

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1530/DEL/2021	Assessment Year: 2016-17
ITA No. 1531/DEL/2021	Assessment Year: 2017-18
ITA No. 1532/DEL/2021	Assessment Year: 2018-19

DCIT, Central Circle-25, New Delhi PAN No. AAQPM1016Q (Appellant)	Vs.	Rajiv Mittal, E-14, Industrial Area, Sonapat, Haryana (Respondent)
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Assessee by:	Shri Salil Agarwal & Madhur Agarwal, Advs.
Department by:	Shri Kumar Avikal, CIT-DR
Date of Hearing:	04.08.2025
Date of pronouncement:	08.08.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The Revenue's appeals are against separate orders dated 16.08.2021 of Learned Commissioner of Income-Tax (Appeals)-29, New Delhi (hereinafter referred as "the Ld. CIT(A)") under Section 250 of the Income Tax Act, 1961 (hereinafter referred as "the Act") arising out of orders dated 31.12.2019 under Section 153A/143(3) of the Act passed by the Assistant Commissioner of Income Tax, Central Circle-25, New Delhi (hereinafter referred as "Ld. AO") for the Act for assessment years 2016-17, 2017-18 and 2018-19 respectively.

2. Since, all the appeals involve similar facts, grounds and issues were heard together for sake of convenience and are being decided by this order.

3. Brief facts of ITA No.1530/Del/2021 are that assessee filed return under Section 139 of the Act on 30.12.2016 declaring income of Rs.7,27,760/- which was processed under Section 143(1) of the Act. A search and seizure action under Section 132 of the Act was carried out in the case of assessee on 05.10.2017. The Ld. CIT(A), Rohtak vide order dated 27.09.2018 under Section 127 of the Act transferred jurisdiction in the case of assessee from Ward5, Sonapat to the Central Circle-25, New Delhi. Notice under Section 153A of the Act was issued on 05.08.2019 asking the assessee to file return was issued. In response to the notice, return of income was filed on 11.09.2019 declaring income of Rs.7,27,760/-. Notice under Section 143(2) of the Act dated 30.09.2019 was issued. Notice under Section 142(1) of the Act along with questionnaire requiring certain details, documents and explanations was issued on 30.09.2019. Shri Sanjay Gupta and Shri Shashi Bhushan Kumar, CAs attended proceedings and filed details. Ld. AO vide order dated 31.12.2019 made addition of Rs.2,40,00,000/- on account of unexplained cash and RTGS payment for assessment year 2016-17.

4. Similarly, in ITA No.1531/Del/2021 and ITA No.1532/Del/2021, Ld. AO made additions of Rs.4,12,70,000/- and Rs.2,15,00,000/- for assessment years 2017-18 and 2018-19 respectively vide orders dated 31.12.2019.
5. Against orders dated 31.12.2019 of Ld. AO, appellant/assessee preferred separate appeals before Ld. CIT(A) which were partly allowed vide orders dated 16.08.2021.
6. Being aggrieved, appellant/assessee preferred present appeals with following grounds:

Grounds in ITA No.1530/Del/2021:

“

1. Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified to deleting the addition of Rs. 2,40,00,000/- made on account of unexplained cash u/s 69A of the Act without considering the incriminating evidence found in digitally form during the course of search.
2. Whether on facts and in circumstance of the case, Ld CIT(A) is justified to overlook the legality of the provision of section 132(4A) and section 292C of the Act in which it is legal presumption that incrimination documents found from a person belongs to such persons.
3. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified to deleting the additions made by the AO without any legality and merit of the case.
4. The order of the CIT(A) is erroneous and not tenable in law and on facts.
5. The grounds of appeal are not prejudicial to each other.
6. The appellant craves leave to add, alter or amend any all of the grounds of appeal before or during the course of the hearing of the appeal.”

Grounds in ITA No.1531/Del/2021:

“

1. Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified to provide the relief of the assessee of Rs. 4,04,44,600/- out of total addition of Rs. 4,12,70,000/- made on account of unexplained cash u/s 69A of the Act without considering the incriminating evidence found in digitally form during the course of search.
2. Whether on facts and in circumstance of the case, Ld CIT(A) is justified to overlook the legality of the provision of section 132(4A) and section 292C of the Act in which it is legal presumption that incrimination documents found from a person belongs to such persons.
3. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified to deleting the additions made by the AO without any legality and merit of the case.
4. The order of the CIT(A) is erroneous and not tenable in law and on facts.
5. The grounds of appeal are not prejudicial to each other.
6. The appellant craves leave to add, alter or amend any all of the grounds of appeal before or during the course of the hearing of the appeal.”

Grounds in ITA No.1532/Del/2021:

“1.Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified to get the relief of the assessee of Rs. 2,10,70,000/- out of total addition of Rs. 2,15,00,000/- made on account of unexplained cash u/s 69A of the Act without considering the incriminating evidence found in digitally form during the course of search.

2. Whether on facts and in circumstance of the case, Ld CIT(A) is justified to overlook the legality of the provision of section 132(4A) and section 292C of the Act in which it is legal presumption that incrimination documents found from a person belongs to such persons.

3. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified to deleting the additions made by the AO without any legality and merit of the case.

4. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”

6. Learned Authorised Representative for the Department of Revenue submitted that approval letter dated 31.12.2019 mentions that “Approval is hereby accorded u/s 153D of the Income Tax Act,1961 to the draft assessment orders as amended in the following cases, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you and brought to the notice of undersigned.

7. Learned Authorised Representative for the assessee submitted that in application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, sought to raise arguments challenging initiation of proceedings with additional ground no.1 i.e. “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.”

7.1 The Additional CIT vide order dated 31.12.2019 granted the approval under Section 153D of the Act to the draft assessment orders for several years i.e. assessment years 2012-13 to 2018-19. Similarly, the Addl.CIT granted similar approvals with details as under:

S.No.	Name of the assessee.	Asstt.Years	Date of order	Page of PB
1.	M/s. Neel Ind. Pvt. Ltd.	2008-09 to 2018-19	26.02.2021	5
2.	Surender Kumar Arya	2008-09 to 2012-13	31.12.2019	6
3.	JBM Auto Ltd.	2008-09 to 2018-19	29.12.2019	7
4.	Jai Bharat Maruti Ltd.	2008-09 to 2018-19	29.12.2019	8
5.	JBM Auto Ltd.	2008-09 to 2018-19	19.04.2021	9 & 10
6.	JBM Industries Ltd.	2008-09 to 2016-17	26.02.2021	11
7.	JBM Industries Ltd.	2017-18 to 2018-19	07.04.2021	12

7.2 Hon'ble High Court of Delhi in the case of PCIT vs. Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Delhi) has held that a plain reading of the provision of section 153D evidences an uncontrived position of law that the approval under section 153D has to be granted for 'each assessment year' referred to in clause (b) of sub-section (1) of section 153A. 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.

7.3 Further reliance was placed on the following decision:

- a) Hon'ble High Court of Delhi in the case of PCIT vs. Anuj Bansal reported in 165 taxmann.com 2;
- b) Hon'ble High Court of Allahabad in the case of PCIT vs Sapna Gupta reported in 147 taxmann.com 288;
- c) Hon'ble High Court of Orissa in the case of ACIT vs Serajuddin & Co. reported in 454 ITR 312;
- d) Hon'ble Hon'ble Supreme Court in the case of ACIT vs Serajuddin & Co. reported in. 163 taxmann.com 118;
- e) Hon'ble ITAT Delhi in the case of Millenium Vinimay Pvt. Ltd. vs ACIT in ITA No. 458/Del/2022;
- d) Copy of order of Hon'ble ITAT Delhi in the case of Arvind Kumar Jain vs ACIT in ITA Nos. 1373 to 1377/Del/2020;
- e) Hon'ble ITAT Delhi in the case of Veena Singh vs ACIT in ITA No. 294/Del/2022;
- f) Hon'ble ITAT Delhi in the case of Shiv Kumar Nayyar vs ACIT in ITA No. 1282 to 1285/Del/2020;
- g) Hon'ble ITAT Delhi in the case of Zeal Impex & Traders Pvt. Ltd. vs DCIT in ITA No. 665/Del/2024;
- h) Copy of order of Hon'ble ITAT Delhi in the case of Parasram Holdings Pvt. Ltd. vs DCIT in ITA No. 2824 to 2827/Del/2023;
- i) Hon'ble ITAT Delhi in the case of Parnika Commercial and Estate Pvt. Ltd. vs DCIT in ITA No. 4494/Del/2024; &

j) Hon'ble Chandigarh in the case of S.P. Singla Constructions Pvt. Ltd.

8. From examination of record in light of above material facts, it is crystal clear that the Addl. CIT vide order dated 31.12.2019 granted approval under Section 153D of the Act in the case of assessee as under:

Additional Commissioner of Income Tax
Central Range-7, Room No. 329
E-2, Jhandewalan Extension
New Delhi

F. No. Addl. CIT/CR-7/2019-20/1411
Dated: 31.12.2019

To
The Assistant Commissioner of Income Tax
Central Circle-25,
New Delhi

Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of Rajiv Mittal (PAN:AEZPG8253L), A.Y. 2012-13 TO 2018-19:- req.

please refer to your letter F. No. ACIT/CC-25/2019-20/1138 dated 31.12.2019 on the above subject.

2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment orders as amended in the following cases, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.

s.No	Nmae of Assessee	A.Y.	Return Income	Assessed Income
1	Rajiv Mittal	2012-13	568060	568060
2	Rajiv Mittal	2013-14	560250	620250
3	Rajiv Mittal	2014-15	646790	646790
4	Rajiv Mittal	2015-16	659840	659840
5	Rajiv Mittal	2016-17	727760	24000000
6	Rajiv Mittal	2017-18	1092900	42360900
7	Rajiv Mittal	2018-19	1764680	23264680

3. Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal for retention of seized material should also be forwarded to this office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the interest of revenue, permission u/s 281B from Pr. CIT(C)-3, New Delhi should be taken. Office note indicating additions in relevant assessment years should be indicated in all Assessment Years. You have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data. You have also certified to the undersigned that all information available in AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment order.

4. Please ensure that penalty is levied under proper section of the Income Tax Act, 1961.

(Vivek Gupta)
Additional Commissioner of Income Tax
Central Range -7, New Delhi

31 DEC 2019
Dy. No.

9. From above letter of approval dated 31.12.2019, it evident that Approval under Section 153D of the Act was accorded in cases of multiple years 2012-13 to 2018-19. Hence, the approval under Section 153D of the Act has been granted in mechanical manner without application of mind.

10. The Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax Vs. Shiv Kumar Nayyar (supra) held 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 subsection (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 PCIT v. Sapna Gupta [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, 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 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 and Co. [2023 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 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 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 (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 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 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." 9. The Hon'ble Orissa High Court in the case of ACIT vs Serajuddin & Co. 454 ITR 312 (Orissa) had an occasion to examine substantial question of law on the propriety of approval granted under s. 153D of the Act. The Hon'ble High Court made wide ranging observations towards the manner and legality of approval under s. 153D of the Act by observing that the approval under s. 153D of the Act being mandatory, while elaborate reasons need not be given, there has to be some

indication that approving authority has examined draft orders and finds that it meets the requirement of law. The approving authority is expected to indicate his thought process while granting approval, held that it is not correct on the part of the Revenue to contend that the approval itself is not justifiable. Where the Court finds that the approval is granted mechanically, it would vitiate the assessment order itself. The Hon'ble High Court inter-alia observed that there is no even a token mention that draft order has been perused by the Ld. Addl. CIT. The approval letter simply grants approval. In other words, even the bare minimum requirement of approving authority having to indicate what thought process involved leading to the aforementioned approval has not been provided. As explained, the mere repeating of words of the Statue or mere rubber stamping of the communication seeking sanction by using similar words like 'approval' will not, by itself, meet the requirement of law. The Hon'ble Court made reference to manual issued by the CBDT in the context of erstwhile section 158BG of the Act and observed that such manual serves as a guideline to the AOs. Since it was issued by CBDT, the powers of issuing such guidelines can be traced to section 119 of the Act. The Hon'ble High Court also held that non-compliance of requirement of section 153D of the Act is not a mere procedural irregularity and lapse committed by Revenue may vitiate the assessment order. The SLP filed against the aforesaid judgment in the case of ACIT vs Serajuddin & Co. Kolkata was dismissed as reported in (2024) 163 taxmann.com 118 (SC). 10. The ratio of judgement delivered in the case of ACIT vs Serajuddin & Co. Kolkata; PCIT vs Anuj Bansal; PCIT vs Shiv Kumar Nayyar; and PCIT vs Subhash Dabas (supra) has held in chorus that the approval granted under s. 153D of the Act, if granted mechanically, will vitiate the assessment order itself. 11. As noted in the instant case, In the first para of the approval memo, the Addl. CIT referred the letter of the A.O. dated 17/12/2019, and in the second para, it was stated that the on the basis of discussion held from time to time the approval u/s 153D of the Act is granted in respect of seven cases. The approval dated accorded u/s 153D of the Act is bearing the printed date of 17/12/2019 and hand written date of '18/12/2019' and the same has been signed on 18/12/2019.

There is not even mentioning of any draft assessment order or the assessment records or the seized materials in the said approval letter. Such mechanical approval cannot be sustainable in law in the light of judicial dicta available. The approval memo is totally silent on the issues involved and has granted omnibus approval without any thoughtful process being discernible. A single approval u/s 153D has been accorded comprising out of seven Assessment Years. Applying the ratio of judgements delivered as noted above, the assessment order based on ritualistic approval stands vitiated and thus quashed by allowing Ground No. 9 of appeal of the Assessee.

12. Since, we have quashed the Assessment Order on the ground of erroneous approval accorded u/s 153D of the Act by allowing the Ground No. 9, we do not consider it necessary to address on other legal and factual contentions raised in the other grounds of Appeal of the Assessee.

13. In the result, the appeal of the Assessee is allowed.”

11. In view of above material facts and well settled principle of law, the assessment order based on mechanical approval accorded under Section 153D of the Act deserved to be quashed. Since the entire assessments are quashed on legal issue, the adjudication of grounds raised by revenue on merits become academic and they are left open.

12. In the result, all the three Revenue's appeals are dismissed and Rule 27 petition of the assessee for all the three years are allowed.

Order pronounced in the open court on 08th August, 2025.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 08/08/2025

Mohan Lal

Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi