

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एफ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
मनीष अग्रवाल, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आअसं.1194 से 1198 /दिल्ली/2021 (नि.व. 2012-13, 2013-14 और 2015-16 से 2017-18)
ITA Nos. 1194 to 1198 /DEL/2021 (A.Ys. 2012-13, 2013-14 & 2015-16 to 2017-18)

SSG Infratech P. Ltd.,
C/o Harjit Singh Sahni,
A-56, Sector-136, Noida,
Uttar Pradesh 201301
PAN No: AAJCS-7616-J

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Central Circle, R. No. 229, 2nd Floor, CGO Complex-I,
Kamla Nehru Nagar, Ghaziabad, Uttar Pradesh 201004

..... प्रतिवादी/Respondent

आअसं.1337 से 1341 & 1348 /दिल्ली/2021 (नि.व. 2012-13 से 2017-18)
ITA Nos. 1337 to 1341 & 1348/Del/2021 (A.Ys. 2012-13 to 2017-18)

Deputy Commissioner of Income Tax,
Central Circle, R. No. 229, 2nd Floor, CGO Complex-I,
Kamla Nehru Nagar, Ghaziabad, Uttar Pradesh 201004

..... अपीलार्थी/Appellant

बनाम Vs.

SSG Infratech P. Ltd.,
D-835, 2nd Floor, New Friends Colony,
Delhi 110025

PAN No: AAJCS-7616-J

..... प्रतिवादी/Respondent

Assessee by : Dr. Rakesh Gupta with
S/Shri Somil Agarwal & Deepesh Garg, Advocates
Department by : Ms. Monika Singh, CIT-DR

सुनवाई की तिथि/ Date of hearing : 16/07/2025

घोषणा की तिथि/ Date of pronouncement: : 31/07/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These are bunch cross appeals by the assessee and Revenue for assessment years 2012-13, 2013-14, 2015-16, 2016-17 & 2017-18. In addition to the above, the Revenue has also filed appeal for AY 2014-15. The assessee and the Revenue in these appeals have assailed the order of Commissioner of Income Tax (Appeals), Kanpur-4 (hereinafter referred to as 'the CIT(A)') for the respective assessment years. All the impugned orders are of even date i.e. 14.07.2021

2. Dr. Rakesh Gupta, appearing on behalf of the assessee at the outset submitted that in appeals filed by the assessee, the assessee has raised a specific ground challenging validity of approval granted u/s. 153D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The Id. Counsel placed on record copy of approval u/s. 153D of the Act dated 28.12.2018 and submitted that the Additional Commissioner of Income Tax vide single order had granted approval in 51 cases including approval in the case of assessee for AYs 2011-12 to 2017-18 along with seven other assesseees for multiple assessment years. He pointed that the AO had sent draft assessment orders in 51 cases to the Additional Commissioner of Income Tax on 27.12.2018. On the very next dated i.e. 28.12.2018 the approval was accorded by the Addl. CIT in all 51 cases. It is not possible to grant approval in 51 cases in just one day if the seized material and draft assessment order in each of the cases is examined. The manner in which approval has been granted clearly shows that the approval has been granted in a mechanical manner without application of mind. Placing reliance on the decision of Hon'ble Delhi High Court in the case of *PCIT vs. Shiv Kumar Nayyar*, 163

taxamann.com 9 and in the case of *PCIT vs. MDLR Hotels (P) Ltd.*, 166 *taxamann.com* 327 he submitted that where single approval has been granted in a mechanical manner for multiple assessment years in the case of multiple assessees, such approval was held to be in valid.

2.1. The Id. Counsel further referred to endorsement made in the margin of the order dated 28.12.2012 (supra) wherein it has been noted, “*Recd A/W All Records, Signed 29/12/18*”. He asserted that the assessment order has been passed on 28.12.2018, whereas, the approval along with all records was received by the AO on 29.12.2018. This shows that the assessment order has been passed on 28.12.2012 without actual receipt of approval by the AO.

3. Ms. Monika Singh, representing the department submitted that the allegations leveled by the assessee for assailing validity of approval u/s. 153D of the Act are baseless. The approval has been granted by the Additional Commissioner of Income after examining the draft assessment orders and after perusal of the assessment records. This fact has been recorded in para 3 of the approval. She thus prayed for rejecting assessee's ground of appeal challenging validity of approval u/s. 153D of the Act.

4. Both sides heard, orders of the authorities below examined. A search and seizure operation u/s. 132 of the Act was conducted on 03.11.2016 at the premises of SSG Group. Notice u/s. 153A of the Act was issued to the assessee on 24.08.2018 and thereafter, assessments for the respective assessment years i.e. from AY 2012-13 to 2016-17 were framed u/s. 143(3)/153A of the Act and for AY 2017-18 the assessment was made u/s. 143(3) of the Act. Before passing the

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assessment orders, mandatory approval u/s. 153D of the Act from officer not below the rank of Joint Commissioner in respect of 'each assessment year' was required. The AO vide letter dated 27.12.2018 forwarded 51 cases of various assessees for multiple assessment years including the present assessee for approval u/s. 153D of the Act. The Additional Commissioner of Income Tax on the very next date i.e. vide order dated 28.12.2018 accorded the approval. The same is reproduced herein below:-

**OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX
CENTRAL RANGE, BHANSHALI GROUND, MEERUT.
Phone-0121-2403191, Fax-0121-2510082**

F. No. Addl.CIT/CR/MRT/Approval/153D/2018-19/2004 Dated: 28.12.2018

To, The Dy. Commissioner of Income Tax,
Central Circle, Ghaziabad.

**Subject: Approval u/s 153D in the cases of M/s. VVIP & SSG Group of cases -
D.O.S. 03/11/2016 - regarding -**

Please refer to your office letter F. No. DCIT/CC/GZB/VVIP & SSG Group/153D/2018-19/6138 dated 27.12.2018 on the above mentioned subject.

2. In the following case of VVIP & SSG Group of cases, prior approval u/s 153D of the IT Act, 1961 is accorded for passing assessment orders in respect of the assessee for the assessment years as mentioned below:

S.No.	Name of the assessee	PAN	A.Ys.	Volume	Section
1	M/s SSG Infratech Pvt. Ltd.	AAJCS7616J	2011-12 to 2017-18	07	153A
2	M/s JPS Reinforced Pipes Pvt. Ltd.	AACCJ1410G	2011-12 to 2017-18	07	153A
2	M/s Solitaire Infrahome Pvt. Ltd.	AAFCA5459H	2011-12 to 2017-18	07	153A
4	M/s vihor vaibhav Infra Pvt. Ltd.	AABCV2953P	2011-12 to 2017-18	07	153A
5	Smt. Gurdeep Kaur	AANPK1012H	2011-12 to 2017-18	07	153A
5	Sh. Vibhor Tyagi	AFWPT4235R	2011-12 to 2017-18	07	153A
7	Sh. Tapesh Tyagi	ACGPT1510N	2011-12 to 2017-18	07	153A
8	M/s Alaina Bullians Pvt. Ltd.	AANCA8659D	2016-17 & 2017-18	02	153A

3. The draft assessment orders in the above cases for the above mentioned assessment years have been approved after perusal of relevant assessment records.

4. This office reference number approving the draft assessment orders shall invariably be quoted in the final order. A copy of final order passed in these cases should be sent to this office for record.

5. It must also be ensured that if any document in this case, pertains to any third party assessed with different AO, the necessary information for taking necessary action must be sent to concerned AO immediately within the limitation period.

6. All the assessment records of above case in 51 vols are being returned herewith.

Recd. At Meerut
Recd. At Meerut Ready
(17)
28/12/18

(Sanjay Kumar Sinha)
Addl. Commissioner of Income Tax
Central Range, Meerut

The assessee has assailed validity of the aforesaid approval on the ground that vide single authorization the Additional Commissioner of Income has granted approval in the case of 8 assesseees for multiple assessment years, such approvals are invalid as approval for each assessment year has to be granted separately. The approval has been granted in 51 cases by the Addl. CIT in a single day in a mechanical manner.

5. The Hon'ble Delhi High Court in the case of PCIT vs. Shiv Kumar Nayyar (supra) having similar facts held that where approval u/s. 153D was granted for 43 cases on a single day without independent application of mind, such assessment orders are illegal. The relevant excerpts from the said judgment are reproduced herein below:-

"10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying intent of the relevant provision of the Act i.e., section 153D, which is culled out as under :-

"153-D. Prior approval necessary for assessment in cases or requisition. — 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 to in clause (b) of [sub-section (1) of section 153-A] or the assessment year referred to in clause (b) of sub-section (1) of Section 153-B, except with the prior approval of the Joint Commissioner :

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or Commissioner] under sub-section (12) of Section 144-BA."

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."

[Emphasis supplied]

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:-

"22. As rightly pointed out by learned counsel for the assessee there is not even a token mention of the draft orders having been perused by the Additional Commissioner of Income-tax. 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 "seen" 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 section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein, (i) the Assessing Officer should submit the draft assessment order "well in time". Here it was submitted just two 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."

[Emphasis supplied]

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."

6. Similar view has been expressed by Hon'ble Jurisdictional High Court in the case of MDLR Hotels (P) Ltd. (supra). The Hon'ble High Court in a case where single approval u/s. 153D was accorded by the Competent Authority in as many as 246 proposed assessments in a mechanical manner quashed the assessment. Thus, where single approval u/s. 153D is granted for multiple assessment years, the same is invalid.

7. Though, in the instant case while granting approval the Addl. CIT has mentioned that the approval has been granted after perusal of relevant assessment records but is absolutely silent as to which assessment records/seized material or any other document has been examined by him. Further, it is not possible to examine 51 assessment records in a single day. Therefore, the manner in which approval has been granted in the case of assessee is held to be without proper application of mind, hence, the same is held to be invalid. Consequently, assessment orders passed by the AO on the basis of such mechanical approval are vitiated. The assessee succeeds on ground no. 2 of appeal.

8. As ground no. 2 of appeal raising legal issue has been decided in favour of the assessee, the other grounds of appeal become academic and thus, are not deliberated upon.

9. In the result, appeals of the assessee for AYs. 2012-13, 2013-14 & 2015-16 to 2017-18 are allowed.

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10. Since, we have held assessment orders to be invalid in the absence of valid approval u/s. 153D of the Act, the Departments appeal for corresponding assessment years are dismissed.

11. For the assessment years 2014-15, there is no appeal by the assessee and only Revenue is in appeal. Nevertheless, the approval u/s. 153D of the Act for passing the assessment order for AY 2014-15 is in similar manner, for parity of reasons the appeal of Revenue is dismissed.

Order pronounced in the open court on Thursday the 31st day of July, 2025.

Sd/-

(MANISH AGARWAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 31/07/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI