

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA Nos.4496 & 4497/Del/2024
[Assessment Years : 2012-13 & 2013-14]**

ZTA Infratech Pvt.ltd., (Formerly known as Proview Rishabh Infra Pvt.Ltd.), C/o-C.S.Anand, Adv., B-81, First Floor (Part-B), Defence Colony, Bhisma Pitamah Marg, New Delhi-110024. PAN-AACCH6823P		vs	DCIT/ACIT, Central Circle, Meerut
APPELLANT			RESPONDENT
Appellant by	Shri C.S. Anand, Adv.		
Respondent by	Ms. Pooja Swaroop, CIT DR		
Date of Hearing	26.08.2025		
Date of Pronouncement	26.09.2025		

ORDER

PER MANISH AGARWAL, AM :

The captioned appeals are filed by the assessee against the order dated 01.08.2024 passed by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld. CIT(A)”] in Appeal No. CIT(Appeal), Kanpur-4/10105/2011-12 & 10184/2012-13 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated NIL passed u/s 153C r.w.s. 153A/143(3) of the Act pertaining to assessment years 2012-13 & 2013-14 respectively.

2. The issues being common, interlinked and related to the same assessee in captioned appeals, therefore, both appeals are heard together and accordingly, adjudicated by a common order.

First, we take assessee's appeal in **ITA No. 4496/Del/2024 for AY 2012-13.**

3. Brief facts of the case are that assessee filed its return of income on 29.09.2012, declaring total income at NIL. A search and seizure operation was carried out by the Investigation Wing, Meerut in the case of Sanjeev Mittal Group of cases on 29.12.2017 and 06.02.2018. During the search and seizure action, incriminating materials were found and seized which *inter-alia* include one Annexure No. LP-19 which contained various papers related to purchase/sale of immovable property in cash. From the perusal of seized documents LP-19, it is found that assessee has made cash transaction in the dealing of immovable property in FY 2011-12 & 2012-13. Therefore, proceedings u/s 153C of the Act was initiated in the case of assessee by issued of notice u/s 153C which was served upon the assessee. In response thereto, assessee filed return of income on 18.01.2021, declaring total loss of INR 5,09,564/-. Thereafter, notices u/s 143(2) and 142(1) with questionnaire were issued and served upon the assessee which were duly complied with by the assessee and detailed submissions were field from time to time. The AO after considering the papers/documents seized and replies submitted assessed the income at INR 6,06,57,739/- in the order passed u/s 153C r.w.s. 153A/143(3) of the Act.

4. Against the order of AO, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, dismissed the appeal of the assessee.

5. Aggrieved by the order of Ld. CIT(A), the assessee preferred appeal before Tribunal by taking following grounds of appeals:-

1. *"The assumption of jurisdiction u/s 153C is illegal.*
2. *The proceedings u/s 153C are liable to be quashed, in as much as-*
 - A. *copy of the Satisfaction Note, if any recorded by the Assessing Officer of the Searched Party, was not brought on record and confronted to the Appellant Assessee.*
 - B. *copy of the Satisfaction Note, if any recorded by the Assessing Officer of the appellant assessee, was not brought on record and confronted to the Appellant Assessee.*
 - C. *the learned AO (assessing officer of the Appellant Assessee) had not recorded his valid satisfaction that the document(s) seized from the premises of Sh. Sanjeev Mittal have a bearing on the determination of the total income of the Appellant Assessee.*
3. *On the facts of the case and in law, the initiation of proceedings u/s 153C, without establishing the authenticity & reliability of Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group), was bad.*
4. *The lower authorities had miserably failed to appreciate the contention of the Appellant Assessee that Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) would have been fabricated by Sh. Sanjeev Mittal at a much later date (when he ceased to be the shareholder/director of the company), in order to make false claims with the mal-intention to extort more money.*
5. *On the facts of the case and in law, the notice u/s 153C issued for AY 2013-14 on 26.09.2019 is barred by limitation.*
6. *On the facts of the case and in law, the proceedings carried out on the basis of Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) were bad, in as much as (1) the particulars of the author of the said document was not specified and communicated to the Appellant Assessee; (ii) it was not made clear, as to whether the author of the said document was examined or not; and (iii) copy of the recorded statement of the author of the said document (if any) was not brought on record and confronted to the Appellant Assessee.*
7. *On the facts of the case and in law, the assessment order passed u/s 153C r.w.s. 153A/143(3) ought to have been annulled because the same was barred by limitation.*

8. *On the facts of the case and in law, the addition of Rs. 66205543/- made by the learned AO u/s 69B based upon Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) is not sustainable because the said seized document was not referred in the Satisfaction Note.*
9. *On the facts of the case and in law, the addition of Rs. 66205543/- made by the learned AO u/s 69B based upon Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) is not sustainable, particularly when he could not establish with certainty that the Appellant Assessee had actually paid such amounts to the sellers of the lands, over & above the consideration which was found recorded in the respective sale deeds.*
10. *On the facts of the case and in law, the addition of Rs. 66205543/- made by the learned AO u/s 69B based upon Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) is not sustainable, particularly when he could not establish with certainty that the Appellant Assessee had actually paid such amounts to the sellers of the lands over & above the consideration which was found recorded in the respective sale deeds, during the previous year relevant to AY 2013-14.*
11. *On the facts of the case and in law, the addition of Rs. 66205543/- made by the learned AO u/s 69B is liable to be deleted, particularly when he had never issued a Show Cause Notice to the Appellant Assessee asking it to explain as to why the addition of Rs. 66205543/- be not made u/s 69B.*
12. *On the facts of the case and in law, the addition of Rs. 275702/-made by the learned AO u/s 69C based upon Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) is not sustainable, particularly when he could not establish with certainty that the Appellant Assessee had actually paid such amounts to the deed writers.*
13. *On the facts of the case and in law, the addition of Rs. 275702/-made by the learned AO u/s 69C based upon Page 78 of LP-19 (which document was stated to had been seized during the search & seizure operation carried out in the case of Sanjeev Mittal Group) is not sustainable, particularly when he could not establish with certainty that the Appellant Assessee had actually paid such amounts to the deed writers, during the previous year relevant to AY 2013-14.*

14. *On the facts of the case and in law, the addition of Rs. 275702/-made by the learned AO u/s 69C is not sustainable, particularly. when he had never issued a Show Cause Notice to the appellant assessee asking it to explain as to why the addition of Rs. 275702/-be not made u/s 69C.*

15. *On the facts of the case and in law, the assessment order is liable to be annulled because the approval stated to be given by the learned Addl. CIT, Central Range, Meerut to the learned ACIT Central Circle Meerut on 21.09.2021, was not in accordance with law.”*

6. During the course of hearing, assessee vide letter dt. 01.05.2025 has taken additional ground of appeal which reads as under:

“On the peculiar facts of the case and in lu, the assessment order is liable to be quashed / annulled as the approval u/s 153D granted by the Addl. CIT Central Range Meerut is mechanical and without due application of mind.”

7. The ld. AR submits that the additional ground now raised is purely a legal ground and goes to the root of the matter thus, the same be admitted and adjudicated first. He placed reliance on the decision of Hon’ble Supreme Court in the case of **NTPC Ltd.** reported in **229 ITR 383 (SC)**.

8. On the other hand, ld. CIT DR for the Revenue vehemently objected of the admission of additional ground and submits that the same was not taken before the ld. CIT(A) and further submits that this ground is taken after almost one year from the filing of appeal thus same should not be admitted.

9. After considering the submission of both the parties and looking to the nature of additional ground raised by the assessee,

we find that in this ground assessee has challenged the validity and legality of approval granted by the Adl. CIT u/s 153D of the Act which is purely a legal ground and requires no further verification. Thus, in the interest of justice and in view of the ratio laid down by the hon'ble Supreme court in the case of NTPC Ltd. (supra), the same is admitted and taken up for adjudication first.

10. Before us, Ld.AR for the assessee submits that Ld. Adl. CIT granted approval for AY 2013-14 to 2019-20 in terms of letter No. Addl. CIT/CR/MRT/Approval-153D/2021-22/760 dt. 21.09.2021 which is mechanical approval as no separate approval for each Assessment Year was given rather approval was given by a single order for various assessment years and for various assessee.

11. Ld.AR further submits that it is apparent from the approval letter, it could be seen that Adl. CIT while granting the approval has not referred any material which was considered by him such as seized material, assessment records including replies filed by the assessee with reference to the additions/ disallowance proposed in the drafts assessment order, etc. As per ld. AR, the Adl. CIT has not verified the material, nor any reference was made in the approval letter and thus, it is a mechanical approval given.

12. On the other hand, Ld.CIT DR for the Revenue supports the orders of lower authorities and submits that the Ld. Pr. CIT has granted approval on the basis of material available before him. Therefore, there is no question that no independent application of

mind on the part of Ld. Pr. CIT who after appreciating each and every aspect of granting approval. A detailed submission is also filed by ld. CIT DR which reads as under:

“Kindly refer to the above.

2. Before the Hon'ble Tribunal, the assessee has preferred appeal in ITA 4496 & 4497/DEL/2024 against the orders of the Ld. CIT(A) dated 01.08.2024 on 21.09.2024. On perusal of the office records it is further seen that the assessee on 15.07.2025 has filed additional ground of "mechanical" approval u/s 153D of the Act, almost a year later. In this regard, it is submitted that the Revenue first of all objects to the ground w.r.t Section 153D of the Act which was never taken before the Ld.CIT(A) and the said ground should, hence, be not admitted. Without prejudice to the objection, the Revenue hereby submits the arguments for Section 153D of the Act.

3. The assessee, ZTA Infratech Pvt. Ltd. was apparently known as PROVIEW RISHABH INFRA PVT. LTD. at the time of assessment proceedings. The AO has submitted the following. copy of which is attached with this submission:

(i) letter of the AO seeking approval u/s 153D of the Act for AY 2013-14 to 2018-19 for PROVIEW RISHABH INFRA PVT. LTD. dated 15.06.2021

(ii) approval accorded u/s 153D of the Act by the Jt./Addl. CIT for 2013-14 to 2018-19 for PROVIEW RISHABH INFRA PVT. LTD. dated 21.09.2021

4. On perusal of the above it can be seen that:

(i) AO had submitted 7 case records along with draft assessment orders u/s 153C of the Act for AYs 2013-14 to 2018-19 in the case of PROVIEW RISHABH INFRA PVT. LTD. ON 15.06.2021.

(ii) The approval u/s 153D of the Act by the Jt. / Addl. CIT was accorded to PROVIEW RISHABH INFRA PVT. LTD. on 21.09.2021 i.e. 3 months after approval request submitted by the AO.

iii) The other cases of other assessees mentioned in the AO's approval request date 15.06.2021, have NOT been repeated in the approval order u/s 153D of the Act by the Jt./Addl. CIT.

5. The search and seizure manual of the Income tax Department mandates, as reproduced below:

"1.3 On receipt of the appraisal report and seized material, the Assessing Officer and Range Head should jointly scrutinize the appraisal report and seized material and prepare an Examination Note to decide:

1. Cases where notices u/s 153A of the Income-tax Act, 1961 (the Act) are required to be issued.

ii. Cases where notices u/s 153C of the Act are required to be issued.

iii. Cases where notices u/s 148 of the Act are required to be issued.

iv. Cases where seized material pertains to persons other than those whose cases have been centralised,

2.2 A detailed questionnaire should be prepared mentioning details of the Annexures relating to the seized material and the assessee's explanation sought on the entries therein. The questionnaire should also contain the queries on the basis of documents attached with the return. If considered necessary, directions under section 144A of the Act should be given by the Range Head.

3.2 All the issues and evidence that is going to be relied upon in the assessment order should be made available to the assessee. The final show cause notice should be prepared in consultation with the Addl. CIT and should contain:

- i. The proposed structure of the order;
- ii. The evidence in possession of the department;
- iii. The case laws being relied upon;
- iv. The opportunity of rebuttal being provided to the assessee.

6. An Appraisal Report is a report prepared by the search conducting Assistant/Deputy Director of Income Tax (Investigation) highlighting the incriminating material along with the outcome of the investigations from the day of commencement of search operations to the culmination of the Appraisal Report. A copy of the Appraisal Report is provided to the AO, Jt. /Addl. CIT and the jurisdictional Principal Commissioner of Income Tax. This report is in the nature of a comprehensive report for the Search Unit (Investigation Directorate) and the Assessment Unit (Central Charge) of the Income Tax Department. Thereafter, the AO along with the Jt./Addl. CIT gets involved in issuing statutory notices, preparing the Action Points, drafting Questionnaires, etc. Neither the AO nor the Jt. / Addl. CIT works in isolation as far as search assessments are concerned. Basically, they work as team during the course of search assessments. The approval accorded by the Jt./Addl. CIT under section 153D of the Act is nothing but the culmination of day-to-day involvement of the AO and the Jt. / Addl. CIT in search assessments. The fact is that the AO and the Jt. / Addl. CIT work as team members and the AO works under the supervision of the Jt./Addl. CIT. The teamwork gets culmination by the approval under section 153D of the Act. Such involvement of the Jt./Addl. CIT in the search assessment is in routine in the Central Charges of the Income Tax Department where the search assessments are completed. It is not a case where the assessment records, other files, investigation folders, etc. of a search case are discussed for the first time between the AO and the Jt./Addl. CIT at the time of approval of the search assessment.

7. As per the SOP prescribed in the Search & Seizure Manual and other instructions/guidelines issued by the CBDT, there is close monitoring of search assessments by the Jt./Addl. CIT by way of internal correspondence folder(s), order sheet noting, meeting(s), discussions, electronic communications, etc. from time to time throughout the year.

Since the Jt./Addl. CIT and the AO of the present case were in rooms apart in the same building, therefore, movement of records, etc. by hand over phone also could not be ruled out. Since, the Jt./Addl. CIT, as per the SOP issued by the CBDT for search assessments, could not be ruled out to be not actively involved in the search assessments, therefore, the issues emerged in the search assessments were on his/her tips at the time of granting approval under section 153D of the Act. It is also not the case that the Jt./Addl. CIT has come to know of the facts/details of assessment proceedings at the time of approval under section 153D of the Act. The entire process of monitoring is a continuous process even before the receipt of draft order seeking the approval under section 153D of the Act. The approval under section 153D of the Act is culmination of joint exercise carried out as team lead by the Jt./Addl. CIT. The AO had worked under the supervision of the Jt./Addl. CIT.

8. A Range Head is fully involved in guiding and supervising the assessment proceedings. Discussions and consultation between the AO and the Range Heads are sometimes not formally put in the form of letters on record. It is not the Jt. /Addl. CIT is seeing issues for the first time which are in the draft order as alleged by the assessee. No government officer or even a layman will sign a legal paper/sensitive order without seeing and applying his/her mind where he can be held responsible/accountable later.

9. As per the Wharton's concise Law Dictionary the word 'satisfied' means being free of anxiety, doubt, perplexity, suspense or uncertainty, whereas 'approval' means "to have or express a favourable opinion or to accept as satisfactory". The 'sanction' requires and independent perusal of facts and record and also the recital of the reasons for granting approval. As seen from the meaning of the words 'satisfied', 'approval' and 'sanction' they constitute a hierarchy of endorsement of a proposed action. The word 'approval' under section 153D of the Act is not a sanction. Sanction requires a more independent application of mind with respect to facts and provisions of law, whereas the approval' as contemplated under section 153D of the Act. being administrative in nature, the preliminary satisfaction of the Jt. / Addl. CIT is required to the extent that the AO has looked into all seized material and has given proper opportunity of being heard to the assessee by confronting the evidences and the proposed additions. The Jt./Addl. CIT, while granting approval under section 153D of the Act, does not enter into the realm of deciding whether the additions proposed by the AO is legally sustainable.

10. The CBDT Circular No. 3 of 2008, dated 12.03.2008 mentions the legislative intent of section 153D of the Act. Further, the section 153D of the Act does not lay the procedure and manner of granting approval under section 153D of the Act. The approval under section 153D of the Act by the Jt./Addl. CIT is merely administrative in nature to safeguard internal checks & balances without affecting the quasi-judicial powers of the AO or creating any prejudice to assessee, In fact, while granting approval under

section 153D of the Act, the Jt./Addl. CIT does not act as a Reviewing Appellate Authority to allow or disallow the additions proposed by the AO.

11. The manner of arriving satisfaction for granting administrative approval itself could not have been matter of adjudication in the draft order in view of ratio laid by the Hon'ble Supreme Court in the case of DG-IT(Inv.) Pune vs. Space Wood Finishers Pvt. Ltd. in Civil Appeal No. 4394 of 2015. (para 12) and Mumbai ITAT decision in the case of Pratibha Pipes & Structural Ltd. In ITA No. 3874/Mum/2015.

12. The Hon'ble Supreme Court. in the cases of State of Bihar vs PP Sharma AIR 1991 SC 1260. State of MP vs Harishankar Bhagwan (2010) 8 SCC 655. CS Krishnamurthy vs State of Karnataka AIR 2005 SC 2790 and State of Maharashtra vs. Ishwar Piraji Kalpatri AIR 1996 SC 722 has held that even in cases where the sanction order does not demonstrate the independent perusal of material and does not carry recital of reasons in view of the statutory presumption under section 114(e) of the Indian Evidence Act, 1872 but if it is established that all the relevant material were duly put up for perusal before the authority, then the sanction cannot be considered as vitiated.

13. The Hon'ble Delhi High Court (Full Bench), in the case of Kelvinator of India Ltd. 123 Taxmann 433 (FB), on the basis of the statutory presumption under section 114(e) of the Indian Evidence Act, 1872, had drawn a presumption in the Income Tax matter that all official actions were performed regularly unless controverted by the corroboratory evidence. Thus, in the present case, the onus is on the corroboratory evidence. Thus, in the present case, the onus is on the assessee to rebut that the Jt./Addl. CIT while approving the case had not applied his mind.

14. The Ld. AR has failed to cite any facts in the assessment order which may shown non-application of mind of the Jt. / Addl. CIT while granting approval under section 153D of the Act. The Hon'ble High Court of Delhi, in the case of Principal Commissioner of Income-tax (Central)-2 vs. Anuj Bansal [2024] 466 ITR 251 (Delhi)(13-07-20231) has cited many instances of inaccuracy/mistake/error/lapses, etc, in the approval under section 153D of the Act and the details mentioned in the assessment order to hold that there was non-application of mind of the Jt./Addl. CIT while, granting approval under section 153D of the Act. However, here in present case, the Ld. AR failed to demonstrate such instances of inaccuracy/mistake/error/lapses, etc. in the approval under section 153D of the Act and the details mentioned in the assessment order. Hence, the facts of this case are distinguishable from the case of Anuj Bansal (supra). Therefore, the decision of the Hon'ble High in the case of Anuj Bansal (supra) is not applicable in the present case. Rather, this case supports the view that in view of the decision of the Hon'ble Delhi High Court (Full Bench) in the case of Kelvinator of India Ltd. (supra) and the fact that the Ld. AR failed to pin point any inaccuracy/mistake/error/lapses, etc. in the approval under section 153D of the Act and the details mentioned in the

assessment order. Similarly, the decision of the Hon'ble Orrisa High Court in the case of (ACIT vs. Serajuddin & Co. [2023] 454 ITR 312 (Orissa)[15-03-2023]) is also DISTINGUISHABLE on the facts as the Ld. AR failed to demonstrate that the search assessment orders did not mention the approval of the Jt. / Addl. CIT. In the present case, the Ld. AR failed to establish that the guidelines enunciated by the Search & Seizure Manual. Circular-3 of 2008 and SOP for search assessments have been flouted by the AO and the Jt./Addl. CIT and there was no application of mind by them.

15. It is equally a well-settled position on the law of precedent that a ruling of a court is to be read, understood and interpreted in the context of not only the issue that was under adjudication but also in the context of the points of arguments canvassed by both the sides. Though there is plethora of judicial precedents on this aspect, it will suffice here to reproduce the relevant part of the judgment of the Hon'ble Supreme Court in the case of Sun Engineering Works (P) Ltd., 198 ITR 297, which is self-explanatory:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court....".

16. In the case of UOI & Ors, V. Dhanwanti Devi & Ors. 6 SCC 44. the Hon'ble Supreme Court observed as under:

"9..... What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

10. Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents....."

17. The dismissal of SLP has no binding force in terms of Article 141 of the Constitution of India. Consequently, it has no binding precedent value, in contradiction with a reasoned order of the Hon'ble Supreme Court or an order passed in appeal. Reliance is placed on the decisions of the Hon'ble Supreme Court in the cases of Kunhayammed 245 ITR 360 and Khoday Distilleries Ltd. 104 taxmann.com 25 (SC). The Hon'ble Supreme Court, in the case of State of Orrisa and Another v. Dharendra Sundar Das and

Others [(2019) 6 SCC 270 (SC)] has clarified this position with the following observations at para 9.27:

"9.27 It is a well settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees Welfare Association v. Union of India & Anr. and State of Punjab v. Davinder Pal Singh Bhullar, that the dismissal of a S.L.P. in limine simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution."

Thus, it is humbly submitted that in the present appeals, only facts of the case should be discussed and examined and they only should determine the fate of these appeal.

18. On perusal of all the documents submitted before Your Honours it is evident that:

(1) AO had submitted 7 case records along with draft assessment orders u/s 153C of the Act for AYs 2013-14 to 2018-19 in the case of PROVIEW RISHABH INFRA PVT. LTD. ON 15.06.2021.

(ii) The approval u/s 153D of the Act by the Jt./Addl. CIT was accorded to PROVIEW RISHABH INFRA PVT. LTD. on 21.09.2021 L.e. 3 months after approval request submitted by the AO.

(iii) The other cases of other assessees mentioned in the AO's approval request dated 15.06.2021, have NOT been repeated in the approval order u/s 153D of the Act by the Jt/Addl. CIT.

19. Thus it is established beyond doubt that:

(i) the search assessment u/s 153C of the Act had been conducted in conformity with the instructions given in the Search and Seizure Manual and relevant CBDT circulars and instructions of the Income tax department.

(ii) The Jt.CIT/Addl.CIT had perused all case records of all AYs independently and has accorded approval for single assessee independently.

(iii) The AR has not been able to point out any defects in the assessment order or in the assessment proceedings or that there was no interaction between the AO and the Jt./Addl.CIT and that there was mechanical application of mind

(iv) Facts of the present case are clearly and beyond doubt distinguishable from facts of the decision of Hon'ble Delhi HC in Anuj Bansal (supra) and of Hon'ble Orissa HC in Serajuddin (supra)

20. In view of the above, there is no doubt that approval u/s 153D of the Act was not mechanical. It was given after proper perusal of case records and interaction with the AO and with proper application of mind for SINGLE ASSESSEE

21. This written submission is being made in hard copy during hearing and is over and above the oral submissions and arguments by Revenue on merits of the case during the course of hearing.”

13. Heard the contentions of both the parties and perused the material available on record. Before going further we first look into the approval granted by Id. Adl. CIT, Meerut in the case of assessee which is reproduced as under:



Government of India
Ministry of Finance, Department of Revenue
O/o Adl. Commissioner of Income Tax, Central Range,
Anyakar Bhawan, Bhainshall Ground, Meerut
Phone-0121-2403191, Fax-0121-2510082
E-mail: Meerut.addlciit.ccn@Incometax.gov.in

F. No. Adl. CIT/CR/MRT/Approval/153D/2021-22/760

Dated: 21.09.2021

To,

The Asstt. Commissioner of Income Tax,
Central Circle,
Meerut.

Subject: Approval u/s 153D of the Income Tax Act, 1961 – reg.

Please refer to your office letters F. No. ACIT/CC/MRT/153D Approval/2021-22/278 dated 15.06.2021 & F. No. ACIT/CC/MRT/153D Approval/2021-22/818 dated 21.09.2021 on the above-mentioned subject.

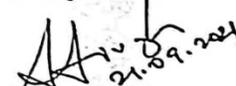
2. In the context of captioned matter, the approval of draft assessment orders in the following cases are hereby accorded as per the details given below: -

S. No.	Name of the Assessee	PAN	A.Y.	Section u/s	No. of Vol.
1.	Smt. Suman Tyagi	BGWPS2440B	2013-14 to 2019-20	153A /144	07
2.	Sh. Sanjay Kansal	AJPK4980G	2013-14 to 2019-20	153C /143(3)	07
3.	M/s Proview Rishabh Infra Pvt. Ltd.	AACCH6823P	2013-14 to 2019-20	153C /143(3)	07

3. It must also be ensured that if any document / information in these cases, pertain to any third party assessed with different AO, the same should be forwarded to the concerned AO immediately for taking necessary action within the limitation period.

4. You are directed to take necessary action accordingly and send a copy of final order passed in these cases.

Encls: along with case records


(Smita Singh)

Addl. Commissioner of Income Tax
Central Range, Meerut

14. The Additional CIT while granting approval, needs to examine all the material including the assessment records, full appraisal report and seized material pertaining to each Assessment Year with reference to the addition proposed by the AO for which approval is sought and the draft assessment order and after considering all the material has to accord the approval. Further approval is to be granted for each assessment year separately. From the perusal of the approval as reproduced above, it is seen that the Adl. CIT has not referred to any such material before granting approval. Further as could be seen from the approval as reproduced above, common approval was given for seven assessment years in the case of three different assessee thus, in total 21 approvals were granted vide single order.

15. The Hon'ble Jurisdictional High Court in the case of **Shiv Kumar Nayyar** in **ITA No.285/2024 [TS-343-HC-2024-Delhi]** has held that the approval u/s 153D of the Act has to be granted for each Assessment year independently. The relevant observations of the judgement of Hon'ble High Court 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 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, 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 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 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."*

16. Similarly, the Hon'ble Orissa High Court in the case of **ACIT vs Serajuddin & Co.** reported in **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 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 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 not 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 judgement in the case of **ACIT vs Serajuddin & Co.** was dismissed as reported in **(2024) 163 taxmann.com 118 (SC)**.

17. The ratio of judgement delivered in the case of ACIT vs Serajuddin & Co., Orrisa and in PCIT vs Anuj Bansal in ITA No.368/2023 (Delhi High Court) has held in chorus that the approval granted under s. 153D of the Act, if granted mechanically, will vitiate the assessment order itself.

18. Recently the Hon'ble **Third Member** in the case of **Dheeraj Chaudhary Vs. ACIT in ITA Nos. 6158 to 6160/Del/2018** after considering all the judgements relied upon by the Id. CIT DR and further after detailed analyzing the provisions of section 153D, power and independence of assessing authority and the CBDT

manual referred by the revenue has held that the common approval granted for various year and for various assessee without making any reference to the material seen is mechanical approval and cannot sustained in the eyes of law. The relevant observations of the hon'ble Third Member are as under:

*22. I noted that the common thread discussed by Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), by Hon'ble Delhi High Court in the case of Anuj Bansal (supra) and by Hon'ble Allahabad High Court in the case of Sapna Gupta (supra) is that the requirement of previous approval of assessment by the Additional CIT/Joint CIT in terms of provisions of Section 153D of the Act being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty formality. Needless to say that before granting approval, the Additional CIT/Joint CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer and the approval must reflect the application of mind to the facts of the case. The CBDT itself recognized the importance of this provision and the above laid down principle and hence issued Manual of Office Procedure in February, 2023 in exercise of powers under Section 119 of the Act. Vide Para 9 of Chapter 3 of Volume-II (Technical), a clear procedure is devised i.e., how an approval is to be granted for draft assessment for passing of assessment order in search cases. According to the Manual, the Assessing Officer should submit the draft assessment order for such approval well in time along with docketed in the order sheet, a copy of the draft assessment order, covering letter filed in the relevant miscellaneous records folder. Even, it is noted that due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. It is further noted that once such approval is granted, it must be in writing and filed in the relevant folder indicating above after making due entry in the order sheet. This is the mandate provided in the office manual of the Department. **In view of above, I am of the view that the 'approval', as mandated u/s 153D of the Act, signifies a product of human thoughts based on the given set of facts and interpretation of the applicable law. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness. It also prevents and avoids inconsistent and divergent views. The power of approval to the specified authority i.e., Superior authority has been envisaged with the objectives that no illegality or biasness, to either of the sides i.e., the assessee or the Revenue, remains.** 23. In the present case before me, the above procedure is not at all followed as is evident from the proposal sent by the Assessing Officer as*

reproduced in Paragraph 10. *It means that the approval granted is mechanical in manner and without application of mind by the approving authority i.e., by the Additional CIT.*

19. 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 in respect of seven Assessment Years and for three different assessee thus in total 21(twenty one) approvals were granted through single order. There is no other material to show involvement of the superior authority in the course of assessment proceedings. Thus applying the ratio of judgements delivered as noted above, the assessment order based on ritualistic approval stands vitiated and thus quashed by allowing additional Ground of appeal of the Assessee.

20. Since we have already allowed the additional ground of appeal taken by the assessee, thus other grounds of appeal are not adjudicated

21. In the result, appeal of the assessee is allowed.

ITA No. 4497/Del/2024 [AY 2013-14]

22. Before us, both the parties have agreed that the facts involved are common for both the assessment years. In this year also, assessee has taken additional ground of appeal challenging the validity of assessment order passed u/s 143(3) r.w.s. 153C in light of provisions of section 153D of the Act which issue has been decided in favour of the assessee in ITA No. 4496/Del/2024 for AY

2012-13, hereinabove. As admitted by both the parties, the facts are identical, and the approval was granted by Adl. CIT for both these assessment years also by a common order vide letter No. Addl.CIT/CR/MRT/Approval-153D/2021-22/760 dated 21.09.2021 for AYrs. 2013-14 to 2019-20 thus, following the said observations, the present appeal of the assessee is allowed.

23. In the result, appeal of the assessee is allowed.

24. In the final result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 26.09.2025.

Sd/-

(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Date:-26.09.2025

Amit Kumar, Sr.P.S

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI