

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 6198/Del/2017
(Assessment Year: 2009-10)**

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi- 110055.	Vs.	Shri Saurav Aggarwal, D-31, Pushpanjali Enclave, Pitampura, New Delhi-110034
(Appellant)		(Respondent)
PAN:AHLPA7628J		

**ITA No. 6195/Del/2017
(Assessment Year: 2009-10)**

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.	Vs.	Shri Sant Lal Aggarwal, D-31, Pushpanjali Enclave, Pitampura, New Delhi-110034
(Appellant)		(Respondent)
PAN:AEWPA7133C		

**ITA Nos. 541 & 657/Del/2020
(Assessment Year: 2009-10)**

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.	Vs.	Sudha Pawa (legal heir of Late Swati Pawa) D-842, 2nd Floor, New Friends colony, New Delhi-110065.
(Appellant)		(Respondent)
PAN:AFKPP3086Q		

**ITA Nos. 1211/Del/2021
(Assessment Year: 2009-10)**

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.	Vs.	Sudha Pawa D-842, 2nd Floor, New Friends colony, New Delhi-110065.
(Appellant)		(Respondent)
PAN:AFKPP3086Q		

ITA No. 540/Del/2020
(Assessment Year: 2009-10)

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.	Vs.	Satish Kumar Pawa, D-842, 2nd Floor, New Friends colony, New Delhi-110065.
(Appellant)		(Respondent)
PAN: AAJPP2997A		

ITA No. 6208/Del/2017
(Assessment Year: 2009-10)

The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.	Vs.	M/S. JAGAT PROJECTS LTD., 1110,D- Mall, Netaji Subhash Place, Pitampura, Delhi-110034
(Appellant)		(Respondent)
PAN: AACCCJ0391C		

CO 16/Del/2021
(In ITA No. 6208/Del/2017)
(Assessment Year: 2009-10)

M/S. JAGAT PROJECTS LTD., 1110,D- Mall, Netaji Subhash Place, Pitampura, Delhi- 110034	Vs.	The Asstt. Commissioner of Income Tax Central Circle-18, First Floor, Jhandewalan, New Delhi-110055.
(Appellant)		(Respondent)
PAN: AACCCJ0391C		

Assessee by :	Shri Salil Agarwal, Sr.Adv Shri Shailesh Gupta, Adv
Revenue by:	Ms. Jaya Chaudhary, CIT (DR)
Date of Hearing	02/04/2025
Date of pronouncement	13/06/2025

O R D E R

PER BENCH:

1. The instant batch of eight appeals of different assessees' are for AY 2009-10. Identical issues are involved in all these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. A search & seizure and survey operation u/s 132/133A of the Act was conducted in Jagat Group of cases, its directors, other individuals and connected associates at business and residential premises on 14.09.2010. The cases of the assessee before us were centralized vide order passed by the learned Commissioner of Income Tax, Delhi – II, Delhi u/s 127 of the Act on 28.12.2012.

3. Before the Id CIT(A), the assessee raised an additional ground in the case of Jagat Projects Ltd for AY 2009-10 as under:-

"1. That since no search u/s 132(1) of the Act has been conducted at the premises appellant company, the initiation of proceedings u/s 153A of the Act and assessment framed u/s 153A of the Act is without jurisdiction and therefore deserves to be quashed as such."

4. The Id CIT(A) forwarded this additional ground to the Id AO for his comments by seeking a remand report. The Id AO submitted his remand report on 11.09.2013 stating that –

a) on verification of records, it was noticed that search u/s 132 of the Act was conducted on 14.09.2010 at the premises of 802, Amba Deep Building, KG Marg, New Delhi and on account of assessee's search, the common panchnama has been drawn in the name of the assessee and M/s. Jagat Agro Commodities Pvt. Ltd.

b) From further verification, it is noticed that 802, Amba Deep Building, KG Marg, New Delhi is the corporate office of M/s. Jagat Agro

Commodities Pvt. Ltd whereas the registered office of the assessee is situated at 287, Tarun Enclave, Pitampura, Delhi-110034.

- c) The Id AO also observed that this additional ground of assessee containing legal contentions was never raised during the assessment proceedings despite the fact that sufficient opportunity was provided to the assessee and hence in view of the provisions of Section 292BB of the Act, the same deserves to be rejected.

5. The assessee filed rejoinder submission on 10.09.2013 to the aforesaid remand report of the Id AO, by placing reliance on various decisions of the Hon'ble Supreme Court for admission of aforesaid ground and also bringing on record all the relevant facts on merits that are already on record. The assessee also placed reliance on various decisions stating that a jurisdictional defect cannot be cured by the provisions of Section 292BB of the Act. The Id AO furnished his 2nd remand report on 17.09.2013 contending that provisions of Section 292CC of the Act are also applicable. The assessee filed its rejoinder submission on 27.09.2013 to the 2nd remand report. The erstwhile CITA had also sought further clarification from the Id AO and in response to the said clarification, the Id AO furnished his report dated 12.12.2014 which is reproduced in pages 26 to 27 of the order of the Id CIT(A) dated 21.07.2017 in the case of Jagat Projects Ltd for AY 2009-10. The assessee filed rejoinder submission for the same vide letter dated 19.12.2014.

6. The Id CIT(A) dismissed this additional ground stating that search warrant was issued in the name of the assessee and panchanama was also drawn wherein, the name of the assessee has been stated. In such circumstances, merely because the premises of the assessee at 287, Tarun Enclave, Pitampura, Delhi 110034 or the premises at Unit 1110, 11th Floor, D-Mall, Netaji Subhash Place, Pitampura, Delhi has not been searched, it

would be irrelevant for initiation of the proceedings u/s 153A of the Act. As for the assumption of jurisdiction, only requirement is initiation of search and once the name of the assessee is stated in warrant of authorization, it is clear that search has been initiated in the case of the assessee and in such circumstances, the Id AO validly assumed jurisdiction u/s 153A of the Act. Aggrieved by these findings of the Id CIT(A), the assessee has filed cross objection before us in the case of Jagat Project Ltd for AY 2009-10 in CO 16/Del/2021.

7. Before us, the assessee has also raised yet another additional ground which is part of page 1 of the Paper Book-VI filed before us, which read as under:-

"Additional Ground No. 1 That on the facts and circumstances of the case the approval accorded under section 153D of the Act (if any) is a mechanical and arbitrary approval without there being any application of mind and also without satisfying the statutory preconditions of the Act and as such, the assessment so framed is null and void and deserves to be quashed."

8. Similar additional ground on mechanical approval given u/s 153D of the Act has been raised for the following assessee's:-

Sl No.	Name of the assessee	ITA No.	Assessment Year
A	Sourav Aggarwal	6198/Del/2019	2009-10
B	Sant Lal Agarwal	6195/Del/2017	2009-10
C	Satish Kumar Pawa	540/Del/2020	2009-10
D	Sudha Pawa	1211/Del/2021	2009-10
E	Sudha Pawa legal heir of Late Ms. Swati Pawa	541/Del/2020	2009-10
F	Sudha Pawa legal heir of Late Ms. Swati Pawa	657/Del/2020	2009-10

9. At the outset, we hold that the aforesaid additional ground raised by the assessee for various assessee's' deserve to be admitted as they go to the root of the matter and facts relevant for adjudication are already

placed on record. Hence, in view of the decision of Hon'ble Supreme Court in the case of NTPC Ltd Vs. CIT reported in 229 ITR 383 (SC) and Jute Corporation of India Ltd Vs. CIT reported in 187 ITR 688 (SC), we are inclined to admit the aforesaid additional ground for all the assesseees. The additional ground raised hereinabove challenging the approval granted u/s 153D of the Act by the Id Addl. CIT is taken up first.

10. On perusal of the last page of the assessment order of the assesseees' before us for the year under consideration, we find that the Id Additional CIT, Central Range-4, Delhi had granted approval in terms of Section 153D of the Act for all the cases for all assessment years vide consolidated approval in Approval No. 153D/CC-09/Jagat Group/2012-13/996 dated 28.03.2013. This fact is very much evident from the last page of the assessment order for various assesseees' for various assessment years. Hence, it is very clear that a common approval was given by the Id Addl. CIT u/s 153D of the Act vide approval No. 996 dated 28.03.2013 for all the assesseees' before us for various assessment years. This goes to prove that the approval u/s 153D has not been given by the Id Addl. CIT for 'each assessment year' and for 'each assessee' separately which is mandate of the provisions of Section 153D of the Act. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Delhi HC); decision of Hon'ble Allahabad High Court in the case of PCIT Vs. Subodh Agarwal reported in 149 taxmann.com 373 (All. HC); PCIT Vs. Sapna Gupta reported in 147 taxmann.com 288 (All. HC) and PCIT Vs. Sidharath Gupta reported 147 taxmann 305 (All. HC), among others.

11. Per contra, the Id DR vehemently argued that very existence of high presumption of law which is also codified u/s 114(e) of the then Indian

Evidence Act, 1872 *that all official acts are regularly performed* and therefore, the Tribunal had to accept that the presumption of approval are validly granted. The Id DR further stated that merely because the approvals were granted by one letter does not mean that it was not granted for each assessment year.

12. As far as the issue of presumption u/s 114(e) of the then Indian Evidence Act is concerned, the Id AR relied on the judgement of the Hon'ble Supreme Court in the case of Suresh Budharmal Kalani alias Pappu Kalani Vs. State of Maharashtra reported (1998) 7 SCC 337, wherein, it was held that presumption can be drawn only from facts, not from other presumptions and only through a process of probable and logical reasoning.

13. We find that if a consolidated approval given by the Id. Addl. CIT for various assesseees' for various assessment years is to be considered as a approval given for "each assessment year", then it would render the requirement of passing an order for "each assessment year" with prior approval u/s 153D of the Act, nugatory. Therefore, the obligation on the approving authority is to verify the draft assessment order of each assessment year together with the related seized document to ascertain whether it complies with law as well as the procedure laid down. Hence it is established that the action of the Id Additional CIT in granting common approval for all the assessment years for various assesseees' in a mechanical manner without application of mind is writ large. The relevant observations of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Del HC) are as under:-

"11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for "each assessment year"

referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of **Pr. CIT v. Sapna Gupta [2023] 147 taxmann.com 288/[2022 SCC OnLine All 1294]** which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- "each assessment year" used in the language of Section 153D of the Act. The relevant paragraphs of the said decision are reproduced as under:-

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

*** 19. The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A."

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

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of **Asst. CIT v. Serajuddin & Co. [2023] 150 taxmann.com 146/292 Taxman 566/454 ITR 312/SCC OnLine Ori 992** to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

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

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

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

"10. We have gone through the approval granted by the Id. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states that a letter dated 30.12.2018 was filed by the Id. AO before the Id. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The Id. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the Id. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the Id. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other

*assesseees, 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/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. **Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the Id. Addl. CIT has granted a single approval for all assessment years put together.***

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

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration."

14. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we have no hesitation in holding that the approval u/s 153D of the Act has not been granted for each of the assessment year which is in violation of provisions of Section 153D of the Act itself thereby making the approval being granted in a mechanical manner without due application of mind. Hence, additional ground raised by the various assesseees' before us in this regard is hereby allowed. Consequentially the assessment framed for these assesseees' are hereby allowed for AY 2009-10. Since, the quantum assessments are quashed, the penalty appeals would have no legs to stand. Since, the assessments are quashed based on additional ground, the other grounds

raised by the assessee as well as revenue need not be gone into and they are left open.

15. To sum up,

Name	ITA No.	Appeal filed by	AY	Result
Saurav Aggarwal	6198/Del2017	Revenue	2009-10	Dismissed
Sant Lal Aggarwal	6195/Del/2017	Revenue	2009-10	Dismissed
Sudha Pawa (legal heir of Late Swati Pawa)	541 & 657/Del/2020	Revenue	2009-10	Dismissed
Sudha Pawa	1211/Del/2021	Revenue	2009-10	Dismissed
Satish Kumar Pawa	540/Del/2020	Revenue	2009-10	Dismissed
Jagat Projects Ltd	6208/Del/2017	Revenue	2009-10	Dismissed
Jagat Projects Ltd	CO16/Del/2021	Assessee	2009-10	Allowed

Order pronounced in the open court on 13/06/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/06/2025
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi