OFFICE OF THE COMMISSIONER OF INCOME TAX (AUDIT & ITAT) 1st floor, BSNL, RTTC Building, Seminary Hills, Near Balaji Temple, Nagpur- 440006
F.No.CIT(Audit&ITAT)/Nag/Yamsanwar Group./ 2024-25 Date 17.03.2025		
To The Registrar, Hon'ble ITAT Bench Nagpur, Sir,		
Sub:- Submission of copies of confidential letters having F.No. Addl CIT- CR-2/Yamsanwar Gr./AMY/ 2021-22 dated 16/07/2021 written by the then Addl.CIT ,Central Range-2,NGP to Addl DIT (Inv) Nagpur and the confidential Deviation meeting held on 03/08/2021 at 11 a.m. in the office of Addl. CIT-reg .		
----- Kindly refer to the above.		
1. The Yamsanwar Group includes the following assessee-		
Sr.No.	Appeal No.	Name of the Assessee
1	ITA 383 & 384/NAG/2023	M/s AVC Homes (PAN:AAZFM2044B)
2	ITA 239 TO 243/NAG/2022	UMESH THAKRE (PAN: ADTPT6214B)
3	ITA 244 TO 246/ NAG/2023	YRCE EDUCARE PVT LTD (PAN: AAACY6482D)
4	ITA 249 TO 256 AND ITA 259 TO 263/NAG/2022	ATUL YAMSANWAR (PAN: AAEPY4543Q)

5	ITA/238 & 264/NAG/2022	VISHWAS CHAKNALWAR (PAN: ABDPC0828J)
6	N.A.	M/S A V REALITIES (PAN: ABFFA9554M)

2. With respect to the abovementioned cases, it is submitted that during the previous hearing on 18/02/2025, this office had filed written submission wherein confidential letters having **F.No. Addl CIT-CR-2/Yamsanwar Gr./AMY/ 2021-22** dated **16/07/2021** written by the then Addl.CIT ,Central Range-2, Ngp to Addl DIT (Inv) Nagpur and the confidential minutes of meeting held on **03/08/2021** at 11 a.m. in the office of Addl. CIT himself was submitted in sealed cover. Since they are confidential internal documents and not being used against the assessee as such, they are sufficient to prove that detailed analysis of seized material and issues under consideration was done by Addl CIT at least two months before the approval, thus proving the clear application of mind well before approving the orders.
3. However your honour mentioned that the bench will not take cognizance of anything submitted in sealed cover.
4. Without prejudice to our bonafide belief that the said documents are useful to Honorable bench to arrive at the factual matrix of the issue of application of mind, we are submitting the copies of these documents to Honorable bench. They are enclosed herewith as **Annexure 1 & 2**.
5. If honorable bench still believes that these documents should be provided to the assessee, the same may be done by Honorable bench.

Encl:- As above

Yours sincerely,



(Sandipkumar Salunke)
Commissioner of Income Tax (DR)
ITAT Nagpur

Annexure 1



OFFICE OF THE
ADDITIONAL COMMISSIONER OF INCOME TAX,
CENTRAL RANGE- 2 Nagpur
Room No 206, 2nd Floor, AayakarBhawan,
Civil Lines, Nagpur - 440 001

F.No. Addl.CIT CR-2/NGP/Yamsanwar Gr./AMY/2021-22

Dated: 16.07.2021

CONFIDENTIAL

To

The Addl. Director of Income Tax (Inv.),
Nagpur

Sir,

Sub: - Search u/s 132(1) conducted in Yamsanwar Group of cases - deviation note in the case of Shri Atul Manohar Yamsanwar - reg.-

Kindly refer to the above subject.

2. Kindly find enclosed herewith a deviation note dated 15.07.2021 along with enclosures received from ACIT-CC-2(1), Nagpur in the case of Shri Atul Yamsanwar (Party A-1) (PAN:AAEPY4543Q).

The assessee is engaged in the business of real estate and earned income from the business of real estate, income from coaching institute, remuneration from various companies in which he is a director and interest and salary as a partner in different firms. A search and seizure proceedings u/s 132 was conducted in the case of assessee and various group of concerns. The Assessing Officer i.e. ACIT-CC-2(1) has submitted a deviation note in the case of assessee which is self explanatory.

3. In view of the facts mentioned in the deviation note, some of the suggestions made by ADIT cannot be added. Accordingly, it is requested that the convenient time at the earliest may kindly be suggested for discussing the issue as per the above note. It may kindly be noted that the assessments are getting time barred by limitation of time on 30.09.2021. The hard copy of the reconciliation annexure is enclosed herewith along with the deviation note received from ACIT-CC-2(1) for your kind perusal and necessary action.

Encl.: As above

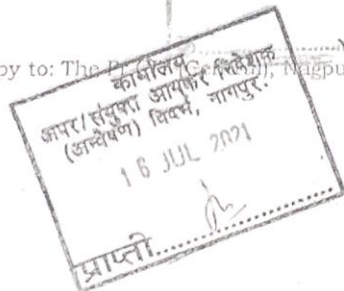
Yours faithfully,

Milind V Patil
(Milind V Patil)

Addl. Commissioner of Income Tax,
Central Circle-2, Nagpur

Copy to: The Principal Officer, Nagpur for Information

Milind V Patil
Addl. Commissioner of Income Tax,
Central Circle-2, Nagpur



Annexure-2

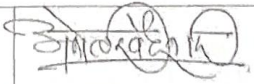
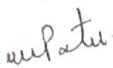

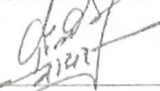
Confidential-

On the request of the Addl. CIT, CR-1&2, Nagpur and the ACIT (Central) 2(1), Nagpur, vide letter F.No. Addl.CIT-CR-2/Yamsanwar Gr./AMY/2021-22 dated 16.07.2021, a Deviation Meeting was held on 03.08.2021 at 11.00 am in the O/o Addl. CIT, CR-1, Nagpur. The meeting is attended by following officers:

1.	Shri Amol Khairnar	Addl. DIT (Inv.), Nagpur
2.	Shri Milind V Patil	Addl. CIT, CR-1, Nagpur
3.	Shri Vikas Chandra	ACIT, CC 2(1), Nagpur
4.	Shri Nitin Warghat	ADIT (Inv.) Unit-II, Nagpur

In the meeting issues raised in the Deviation Note were discussed in detail and verified along with the seized material and Appraisal Report. After discussion following has been decided unanimously:-

1. The officers of the Investigation Wing are of the considered opinion that recommendations of the ADIT in the Appraisal Report are based on the facts and the circumstances existing on the date of finalization of such report. Any fresh facts brought on record by the AO during the course of assessment proceedings cannot be basis of deviation note. The assessing officer is at liberty to take his own decision and call on the basis of evidences brought on record as per the provisions of the Income Tax Act.
2. The ADIT has also pointed out that all the seized material and statements recorded prior to the finalization of the appraisal reports has already been transferred to the Assessing Officer without retention of any copy thereof in his office. It is also emphasized that the appraisal report is prepared and submitted by his predecessor Shri Abhay K Shende and he was not involved in said process in any capacity.
3. It has been agreed by all the participants of the meeting that the AO is free to take his own decision as per the provisions of the Income Tax Act and the facts brought on record during the assessment proceedings.
4. The meeting concluded on 01.30 pm.

1.	Shri Amol Khairnar, Addl. DIT (Inv.), Nagpur	
2.	Shri Milind V. Patil, Addl. CIT, CR-1, Nagpur	
3.	Shri Vikas Chandra, ACIT, CC 2(1), Nagpur	
4.	Shri Nitin Warghat, ADIT (Inv.) Unit-II, Nagpur	

viii) As can be seen the above, the covering letter mentioned subject as under:-

"Submission of copies of confidential letters having F. No. Addl CIT – CR/2/Yamsanwar Gr./ AMY/ 2021-22 dated 16/07/2021 written by then Addl. CIT, Central Range – 2, NGP to Addl DIT (Inv.) Nagpur and the confidential deviation meeting held on 03/08/2021 at 11 AM in the office of Addl. CIT – reg."

ix) In the covering letter itself, the learned D.R. stated in Para-2,3,4 that these "*confidential*" documents were produced before this Bench on 18/02/2025, but the Bench refrained from accepting the same as they were in sealed cover, however, as these documents were important, they are being submitted now. Thereafter, in Para 5, the learned D.R. stated – "*If honourable Bench still believes that these documents should be provided to the assessee, the same may be done by Honourable Bench.*"

x) This Tribunal is in no position to accept any document which is not given to the other side, and these documents are not related to national security, which require submission in sealed covers. These are simple documents related to the search case of the assessee itself. Relying on documents which the other side has not been examined is completely unjustified and unacceptable by us and/or the Tribunal.

xi) During the course of hearing, the learned D.R. handed over the "*confidential*" document on the date of hearing itself. The learned Counsel for the assessee rightly pointed out that these two pages

submitted by the learned D.R. are nothing, but deviation note. The first document is a letter addressed to Addl. DIT (Inv.) from Addl. CIT, Central Circle-2, Nagpur, dated 16/07/2021 in which it is being requested to arrange a meeting to discuss changes in deviation note. The second document is the minutes of the meeting dated 03/08/2021 formed in pursuance to the letter dated 16/07/2021, in which issues relating to deviation note and appraisal report were discussed. It must be noted here that there is no concept of deviation note in the Income Tax Act, and, therefore, any such note does not have any statutory relevance. The meeting was attended by four officers, i.e., Addl. DIT (Inv.), Addl. CIT, CR - 1, ACIT (CC) 2(1), ADIT (Inv.), Unit - II. We are unable to understand what are we supposed to make out of these two documents? Why are they being produced before this Tribunal in such a dramatic manner, especially when they are not even remotely related to the issue of provisions of section 153D application of mind by the Approving Authority. This is just a deviation note that is prepared based on Appraisal Report before the Draft Assessment Orders are prepared. Application of mind by the Approving Authority under section 153D is supposed to be after the preparation of Draft Assessment Orders. It appears that the learned D.R. is simply trying to confuse and mislead this Bench by producing documents which are absolutely irrelevant to the case in hand.

xii) We further find that the opinion formed by the Approving Authority while passing order u/s 153D of the Act were not based on

any evidence, as there is no mention of the same, neither in the order under section 153D, nor in the Affidavits, even though the same have been vehemently argued by both the learned Counsel appearing for the parties before this Tribunal. What stopped the Department to simply produce documents and put this chapter to rest? Apparently, there was no such perusal of Draft Order, or relevant material that was perused by Approving Authority before passing the order under section 153D of the Act. According to the Hon'ble CJI Bhagwati in M/s Mehta Parikh & Co. v/s CIT, 1956 AIR 554, vide order dated 10/05/1956), the Hon'ble Supreme Court held as under:-

"Conclusions based on facts proved or admitted may be conclusions of fact but whether a particular inference can legitimately be drawn from such conclusions may be a question of law. Where, however, the fact-finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the court is entitled to interfere."

26. Further, we find that the learned D.R. relied on the decision of the Co-ordinate Bench of the Tribunal, Mumbai Bench, in Usha Satish Salvi v/s ACIT, ITA no. 2439/Mum./2023, vide order dated 23/01/2025, (discussed in following paragraphs), wherein the Tribunal relied on the decision of the Co-ordinate Bench of the Tribunal, Mumbai Bench, in Prathibha Pipes and Structural Ltd. v/s DCIT, ITA no.3874 to 3876/Mum./2015, order dated 06/09/2019 and while going through this decision of the Tribunal, we find that the same as distinguishable in nature and is irrelevant in the facts and circumstances of the present case due to the following reasons:-

- i) Assessee alleged the assessment under section 153A has been completed in absence of approval under section 153D of the Act. The Tribunal observed that the approval under section 153D was found in the group files, and at Para 7 of the assessment order, also mentioned of passing of assessment after due approval under section 153D of the Act. Therefore, the ground of the assessee regarding absence of approval under section 153D does not stand;
- ii) Issue related to non-availability of approval under section 153D in the assessment record, and not "*non application of mind by Approving Authority under section 153D*", as is being challenged in the present case. In the entire order, the phrase "*Application of Mind*" is not appearing;
- iii) The Affidavit produced in this case by the Assessing Officer as well as Approving Authority was to confirm that the assessment had been completed after passing order under section 153D. It seems that the idea of producing Affidavits in the present case has found inspiration from the case of Prathibha Pipes and Structural Ltd. (supra). However, in Prathibha Pipes and Structural Ltd. (supra), the issue is entirely different, as it is not related to "*Application of mind*" under section 153D;

27. The learned D.R. also relied on another Co-ordinate Bench decision of the Tribunal, Mumbai Bench, rendered in Usha Satish Salvi v/s ACIT, ITA 2439/Mum./2023, order dated 23/01/2025, wherein the case of Prathibha

Pipes and Structural Ltd. (supra) was relied upon. The learned D.R. stated that the case of Usha Salvi (supra) and the present case are similar and, therefore, the same ratio must be applied to the present case as well. However, the case of Usha Salvi (supra) is also distinguishable in nature as compared to the facts of the present case for the following reasons:-

- i) The case is related to only 3 annexures in seized material which are mentioned in Para-3 of the submissions of the learned D.R. appearing in Para-7.2 of the impugned order. While in the present case, extensive materials were seized from various locations and different assessees, demanding application of mind for each assessee and for each assessment year;
- ii) Vide Para-8 of the order, approval so granted by the Department under section 153D is produced, wherein the Addl. CIT has stated "*subject to corrections made therein*". This phrase clearly shows that the Addl. CIT has applied her mind to the cases and has also made corrections. No such application of mind is appearing in approval so granted by the Department under section 153D in the present case. Neither the same is proved by furnishing Affidavit nor have any other corroborative documents been filed by the Department;
- iii) Hon'ble Bench misinterpreted the case of Prathibha Pipes and Structural Ltd. (supra), as it was related to absence of approval under section 153D, and not in respect to "*application of mind*" while granting

approval under section 153D; when, in fact, in Usha Salvi's case, the issue was related to "*application of mind*"; and

iv) The issue of "*application of mind*" while granting approval under section 153D of the Act has been clearly established in the judgment of the Hon'ble Bombay High Court rendered in PCIT v. Smt. Shreelekha Damani (2018) 307 CTR 218 (Bom. HC), wherein the Hon'ble Bombay High Court upheld the Co-ordinate Bench decision of the Tribunal, Mumbai Bench, and the another judgment of the Hon'ble Orissa High Court rendered in ACIT v/s Serajuddin & Co., [2023] 150 taxmann.com 146 (Ori.), wherein the SLP filed by the Department was also dismissed by Hon'ble Supreme Court, which has not been even referred. Both judicial pronouncements relate to the issue of "*Application of Mind*", whereas Prathibha Pipes and Structural Ltd. (supra), which has been strongly relied on by the Hon'ble Bench, is related to absence of the approval under section 153D.

28. The learned D.R. further relied on the Co-ordinate Bench decision rendered in Bibhudatta Panda v/s ACIT, ITA no.76 to 81/Ctk./2022, vide order dated 01/02/2023. The said case is distinguishable in nature as compared to the facts of the present case for the following reasons:-

i) In that case as well, from the approval itself, the requirement of "*application of mind*" seems to be fulfilled. The relevant portion of approval under section 153D of the Act is highlighted below:-

"The draft assessment orders in all the above noted assesseees are approved accordingly as per statutory requirement u/s. 153D only in the light of the suggestions given above.

Therefore, only after making verifications, necessary enquiries and investigations in the light of the above suggestions made, the final assessment orders should be passed expeditiously as per the draft orders approved. The tax and interest calculations to 'be incorporated in the final orders should be checked up once again to ensure the correctness of the same. The final orders along with Demand Notice should be served on the assessee concerned expeditiously and the proof of service be placed in the assessment folders. Copies of the final assessment orders may be sent to this office for record."

ii) Further, the above case law has distinguished Serajuddin and Co v/s ACIT, which was, at that time, the decision of the Coordinate Bench of the Tribunal. Before High Court of Orissa, Serajuddin's case was upheld by dismissing the appeal of the Department, and the subsequent SLP filed before the Hon'ble Supreme Court was also dismissed. Thus, Serajuddin's case, due to upholding by Orissa HC, makes the case of Bibhudutta Panda inapplicable to the present case;

iii) Also, this case is against the Department, as the Tribunal had allowed the appeal for statistical purpose holding as follows:-

"12. We have considered the rival submissions. Coming to the first issue raised by the assessee in regard to the satisfaction u/s.153D of the Act, admittedly, the provision of Section 153D of the Act prescribes that the assessment order must have the approval of the Addl. CIT if the order is passed below the rank of JCIT. It is an admitted fact that an approval has been obtained for a draft assessment order passed on 27.03.2015. It is also an admitted fact that the Addl. CIT has directed the AO to do further verification and to proceed with the assessment without taking any further approval. This is where the error took place. The satisfaction of the Addl. CIT is not there as per the provisions of the Section 153D of the Act in respect of the variation in the income between that as was determined in the draft assessment order as on 27.03.2015 and as determined in the assessment order dated 31.03.2015. There is no power available with the

Addl. CIT to override the provisions of Section 153D of the Act and to direct the AO to do any further verification and to proceed with the assessment order without obtaining any further approval from the Addl. CIT. The Addl. CIT is a creature of statute and the statute binds him. The assessment order is a statutory document and it is bound by the rules of statute. This approval u/s.153D of the Act is an administrative act and if an administrative act has been prescribed in respect of the statutory document, such administrative act has to be done in respect of that statutory document. Failure of such act or the waiver of such act would lead to a statutory document being passed erroneously. Admittedly, such document does not become void ab initio. This being so, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Shiv Kumar Agrawal (supra) as also the coordinate bench of the Tribunal in the case of Gobardhan Matia(supra), as the irregularity in the assessment proceedings has taken place when the final assessment order has been passed without obtaining the approval of the Addl. CIT, we are of the view that the issue in this appeal would have to be restored to the point before passing of the impugned assessment order to obtain the approval of the Addl. CIT and then to proceed therefrom in accordance with law. Consequently, this ground of assessee's appeal for all the assessment years under consideration is partly allowed for statistical purposes."

29. Now, coming to the case laws relied upon by the assessee, i.e., ACIT v/s Serajuddin & Co., [2023] 150 taxmann.com 146 (Ori.), PCIT v/s Smt. Shreelekha Damani, 307 CTR 218 (Bom) and Arch Pharmalabs Ltd v/s ACIT [2021] (Mum-Trib.), ITA No.3752, 7597/Mum./2012, order dtd 07/04/2021, the very same Bench in composition of the same Coram (i.e., ITAT, Nagpur Bench) has considered similar issues raised by the assessee in these appeals rendered in Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. reported in [2025] 171 taxmann.com 842 (26/12/2024). In Maheshwari Coal, exactly same order under section 153D has been passed by the same authority, having same format, and exhibiting similar non-application of mind by the Approving Authority. For the sake of brevity, we are producing relevant portion of the said order:-

"58. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record which consist of Paper Book furnished by the learned A.R. and gone through the case laws relied upon. We find that the Addl.CIT has granted approval under section 153D for making assessment under section 153C for the assessment year 2009-10 to 2013-14 separately for each assessment year. The respective approval so granted under section 153D of the Act for each assessment year has been reproduced above.

59. From perusal of the approval granted under section 153D of the Act dated 31/03/2022, cited supra, it emerges that it is granted on the same day itself on 31/03/2022 on the basis of letter dated 31/03/2022 by the Assessing Officer for seeking approval, though it is separate approval for each year but it is stereo-type approval, in mechanical & routine manner, though it is recorded that he has perused the draft assessment order but he has not pointed out the mistake / error committed by the Assessing Officer in the alleged draft order i.e., for example -

(a) The issue of "time barred by limitation" has not been cared by the Addl.CIT for the assessment year 2009-10 to 2011-12, since in this case, assessment has been made under section 153C due to search under section 132 was conducted upon a third party on 22/01/2019 and the Addl. CIT has not cared that the amended provisions of law under section 153A / 153C by the Finance Act, 2017 (wef 01/04/2017) would only be applicable in the case of the present-assessee, since search under section 132 has been conducted upon the searched person on 22/01/2019, amended section 153A/153C wef 01/04/2017 has been completely ignored by the Addl. CIT while granting such mechanical approval in routine manner/stereo type on the same day itself (i.e., 31/03/2022) without even perusing / reading / verifying the assessment records / files of the assessee, the Addl.CIT has not even seen / perused the assessment records files wherein date of transmitting the documents is 21/01/2021 and not applied his mind to the fact that it would be deemed date of search and therefore, on his part, he has not pointed out the glaring mistake of the Assessing Officer for computation of block period of 10 assessment years as per Explanation-1 to section 153A by the Finance Act, 2017 (w.e.f. 01/04/2017) which is a jurisdictional fact / pre-condition / sine qua non for usurping / assuming jurisdiction under section 153C for the assessment year 2009-10 to 2011-12 (i.e., 3 consecutive years) and for issuing notice under section 153C for the assessment year 2009-10 to 2011-12, he has not cared that in the absence of this jurisdictional fact, the whole proceedings for the assessment year 2009-10 to 2011-12 would be vitiated and to be held as invalid, bad in law, and therefore, there would be a futile exercise to give his mechanical approval under section 153D for the assessment year 2009-10 to 2011-12. The approval granted on the same day itself (i.e., letter seeking approval on 31/03/2022 by the Assessing Officer to Addl.CIT), which itself proves that Addl. CIT has not even perused the assessment records and not even read / seen / perused the draft assessment order; for computation of 10 assessment years from the search year. The documents has been transferred on 21/01/2021 and thus, search year would be 2021-22 for the assessee under section 153C as the first year and the tenth year would be the assessment year 2012-13 and thus, the assessment year 2009-10 to 2011-12 would be clearly beyond the block of 10 assessment years. Had the Addl.CIT applied his mind on these vital facts of the case, he certainly would have not given approval under section 153D for the assessment year 2009-10 to 2011-12. Had there been application of mind, he would not have approved the draft assessment order for the assessment year 2009-10 to 2011-12 which is time barred as per

Explanation-1 to section 153A by the Finance Act, 2017 (wef. 01/04/2017), the Addl.CIT has not cared that the assessment made under section 153C dated 31/03/2022 for the assessment year 2009-10 to 2011-12 is time barred, as per first proviso to section 153C, date of search shall be the date of receiving the documents/ material by the Assessing Officer of the assessee, the date of receipt of the documents is 21/01/2021 shall be considered the date of search for the assessee company and thus, the assessment year 2009-10 to 2011-12 would be beyond the block of 10 assessment years as per Explanation-1 to section 153A, the assessment made under section 153C for the assessment year 2009-10 to 2011-12 is time barred and there is a violation of first proviso to section 153C. There is also violation of provisions of Explanation-1 to section 153A which is not cared by the Addl.CIT.

(b) That for the assessment year 2009-10 to 2013-14 which comes under „relevant AY / AYs“ as per Explanation-1 to sec153A(1) and Addl.CIT has not cared that documents / material i.e., ledger accounts found in searched premises (i.e., Suresh Agrawal, Kolkata) has been transferred to the Assessing Officer of the assessee-Company on 21/01/2021 by way of consolidated satisfaction note recorded by the Assessing Officer of the searched person, which is in possession of the Assessing Officer of the assessee-Company, does not constitute „asset“ as per fourth proviso to section 153A(1) and Explanation-2 of the fourth proviso which is sine qua non for issuing notice under section 153C for the „relevant AY/ AYs“, there is a violation of fourth proviso to section 153A(1), which is not cared by the Addl.CIT while granting such mechanical approval.

(c) More so, thereafter, the Addl.CIT has also not cared that the Assessing Officer has not made any addition on account of „undisclosed assets“ for the assessment year 2009-10 to 2013-14 which comes to the „relevant AY/ AYs“ as per Explanation-1 to section 153A(1) and it is mandatory to make first addition on the count of „undisclosed assets“, then only, he would be empowered to make any other addition on certain independent issue of unexplained cash credits under section 68 etc. This fact has not been cared by the Addl.CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2009-10 to 2013-14.

(d) Further, in the draft assessment order for the assessment year 2009-10 to 2013-14, the Assessing Officer has made addition on account of unexplained cash credits under section 68 whereas, there is no such credit entry is appearing / recorded/ found credited in the books of account of the assessee-Company in the assessment years, which is sine qua non for applying section 68 which is absent in these cases which is not cared by the Addl.CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2009-10 to 2013-14 for example, in the draft assessment order for the A.Y. 2013-14, the Assessing Officer has made addition of ₹ 35 lakh on account of unexplained cash credits under section 68, whereas, it is an opening balance of ₹ 35 lakh as on 01/04/2012 which brought forward from earlier year(s) and thus, it is unsustainable in the eyes of law as there is no fresh credits appearing in the books of account, which is against the law laid down under section 68. It is also not cared by Addl.CIT while granting such mechanical approval on 31/03/2022 for the assessment year 2013-14.

(e) Though, there is separate approval for each year is granted, but it is stereo-typed approval in same manner, in same fashion, in mechanical manner, merely on formality for all the 5 years i.e., A.Y. 2009-10 to 2013-14 separately, he has not even recorded any single word of his own satisfaction in the approval order passed under section 153D. It is an simpliciter approval

merely for formality, he has recorded in the approval granted under section 153D 31/03/2022 that he perused the „draft assessment order“ but he has not pointed out the defects / discrepancies / inconsistencies in the „draft assessment order“ as he has not verified the deemed date of search which only would be applicable for „Non-searched person“ i.e., the assessee-Company, which should have been the date of receiving the document from the Assessing Officer of the searched person, as he has not even recorded that he perused the assessment records/ files for the impugned years involved therein. He has not even verified that opening balances of loan accounts are also added by the Assessing Officer under section 68 which is invalid as per mandate of section 68, as only fresh credits during the year concerned are liable to be assessed under section 68, which is ignored by the Addl.CIT while granting such mechanical approval. He has not even cared that in the absence of required satisfaction note“ for each year separately, entire assessment under section 153C would be vitiated.

60. In the present case before us, we noted that the Addl.CIT did not mention anything in the approval order passed under section 153D dt.31/03/2022, even though for each year separately, towards his process of deriving satisfaction so as to exhibit his due application of mind. The Addl.CIT has failed to satisfactorily record its concurrence. Even the approval granted by the Addl.CIT does not refer to any seized material/assessment records/ satisfaction note or any other documents which could suggest that the Addl.CIT has duly applied his mind before granting approvals. We noted that the Addl.CIT merely approved the letter and the relevant para is noted in above paras. We noted that the relevant para of the above approval letter (i.e., for A.Y. 2013-14) merely says that "I have perused the draft assessment order submitted by you in the case of the assessee for AY13-14 vide above referred letter. Accordingly, an approval u/s153D is hereby accorded to pass the assessment order u/s143(3) rws.153C for AY13-14" which clearly proves that the Addl.CIT had routinely given approval to the Assessing Officer to pass the order only on the basis of contents mentioned/ dotted lines in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. From the said approval granted on the same day itself on 31/03/2022, it can be easily inferred that the said order was approved solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order. Thus, the sanctioning authority has, in effect, abdicated his statutory functions and delightfully relegated his statutory duty to the subordinate Assessing Officer, by virtue of whose action, the Addl.CIT was supposed to supervise. The Addl.CIT, without any consideration of merits in proposed additions with reference to the satisfaction note/incriminating material collected in search etc., has proceeded to grant a simplicitor approval. This approach of the Addl.CIT has rendered the approval to be a mere formality and cannot be considered as actual approval in law.

61. We also find that as per the scheme for framing search assessments, the Assessing Officer can pass the search assessment order under section 153A or under section 153C only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Addl.CIT in terms of section 153D. This is a mandatory requirement of law. The said approval granting proceedings by the Addl.CIT is a quasi judicial proceeding requiring

application of mind by the Addl.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme, it is the bounden duty of the Assessing Officer to seek to place the draft assessment order together with copies of the satisfaction note/seized documents before the Addl.CIT well in time much before the due date of completion of search assessment. In the present case, approval under section 153D granted on the same day on 31/03/2022 on the basis of letter dated 31/03/2022 by the Assessing Officer for seeking approval, and thus, proper procedure has not been followed by the Assessing Officer as well as the Addl.CIT.

62. The Addl.CIT is supposed to examine the satisfaction note for the concerned year, seized documents, questionnaires raised by the Assessing Officer on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Assessing Officer and the conclusions drawn by the Assessing Officer vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, has to be performed by the Addl.CIT in a judicious way after due application of mind.

63. Even though, as vehemently argued by the learned Departmental Representative, the Addl.CIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and the „Satisfaction Note“/documents received from the Assessing Officer of the searched person, still, the Addl.CIT, while granting the approval under section 153D has to independently apply his mind dehors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Assessing Officer in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Assessing Officer and the Addl.CIT are merely guidance to the Assessing Officer and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Assessing Officer to frame the assessment after getting prior approval from Addl.CIT under section 153D. The Addl.CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions as nowhere the Act mandates so. The scheme mandates due application of mind by the Assessing Officer to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation / clarifications from the assessee on the contents of the seized documents.

64. When the scheme provides for a leeway to both the Assessing Officer as well as the Addl.CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Addl.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report/ satisfaction note, as argued by the learned D.R., has no substance.

65. In our considered opinion, if the arguments of the learned Departmental Representative are to be appreciated that the Addl.CIT need not apply his mind while granting approval of the draft assessment orders under section 153D, as it is not provided in section 153D, then it would make the entire approval proceedings contemplated under section 153D otiose. The law

provides only the Assessing Officer to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Addl.CIT to grant judicious approval under section 153D to the draft assessment orders placed by the Assessing Officer.

66. We have gone through the approval granted by the Addl.CIT on 31/03/2022, the date mentioned in the table hereinabove under section 153D. The said approval letter clearly states that a letter dated 31/03/2022 was filed by the Assessing Officer before the Addl.CIT seeking approval of draft assessment order under section 153D. The Addl.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 31/03/2022 for various assessment years in the case of the assessee.

67. There is no recording of satisfaction by the Addl.CIT in the impugned approval order as to whether the assessment records/ assessment folders/ files/ seized materials or any incriminating documents or other connected documents and papers/ various statements recorded under section 132(4) and section 131(1A) of the assessee or any other person/ appraisal report of the Investigation Wing of the Department/ materials on hand with the Department at the time of initiation of search or material evidences gathered were placed for its verification and the same were duly verified and/or examined by him as mandated under section 153D. In the absence of compliance of the above mandate, the approval order dated 31/03/2022, passed under section 153D becomes an empty formality without due process of law and, thus, not sustainable. This is nothing but an approval by way of mere mechanical exercise accepting the draft assessment order without any independent application of mind by the Addl.CIT. Following case laws are relied on:-

- (i) *Sahara India (Firm) Luck v. CIT (2008) 169 Taxman 328 (SC), the Hon“ble SC explained as under:*

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

- (ii) *Dharampal Satyapal Ltd (2019) (Gau HC) Manu/GH/07070/2018 has held as under:*

"28. When an Authority is required to give his approval, it is also to be understood that such Authority makes an application of mind as to whether the matter that is required to be approved satisfies all the requirements of Law or procedure to which it may be subjected. In other words, grant of approval and application of mind as to whether such approval is to be granted must coexist and, therefore, where an Authority grants an approval it is also to be construed that there was due application of mind that the

subject matter approved and satisfies all the legal and procedural requirements."

(iii) *PCIT v. MDLR Hotels P Ltd (2024) 166 taxmann.com 327 (Del HC) dt.30-7-24, concluded that-*

"3. It is the aforesaid facts which appear to have constrained the Tribunal to observe as follows:

"13. We have given thoughtful consideration to the orders of the authorities below and have carefully perused all the relevant documentary evidences brought on record. We have also gone through each and every approval granted by the Addl.CIT, Cent-Range- 2, New Delhi vis-a-vis, each and every proposal made by the DCIT, Cent-Cir-15, New Delhi.

14. The issue which we have to decide is, can these approvals be treated as fulfilling the mandate of sec153D vis-a-vis legislative intent of the said sec in the statute. Sse153D reads as under:

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

19. Thus, the worthy Addl.CIT, Cen-Range-2, New Delhi gave approval To 246 assessment order by a single approval letter u/s153D by mentioning as under:

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

20. In our considered opinion, there is no whisper of any seized material sent by the AO with his proposal requesting the approval u/s153D. All the requests for approval are exhibited at pages 123 to 135 of the Convenience Compilation.

21. Even the approval granted by the Addl.CIT, Cent-Range-2, New Delhi does not refer to any seized material/assessment records or any other documents which could suggest that the Addl.CIT, Cent-Range-2, New Delhi has duly applied his mind before granting approvals."

4. We note that dealing with an identical challenge of approval having been accorded mechanically and without due application of mind had arisen for our consideration in Pioneer Town Planners (P) Ltd [2024] 160 taxmann.com 652 (Del HC) and where we had held as follows :

13. The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority u/s151 for reopening of assessment proceedings as per sec148.

15. A plain reading of the aforesaid provision would indicate that sec151 stipulates that the PCCIT or CCIT or PCIT or CIT must be "satisfied", on the reasons recorded by the AO, that it is a fit case for the issuance of such notice. Thus, the satisfaction of the prescribed authority is a sine qua non for a valid approval as per the said Sec.

16. A perusal of the proforma attached as Annex-II in the instant appeal would suggest that though the ACIT has appended his signatures by writing in his hand- "Yes, I am satisfied", however, the PCIT has merely written

"Yes" without specifically noting his approval, while recording the satisfaction that it is a fit case for issuance of notice u/s148.

17. Thus, the incidental que which emanates at this juncture is whether simply penning down "Yes" would suffice requisite satisfaction as per sec151. Reference can be drawn from the decision of this Court in NC Cables Ltd, wherein, the usage of the expression "approved" was considered to be merely ritualistic and formal rather than meaningful. The relevant paragraph of the said decision reads as under:-

"11. Sec151 clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the ITAT cannot be disturbed."

18. Further, this Court in Central India Electric Supply Co Ltd [2011] has taken a view that merely rubber stamping of "Yes" would suggest that the decision was taken in a mechanical manner. Paragraph 19 of the said decision is reproduced as under:-

"19. In respect of the first plea, if the judgments in Chhugamal Rajpal (1971) (SC), Chanchal Kumar Chatterjee (1974) (Cal) and Govinda Choudhury and Sons (1977) (Orissa) are examined, the absence of reasons by the AO does not exist. This is so as along with the proforma, reasons set out by the AO were, in fact, given.

However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by an Under Secretary underneath a stamped Yes against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least which is expected is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority."

19. In the case of Chhugamal Rajpal, the Hon^{ble} SC refused to consider the affixing of signature alongwith the noting "Yes" as valid approval and had held as under:-

"5. --- Further the report submitted by him u/s151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice u/s148. We are also of the opinion that the CIT has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice u/s148. To Que 8 in the report which reads "whether the CIT is satisfied that it is a fit case for the issue of notice u/s148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice u/s148. The important safeguards provided in secs147 and 151 were lightly treated by the ITO as well as by the CIT. Both of them appear to have taken the the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

20. This Court, while following *Chhugamal Rajpal* in the case of *Ess Advertising (Mauritius) SNC Et Compagnie [2021] (Del HC)*, wherein, while granting the approval, the ACIT has written- "This is fit case for issue of notice u/s148. Approved", had held that the said approval would only amount to endorsement of language used in sec 151 and would not reflect any independent application of mind. Thus, the same was considered to be flawed in law.

21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority u/s151 must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment u/s148. The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of sec 151 as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose.

22. So far as the decision relied upon the Revenue in the case of *Meenakshi Overseas P Ltd* is concerned, the same was a case where the satisfaction was specifically appended in the proforma in terms of the phrase- "Yes, I am satisfied". Moreover, paragraph 16 of the said decision distinguishes the approval granted using the expression "Yes" by citing *Central India Electric Supply (2011) (Del HC)*, which has already been discussed above. The decision in the case of *Experion Developers P Ltd* would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval.

23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression "Yes" could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of "Yes" in the case of *Central India Electric Supply (2011) (Del HC)*.

5. In view of the aforesaid, we find no justification to interfere with the view expressed by the Tribunal. No substantial queof law arises. The appeals fail and shall stand dismissed.

6. While disposing of these set of appeals, we take note of the following observations that were made in ITA 8/2024: -

"4. Accordingly, while we dismiss the instant appeal following the reasons assigned in the earlier case of *Anuj Bansal*, we leave the que pertaining to the effect and impact of sec144A as well as of the provisions contained in the Search and Seizure Manual, 2007, open to be addressed in appropriate proceedings."

7. In the facts of the present case and those which have come to be recorded by the Tribunal, we find that there arises no occasion for us to examine the said issue. The same be accordingly kept open to be addressed in appropriate proceedings."

(iv) *PCIT v. Anuj Bansal (2024) 165 taxmann.com 2 (Del HC) dt.13-7-23*, concluded that-

"7. The Tribunal has via the impugned order set aside the additions made qua the income of the asseessee inter alia, on the Gr. that there was no application of mind by the Addl.CIT in granting approval u/s153D.

8. To be noted, an assessment order was framed qua the asseessee u/s153A, rws.143(3).

9.1. 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.

10. There were 2 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.

11. 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.

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

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

13. 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 Id 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 (Del Trib). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the AO 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 ROI 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/s153D 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/s153D. In view of the above discussion, we hold that the order passed u/s153A rws.43(3) has to be quashed, thus ordered accordingly. The Gr. raised by the Assessee is accordingly allowed".

14. In this appeal, we are required to examine whether any substantial que of law arises for our consideration.

15. Having regard to the findings returned by the Trib, which are findings of fact, in our view, no substantial que of law arises for our consideration.

The Tribunal was right that there was absence of application of mind by the ACIT in granting approval u/s153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to sec292B.

16. We are not inclined to interdict the order of the Trib."

- (v) *PCIT v. Subash Dabas (2024) (Del HC) dt.17-5-24; ITA No.243/2023 & CNAPPL.20652/2023, concluded that-*

"11. Recently, in *Shiv Kumar Nayyar (2024) (Del HC)*, we had an occasion to deal with an almost identical issue i.e., grant of approval u/s153D in a

mechanical manner and without application of mind. The relevant discussion of the said decision in Para no.10 to 15, is reproduced hereunder as:-

"13. Reliance can also be placed upon Serajuddin and Co (Ori HC) to understand the exposition of law on the issue at hand. Para no.22 of the said decision reads as under:-

"22. As rightly pointed out by Id counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like „see" or „approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D. There are 3 or 4 requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 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."

14. During the course of arguments, Id counsel for the assessee apprised this Court that the SLP preferred by the Revenue against Serajuddin, came to be dismissed by the SC vide order dt. 28-11-23 in SLP(C) Diary no.44989/2023.

15. A similar view was taken by this Court in Anuj Bansal (Del HC), whereby, it was reiterated that the exercise of powers u/s153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval u/s153D cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind."

12. A perusal of the discussion extracted hereinabove would lead us to safely conclude that after placing reliance on various judicial pronouncements, this Court was of the opinion that approval u/s153D cannot be accorded in a casual or mechanical manner. Rather, the said exercise involves due application of mind which must be reflected in the order of approval passed by the concerned statutory authority.

13. In the instant case, with respect to the inappropriate approval accorded by the relevant authority, the Tribunal has made a categorical finding, which reads as under:-

"36. A perusal of the approval sought by the AO shows that he has requested to grant necessary approval u/s153D for the cases completed u/s153A/143(3). A combined perusal of the approval sought by the AO, the approval given by the Addl.CIT and the copy of remand report of the AO show that there is only some namesake approval given by the Addl.CIT on the very same day on which the AO sought approval. The Addl.CIT without verifying the records has given approval in a mechanical manner. This is more so evident from the fact that the opening balance of unsecured loans of Rs.8 crores was added by the AO, which is not a small amount and the number of unsecured loan creditors are only four and not very large. We find merit in the argument of the Id counsel for the assessee that the Id Addl.CIT received draft assessment order in 35 cases and approved all cases in one go on the same day and the AO not only passed the orders on the very same day but also prepared demand notices after completion of tax calculation and penalty notices etc. which is not possible within a span of few hours."

37. However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Id Addl.CIT before granting the approval. Had there been application of mind, he would not have approved the addition of Rs.8 crores in respect of M/s.Tirupati Real Tech Pvt Ltd and Rs.7 lakhs in respect of M/s.Golden Buildmart P Ltd which are opening balances and the very same amounts were added in the preceding AY. Even the AO in his remand report has also admitted the mistake that the addition of an amount of Rs.8 crores, was the opening balance and the mistake is apparent from record and needs to be rectified."

14. It is, therefore, discernible from the impugned order of the ITAT which reckons a categorical finding, and rightly so, that the approval u/s153D has been granted without due application of mind in the present case. Admittedly, the ITAT notes that the Addl.CIT has approved the draft assessment order without verifying the record which was made available before the said authority. It is further seen that the approval in the present case was accorded on the same day when it was sent to the concerned authority. It is also noteworthy that 35 draft assessment orders were approved by the Addl.CIT in one go on the said day.

15. Thus, in light of the decision rendered by us in Shiv Kumar Nayyar (2024) (Del HC), it is seen that the present appeals do not raise any substantial queof law. Consequently, the appeals stand dismissed and pending application(s), if any, are disposed of.

(vi) *PCIT v. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Del HC) dt.15-5-24, concluded that-*

"13. Reliance can also be placed upon *Serajuddin and Co (2023) (Ori HC)* to understand the exposition of law on the issue at hand. Para no.22 of the said decision reads as under:-

"22. As rightly pointed out by Id counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like „see" or „approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D. There are 3 or 4 requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 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."

14. During the course of arguments, Id counsel for the assessee apprised this Court that the SLP preferred by the Revenue against *Serajuddin*, came to be dismissed by the SC vide order dt. 28-11-23 in SLP(C) Diary no.44989/2023.

15. A similar view was taken by this Court in *Anuj Bansal (Del HC)*, whereby, it was reiterated that the exercise of powers u/s153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval u/s153D 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 30-12-18 u/s153D which is enclosed at page 36 of the PB of the assessee. The said letter clearly states that a letter dt.30-12-18 was filed by the Id AO before the Id Addl.CIT seeking approval of draft assessment order u/s153D. The Id Addl.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30-12-18 for 7 AYs in the case of the assessee and for 7 AYs in the case of Smt Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the PB which contains information obtained by Smt.Neetu Nayyar from Central Public Information Officer who is none other than the Id Addl.CIT, Central Range-S, New Delhi, under RTI Act, wherein, it reveals that the Id Addl.CIT had granted approval for 43 cases on 30-12-18 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the PB which contains the approval u/s153D, 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 Id Addl.CIT to grant judicious approval u/s153D for 43 cases on a single day is the subject matter of dispute before us. Further, sec153D provides that approval has to be granted for each of the AY whereas, in the instant case, the Id Addl.CIT has granted a single approval for all AYs put together."

17. Notably, the order of approval dt.30-12-20 which was produced before us by the Id counsel for the assessee clearly signifies that a single approval has been granted for AYs 11-12 to 17-18 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 judicial pronouncements discussed hereinabove, we are unable to find any substantial que of law which would merit our consideration."

(vii) *PCIT v. Dilip Construction P Ltd (2023) 7 NYPCTR 892 (Ori HC)* held as under:

"4. We find similarity in facts found in the case by the Trib. The approval does not even say the Jt.CIT had perused the files. As such, the contention sought to be raised in the appeal is covered by *Serajuddin & Co (2023) (Ori HC)*. In the circumstances, the appeal and applications are dismissed."

(viii) *ACIT v. Serajuddin & Co (2023) 150 taxmann.com 146 (Ori HC)* dt.15-3-23, concluded that-

"16. That such an approval of a superior officer cannot be a mechanical exercise has been emphasized in several decisions. Illustratively, in the context of sec142(2A) which empowers an AO to direct a special audit. The obtaining of the prior approval was held to be mandatory. *Rajesh Kumar (2007) 2 SCC 181 (SC)* observed as under:

"58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving

authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the AO if he was found to have adopted a wrong approach or posed a wrong que unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/ or the entries made therein. While exercising its power, the AO has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief CIT or the CIT, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given."

17. It is therefore, not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the approval is granted mechanically, it would vitiate the assessment order itself. In Sahara India (Firm) Luck, the SC explained as under:

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

18. The contention of the Revenue in those cases that the non-compliance of the said requirement does not entail civil consequences was negated. Reiterating the view expressed in Rajesh Kumar, the SC in Sahara India (Firm) Luck held as under:

"29. In Rajesh Kumar (2007) 2 SCC 181 it has been held that in view of sec 136, proceedings before an AO are deemed to be judicial proceedings. Sec136, stipulates that any proceeding before an IT Authority shall be deemed to be judicial proceedings within the meaning of sec 193 and 228 of IPC, 1860 and also for the purpose of sec196 of IPC and every IT Authority is a court for the purpose of sec195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case, but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of sec136. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: Maneka Gandhi (1978) 1 SCC 248 and SL Kapoor v. Jagmohan (1980) 4 SCC 379).

30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order u/s142(2A) does entail civil consequences, the rule audi alteram partem is required to be observed."

20. The non-compliance of the requirement was held to have vitiated the notice for reopening of the assessment. Likewise, in Syfonia Tradelinks P Ltd

(2021) (Del HC) the Del HC disapproved of the rubber stamping by the superior officer of the reasons furnished by the AO for issuance of the sanction.

22. As rightly pointed out by Id counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like „see“ or „approved“ will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of sec158BG, it would equally apply to sec153D.

There are 3 or 4 requirements that are mandated therein,

(i) the AO should submit the draft assessment order "well in time". Here it was submitted just 2 days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind;

(ii) the final approval must be in writing;

(iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Addl.CIT seeking his approval or of the Addl.CIT having granted such approval. Interestingly, the assessment orders were passed on 30-12-10 without mentioning the above fact. These 2 orders were therefore, not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.

25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of sec153D and that such approval is not meant to be given mechanically.

The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders themselves.

- (ix) *SVP Southwest Industries Ltd v. DCIT (2024) (Mum-Trib) dt.30-4-24; ITA No.1275/ Mum/ 2022, which concluded as under:*

"39. Thus, the approval granted by the Id Addl.CIT is identically worded as approval considered by Seerajuddin & Co (2023) 150 taxmann.com 146 (Ori HC) as per para No.22 of that decision, where there was not even a token mention of the draft orders having been pursued by the Addl.CIT. The letter simply grants approval. The bare minimum requirement of the approving authority having to indicate what thought process involved is also missing in the aforementioned approval order.

47. We are not on the issue that how the Id approving authority would approve all such orders on one day on 26-2-21 because it may be possible for a person to approve all such orders if he is in know of things since the stage of commencement of the assessment proceedings. However, we are unable to understand and appreciate the situation where the glaring mistakes in the assessment order as stated above and also fact of approval with approval No. and date of approval is mentioned in the draft assessment order itself which is sent for approval of the approving authority. This itself

forces us to state that all such approval granted u/s153D by the approving authority in all these appeals are without application of mind. Neither the interest of revenue, nor the principle of fair play and natural justice were taken care of while approving draft orders of the AO.

48. In view of above cumulative facts and respectfully following the decision of the Hon'ble Orissa and Allahabad HC as well as the decision of the coordinate benches placed in PB No.4, we hold that the approval granted u/s153D in assessment orders in all such appeals are without application of mind and therefore, the assessment made by the Id AO are quashed.

49. Thus, Gr.No.1 in appeal of the assessee is allowed in all these 34 appeals filed by the assessee holding that approval granted u/s153D is without application of mind and hence, the assessment orders are annulled."

(x) *Subhash Bhawnani v. DCIT (2023) 37 NYPTTJ 807 (Indore-Trib) dt.25-5-23, ITA Nos. 38 to 40/Ind/2020; AY12-13, 16-17 & 17-18, held that-*

"9. ... Thus, Id AR contested, there is no recording of satisfaction by the Id Addl.CIT in the impugned approval order as to whether the assessment records/ assessment folders/ files/ seized materials or any incriminating documents or other connected documents and papers/ various statements recorded u/s132(4) and sec131(1A) of the assessee or any other person/ appraisal report of the Investigation Wing of the Department/ materials on hand with the Department at the time of initiation of search or material evidences gathered were placed for its verification and the same were duly verified and/or examined by him as mandated u/s153D. In the absence of compliance of the above mandate, the approval order dt.25-12-18 passed u/s153D becomes an empty formality without due process of law and, thus, not sustainable.

The Id Addl.CIT, in fact, abdicated his statutory functions and delightfully relegated the statutory duty to his subordinate being the Dy.CIT, Central-1, Bhopal adopting a shortcut method. Merely, an undertaking given by the Id AO was considered to be adequate by the Addl.CIT to accord approval in all assessments involved without considering any merit in the proposed adjustments with reference to appraisal report, incriminating material collected in search etc.; this is nothing but an approval by way of mere mechanical exercise accepting the draft assessment-order without any independent application of mind by Addl.CIT. Ld AR submitted that the power to grant approval u/s153D is not to be exercised casually or any routine manner, rather the concerned authorities are expected to grant approval upon examination of the entire materials before approving the draft assessment-order and the authority is legally required to ensure due application of mind. Ld AR strongly contended that the Revenue does not have any evidence to show that the approval was granted with due diligence upon exercising adequate time and upon examining the materials needs to be considered in terms of the statutory provisions. Clearly, therefore, the approval is violative of the mandate of sec153D and therefore not sustainable at all. Ld AR argued that the case of assessee is fully covered by the decision of Hon'ble Co-ordinate Bench in ITA No.70 to 76/Ind/2020, Gurumukhdas Contractors (P) Ltd which is in fact a case of one of the group-entities part of the same search/ assessment proceeding and deal with by same AO and Addl.CIT in the same manner; therefore, the view taken therein by the Hon'ble Co-ordinate Bench is applicable to assessee without any hesitation. Still to strengthen assessee's case, Ld AR also relied upon the Trib, Cuttack Bench in ITA No.25 to 28/CTK/2012, Serajuddin & Co, dt.21-1-22 where an identical issue was decided in favour of assessee and against revenue and the assessment orders passed by authorities on bad approval

u/s153D has been quashed. With these vehement submissions, Id AR prayed to quash the assessment-order passed by AO."

- (xi) *Mysore Finlease P Ltd (2024) (Del-Trib) dt.10-1-24, ITA No.8821/del/2019 11-12, held as under:*

"8. Per contra, the Id DR vehemently argued that the role of Jt.CIT, Cen-Range is totally different from the role of a Jt.CIT in the normal range. He argued that in a Cen-Range, the Jt.CIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Id AO from time to time while issuing various questionnaires to the assessee. The Jt.CIT in Cen-Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Id AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Jt.CIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the Id AR has no force. Further, the Id DR vehemently argued that bare reading of sec153D talks only about existence of approval from the Jt.CIT. There is no mention of application of mind on the part of the Jt.CIT or the approving authority in the said sec. The expression „application of mind“ is only provided by the Judicial decisions and not provided in the statute. Hence, the Id DR argued that literal interpretation is to be given to the sec153D which does not provide for application of mind of the approving authority and hence, any other interpretation contrary to the same would only result in re-writing the law.

9. We find, as per the scheme, for framing search assessments, the Id AO can pass the search assessment order u/s153A or u/s153C only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Jt.CIT in terms of sec153D. This is a mandatory requirement of law. The said approval granting proceedings by the Jt.CIT is a quasi judicial proceeding requiring application of mind by the Jt.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme, it is the bounden duty of the AO to seek to place the draft assessment order together with copies of the seized documents before the Jt.CIT well in time much before the due date of completion of search assessment. The Jt.CIT is supposed to examine the seized documents, quenaies raised by the Id AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the quenaies issued by the Id AO and the conclusions drawn by the Id AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Jt.CIT in a judicious way after due application of mind. Even though as vehemently argued by the Id DR, the Jt.CIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Jt.CIT, while granting the approval u/s153D has to independently apply his mind dehors the conclusions drawn either by the Investigation Wing in the appraisal report or by the AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the AO and Jt.CIT are merely guidance to the AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the AO to frame the assessment after getting prior approval from Jt.CIT u/s153D. The Jt.CIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions as no

where the Act mandates so. The scheme mandates due application of mind by the Id AO to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme provides for a leeway to both the AO as well as the Jt.CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Jt.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Id DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the AO and the Jt.CIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. In our considered opinion, if the arguments of the Id DR are to be appreciated that the Jt.CIT need not apply his mind while granting approval of the draft assessment orders u/s153D as it is not provided in sec153D, then it would make the entire approval proceedings contemplated u/s153D otiose. The law provides only the AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Jt.CIT to grant judicious approval u/s153D to the draft assessment orders placed by the Id AO.

10. Let us now examine whether in the aforesaid background of the scheme, whether the approval in terms of sec153D has been granted by the Jt.CIT in a judicious way after due application of mind or not, in the instant case.

11. We have gone through the approval granted by the Jt.CIT on the date mentioned in the table hereinabove u/s153D. The said approval letter clearly states that a letter dt.29-12-17 was filed by the Id AO before the Jt.CIT seeking approval of draft assessment order u/s153D. The Jt.CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 29-12-17 for various AYs in the case of various assessees. In any event, whether is it humanly possible for an approving authority like the Jt.CIT to grant judicious approval u/s153D for 40 cases for various AYs on a single day is the subject matter of dispute before us. Further, sec153D provides that approval has to be granted for each of the AY whereas, in the instant case, the Jt.CIT has granted a single approval for all AYs put together. We find that the reliance placed by the Id AR on Serajuddin & Co (Ori HC) dt.15-3-23 is well founded. The que before the Hon^{ble} Ori HC is as under:-

"Whether on the facts and circumstances the ITAT was correct in holding that the approving authority has not applied his mind for giving approval u/s153D?"

15. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s153D has been granted by the Jt.CIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual.

Such an approval has neither been mandated by the provisions nor endorsed by the Hon^{ble} Ori HC; Hon^{ble} Alld HC and Hon^{ble} Jurisdictional HC (Del HC) referred to supra. Hence, we find lot of force in the arguments advanced by the Id AR in support of the addl.grs raised for all AYs u/c before us for all the assessees. Accordingly, the Addl.grs raised by all the assessees for all the AYs u/c are hereby allowed."

- (xii) *Inder International v. ACIT (2021) 213 TTJ 251 (Chd-Trib) dt.7-6-21, ITA No.1573/ Chd/ 2018; AY16-17, held that-*

"15.In the present case before us, we noted that the Addl.CIT did not mention anything in the approval memo towards his process of deriving satisfaction so as to exhibit his due application of mind. We noted that the Addl.CIT merely approved the letter and the relevant para is noted in above paras. We noted that the relevant para of the above approval letter merely says that "Necessary statutory approval u/s153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith..." which clearly proves that the Addl.CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved solely relying upon the implied undertaking obtained from the AO in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination/ investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his statutory functions and delightfully relegated his statutory duty to the subordinate AO, whose action the Addl.CIT was supposed to supervise. The Addl.CIT in short appears to have adopted a short-cut in the matter and an undertaking from AO was considered adequate by him to accord approval in all assessments involved. Manifestly, the Addl.CIT, without any consideration of merits in proposed additions with reference to incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Addl.CIT, Central has rendered the approval to be a mere formality and cannot be considered as actual approval in law. Hence, we quash the assessment framed u/s153A on this Addl. Gr. alone.

16. Needless to say that we need not adjudicate the Gr.s raised on merits by the assessee as we have already quashed the assessment on jurisdictional issue that the statutory approval granted u/s153D is without application of mind by the Addl.CIT."

(xiii) Arch Pharmalabs Ltd v. ACIT (2021) (Mum-Trib) dt.7-4-21, ITA No.3752, 7597/Mum/ 2012, held as under:

"11.5. At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/ her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s153D to complete assessments u/s143(3) rws.153A in the following case on the basis of draft assessment orders..." which clearly proves that the Addl.CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/ or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the AO in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination/ investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/ her statutory duty to the subordinate AO, whose action the Addl.CIT, was supposed to supervise. The addl.CIT in short

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

11.6. 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/s153D. Such perfunctory approval has no legal sanctity in the eyes of the law. Shreelekha Damani (Mum-Trib) approved by jurisdictional HC subsequently as reported in 307 CTR 218 affirms the plea of the assessee.

11.7. Very recently, Sanjay Duggal (Del-Trib) dt.19-1-21 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority u/s153D. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the assessee against maintainability of hollow approval u/s153D totally devoid of any application of mind. The approval so granted under the shelter of sec153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various AYs as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relatable to search in captioned appeals are non est and a nullity and hence, quashed."

(xiv) *Sanjay Duggal v. ACIT (2021) (Del-Trib) dt.19-1-21, ITA No. 1813/Del/2019, held as under:*

"11.5. Dharampal Satyapal Ltd (2019) (Gau HC) Manu/GH/07070/2018 in para-28 has held as under:

"When an Authority is required to give his approval, it is also to be understood that such Authority makes an application of mind as to whether the matter that is required to be approved satisfies all the requirements of Law or procedure to which it may be subjected. In other words, grant of approval and application of mind as to whether such approval is to be granted must coexist and, therefore, where an Authority grants an approval it is also to be construed that there was due application of mind that the subject matter approved and satisfies all the legal and procedural requirements."

11.6. Therefore, in the cases of search, assessment orders whether framed u/s 153A or 153C, the Jt.CIT (Approving Authority) is required to see that whether the additions have been made in the hands of assessee are based properly on incriminating material found during the course of search, observations/ comments in the appraisal report, the seized documents and further enquiries made by the AO during the course of assessment proceedings. Therefore, necessarily at the time of grant of approval of the assessment made by the AO, the Jt.CIT is required to verify the above issues, apply his mind that whether they have been properly appreciated by the AO while framing the assessment orders or not. The Jt.CIT is also required to verify whether the required procedure have been followed by the AO or not at the time of framing of the assessments. Thus, the approval cannot be a mere discretion or formality, but, is mandatory being Quasi Judicial function and it should be based on reasoning.

In our view, when the legislature has enacted some provision to be exercised by the higher Revenue Authority enabling the AO to pass assessment order or reassessment order in search cases, then, it is the duty of the Jt.CIT to exercise such powers by applying his judicious mind. We are

of the view that the obligation of the approval of the Approving Authority is of 2 folds; on one hand, he has to apply his mind to secure in build for the Department against any omission or negligence by the AO in taxing right income in the hands of right person and in right AY and on the other hand, Jt.CIT is also responsible and duty bound to do justice with the tax payer (Assessee) by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO creating baseless tax liability on the assessee and thus, the Jt.CIT has to discharge his duty as per Law. Thus, granting approval u/s153D is not a mere formality, but, it is a supervisory act which requires proper application of administrative and judicial skill by the Jt.CIT on the application of mind and this exercise should be discernable from the Orders of the approval u/s153D.

11.7. In the following Orders of various Benches of the Trib, it is held that while granting approval u/s153D, the Jt.CIT shall have to peruse all the incriminating material and other seized material on record and proper procedure if have been adopted by the AO and appraisal report as well. The Jt.CIT shall apply his mind to such material on record before granting his approval, otherwise, it will be invalid and bad in Law. We may refer to such Orders as under:

13. In the present cases various approvals were granted by the Jt.CIT, Central Range-1, New Delhi, and forwarding letter of the AO are placed on record in all the cases. In all the cases as per the forwarding letter of the AO only assessment records were forwarded to the Jt.CIT, Range-1, New Delhi at the time of granting approval. Therefore, it is evident that the Jt.CIT being the Approving Authority was neither having seized material nor the appraisal report or other material at the time of granting approval. In the approval u/s153D there is a reference to the AO letter only. There is no reference to the seized material or record or notice u/s142 and reply of the assessee and if procedure for its inspection or perusal is there. There is no material considered by the Jt.CIT. Ld Counsel for the assessee has pointed out that assessee has suffered serious prejudice because of non-application of mind on the part of the Jt.CIT while granting approval u/s153D because the AO has made several double or triple additions on account of share capital, investments, FDRs purchased, loans, capital gains because these were created out of bank deposits made in the bank accounts of the assessees after the money transferred from the account of M/s. Alfa India. No telescopic benefit have been given as it was out of the source deposited in the bank accounts of the assessees. Netting of the money left have also not been considered and even the Id CIT(A) without considering the same has enhanced the assessments in some of the cases of the assessee. No steps have been taken by the AO for rectifying their mistakes when assessee filed petition for rectification u/s154. Thus, there was inconsistencies and double additions made by the AO in various AYS. It may also be noted that in the present case the facts stated in the impugned orders are that the sales of liquor are made by M/s. JIL to M/s. MAPSCO and Singla Group of cases and that part of the sale proceeds have been transferred to the account of M/s. Alfa India instead of paying the entire sale consideration to M/s.JIL. Thus, the nature of total receipt/ addition is the sale proceeds originally to be received by M/s.JIL. If the part of the sale proceeds which were to be received by M/s. JIL and when transferred to the account of M/s. Alfa India Ltd., the entire part sale receipts cannot be the income either in the hands of M/s. JIL or M/s. Alfa India or the assessees who may be the conduit as argued before us. The AO has failed to consider the concept of real income for the purpose of determining the correct tax liability and correct determination of income of the assessees. We rely upon Godhra Electricity Co Ltd (SC). This fact is also not verified and considered by the Jt.CIT while granting approval u/s153D. It may be noted here that entire sale proceeds when cannot be added in the hands of M/s JIL as income

which is also not done in the case of M/s. JIL, rightly so, how the same sale proceeds could be added as income in the hands of assessee u/s68 is not understandable.

Thus, the Approving Authority without application of mind and in a most mechanical and technical manner granted approval u/s153D even without reference to any reason in the Order u/s153D. We, even, otherwise failed to understand that in search cases how an approval can be granted to an AY which is required to be based only on incriminating material without verification of those material and its reference in the appraisal report. The Jt.CIT even in approval did not mention if assessment record is seen by him.

14. Another interesting aspect that has come to the notice on the basis of various documents submitted for approval as well as request for approval by the AO to the Jt.CIT. We make a specific reference to letter dt.29-12-17 written by ACIT, Central Circle-4, New Delhi, which is placed at page 144 of the PB. This letter dt.29-12-17 is a request for obtaining approval u/s153D in the case of Shri Rajnish Talwar and family wherein the approval in the case of Shri Rajnish Talwar for AY10-11 to 16-17 is sought for. The AO send the draft assessment order along with assessment records of the above named assessee. In para 4 of the letter, AO stated as under:

"It is certified that all issues raised in the appraisal reports have been duly examined with reference to the seized impounded material."

15. Thus, the Jt.CIT acted on certificate given by the AO without satisfying himself to the record/ seized material etc., The AO sent only assessment records to the Jt.CIT for his approval. The identical is fact in the case of all the request for approval made by the AO but factual position noted above established that even assessment records have not been seen by the Jt.CIT. The AO sent draft assessment orders for 7 AYs on 29-12-17 which were got approved on 30-12-17 merely on the basis of draft assessment order. The Jt.CIT in the approval Order dt.30-12-17 also mentioned that AO to ensure all the assessment proceedings are conducted as per procedure and Law. It would show that even JCIT was not satisfied with the assessment proceedings conducted by the AO as per Law and records.

16. In some of the cases the approval was granted on the date the request was made for approval by the AO. In all those cases merely draft assessment order and the assessment folders were available with the AO. For example in the case of Shri Sanjay Duggal family, in the case of Ms. Kritika Talwar on the same date the approval was granted and that too merely on the basis of the assessment records and draft assessment order and in most of the cases approval has been granted either on the same day or on the next day. Further, there is no reference that seized material as well as appraisal report have been verified by the Jt.CIT. It is not clarified whether assessment record is also seen by the Jt.CIT. It may also be noted that even in some of the Talwar group of cases approval is granted prior to 30-12-17 but in main cases of Shri Sanjay Duggal and Rajnish Talwar the approval is granted on 30-12-17. Therefore, without granting approval in the main cases how the Jt.CIT satisfied himself with the assessment orders in group cases which is also not explained.

Therefore, the approval granted by the Jt.CIT in all the cases are merely technical approval just to complete the formality and without application of mind as neither there was an examination of the seized documents and the relevance of various observations made by the Investigation Wing in appraisal report. Thus, we hold the approval u/s153D have been granted without application of mind and is invalid, bad in Law and is liable to be quashed."

(i) SMW Ispat (P) Ltd v. ACIT (2024) 163 taxmann.com 119 (Pune-Trib) held as under:

"15. Heard both the parties and perused the material available on record. Coming to the main contention of non-application of mind by the approving authority. The Id AR placed reliance primarily on Serajuddin & Co (2023) (Ori HC). The relevant portion of the said judgment is reproduced here-in-below for ready reference:

"22. As rightly pointed out by Id counsel for the assessee there is not even a token mention of the draft orders having been perused by the Addl.CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like „see“ or „approved“ will not satisfy the requirement of the law.

25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of sec153D and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders themselves."

16. On careful reading of the above judgment, we note that the Hon"ble HC was pleased to observe that there should be some indication that the approving authority examined relevant material in detail while granting the approval u/s153D. The approval u/s153D is a mandatory requirement and such approval is not meant to be given mechanically. Such approval granted mechanically without application of mind by the Addl.CIT resulting in vitiating the assessment orders. We find in the present case that the AO sought approval u/s153D on 18-3-16, the Jt.CIT granted approval on 21-3-16 and the final assessment order u/s143(3) rws.153A was passed on 30-3-16 which clearly indicates that the approving authority granted approval in one day mechanically without examining the relevant material. According to the AO, the case of the assessee was covered by search action u/s132 conducted at Bhilwara concerning Mantri-Soni Group of Jalna/ Bhilwara and their family members and business concerns at the business and resi-premises of different members/ associate which is evident from para 1 of the assessment order. Admittedly, the AO sought approval u/s153D in 49 assessment orders vide letter dt. 18-3-16 which is on record placed on by the Id DR on 9-10-23. The approving authority has to examine number of evidences, documents, statements of various persons etc. recorded which were necessarily to be taken into consideration while granting approval u/s153D by the Jt.CIT. On an examination of the approval dt.21-3-16 which is on record placed by the Id DR on 9-10-23, we find no such indication of examination of evidences, documents, statements of various persons etc. at least, no reference whatsoever made by the Jt.CIT i.e., approving authority. Thus, we find the facts and circumstances in the present case are similar to the facts of the case before the Serajuddin & Co (2023) (Ori HC) and the ratio laid down therein is applicable to the present case. Therefore, the Jt.CIT granted approval u/s153D mechanically without application of mind which resulting in vitiating the present final assessment order dt.30-3-16 u/s143(3) rws.153A.

17. We find the Department of Revenue filed SLP against the decision of Hon^{ble} HC of Orissa in the case of M/s. Serajuddin & Co. before the Hon^{ble} SC. The Hon^{ble} SC was pleased to dismiss the SLP © Diary No. 44989/2023. The relevant decision is reproduced as under:

"ACIT v. M/s.Serajuddin And Co. Date: 28-11-23

UPON hearing the counsel the Court made the following ORDER

Delay condoned. Having regard to facts and circumstances of the case, we are not inclined to interfere in the matter. The SLP is dismissed. Pending application(s) shall stand disposed of."

18. On careful reading of the above, we note that the Hon^{ble} SC declined to interfere in the finding recorded by Serajuddin & Co (Ori HC) holding that the approval u/s153BD is mandatory requirement and such approval is not meant to be given mechanically, further, approval granted mechanically without application of mind vitiates the assessment orders.

22. The Id AR placed on record S Goyanka Lime & Chemicals Ltd (2015) (MP). On a careful examination of the same, we note that in pursuance of search, the assessments processed u/s143(1) were reopened by issuing a notice u/s148 on the basis of certain reasons recorded. The assessee objected to the same before the AO, which was rejected. The AO completed the assessment u/s143(3) rws.147. The CIT(A) quashed the said reassessment by holding the action of Jt.CIT in according sanction was without application of mind which was done in a mechanical manner. The ITAT upheld the order of CIT(A). The Hon^{ble} MP HC dismissed the appeal of Revenue by observing no que of law involved warranting reconsideration. The relevant extract of the said decision as under for ready reference :

"7. We have considered the rival contentions and we find that while according sanction, the Jt.CIT, IT has only recorded so "Yes, I am satisfied". In Arjun Singh, the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The CIT acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the CIT did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Jt.CIT, which accords sanction for issuing notice u/s148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to sec151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent findings recorded by the Id appellate authorities and the law laid down in Arjun Singh (MP HC), we see no que of law involved in the matter, warranting reconsideration.

11. The appeals are, therefore, dismissed."

23. We find the Department of Revenue filed SLP before the Hon"ble SC against the decision of S Goyanka Lime & Chemicals Ltd (MP HC). The Hon"ble SC dismissed the SLP in favour of the assessee which reported in (2015) 64 taxmann.com 313 (SC) which is at page No.162 of the case laws PB. We find the facts and circumstances relating to challenging the approval granted by the Jt.CIT on 21-3-16 are similar to the facts in the case of S Goyanka Lime & Chemicals Ltd (MP HC). Therefore, the ratio laid down by S Goyanka Lime & Chemicals Ltd (MP HC) which was confirmed by the Hon"ble SC is applicable to the facts on hand, therefore, the approval granted by the Jt.CIT on 21-3-16 is invalid, consequently, the final assessment order dt.30-3-16 passed u/s143(3) rws.153A is liable to be quashed.

24. Further, Sahara India (Firm) (2008) (SC), while discussing the requirement of prior approval, opined that the requirement of previous approval of the CCIT or the CIT in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the AO, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Sec is not turned into an empty ritual. The Hon"ble SC was pleased to hold 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.

25. In view of our discussion made here-in-above, considering the submissions of Id AR, Id DR, case laws relied on and respectfully following Serajuddin & Co (2023) (Ori HC) which was confirmed by the Hon"ble SC vide order dt.28-11-23 in SLP(C) No.026338/2023, we hold that the approval dt.21-3-16 granted by the Jt.CIT u/s153D is without application of mind, therefore, invalid under law. Consequently, the final assessment order dt.30-3-16 passed u/s143(3) rws.153A fails and quashed."

68. Therefore, approval given by the Addl.CIT, in our opinion, is invalid in the eyes of law and, therefore, hold that approval given under section 153D was granted in a mechanical manner and without application of mind and hence, it is treated as invalid and bad in law and consequently vitiated the assessment orders for want of valid approval under section 153D. In view of the above discussion, we hold that the impugned order passed under section 153C r/w section 143(3) / 144 of the Act is hereby quashed. Thus, we hold as under:-

a) Ground no.4, in the appeal being ITA No.108/Nag./2024, A.Y. 2009-10, is allowed;

b) Ground no.4, in the appeal being ITA No.109/Nag./2024, A.Y. 2010-11, is allowed;

c) Ground no.4, in the appeal being ITA No.110/Nag./2024, A.Y. 2011-12, is allowed;

d) Groundn no.4, in the appeal being ITA No.111/Nag./2024, A.Y. 2012-13, is allowed; and

e) Ground no.3, in the appeal being ITA No.112/Nag./2024, A.Y. 2013-14, is allowed."

30. Thus, the power to grant approval under section 153D is not to be exercised casually or in a routine manner, rather the concerned authorities are expected to grant approval upon examination of the entire materials before approving the draft assessment order and the authority is legally required to ensure due application of mind. We also find that the Revenue does not have any evidence to show that the approval was granted with due diligence upon exercising adequate time and upon examining the materials needs to be considered in terms of the statutory provisions. Clearly, therefore, we hold that the approval so granted is violative of the mandate of section 153D and, therefore, not sustainable in the eyes of law. Consequently, the assessment made for the A.Y. 2014-15 to 2020-21, is held to be invalid and bad-in-law, hence the same is hereby quashed for want of valid assumption of jurisdiction in the absence of valid and proper statutory approval under section 153D by the Addl. CIT.

31. The above referred case of Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. (supra) is squarely applicable to the facts of the present case, more so, because it is the exact copy of the 153D orders that are being challenged in the present cases, as were challenged in Maheshwari Coal Benefication & Infrastructure Pvt. Ltd. (supra).

32. We further refer to The Blacks Law Dictionary which defines "approval" to mean an act of confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. In the case of Vijay S. Sathaye vs.

Indian Airlines & Others (AIR SCW 6213), the Hon'ble Supreme Court held that approval means confirming, ratifying, assenting, and sanctioning some act or thing done by another. In the case of Manpower Group Services India Pvt. Ltd. v/s CIT (430 ITR 399), the Hon'ble Delhi High Court has held that approval means to agree with the full knowledge of the contents of what is approved and pronounce it as good. In the case of Dharampal Satyapal Ltd. v/s Union of India (2018) 6 GSTROL 351, it has been observed by the Hon'ble Gauhati High Court that grant of approval means due application of mind on the subject matter approved, which satisfies all the legal and procedural requirements. In the context of the Land Acquisition Act, 1894, the Hon'ble Supreme Court in Vijayadevi Naval Kishore Bhartia v/s Land Acquisition Officer, (2003) 5 SCC 83, has drawn the distinction between the Approving Authority and the appellate authority. It has observed that the Collector, after assessing the land, makes an award for its acquisition and works out compensation payable under section 11 of the said Act, and his award is sent to the Commissioner for his approval as per proviso to section 11(1) of the said Act. It has further been observed that the said Act has not conferred an appellate jurisdiction on the Commissioner under the proviso to section 11(1) of that Act, but the appropriate government exercises the appellate power. On the same logic, there is a distinction between the assessing authority and the Approving Authority. Thus, the assessing power, approving power and appellate powers are separate and distinct, and there should not be a mix-up of the said powers.

33. In the case of the State (Anti-Corruption Branch) Government of NCT of Delhi & Anr. v/s R.C. Anand & Another, [2004] 4 SCC 615, it has been held by the Hon'ble Supreme Court as under:-

"The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence, including the transcript of the tape record, have been considered by the sanctioning authority. Consideration implies the application of the mind. The order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority."

34. The Hon'ble Supreme Court in Chhugamal Rajpal v/s S.P. Chaliha [1971] 79 ITR 603 (SC), the issue relates to re-opening of assessment wherein the Hon'ble Court that the report submitted by the Income Tax Officer under section 151(2) did not mention any reason for concluding that it was a fit case for the issue of a notice under section 148 and the Commissioner mechanically accorded his permission. On these facts, it was held by the Hon'ble Supreme Court that important safeguards provided in sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner, and therefore, notice issued under section 148 of the Act was invalid and had to be quashed.

35. It is a settled principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. If a statute has conferred a power to do an act and had laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been

prescribed, when the statute prescribes to do a particular thing in a particular manner, the same shall not be done in any other manner than prescribed under the law. When a particular mode is prescribed, no other mode can be adopted.

36. The legal maxim "*Expressio unius est exclusio alterius*" i.e., the express mention of one thing implies exclusion of another. The Law Lexicon explains the maxim – whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative viz. that the thing shall not be done otherwise. This Rule had been adopted in various judicial precedents from Taylor v/s Taylor (1875(1) Ch D 426) to GVK Industries Ltd. and another v/s ITO & Anr. [2011(4) SCC 36]. This Rule adopted in Taylor v/s Taylor is well recognised and is founded on sound principle. The court took the view that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than which has been prescribed. This view has been adopted in Nazir Ahmed v/s King Emperor (AIR 1936 PC 253(2)).

37. The above jurisprudence equally applies to taxation laws as well. Reference may be taken from CIT v/s SPL's Sidhartha Ltd. 345 ITR 223 (Del.) (referred in ITAT Delhi ITA No.1185 & 1186/Del./2009 dated 24/02/2016 at Page-10 &11) it is observed at Page-227 reproduced herein below:-

"It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not accept it being done in some other manner."

38. As a measure of abundant caution, the Legislature consciously provided a rider for previous approval so that certain harsh provisions are not abused by the Lower Authorities in delivering justice, befalling any *ipse-dixit* conduct in the quasi-judicial process and frustrating intent of the law as the provision being an inbuilt protection against arbitrary or unjust exercise of power by the assessing officer, casts a very heavy duty on the said high-ranking authority to see it that the approval envisaged in the section is not turned into an empty ritual.

39. The Income Tax Act 1961, has categorically prescribed specific approval by the competent authority before obtaining jurisdiction for application of several proviso including section 153D of the Income Tax Act 1961. So, there is no space for mechanical and a baffling haste approach in discharging statutory obligation casted upon. Any abysmal conduct of statutory authority defies law and causes injustice.

40. The term "*approval*" being an expression indicates application of mind on the part of the higher authority. The Hon'le Supreme Court in the decision reported in AIR 2006 SC 2879 Ashok Kumar Sahu v/s Union of India, held that the expression "*approval*" means to have or express a favourable opinion of to accept as satisfactory as to the content of the assessment made under section 158BC of the Act. It is instrument for persuasion of judges.

41. The Hon'ble Karnataka High Court pointed out the difference between the "*approval*" and "*permission*" by referring P.Ramanatha Aiyar's Law Lexicon and held that when approval is given it means the Approving

Authority has full knowledge about the contents of what is approved and confirmed authoritatively the order of the lower authority. It also preserves the institutional legitimacy and "*adjudicative integrity*".

42. "*Approval*" signifies a product of human thoughts based on the given set of facts and interpretation of the applicable law. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness and avoids inconsistent / divergent decisions. The Manual of Office Procedure, Volume II (Technical) February 2003 issued by Directorate of Income Tax on behalf of Central Board of Direct Taxes, Department of Revenue, and Government of India, is based on sound principles of law.

43. The concept of approval after due application of mind after deliberation of records, is not new to legal parlance but akin to Cr.PC under section 196, as well, where It is the obligation of the sanctioning authority to scrutinize all the records and facts presented and apply their own mind on the same so that the sanction would be granted in accordance with the law. Strict adherence to the time limit is to be followed by the sanctioning authority. The concept of due approval was explained by the Hon'ble Supreme Court in the matter of CBI v/s Ashok Kumar Aggarwal, 14 SCC 295 where Hon'ble Supreme Court has explained the basic requirement of the process of sanction which is similar to the term "*approval*" as prescribed by section 153D of the Act.

44. Reference may be taken of Hon'ble Supreme Court in Mansukhlal Vitthal Das Chauhan v/s State of Gujarat, [1997] 7 SCC 622, wherein Hon'ble

Supreme Court deals with the issue of sanction/approval, in which the Hon'ble Court emphasises that the power to sanction also includes the power of "not to sanction", in case the Approving Authority or the sanctioning authority does not get to apply mind to the relevant documents necessary for granting the approval. Vide Para-18 & 19, Hon'ble Supreme Court held as under:-

"18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

45. From the aforesaid decisions of the Hon'ble Supreme Court, it is clear that the approving / sanctioning authority, while approving the documents placed before him, should apply his mind, and the approval / sanction must ex-facie disclose that the approving / sanctioning authority had considered the evidence and other material placed before it. Application of mind is the sacred duty of the Approving Authority. Approval must have an inextricable link with application of mind based on material on records. In sum and substance,

the term "Approval" for the purpose of section 153D connotes conscious, diligent and objective appraisal of facts, material on record and its findings by assessing officer in the form of 'Draft Assessment order', by applying judicious mind and skill in accordance with law by superior authority, encompassing dominate purpose test. The proposition is no more res-integra that approval under section 153D of the Act is not procedural requirement but mandatory. It is trite that where the Assessing Officer is required to do a particular act in a particular manner, he cannot bypass the mandate of law and adopt a different approach. The supervisory power mandated under section 153D of the Act in case of search assessment could not be bypassed. The noncompliance of provisions of section 153D of the Act are a substantive defect and thus not curable. Such absence of approval has rendered the assessment order passed under section 153A of the Act as invalid and bad in law at the threshold.

46. We note that the Co-ordinate Bench of the Tribunal in ACIT v/s Splendor Landbase Ltd. and Vice Versa and ACIT v/s Hridey Vikram Bhatia and (vice versa) vide order dated 07/3/2025 reported in 2025 (3) TMI 599 has considered the exactly similar issue and has held as under:-

"We find that only draft assessment orders were sent to JCIT without any assessment or search record. The approvals establishes that approving authority has granted the approvals, without reasons or depicting having applied an active mind to the issue involved and the material relied by the AO, but by merely mentioning "Following draft assessment orders are being approved", the impugned approval is granted.

Now more particularly in the present set of facts where substantive additions were made in the hands of respondent and protective assessment were made in the hands of its Director respondent, had the competent authority been

even aware of the fact of the protective and substantive assessments being made, then it was more likely to have been granted in one letter.

Rather if the sequence number of letters granting approval is considered the approval was first granted in case of protective addition and then of substantive addition in case of the company. This certainly shows that unmindful of nature of material relied and nature of additions the approvals have been mechanically granted by the JCIT.

Whatever attempt is now being made by the department to fill in the lacuna by filing letters of then JCIT who granted the approval is doing more damage to the case of the department because when we take into consideration the letter of then JCIT, with the submission, we find that the said JCIT seems to be still under impression that grant of approval is mere formality and for that reasons the JCIT has stated in this letter that, "It is further noted that Approval letter U/s 153D is 'only a formal' culmination of application of mind, which takes place throughout the assessment period." [Emphasis supplied]

On the contrary law as stands crystallized is that the approval letter should be speaking one and show that approval was granted by application of mind.

There is inherent fallacy in the belief of JCIT as mentioned in this letter that "there is no requirement in law creating any evidence for discussions before granting the approval u/s 153D." On the contrary this bench is of firm view that not only as quasi-judicial authority but even in administrative capacity, if an approval is to be granted under a statute for initiating any quasi judicial proceedings then such approval should be self contained piece of evidence that due process of law was followed in grant of approval.

Which certainly is not the case here.

Thus, approvals granted in case of both the assessee to be vitiated and deserve to be quashed - Decided in favour of assessee."

47. Lastly, it is observed that the Draft Assessment Order, for the purpose of granting approval under section 153D was sent to the Additional CIT (Approving Authority) by the ACIT on 18/08/2021. However, by that date, the investigations had not concluded, but, as on 01/09/2021, further explanation was demanded by the Assessing Officer through the following letter:-

OFFICE OF THE
ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-2(1), NAGPUR,
ROOM NO.312, AAYAKAR BHAVAN, CIVIL LINES, NAGPUR
Email Id- Nagpur.dot2.1@incometax.gov.in

F.No. ACIT-2(1)/NGP/UT/2021-22

Date: - 01.09.2021

To

Shri Umesh Sadashiv Thakre,
Plot No. 53, Indira Nagar, Shinde Bhure Maidan,
PO Ajni, Nagpur-03

Sir,

Sub: - Details of loan transaction between Shri Atul Yamsanwar and
Smt. Sonal Amidwar alias Smt. Sonal Nikhil Nilawar-reg-

Please refer to the above.

During the course of search at your residential premises, document no. B-1 and B-2 was found and seized which contains details of loan transactions with various persons. Among these persons, the transaction between Shri Atul Yamsanwar and Smt. Sonal Amidwar alias Smt. Sonal Nikhil Nilawar was identified and a letter was issued to her. In response to this she has denied any transaction with you. The copy of related pages of above document with above named lady is being enclosed for your kind reference. Please explain the details of transaction between Shri Atul Yamsanwar and her along with the documentary evidences. Please provide the detailed address of Smt. Sonal Amidwar, if she is a person different from the above identified lady.

Encl: as above.



Yours faithfully,

(Vikas Chandra)

Assistant Commissioner of Income Tax
Central Circle 2(1), Nagpur

48. In response to the above notice, the assessee filed a detailed reply on 14/09/2021, subsequent to which the assessment was concluded on 22/09/2021. The Approving Authority had no occasion to examine these new facts on record, as the Draft Order was submitted before him on 18/08/2021 itself. Thus, the we hold that the assessment order was passed under section 153D of the Act without a valid approval, which is an incurable defect, making

the assessment order *void ab initio*. It is questionable why such an important fact was not mentioned in the Affidavits filed by learned officers of the Income Tax Department.

49. The ratio of the present judgment shall apply *mutatis mutandis* to all the 21 appeals under consideration as the additional ground relating to 153D of the Act is raised in all the 21 appeals. The core issue revolves around the lack of due application of mind by the Approving Authority, as evident by the mechanical and template-driven approvals, which fail to reflect any substantive engagement with the draft assessment orders or seized material. We find that the approvals under Section 153D, being a mandatory judicial function rather than a mere administrative formality, require independent and judicious scrutiny, as mandated by the Manual of Office Procedure and reinforced by judicial precedents such as *Serajuddin & Co. (supra)* and *Shreelekha Damani (supra)*. The affidavits and so-called "*confidential*" documents submitted by the Department are deemed inadmissible and irrelevant, lacking corroborative evidence to substantiate the application of mind. Furthermore, the submission of draft orders prior to the conclusion of investigations, as evident by subsequent notices issued to the assessee, underscores the procedural infirmity in the approval process. Applying the principles laid down by the Hon'ble Supreme Court in *Chhugamal Rajpal (supra)* and *Mansukhlal Vithaldas Chauhan (supra)*, we hold that the absence of valid approvals under section 153D renders the assessment orders *void ab initio*, as this defect is substantive and incurable. Accordingly, the assessment orders for the respective assessment years under consideration are hereby

quashed and the appeals filed by the assessee for all the years under consideration are allowed. Once the assessments are quashed, the appeals of the Department rendered infructuous and hence the same are also dismissed.

50. Before parting, we place on record our appreciation for the excellent contribution made by the learned Counsel for the assessee, Shri Saket Raman Bhattad, Advocate and Shri Sandipkumar Salunke, learned Departmental Representative on behalf of the Revenue during the course of hearing.

51. In the result, all the appeals filed by the assessee are allowed and all the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 09/06/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 09/06/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur