

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: F : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITAs No.7856, 7857 & 7858/Del/2018
Assessment Years: 2012-13, 2013-14 & 2014-15

Anshul Gupta, Liquidator of M/s Vs ACIT,
RGTL Industries Ltd., Central Circle-16,
24/1, Mohan Cooperative Jhandewalan Extn.,
Industrial Estate, New Delhi – 110 055.
Mathura Road,
New Delhi – 110 044.

PAN: AACCR8792D

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, Advocate &
Shri Ayush Garg, Advocate
Revenue by : Ms Rajinder Kaur, CIT-DR
Date of Hearing : 30.07.2025
Date of Pronouncement : 31.07.2025

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Assessee against the orders of the Commissioner of Income Tax (Appeals) (hereinafter referred to as Ld. First Appellate Authority or 'the ld. FAA' for short) in appeals filed before him against the orders of the ld. Assessing Officer (hereinafter referred to as the Ld. AO, for short). Further details of the orders of the lower authorities are as under:-

| ITA No. | CIT(A) who passed the order | Appeal No. & Date of order of the CIT(A) | AO who passed the assessment order & Date of order | Section of the IT Act under which the AO passed the order |
|---------------|-----------------------------|---|--|---|
| 7856/Del/2018 | CIT(A)-XXVI, New Delhi. | 10545/16-17, dated 19 th Nov., 2018. | ACIT, Central Circle-16, New Delhi, date: 30.12.2016 | 153A/143(3) |
| 7857/Del/2018 | - Do- | 10548/16-17 dated 19 th Nov., 2018. | - Do - | - Do - |
| 7858/Del/2018 | - Do - | 10556/16-17, dated 19 th Nov., 2018. | - Do - | - Do - |

2. At the time of hearing, the ld. AR has pointed out that vide letter dated 18th June, 2024 the assessee had filed Revised Form 36 along with applications under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 raising the following identical ground, in respect of all the appeals of the assessee:-

“On the facts and circumstances of the case the proceedings initiated u/s 153A against the appellant and the assessment framed under section 153A r.w.s. 143(3) are in violation of mandatory provision of section 153D of the Act and as such the same is bad in eyes of law. The purported approval u/s 153D of the Act is illegal, bad in law and also without application of mind.”

3. The ld. DR has objected to the admission of this ground on the basis that same were not raised before the ld. FAA and further submitted that opportunity be given for calling a report from the AO. However, the Bench was of the view that being a pure question of law which can be decided on the basis of the

admitted facts appearing in the assessment order itself, the legal grounds can be adjudicated. The same are being admitted.

4. The ld. AR has pointed out that approval in this case was given by common approval No.JCIT/CR-4/2016-17/1126 dated 30.12.2016. Ld.. Counsel has submitted that the said approval was pertaining to one other assessee Rathi Steel and Power Ltd. for assessment years 2009-10 to 2015-16. A coordinate Bench in the case *ACIT vs. Shri Sant Lal Aggarwal, ITA No.6195/Del/2017*, has considered such common approvals on the basis of details of approval letter mentioned in the assessment order and held same to be bad in law. The ld. DR has submitted that the AO is constantly supervised with regard to the assessment in search cases and the approval u/s 153D is merely an administrative approval.

5. We are of the considered view that all these aspects as relied by the ld. DR has duly been considered in numerous cases and the coordinate Bench in the case of *Shri Sant Lal Aggarwal & Others (supra)* has taken into consideration the such an approval to hold it to be not in accordance with the law. It will be appropriate to reproduce paras 10 to 14 of the order dated 13.06.2025 in the case of *Shri Sant Lal Aggarwal & Others (supra)* to decide the grounds in favour of the assessee:-

*“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 ld 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 ld 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 ld 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 ld 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 ld 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 ld 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 ld. 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 ld 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 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 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 assesseees, 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 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."

6. In the light of the aforesaid, we are inclined to sustain the additional ground as raised before us in all these appeals and assumption of jurisdiction is found to be vitiated. All the subsequent proceedings are liable to be quashed. Accordingly, the impugned assessment orders are quashed. Consequently, the appeals of the assessee are allowed.

Order pronounced in the open court on 31.07.2025.

Sd/-

(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Dated: 31st July, 2025.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi