

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

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2871/DEL/2016
(Assessment Year: 2010-11)**

DCIT, Central Circle 5,
New Delhi.

vs.

M/s. Metro Ortem Limited,
134/4 & 135/5, Near Ajit Arcade,
Kailash Colony,
New Delhi – 110 048.
(PAN : AAACM3393H)

**ITA No.3177/DEL/2016
(Assessment Year: 2010-11)**

M/s. Metro Ortem Limited,
134/4 & 135/5, Near Ajit Arcade,
Kailash Colony,
New Delhi – 110 048.

vs.

DCIT, Central Circle 5,
New Delhi.

(PAN : AAACM3393H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Shri Shivam Yadav, Advocate

REVENUE BY : Ms. Monika Singh, CIT DR

Date of Hearing : 10.07.2025

Date of Order : 16.07.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. These cross appeals are filed by the assessee and Revenue against the order of ld. Commissioner of Income-tax (Appeals)-24, New Delhi [hereinafter referred to as 'ld. CIT (A)'] dated 23.03.2016 for Assessment Year 2010-11.

2. First we take up assessee's appeal and the assessee has taken the following grounds of appeal :-

“1. That the Commissioner of Income-tax (A) ['CIT(A)'] erred on facts and in law in confirming the addition of Rs.18,015/- out of total addition of Rs.68,295/- made in the assessment order on account of alleged personal expenses of the Directors being met from the funds of the appellant.

2. That the CIT(A) erred on facts and in law in confirming the addition to the extent of Rs.11,82,047/- out of total addition of Rs.17,52,348/- made in the assessing order on account of alleged undisclosed income from sale of scrap.

3. That the CIT(A) erred on facts and in law in confirming the addition of Rs.30,37,309/- made in the assessment order on account of alleged bogus power and fuel expenses claimed as business deduction.

4. That the CIT(A) erred on facts and in law in confirming the addition of Rs.56,200/- comprising of Rs.46,200/- being payment made to government offices and Rs.10,000 being payment made to an employee, made in the assessment order as unaccounted/unexplained expenses of the appellant.”

3. At the outset of the hearing, ld. AR for the assessee submitted that assessee has filed additional ground of appeal under Rule 11 of the Income Tax (Appellate Tribunal) Rules and it is purely legal issue and the same is reproduced below :-

“5. That the assessment order dated 28.03.2014 passed under section 153A r.w.s. 143(3) of the Act by the Deputy Commissioner of Income Tax, Central Circle 5, New Delhi is illegal & bad in law as the same is passed without valid statutory approval in terms of Section 153D of the Act as the same was granted mechanically and without any application of mind.”

4. Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, ld. AR of the assessee prayed that the same may be admitted in view of the judgement of NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).
5. On the other hand, ld. DR for the Revenue has no objection of admitting the additional ground of appeal being purely legal issue.
6. In view of the reliance made by the ld. AR for the assessee on the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. (supra) and issue being purely legal, we proceeded to admit the additional ground of appeal being a legal issue.
7. At the time of hearing, ld. AR of the assessee mainly pressed additional ground of appeal wherein assessee has raised the issue of approval granted for initiation of assessment under section 153C of the Income-tax Act, 1961 (for short 'the Act') wherein approval granted u/s 153D was granted common group approval. In this regard, he brought to our notice the letter dated 28.03.2014 drafted by the AO for seeking approval in the case of the assessee by invoking section 153C of the Act. However, approval was granted u/s 153D was for section 153A of the Act. He submitted that

common approval granted for all the assesseees as per the aforesaid notice dated 28.03.2014 is bad in law. In this regard, he relied on the decision of coordinate Bench in the case of Mysore Finlease Pvt. Ltd. and others in ITA No.8821/Del/2019 & others dated 10.01.2014 and various decision of Hon'ble High Courts. He submitted that it is held that each assessee and for each assessment year, the approval has to be granted by the approving authority. He submitted that the approval was granted mechanically without properly referring to the detailed facts in each case and in particular, he submitted that the approval sought by the AO is u/s 153C whereas approval was granted for section 153A of the Act.

8. On the other hand, ld. DR of the Revenue relied on the findings of ld. CIT (A) and submitted that he has given specific finding that the issue under consideration is not a mechanical approval. With regard to submission of ld. AR of the assessee on the approval sought by the AO u/s 153C whereas approval was granted u/s 153A of the Act, he submitted that it is only a clerical mistake and it cannot be taken out of proportion. He also submitted written submissions consisting of three pages. Accordingly, he objected to the submissions of the ld. AR of the assessee.
9. Considered the rival submissions and material placed on record. Before deciding the legal issue in dispute, we may gainfully reproduce the approval u/s. 153D of the Act, which read as under:-



Office of the

Addl. Commissioner of Income Tax,

Central Range-3, 3rd Floor,

A.R.A. Centre, E-2, Jhandewalan Extn. New Delhi-110055

F.No.Addl.CIT.C.R-3/2013-14/1127

Dated:-28.03.2014

To

The Deputy Commissioner of Income Tax
Central Circle-5,
New Delhi.

Sub: Approval u/s. 153D of the Income Tax Act in Metro Group of cases - reg -

This is in reference to your letter No. DCIT/CC-5/13-14/1155 dated 28.03.2014, whereby you have submitted draft orders to be passed seeking approval u/s 153D of the IT Act 1961 in the following cases:-

S. No.	Name of the assessee	U/s	PAN	AY
1.	M/s Metro Tyres Limited	153A	AAACM3394A	2006-07
2.	M/s Metro Tyres Limited	153A	AAACM3394A	2007-08
3.	M/s Metro Tyres Limited	153A	AAACM3394A	2008-09
4.	M/s Metro Tyres Limited	153A	AAACM3394A	2009-10
5.	M/s Metro Tyres Limited	153A	AAACM3394A	2010-11
6.	M/s Metro Tyres Limited	153A	AAACM3394A	2011-12
7.	M/s Metro Tyres Limited	143(3)	AAACM3394A	2012-13
8.	M/s Metro Ortem Limited	153A	AAACM3393H	2006-07
9.	M/s Metro Ortem Limited	153A	AAACM3393H	2007-08
10.	M/s Metro Ortem Limited	153A	AAACM3393H	2008-09
11.	M/s Metro Ortem Limited	153A	AAACM3393H	2009-10
12.	M/s Metro Ortem Limited	153A	AAACM3393H	2010-11
13.	M/s Metro Ortem Limited	153A	AAACM3393H	2011-12
14.	M/s Metro Ortem Limited	143(3)	AAACM3393H	2012-13
15.	M/s Metro International	153C	AAEFM7298Q	2006-07
16.	M/s Metro International	153C	AAEFM7298Q	2007-08
17.	M/s Metro International	153C	AAEFM7298Q	2008-09
18.	M/s Metro International	153C	AAEFM7298Q	2009-10
19.	M/s Metro International	153C	AAEFM7298Q	2010-11
20.	M/s Metro International	153C	AAEFM7298Q	2011-12
21.	M/s Metro International	143(3)	AAEFM7298Q	2012-13
22.	Sh. Man Singh	153A	ANZPS7548B	2006-07

23.	Sh. Man Singh	153A	ANZPS7548B	2007-08
24.	Sh. Man Singh	153A	ANZPS7548B	2008-09
25.	Sh. Man Singh	153A	ANZPS7548B	2009-10
26.	Sh. Man Singh	153A	ANZPS7548B	2010-11
27.	Sh. Man Singh	153A	ANZPS7548B	2011-12
28.	Sh. Man Singh	143(3)	ANZPS7548B	2012-13
29.	Sh. Rummy Chhabra	153A	AAKPR7719P	2006-07
30.	Sh. Rummy Chhabra	153A	AAKPR7719P	2007-08
31.	Sh. Rummy Chhabra	153A	AAKPR7719P	2008-09
32.	Sh. Rummy Chhabra	153A	AAKPR7719P	2009-10
33.	Sh. Rummy Chhabra	153A	AAKPR7719P	2010-11
34.	Sh. Rummy Chhabra	153A	AAKPR7719P	2011-12
35.	Sh. Rummy Chhabra	143(3)	AAKPR7719P	2012-13
36.	Smt. Bindia Chhabra	153A	ADOPC9460F	2006-07
37.	Smt. Bindia Chhabra	153A	ADOPC9460F	2007-08
38.	Smt. Bindia Chhabra	153A	ADOPC9460F	2008-09
39.	Smt. Bindia Chhabra	153A	ADOPC9460F	2009-10
40.	Smt. Bindia Chhabra	153A	ADOPC9460F	2010-11
41.	Smt. Bindia Chhabra	153A	ADOPC9460F	2011-12
42.	Smt. Bindia Chhabra	143(3)	ADOPC9460F	2012-13
43.	Ms. Harshita Chhabra	153A	AFLPC0777N	2006-07
44.	Ms. Harshita Chhabra	153A	AFLPC0777N	2007-08
45.	Ms. Harshita Chhabra	153A	AFLPC0777N	2008-09
46.	Ms. Harshita Chhabra	153A	AFLPC0777N	2009-10
47.	Ms. Harshita Chhabra	153A	AFLPC0777N	2010-11
48.	Ms. Harshita Chhabra	153A	AFLPC0777N	2011-12
49.	Ms. Harshita Chhabra	143(3)	AFLPC0777N	2012-13
50.	Sh. Bimal Vashisht	153A	AAAPV0378A	2006-07
51.	Sh. Bimal Vashisht	153A	AAAPV0378A	2007-08
52.	Sh. Bimal Vashisht	153A	AAAPV0378A	2008-09
53.	Sh. Bimal Vashisht	153A	AAAPV0378A	2009-10
54.	Sh. Bimal Vashisht	153A	AAAPV0378A	2010-11
55.	Sh. Bimal Vashisht	153A	AAAPV0378A	2011-12
56.	Sh. Bimal Vashisht	143(3)	AAAPV0378A	2012-13

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



(Nandita Kenchan)

Addl. Commissioner of Income Tax,
Central Range-3, New Delhi.

10. We observe that at the time of hearing, Ld. AR of the assessee relied on the decision of coordinate Bench in the case of Mysore Finlease Pvt. Ltd. (supra) wherein coordinate Bench relying on the decisions of Hon'ble Orissa High Court in ITA Nos.39 to 45 of 2022 dated 15.03.2023 in the case of ACIT, Circle 1(2), Bhubaneswar vs. M/s. Serajuddin & Co. and Hon'ble Allahabad High Court in the case of PCIT vs. Subodh Aggarwal in ITA No.86/2022 dated 12.12.2022 decided the legal issue in dispute in favour of the assessee.
11. We also find support from the decision of Hon'ble Allahabad High Court in the case of PCIT vs. Siddarth Gupta (supra) wherein Hon'ble Court held that, *"wherein approval u/s 153D was given for 123 cases through a single letter. On considering the above facts, court held that the approval granted u/s 153D is mechanical in nature and consequential impugned order is void-ab-initio.*
12. Further we also find support from the decision of ITAT Delhi Bench in the case of M/s Millenium Vinimay (P) Ltd. vs. ACIT, ITA No.458/Del/2022 dated 31.5.2024 and Hon'ble Delhi High Court decision in the case of PCIT vs. Shiv Kumar Nayyar in ITA No. 285/2024 (Del), dated 15.05.2024 that the legal issue is in favour of the assessee. The relevant findings of the Coordinate Bench in the case of M/s Millenium Vinimay (P) Ltd. (supra) are reproduced as under:-

“15. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) which has been approved by jurisdictional High Court subsequently, reported in 307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held as under:-

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

2. Following question was argued before us for our consideration:

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"

3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007- 08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.

4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks : "To, The DCIT(OSD)1, Mumbai Subject: Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg. Ref: No. DCIT (OSD)1/ CR7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010.

However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyze the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted u/s 153D of the I. T. Act, 1961."

7. *In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.*

8. *Accordingly, the Tax Appeal is dismissed."*

16. *In the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act.*

17. *Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the arguments advanced by the Ld. the Assessee's Representative on the Additional Ground of Appeal. In our considered opinion the approvals so granted under the shelter of section 153D of the Act does not pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments orders in the captioned appeals are non-est and a nullity and hence the same are quashed.*

18. *In view of prima facie merits found in the legal objections raised in the Addl. Grounds of the Assessee, we do not consider it expedient to look into the aspects on merits of additions/disallowance as the legal objections on sanction granted under Section 153D of the Act has been answered in favour of the Assessee.*

Thus the other Grounds raised in the Appeals of the Assessee in both the Appeals have rendered in- fructuous, which do not need any separate adjudication.

19. *In the result, the Appeals filed by the Assessee in ITA Nos. 294/Del/2022 and ITA No. 295/Del/2022 are allowed.*

11. *Upon considering the entire aspect of the matter, we find that the approval has been granted not separately for each assessment year for the assessee whereas the provision of Section 153D of the Act stipulates conditions that no order of assessment or reassessment shall be made by an Assessment Officer below the rank of Joint Commissioner in respect of each assessment year referred to in Clause (b) of Sub Section (1) of Section 153A of the Act or the assessment year referred to in Clause (b) of Sub Section 153B of the Act except the prior approval of the Joint Commissioner. It further appears from the approval dated 08.06.2018 that the same was a common and composite order whereas the Addl. Commissioner is required to verify and approve that each of assessment year is complied with as well as procedural laid down under the Act.*

Such fact clearly reveals non-application of mind on the part of the Learned Addl. Commissioner of Income Tax, Central Range-7, New Delhi. Thus granting approval for all the common years instead of approval under Section 153B for each assessment year separately de horse the rules. The said approval is found to have been given in a mechanical and routine manner. We find that the order issuing authority has not discharged its statutory duties cast upon him even by assigning cogent reasons in respect of the issues involved in the matter. Thus granting approval in the absence of due application of independent mind to the material on record for each assessment year in respect of the assessee's case separately vitiates the entire proceedings; the same is found to be arbitrary and erroneous and therefore, liable to be quashed. We are also inspired by the ratio laid down in the Judgment narrated hereinabove passed by the Hon'ble Jurisdictional High Court and respectfully relying upon the same with the above observation, we quash the entire proceeding initiated under Section 153C r.w.s 153A of the Act in the absence of a valid approval granted by the Learned Additional Commissioner of Income Tax, Central Range-7, New Delhi.

12. *In the result, appeal of the assessee is allowed."*

13. We further find that Hon'ble jurisdictional High Court in the case of PCIT vs. Shiv Kumar Nayyar (supra) has decided the similar legal issue in favour of the assessee and against the Revenue. The relevant findings of the Hon'ble Delhi High Court are reproduced as under :-

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

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

"10. We have gone through the approval granted by the ld. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assessee, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

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

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI