

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : A : NEW DELHI  
BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. & Assessment Year	Appellant	Respondent
2120/Del/2023, 2016-17 & 2139/Del/2023, 2017-18	Ankur Chaudhary, H-37, Sector-27, Gautam Budha Nagar, Noida, UP - 201301.  PAN: AHIPC1217E	DCIT, Central Circle-1, Noida.
2226/Del/2022, 2014-15; 2227/Del/2022, 2015-16; 2229/Del/2022. 2017-18; & 2230/Del/2022. 2018-19	Sudesh Chaudhary, H-37, Sector-27, Gautam Budha Nagar, Noida, UP - 201301.  PAN: ABWPC1903D	- Do -
2228/Del/2022, 2016-17	Braj Pal Singh H-37, Sector-27, Gautam Budha Nagar, Noida, UP - 201301.  PAN: AFPPS6596H	- Do -
2386/Del/2022, 2015-16	DCIT, Central Circle-1, Noida.	Late Mr. Braj Pal Singh (through his Legal Heir Mr. Ankur Chaudhary) H-37, Sector-27, Gautam Budha Nagar, Noida, UP - 201301.  PAN: AFPPS6596H

Assessee by : Shri Rajiv Khandelwal, Shri Gagan R.  
Khandelwal & Shri Jaind Jaiswal,  
Advocates.

Department by : Shri Amit jain, CIT-DR

Date of Hearing : 10.09.2025

Date of Pronouncement : 29.09.2025

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Assesseees as well as revenue against the orders of the Ld. First Appellate Authority in appeals filed before him against the orders of the ld. Assessing Officer (hereinafter referred to as the Ld. AO, for short). Further details of the orders of the lower authorities are as under:-

ITA No. & Assessment Year	CIT(A) who passed the order	Appeal No. & Date of order of the CIT(A)	AO who passed the assessment order & Date of order	Section of the IT Act under which the AO passed the order
2120/Del/2023, 2016-17 & 2139/Del/2023, 2017-18	CIT(A), Noida-3, Noida.	CIT(A)-III/Noida/10652, 11902/2015-16, 2016-17. Dated 02.06.2023	JCIT (OSD), Central Circle-I, Noida date: 29.09.2021	153A/143(3)
2226/Del/2022, 2014-15; 2227/Del/2022, 2015-16; 2229/Del/2022. 2017-18; & 2230/Del/2022. 2018-19	CIT(A), Kanpur-4	CIT(A)-IV/KNP/10160/2013-14; CIT(A)-IV/KNP/10115/2014-15; CIT(A)-IV/KNP/11952/2016-17; & CIT(A)-IV/KNP/11062/2017-18, all dated 18.07.2022	- Do -	- do -
2228/Del/2022, 2016-17	- do -	CIT(A)-IV/KNP/10608/2015-16, dated	- Do -	- Do -

		18.07.2022		
2386/Del/2022, 2015-16	- Do -	CIT(A)- IV/KNP/10114/ 2014-15, dated 18.07.2022	- Do -	- Do -

2. At the time of hearing, the ld. AR has primarily argued on the additional ground of appeal raised in case of assessee Ankur Chaudhary and ground no. 6, 7 or 8 in case of other assessee by which the assessee has questioned the assessments on the basis that the approval granted u/s 153D of the Act is not in accordance with the law. In this context, we consider it appropriate to reproduce the additional ground raised in ITA no. 2139/Del/2023:-

*“The following ground of appeal is independent of, and without prejudice to the original grounds of appeal –*

*The authority under section 153D erred in not granting an appropriate approval as required under the section 153D of the Act.*

*The appellant contends that on the facts and in the circumstances of the case and in law, the approval granted by the authority under section 153D of the Act is mechanical and without application of mind and hence, the consequent assessment order is bad in law and needs to be quashed.”*

3. On the basis of the admitted facts arising out of the copy of approval on record, we find that the questions about the illegality of the approval u/s 153D is a legal question which could be raised and decided at this stage. Accordingly, the ground is admitted.

4. The ld. AR has brought on record the copy of approval on record and for convenience, we reproduce the same:-



Government of India  
 Ministry of Finance, Department of Revenue  
 O/o Addl. Commissioner of Income Tax, Central Range,  
 Aayakar Bhawan, Bhainshali Ground, Meerut  
 Phone-0121-2403191, Fax-0121-2510082  
 E-mail: Meerut.addlcit.cen@Incometax.gov.in

F. No. Addl. CIT/CR/MRT/Approval/153D/2021-22/825

Dated: 28.09.2021

To,  
 The Joint Commissioner of Income Tax (OSD),  
 Central Circle-I,  
 Noida.

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

Please refer to your office letter F. No. JCIT(OSD)/CC-I/Noida/153D/2021-22/275 dated 13.09.2021 on the above-mentioned subject.

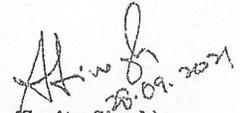
2. In the context of captioned matter, the approval of draft assessment orders in the following cases are hereby accorded as per the details given below: -

S. No.	Name of the assessee	PAN	A.Y.	U/s	Volumes
1	Brijpal Chaudhary	AFPPS6596H	2013-14 to 2019-20	153A	7
2	Ankur Chaudhary	AIIPC1217E	2013-14 to 2019-20	153A	7
3	Sudesh Chaudhary	ABWPC1903D	2013-14 to 2019-20	153A	7

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: as above (along with case records)

  
 (Smita Singh)

Addl. Commissioner of Income Tax  
 Central Range, Meerut

5. The ld. DR has defended the approval by filing the following written submissions:-

*“Section 153 D of the Act was inserted vide amendment in Finance Act 2007 provides for the prior approval for the assessment in cases of search or requisition. Prior to the amendment vide Finance Act 2007 the existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment. Accordingly new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153 A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.*

*Section 153D of the Act is for administrative purposes and does not require that an opportunity of hearing is required to be given to the assessee. The Hon’ble Supreme Court in S. Narayanappa vs. CIT 63 ITR 219 (SC) as to whether such approval is merely an administrative act or whether such approval can be brought under judicial scrutiny. The apex court held that the stage of obtaining approval from higher authority was administrative in character and not a quasi-judicial act. What is to be seen is whether the Approving Authority is competent to grant approval is important and under scheme of things the JCIT is the competent authority to grant approval u/s 153D of the Act. In view of the above, it is submitted that aforementioned ground of appeal on the issue of invalid approval under section 153D of the IT Act may kindly be dismissed for the reason mentioned above, it is submitted that aforementioned ground of appeal on the issue of invalid approval under section 153D of the IT Act may kindly be dismissed for the reason mentioned above it is submitted that aforementioned ground of appeal on the issue of invalid approval under section 153D of the IT Act may kindly be dismissed for the reason mentioned above.*

*The Hon’ble High Court of Kamatka in Rishabhchand Bhansali vs. DCIT in 136 taxman 579 held the approval granted by the JCIT is an administrative act and does not create any right to the appellant. The Hon’ble High Court noted:-*

*4. Section 158BG provides that no order of assessment for the block period shall be passed by the AO without the previous approval of the Jt. CIT in respect of a search initiated under Section 132. The assessee contends that before granting previous approval under Section 158BG for an order of assessment made under Section 158BC, the Jt. CIT should have given a hearing to the assessee. It is submitted that the power to grant previous approval under Section 158BG is an amalgam of appellate and revisional power and therefore, the right to a hearing should be read into Section 158BG. It is also contended that the Tribunal failed to consider this ground though specifically urged before it.*

*4.1 Chapter XIV-B contains a special procedure for assessment of search cases. Section 158BC prescribes the procedure for block assessment. Clause (c) of Section 158BC enables the AO, on determination of the undisclosed income of the block period, to pass an order of assessment and determine the tax payable by him on the basis of such assessment. Sub-clause (b) requires the AO to proceed in the manner laid down in Section 158BB and the provisions of Section 142, Sub-sections (2) and (3) of Section 143 and Section 144, while determining the undisclosed income of the block period. It is thus evident that the procedure clearly contemplates the AO giving a hearing to the assessee before making an assessment order in regard to the block period.*

*4.2 Clause (k) of Section 246A provides for an appeal against the order of assessment for the block period made by the AO under Clause (c) of Section 158BC. Sub-section (2) of Section 250 provides for a hearing of the appeal. Thus, the assessee is heard by the AO before making the assessment order under Section 158BC. If the assessee is aggrieved by the assessment order he has a remedy by way of an appeal under Section 246A where also he is heard. There is no need, therefore, for the Jt. CIT to give a hearing before giving previous approval under Section 158BG. Firstly, the statute does not provide for such a hearing, secondly, principles of natural justice also do not require such a hearing having regard to the fact that the assessee gets a hearing before the assessment and also a hearing if he files an appeal against the order of assessment, and thirdly the order passed by the Jt. CIT granting previous approval under the proviso to Section 158BG is in exercise of administrative power on being satisfied that the order of assessment has been made in accordance with the*

*provisions of Chapter XIV-B. The previous approval is purely an internal matter and it does (SIC-not) decide upon any rights of the assessee. The Jt. CIT, while examining the matter under the proviso to Section 158BG does not examine or adjudicate upon the rights or obligations of the assessee, but only considers whether the AO has fulfilled the requirements of Chapter XIV-B. 4.3. In V.C. Shukla v. State (Delhi Administration) , the Supreme Court gave the following example:*

*"In cases where law requires sanction to be given by the appointing authority before a prosecution can be launched against a Government servant, it has never been suggested that the accused must be heard before sanction is accorded....."*

*4.4 Where a statute requires the Executive to take an administrative action after being satisfied or after forming an opinion as to the existence of a state of circumstances, the action is based on the subjective satisfaction. It is well settled that any administrative actions based either on policy or on subjective assessment, if does not prejudicially affect any vested right or interest, need not be preceded by a hearing, unless the statute specifically provides for the same. Therefore, in the absence of any provision for opportunity of hearing in Section 158BG, there is no need for the Jt. CIT to give a hearing to tire assessee before granting "previous approval" under Section 158BG. The first question is, therefore, answered against the assessee.*

***The Hon'ble ITAT Mumbai in the case of Smt. Usha Satish Salvi vs ACIT Central Circle-4(4), Mumbai in ITA Nos. 4239,4237 & 4238/Mum/2023 dated 23.01.2025 has examined all the following judgements of the Tribunal and Hon'ble High Courts [Para 6.2] and rejected the objection raised by the assessee that approval granted u/s 153D of the Act has been accorded on presumption and without application of mind rather opined that approval was granted by the Addl CIT after due application of mind.***

*6.2 (i) Decision dated 06/06/2024 of Delhi bench of the T Tribunal in the case of Shri Guvinder Singh Duggal in ITA No. 860 to 863/Del/2021 for AY 2012-13 2012 to 2018-19.*

*(ii) Decision dated 29/04/2024 of Delhi Bench of Tribunal in the case of MDLR Airline (P) Ltd in ITA No. 1420 & 1421/Del/2023 for AY 2007-08 2007 and 2008-09.*

*(iii) Decision of Hon'ble Allahabad High Court in the case of PCIT vs Sapna Gupta in ITA No. 88 of 2022.*

*(iv) Decision of Hon'ble Delhi High Court in the case of PCIT vs Shiv Kumar Nayyar in ITA 285/2024 & CM Appela*

*(v) Decision of Mumbai Bench of Tribunal in the case of Arch Phamalabs Ltd in ITA No. 6656/Mum/2017 for AY 2011-12 and other appeals.*

*Hon'ble Delhi High Court in the case of PCIT Vs*

*(vi) Decision of Hon'ble M/s MDLR Hoteles P Ltd in ITA 593/2023*

*(vii) Decision dated 24/04/2024 of Delhi Bench of Tribunal in the case of Veena Singh in ITA No. 294 & 295/Del/2022 for AY 2016-17 17 and 2017-18*

2. *Without prejudice to above objection, It is submitted that reading of letter dated 28.09.2021 giving approval under section 153 D of the I.T. Act make it amply evident that in the instant case, approving authority i.e. Addl Commissioner of Income Tax, Central Range, Meerut had applied his mind independently in judicious manner while granting his approval.*

*In the given facts, the Addl.CIT had applied his mind on the issues involved and accorded his approval in accordance with the provisions of the Act.*

*It is not a gainsaying that the Addl CIT hold the concurrent jurisdiction and that the assessment is a continuous process involving administrative as well statutory roles being donned by the Addlt CIT. And it is incumbent on the approving authority to examine and monitor the assessments which can't be denied if the same is not reduced in writing at every point of time till the finalization of the assessment. The approval of the approving authority underlines that he has examined the assessment records, relevant copies of seized documents and the relevant issues arising from the material on record judiciously in independent manner by way of due application of mind. It would not be out of place to mention here that the appellant has not come out with any case that there is case of non-application of mind. The appellant has to positively prove that there is a case of non-application of mind in light of the submission that the approval u/s 153D is an administrative approval. Here, it would not be out of place to highlight that the relevant seized documents in a case are always part of the assessment records as per practice, and requirement of the work. They are not kept separately as relevant seized material is frequently referred to by the assessing officer during the course of assessment proceedings and also*

*made part of assessment order most of the time. In fact, as per the law, seized material is considered as part of records before Assessing Officer and all such seized records, return of income, notices etc. used during an assessment proceeding when considered collectively is known as 'Assessment record'. Therefore, from the letter seeking approval, it is evident that the entire assessment records which included seized material was placed before the approving authority for the purpose of taking decision with regard to approval under section 153D of the Act.*

*In view of the same, it cannot be inferred in any manner from the letter seeking approval by the AO and the letter granting approval by the Addl CIT that approval under section 153D of the Act was granted in mechanical manner without independent application of mind by the Addl CIT.*

3. *It would also be pertinent to submit that in this case, letter granting approval in the instant case mentioned name of assessee only. This case was approved by the approving authority vide aforesaid letter dated 28.09.2021.*

*Thus, it cannot be considered by any stretch of imagination that the approving authority was not in a position to apply his mind to the facts of the case and issues involved while granting approval under section 153D of the Act. The approving authority had sufficient time to go through all the records and relevant material to arrive at decision granting approval Under Section 153D of the I.T Act in judicious manner in the instant case.*

*Further, in search cases, a Addl. CIT is well aware about progress of the assessment proceedings, relevant issues of different assessee, nature and content of the seized material in light of the fact that the as per the CBDT guideline F. No. 286/161/2006-IT (Inv. II) dt. 22.12.2006, copy of appraisal report is shared by Investigation Wing with both that the assessing officer and Joint CIT. In fact, CBDT guideline dt. 22.12.2006 (Copy enclosed) on the subject of the search and Seizure Assessments clearly outlines such close coordination. Thus, as per the prevailing Practice and Guidelines, the approving authority has good idea of issues involved in particular case before hand i.e. much before the cases are sent to him for approval Under Section 153D of the Act. This guideline of CBDT is relevant piece of information, which throws light on the way search assessments are taken up by the filed officers.*

*Therefore, in light of such peculiar fact of instant case, it cannot be inferred that the Addl. CIT was not in a position to independently apply his mind in judicial manner to the case of assessee on the same day.*

4. In this regard, it is further submitted that on perusal of case laws on the issue of requirements for proper approval under section 153D, it is found that Hon'ble jurisdictional high court has emphatically held that such an issue is essentially a question of fact and has to be decided based of factual matrix of a particular case. Further, it has been held that approval cannot be reduced to a mechanical exercise and approving authority is required to apply his/her independent mind while granting such an approval. Thus, all the cases have been decided on this point by Hon'ble Tribunal and Hon'ble High court in light of peculiar facts of those cases only. Some of such peculiar facts of such cases are outlined here in under to emphasize upon distinguishing nature of facts of instant cases from those cases. :

<i>Case Name and Citation</i>	<i>Peculiar Facts of cases in mentioned in first col.</i>	<i>Distinguishing facts of the instant case</i>
<i>HIGH COURT OF DELHI in the case of PCIT vs. Anuj Bansal ITA 368/2023 Dated July 13,2023</i>	<p><i>-No Assessment records were sent along with draft assessment order</i></p> <p><i>-There were infirmities in the figures of Original Return of income and Assessed income.</i></p> <p><i>-Addl. CIT did not apply his mind as he did not notice such errors/infirmities.</i></p>	<p><i>Appellant has not been able to prove that its case and facts are in alliance with the cited case.</i></p> <p><i>Further, there is nothing on the record to suggest that in the instant case of the assessee, there were some factual infirmities in the order granting approval. None of the peculiar factual aspects are present in the instant case.</i></p> <p><i>Therefore, the case of Anuj Bansal had distinguishable facts than those of instant case.</i></p>
<i>HIGH COURT OF DELHI in the case of Principal Commissioner of Income-tax v. Shiv Kumar Nayyar</i>	<i>The approval order failed to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of</i>	<p><i>Further, in the instant case, approval is given for the case of assessee only.</i></p> <p><i>Therefore, facts of the</i></p>

<p>[2024] 163 taxmann.com 9 (Delhi)</p>	<p><i>the same with an independent application of mind.</i></p> <p><i>Also, in this case of Shiv Kumar Nayyar, there was no fact brought on the record by the Revenue to prove that identical issues (involving similar facts) were involved in different cases submitted for approval by the AO. It was in absence of such factual information that granting of approval for 43 cases in a single day was viewed by the Hon'ble High Court.</i></p>	<p><i>instant case are distinguishable.</i></p>
<p><i>ITAT NEW DELHI in the case of Seh Realtors Pvt. Ltd. v. ACIT Central Circle-8 ITA no.2503/Del/2017 Dated 23.07.2024</i></p>	<p><i>The approving authority had granted approval in 232 cases in a single day. Therefore, issue of judicious approval for such large number of cases from the angle of human limitations was an issue before Hon'ble Bench.</i></p>	<p><i>In the instant case, approval is given for the case of assessee only and that too in single case. Therefore, facts of the instant case are distinguishable.</i></p>

*Reliance is placed in the case of Home Finders Housing Ltd. v Income-tax Officer Ward 2(3), Chennai [2018] 93 taxmann.com 371 (Madras) wherein it was held that in case an order is passed without following a prescribed procedure, the entire proceedings would not be vitiated.*

*“9. There is no statutory requirement to deal with the objections given by the assessee after receiving reasons for initiating proceedings under Section 147 of the I.T. Act. However, there is a judgment of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. mandating such disposal of objections before passing the assessment order.*

10. *The Supreme Court in GKN Driveshafts (India) Ltd. made it clear that on receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by a speaking order. The judgment is very clear that before proceeding with the assessment proceedings, the Assessing Officer has to pass a speaking order. Therefore, the Assessing Officer is bound to pass an order and thereafter only further proceedings could be taken for passing the assessment order. It would not suffice by giving reasons to the objections in the assessment order, in view of the judgment in GKN Driveshafts (India) Ltd.*

15. *The appellant has raised two contentions in this appeal.*

*(a) The assessment order passed in violation of the law laid down by the Supreme Court is void and it cannot be ratified by remitting the matter to the Assessing Officer;*

*(b) The assessment order was passed just one day prior to the period of limitation and therefore, it would not be possible to pass a fresh order after giving disposal to the objections.*

16. *It is not in dispute that there is no statutory requirement to pass an order taking into account the statement of objections filed by the assessee after receiving the reasons for invoking Section 147 of the I.T. Act. The Hon'ble Supreme Court in GKN Driveshafts (India) Ltd., has given a procedural safeguard to the assessee to avoid unnecessary harassment by directing the Assessing Officer to pass a speaking order taking into account the objections for reopening the assessment under Section 147 of the I.T. Act.*

17. *The forming of opinion to proceed further by disposal of the objections need not be a detailed consideration of all the facts and law applicable. It must show application of mind to the objections raised by the noticee. In case the objections are such that it would require a detailed examination of facts and application of legal provisions, taking into account the assessment order sought to be reopened, the string of violations, suppression of material particulars and transactions which would require considerable time and would be in the nature of a detailed adjudicatory process, the Assessing Officer can dispose of the objections, by giving his tentative reasons for overruling the objections.*

18. *The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which*

*made the Assessing Officer to arrive at a prima facie satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee.*

*20. The learned counsel for the appellant by placing reliance on an order passed by the learned Single Judge in Mrs. Jayanthi Natarajan (cited supra) submitted that the order being one made without complying with the mandatory procedure, is non est in law and it cannot be given life by complying with the procedure later. In short, it is the contention that non compliance of a prescribed procedure would nullify the order and the irregularity cannot be cured later.*

*26. We therefore make the position clear that non-compliance of the procedure indicated in the GKN Driveshafts (India) Ltd. 's case (supra) would not make the order void or non-est. Such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority”*

*Later, the Hon'ble Supreme Court also dismissed the SLP raised in the matter.*

*Further, reliance is also placed on the judgement of Hon'ble Kerala High Court in OP(C) No. 340 of 2019 against the order in IA 3123/2018 in OS 125/2018 of II Additional Sub Court, Ernakulam dated 23.06.2022, wherein it is held that the*

*“5 Courts should endeavour to dispose of a case on merits rather than on default. ”*

*The Apex Court in the case of Improvement Trust, Ludhiyana vs Ujagar Singh & Ors on 09.06.2010 in Civil Appeal NO. 2395 of 2008 also held that*

*“ After all, justice can be done only when the matter is fought on merits and in accordance with law rather to dispose it of on such*

*technicalities and that too at the threshold. Both sides had tried to argue the matter on merits but we refrain ourselves from touching the merits of the matter as that can best be done by the Executing Court which had denied an opportunity to the appellant to lead evidence and to prove the issues so formulated.*

*In our opinion, ends of justice would be met by setting aside the impugned orders and matter is emitted to the Executing Court to consider and dispose of appellant's objections filed under Order 21 Rule 90 of CPC on merits and in accordance with law, at an early date. It is pertinent to point out that unless malafides are writ large on the conduct of the party, generally as a normal 1 rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities."*

5. *It is further submitted that there cannot be any presumption drawn against the approving authority with regard to application of mind merely on the ground that number of cases approved in a day were high. There cannot be any threshold limit set for the same. How many cases will be considered unreasonably high and how many cases will be considered reasonable? It is submitted that every approval needs to be examined in light of its peculiar facts such as number of issue involved, nature of issue involved, modus-operandi involved, number of cases involved and inter-relationship among facts of such cases. If identical issues are involved involving same modus-operandi and cases are of same search group only, it would not be unreasonable to consider that an approving authority will be able to apply its independent mind judiciously to relatively larger number of cases in a single day. Ultimately, it boils down to factual matrix of the cases sent for approval. In the instant case, in light of the factual matrix that additions were made in different cases of the group on the same ground based on same factual position with regard to same accommodation entry provider and involving same modus-operandi, it would be justified to consider that the approving authority would have been in a position to apply his mind to all such cases sent for approval by the AO on the same day, particularly when number of such cases is not too high and facts/issues involved are in the knowledge of approving authority beforehand i.e. before receiving proposal for approval.*

6. *Therefore, in view of the above discussion, it is respectfully submitted that the fact of the instant cases are significantly distinguishable from the fact all those cases where Hon'ble Courts and Hon'ble Tribunal have held approval under section 153D as a mechanical approval without due application of mind by the approving authority. Moreover, content of the approval letter clearly establishes that while granting approval, the*

*approving authority had considered facts of the case, assessment records and seized documents and had applied his mind independently.*

*In view of the above it is respect to submitted to kindly take on record the above objections and reject the contention of the assessee on this ground and uphold the order of assessing officer.*

6. On the basis of the copy of approval, it is apparent that although on 13.09.2021, the AO had called for approval and on 28.09.2021 the approval was granted, however, the approval in its content is silent if not ambiguous as to what were the issues involved in regard to three different assessee for multiple years 2013-14 to 2019-20 involved so as to show at the time of grant of approval that there was exercise of judicial discretion vested in the approving authority. The law in this regard is settled that approval cannot be mechanical and the approval letter should exhibit application of mind. However, when a consolidated approval is granted in case of the three assessees for multiple years involved, then, the presumption is that through non-application of mind to the case of each approval the mandate of law is not satisfied.

7. Though there are catena of decision of coordinate bench in favour of assessees, we rely Hon'ble Jurisdictional High Court decision in case of ***PCIT vs Shiv Kumar Nayyar reported in 163 taxmann.com 9*** which has also relied this decision in case of ***Serajuddin***(ACIT v. Serajuddin & Co. ( 2023)454 ITR 312) and held in para 10 to 15 as follow;

*“10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying intent*

*of the relevant provision of the Act i.e., Section 153D, which is culled out as under:-*

*“153-D. Prior approval necessary for assessment in cases or requisition.—No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of Section 153-A] or the assessment year referred to in clause (b) of sub-section (1) of Section 153-B, except with the prior approval of the Joint Commissioner :*

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

*11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for “each assessment year” referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of 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.***

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*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."*

8. Thus the ground covering the issue in respective appeals are sustained.

The appeals of assessee are allowed and of revenue dismissed. Impugned assessment orders are quashed.

Order pronounced in the open court on 29.09.2025.

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 29<sup>th</sup> September, 2025.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi