

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

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

**ITA No.6942/DEL/2017
(Assessment Year: 2010-11)**

**ITA No.6943/DEL/2017
(Assessment Year: 2011-12)**

**ITA No.6944/DEL/2017
(Assessment Year: 2012-13)**

M/s. Indo Global Infra Energy Limited,
Plot No.20, Begampur Extension,
Village Begampur,
New Delhi – 110 086.
(PAN : AABCI6101N)

vs.

ACIT,
Central Circle 15,
New Delhi.

**ITA No.620/DEL/2020
(Assessment Year: 2010-11)**

ACIT,
Central Circle 15,
New Delhi.

vs. M/s. Indo Global Infra Energy Limited,
Plot No.20, Begampur Extension,
Village Begampur,
New Delhi – 110 086.

(PAN : AABCI6101N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shailesh Gupta, Advocate
Shri Uma Shankar, 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. The assessee has filed appeals against the order of Id. Commissioner of Income-tax (Appeals)-XXVI, New Delhi [hereinafter referred to as 'Id. CIT (A)'] dated 19.09.2017 for Assessment Years 2010-11, 2011-12 & 2012-13. The Revenue has also filed appeal against the order of Id. CIT (A) dated 15.10.2019 for AY 2010-11 against the penalty order u/s 271(1)(c) of the Income-tax Act, 1971 (for short 'the Act').
2. First we take up assessee's appeal in ITA No.6942/Del/2017 for AY 2010-11 as lead case wherein the assessee has taken the following grounds of appeal :-

“1. The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

2. The learned Commissioner of Income Tax (A) has failed to appreciate that the proceeding initiated u/s 153A of the Income Tax Act and the assessment framed U/S 153A 1143(3) of the Income Tax Act, 1961 are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eyes of law and liable to be quashed.

3. The learned Commissioner of Income Tax (A) confirmed the addition in respect of share capital / share premium /share application money of Rs.4,84,00,000/- without going through the facts of the case, statutory provisions as well as explanation filed during assessment proceeding and appellate proceeding.

4. The learned Commissioner of Income Tax (A) while dismissing the appeal and confirming the addition in respect of share capital/ share premium / share application money of Rs.4,84,00,000/- has failed to consider the fact that during the course of search no incriminating material in respect of share capital / share application money have been found.

5. The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that all the documentary evidence to prove the identity, genuineness and credit worthiness of the amount of share capital / share premium / share application money have been submitted during the course of assessment proceeding.

6. The learned Commissioner of Income Tax (A) has failed to appreciate the fact that the addition made by the Assessing officer has been made simply on the basis of suspicion, assumption, surmises, & conjectures and without bringing any cogent material on record.”

3. At the outset of the hearing, ld. AR for the assessee submitted that assessee has filed additional grounds of appeal and it is purely legal issue and the same is reproduced below :-

“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.

2. That on the facts and circumstances of the case the approval accorded under section 153A of the Act, so passed is null and void, as no valid search under section 132 of the Act was initiated or executed on the assessee – appellant.”

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 grounds 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 common granted u/s 153D was granted group approval. In this regard, he brought to our notice the letter dated 28.12.2016 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 vide letter dated 29.12.2016 for all the assesseees as per the aforesaid notice dated 28.12.2016 is bad in law. In this regard, he relied on the decision of coordinate Bench in the case of M/s. Airwill Infra Ltd. vs. DCIT in ITA No.349/Del/2019 dated 18.12.2024 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 the 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
JOINT COMMISSIONER OF INCOME TAX
CENTRAL RANGE-4, NEW DELHI

ROOM NO.- 343, 3RD FLOOR, ARA CENTRE, I-2, JHANDWALA EXTENSION, NEW DELHI-110055
Tel : 011-23593272

L. No. JCIT/CR-4/2016-17/1122

Date: 29.12.2016

To

The Assistant Commissioner of Income Tax
Central Circle -15,
Delhi

Sub:- Approval u/s 153D of the Income Tax Act, 1961 in the cases of M.M.
Aggarwal Group – Regarding -
Ref:- Draft Orders vide F.No.ACIT/CC-15/2016-17/1554 dated 28.12.2016

Please refer to the above subject and draft orders u/s 153A/143(3) of the I.T. Act, 1961 submitted to this office in the following cases of M.M. Aggarwal and Kandhari Group seeking approval u/s 153D of the Income Tax Act, 1961:-

S.No.	Name of the Assessee	Assessment Year
1.	M/s Versatile Datamatics Pvt. Ltd.	2009-10, 2012-13 & 2014-15
2.	M/s Utility Developers Pvt. Ltd.	2009-10 & 2010-11
3.	M/s Horizon Infra Realtors Pvt. Ltd.	2010-11, 2011-12
4.	M/s Goldsmith Realtech Pvt. Ltd.	2013-14
5.	M/s Metbrass Plassim India Ltd.	2009-10, 2010-11, 2011-12 & 2013-14
6.	M/s Maksad Buildwell Pvt. Ltd.	2009-10, 2010-11, 2011-12 & 2013-14
7.	M/s Swastik Calltech Pvt. Ltd.	2010-11
8.	M/s Superior Calltech Pvt. Ltd.	2010-11, 2013-14
9.	M/s Sunstar Infra Developers Pvt. Ltd.	2011-12, 2012-13
10.	Mrs. Prabha Aggarwal	2014-15 & 2015-16
11.	M/s Lumax Builders Pvt. Ltd.	2009-10, 2010-11 & 2011-12
12.	M/s Fortune Industrial Resources Ltd.	2009-10 & 2011-12
13.	M/s Competent Infoways Pvt. Ltd.	2009-10 & 2010-11
14.	Sh. Sanjeev Aggarwal	2009-10 to 2015-16

15.	M/s Hal Offshore Ltd.	2009-10 to 2014-15
16.	M/s Hindustan Aqua Ltd.	2009-10 to 2015-16
17.	M/s Moon Beverages Ltd.	2009-10 to 2013-14 with office note
18.	Smt. Deepti Aggarwal	2009-10 to 2015-16
19.	M/s Versatile Polytech Pvt. Ltd.	2009-10, 2010-11 & 2014-15
20.	M/s Universal Electronics and Communication Pvt. Ltd.	2009-10 & 2011-12
21.	M/s Indo Gulf Infrastructure investment Pvt. Ltd.	2009-10 to 2011-12
22.	M/s Enrich Agro Food Products Pvt. Ltd.,	2009-10 to 2012-13
23.	M/s Focus Buildwell Pvt. Ltd.	2009-10 to 2012-13
24.	M/s Juicy Beverages Pvt. Ltd.	2014-15
25.	M/s Heritage Beverages Pvt. Ltd.	2011-12 to 2015-16
26.	M/s MSG Finance India Pvt. Ltd.	2009-10 to 2012-13
27.	Smt. Neena Kandhari	2009-10 to 2015-16
28.	Varinder Pal Singh Kandhari	2009-10 to 2015-16
29.	M/s Indo Global Infra Energy Ltd.	2009-10 to 2015-16

The approval u/s 153D in respect of the draft orders submitted by you in the above cases is hereby accorded. The orders after approval require to be uploaded on AST as per directions of the CBDT vide Instruction No. 109, which have already been issued by the Range.

Asstt. Commissioner of Income Tax
Central Circle-15 New Delhi
1172 29 DEC 2016

(Kumar Pranav)
Joint Commissioner of Income Tax,
Central Range-4, 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 M/s. Airwill Infra Ltd. (supra) wherein coordinate Bench relied on the decision of Hon'ble Delhi High Court in the case of Shiv Kumar Nayyar in ITA 285/2024 7 CM APPL 28994/2024 and coordinate Bench decision in case of M/s. Aashiyana Buildwell Pvt. Ltd. vs. DCIT in ITA No.361/Del/2019 for AY 2014-15 dated 06.09.2024 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

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 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 judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration.”

14. Respectfully following the above precedents, we quash the entire proceedings initiated under section 153C r.w.s. 153A of the Act in the absence of a valid approval granted by the Ld. Joint CIT, Central Range 4, Delhi.
15. We are refrained from adjudicating the other grounds of appeal and at this stage, we keep the other grounds of appeal open.
16. In the result, the appeal filed by the assessee is allowed.
17. With regard to assessee's appeals for AYs 2011-12 & 2012-13, since the facts are exactly similar to AY 2010-11 our above findings in AY 2010-11 are applicable *mutatis mutandis* in Assessment Years 2011-12 & 2012-13. Accordingly, the appeals filed by the assessee for Assessment Years 2011-12 & 2012-13 are allowed.
18. With regard to Revenue's appeal for AY 2010-11 which is filed against the penalty order u/s 271(1)(c) of the Act, since we have already quashed the quantum proceedings, the penalty appeal filed by the Revenue is dismissed as infructuous.

19. To sum up : all the assessee's appeal for AYs 2010-11, 2011-12 & 2012-13 are allowed and the penalty appeal filed by the Revenue for AY 2010-11 is dismissed.

Order pronounced in the open court on this 16th day of July, 2025.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 16.07.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**