

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
[DELHI BENCH : "H" NEW DELHI]
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMEBR
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No.2789/Del/2023 (A.Y 2016-17)
I.T.A. No.2790/Del/2023 (A.Y 2017-18)
I.T.A. No.2791/Del/2023 (A.Y 2018-19)

Minda Corporation Limited A-15, Ashok Vihar, Phase-1, H. O. Ashok Vihar, North West, New Delhi PAN: AACM0344C	Vs.	DCIT Central Circle-13 Jhandewalan Extension, New Delhi
Appellant		Respondent

I.T.A. No.2654/Del/2023 (A.Y 2016-17)
I.T.A. No.2662/Del/2023 (A.Y 2017-18)
I.T.A. No.2663/Del/2023 (A.Y 2018-19)

DCIT Central Circle-13 Room No. 247, E-2 ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Minda Corporation Limited A-15, Ashok Vihar, Phase-1, H. O. Ashok Vihar, North West, New Delhi PAN: AACM0344C
Appellant		Respondent

Assessee by	Sh. Salil Aggarwal, Sr. Adv, Sh. Madhur Aggarwal, Adv& Sh. Uma Shankar, Adv	
Revenue by	Sh. S. K. Jadhav, CIT- DR	
Date of Hearing	04/08/2025	
Date of Pronouncement	10/09/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned appeals are filed by the Assessee and the Revenue challenging the orders of Ld. Commissioner of Income Tax (Appeals)- 28, New Delhi ('Ld. CIT(A)' for short) dated 25/07/2023, 25/07/2023 and 14/07/2023 pertaining for the Assessment Years 2016-17, 2017-18 & 2018-19 respectively.

2. Brief facts of the case are that, a search operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was conducted on 08/06/2017 and on subsequent dates at the business and residential premises of 'Minda Group of Cases' comprising Spark Minda Group led by Sh. Ashok Minda and UNO Minda Group led by Sh. Nirmal Kumar Minda. During the course of search and seizure operation, incriminating papers/documents were found/seized related to the Assessee. Assessment Orders came to be passed against the Assessee u/s 153A/143(3) for Assessment Year 2016-17 and 2017-18 on 25/06/2021 and an assessment order u/s 143(3) came to be passed on 25/06/2021 for Assessment Year 2018-19 by making certain additions. Aggrieved by the above assessment orders, the Assessee preferred three Appeals before the Ld. CIT(A). The Ld. CIT(A) vide orders impugned partly allowed the Appeals filed by the Assessee.

3. As against action of the Ld. CIT(A) in sustaining the disallowance claimed by the Assessee, the Assessee preferred the captioned Appeals in I.T.A. Nos.2789/Del/2023, 2790/Del/2023 and I.T.A. No.2791/Del/2023 and as against order of the Ld. CIT(A) in deleting of the adjustments made by the TPO, the Revenue preferred the Appeals in ITA Nos. 2654/Del/2023, I.T.A. No.2662/Del/2023 and I.T.A. No.2663/Del/2023 for Assessment Year 2016-17 to 2018-19 respectively.

4. The Ld. Senior Counsel for the Assessee vehemently submitted that initially A.O. passed final assessment order on 12/05/2021 without passing draft assessment order and the said mistakes were corrected by the A.O. by passing corrigendum stating that the order dated 12/05/2021 are the 'Draft Assessment Order'. Thereafter, again Final Assessment Orders were passed by the A.O. u/s 153A r.w. Section 143(3) on 25/06/2021. Further submitted that, there was no approval u/s 153D of the Act was taken or mentioned with regard to draft assessment order dated 12/05/2021 and in the final assessment order, approval u/s 153D of the Act dated 19/04/2021 was mentioned when there were no existence of draft assessment orders. Therefore, Ld. Assessee's Representative submitted that the alleged 'Draft Assessment Orders' dated 12/05/2021 were never approved by Additional CIT u/s.153D of the Act, thus, submitted that the Assessment Orders passed in the above cases are without satisfying the statutory pre-condition envisaged u/s 153D of the Act. Further submitted that as the Assessment Orders have been framed without jurisdiction, the Assessment Orders are liable to be quashed. The Ld. Senior Counsel further submitted that the approval so accorded u/s 153D of the Act dated 19/04/2021 is a common approval and approval has been accorded in a mechanical manner without application of mind. The Ld. Senior Counsel also relied on plethora of judicial precedents to support his contentions.

5. Per contra, the Ld. Departmental Representative submitted that the order dated 12/05/2021 were indeed a draft assessment orders, which was inadvertently mentioned as Assessment Orders and after coming to know about the bona-fide error, by way of corrigendum dated 17/05/2021, it has been clarified that the orders dated 12/05/2021 were 'Draft Assessment Orders'. The Ld. Departmental Representative submitted that passing of the Assessment Orders dated 25/06/2021 are in accordance with law, which requires no adjudication.

6. The Ld. Department's Representative further submitted that the approval u/s 153D of the Act has been accorded by the Competent Authority in accordance with provisions of the Act and the Tribunal cannot go into the legality or otherwise of such approval which has been granted after verifying the Draft Assessment Orders and the material available on record with due application of mind. Thus, sought for dismissal of the Appeals of the Assessee.

7. We have heard both the parties and perused the material available on record. As could be seen from the record, originally assessment orders came to be passed on 12/05/2021 u/s 153A r.w. Section 143(3) for Assessment Year 2016-17 and 2017-18 and for Assessment Year 2018-19 u/s 143(3) of the Act. Subsequently on

17/05/2021 a corrigendum came to be issued from the office of the Assistant Commissioner of Income Tax, Central Circle-13, Delhi stating that while passing the Assessment Orders dated 12/05/2021, which was inadvertently mentioned as 'Assessment Order' instead of 'Draft Assessment Order' at page 1 of the said order and requested the Assessee to treat those assessment orders dated 12/05/2021 as draft assessment orders. It is further observed that Final Assessment Orders came to be passed for all the above three Assessment Years on 25/06/2021.

8. As could be seen from the Assessment Orders dated 25/06/2021, it has been mentioned at the end of the order that the said 'assessment order has been passed with the prior approval of Additional CIT, Central Range-4, New Delhi vide Letter No. Addl.CIT/CR-4/Approval/153-D/2021-22/90 dated 19/04/2021'. From the above, it is clear that as on the said date i.e. 19/04/2021, there was no existence of draft assessment orders. As per the corrigendum dated 17/05/2021, the assessment orders dated 12/05/2021 have been treated as Draft Assessment Orders. Therefore, it is clear that the Draft Assessment Orders dated 12/05/2021 were never approved by the Addl. CIT u/s 153D of the Act. Thus, the assessment orders passed in the above cases are without satisfying the statutory pre-conditions envisaged u/s 153D of

the Act. In our considered opinion, the Assessment Orders dated 25/06/2021 pertaining to Assessment Years 2016-17 to 2018-19 were passed without jurisdiction and deserves to be quashed.

9. Further, we find that the assessment orders in question are liable to be quashed for one more reason that the subject assessment orders have been passed pursuant to the combined Approval accorded by Addl. Income Tax Central Range-4, New Delhi u/s 153D of the Act on 19/04/2021, wherein the Ld. ACIT issued common approval u/s 153D of the Act from Assessment Year 2012-13 to 2018-19. It is the contention of the Ld. Senior Counsel that the said common approval is a mechanical one and the same has been accorded without application of mind.

10. For the purpose of adjudicating the issue of legality or otherwise of approval accorded u/s 153D of the Act and the consequential assessment proceedings, we shall straightaway advert to the approval accorded u/s 153D of the Act. The approval under Section 153D of the Act dated 19/04/2021 granted by the Addl. CIT, Central Range-4, New Delhi addressed to DCIT, Central Circle-13, New Delhi is reproduced hereunder:-



OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-4, NEW DELHI

Room No. 249, 2nd Floor, ARA Centre, E-2, Jhandewalan Extension, New Delhi - 110055
Phone No. 011-23593272; E-Mail I.D.: delhi.addlciit.cen4@incometax.gov.in

F.No. Addl. CIT/C.R-4/Approval 153D/2021-22/ 90

Date: 19.04.2021

To,

The Dy. Commissioner of Income-Tax,
Central Circle - 13,
New Delhi

Subject: Approval u/s 153D of the I.T. Act, 1961 for making assessment u/s 153A/143(3) of the I.T. Act, 1961 in the case of M/s Minda Corporation Limited (PAN:- AAACM0344C) pertaining to 'Minda Group of cases' - reg.

Please refer to your letter F.No DCIT/CC-13/2020-21/31 dated 12.04.2021 whereby you have submitted draft assessment orders, seeking approval u/s 153D of the I.T. Act, 1961 in the case of M/s Minda Corporation Limited (PAN:-AAACM0344C) for Assessment Years 2012-13 to 2017-18 u/s 153A/143(3) & 2018-19 u/s 143(3) of the I.T. Act, 1961.

2. After perusing the draft assessment orders and case records for A.Ys. 2012-13 to 2017-18 u/s 153A/143(3) & 2018-19 u/s 143(3) of the I.T. Act, 1961 submitted by you is accorded as under:-

S No	AY	Section	Returned Income (in Rs.)	Assessed Income (in Rs.)
1.	2012-13	153A r.w.s. 143(3)	122143390/-	140939835/-
2	2013-14	153A r.w.s. 143(3)	281483005/-	412465428/-
3	2014-15	153A r.w.s. 143(3)	282119941/-	346386028/-
4	2015-16	153A r.w.s. 143(3)	418224870/-	542392431/-
5	2016-17	153A r.w.s. 143(3)	480060340/-	650295211/-
6	2017-18	153A r.w.s. 143(3)	272920000/-	492742549/-
7	2018-19	143(3)	431690730/-	724793761/-

3. The approval accorded by the undersigned u/s 153A/143(3) of the I.T. Act, 1961 should be mentioned in the concluding para of the draft assessment order and AO is directed to ensure that the orders are passed well before the limitation. Further, the copies of the final orders so passed to be sent to this office for records. The assessment records in all the above cases are returned herewith.

4. Further, it is also directed that no order shall be passed without "DIN" in view of the CBDT's Circular No. 19/2019 dated 14.08.2019.

Encl: As above

Asstt. Commissioner of Income Tax
Central Circle-13, New Delhi

19 APR 2021

RECEIVED

(YAMINI)
Addl. Commissioner of Income Tax
Central Range-4, New Delhi

11. On a perusal of the approval dated 19/04/2021 addressed to DCIT, Central Circle-13, New Delhi, it emerges that the Addl. CIT, has not uttered a word on the subject matter of additions. The approval is in the nature of Performa approval; the approval granted smacks of mechanical or perfunctory approval in a symbolic exercise of powers vested under s. 153D of the Act. Apart from the same, a single approval has been granted for seven Assessment Years pertaining to the Assessee.

12. 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 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 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 OnLineOri 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. NeetuNayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. NeetuNayyar 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.

NeetuNayyar. The remaining cases may belong to some other assessees, 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."

13. Significantly, 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 Section 153D of the Act. The Orissa High Court made wide ranging observations towards the manner and legality of approval under s. 153D of the Act. The Hon'ble High Court *inter-alia* observed 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 justiciable. Where the Court finds that the approval is granted mechanically, it would vitiate the assessment order itself. 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 Statute 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.

14. The ratio of judgment 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. 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).

15. As noted above, in the instant case, a single approval u/s 153D has been accorded in respect of Seven Assessment Years pertaining to the Assessee, there is no mentioning of seized material or the other material to show involvement of the superior authority in the approval granted by the ACIT. By applying the ratio laid down in the above judgments, the assessment orders based on ritualistic approval stands vitiated and thus the Assessment Orders quashed on this count as well.

16. In the result, the appeals of the Assessee in I.T.A. Nos. 2789/Del/2023, I.T.A. No.2790/Del/2023 and I.T.A. No.2791/Del/2023 are allowed.

17. Since, we have quashed the Assessment Orders on the ground of passing of the draft assessment order/assessment order in the absence of approval u/s 153D of the Act and also on the ground of erroneous common approval accorded u/s 153D of the Act, we do not consider it

necessary to adjudicate address on other legal and factual contentions raised in the grounds of Appeal of the Assessee.

18. As we have quashed the assessment orders for Assessment Year 2016-17 to 2018-19, the Appeals of the Revenue have rendered infructuous. Accordingly, appeals of the Revenue in ITA Nos.2654/Del/2023,I.T.A. No.2662/Del/2023 and I.T.A. No.2663/Del/2023 are dismissed.

Order pronounced in the open court on 10th September, 2025

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Date:- 10.09.2025
R.N, Sr.P.S*

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

