

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2549/Del/2023
निर्धारणवर्ष/Assessment Year:2017-18**

SONIA MEHTA 97, Eastern Avenue, Sainik Farms, Delhi. PAN No.ACAPM1777A	<u>बनाम</u> Vs.	ACIT, E-2, Central Circle-17, ARA Centre, Jhandewalan Extn., New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

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**आ.अ.सं./I.T.A No.2551/Del/2023
निर्धारणवर्ष/Assessment Year:2017-18**

SWATY MEHTA 97, Eastern Avenue, Sainik Farms, Delhi. PAN No.ACAPM1777A	<u>बनाम</u> Vs.	ACIT, E-2, Central Circle-17, ARA Centre, Jhandewalan Extn., New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri Harshit Srivastava, CA
Revenue by	Shri Mahesh Kumar, CIT DR

सुनवाईकीतारीख/ Date of hearing:	20.08.2025
उद्घोषणाकीतारीख/ Pronouncement on	27.10.2025

आदेश / O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by different assessees of same group for the AY 2017-18 challenging the order of the Ld. CIT(Appeals)-27, New Delhi dated 09.09.2022. These appeals are filed with a delay of 303 days and the assessees filed petition for condonation of delay along with affidavit explaining the cause for the delay stating that the delay is due to inadvertent omission on the part of the assessees previous Counsel M/s Malhotra Rajesh & Associates, CAs who misguided the assessee in taking appropriate action to file the appeal before the Tribunal. It is also stated that the assessee was informed by the previous Counsel that there will be no demand left after the impugned appellate order passed by the Ld. CIT(Appeals) which was factually incorrect and grossly misconceived on the part of previous Counsel of the assessee. It was further stated that later due to penalty proceedings the assessee engaged a new Counsel M/s H.S. Srivastava and Associates, CAs who advised the assessee to file appeal against quantum order before the Tribunal. It was also further stated that the assessee is a 59 years old lady and law abiding citizen of the Country and was fully cooperated with the

assessment proceedings and there was no *mala fide* or deliberate inaction on the part of the assessee in filing the appeal with delay. The assessee also sworn in an affidavit solely affirming the facts. Reliance was placed on the decision of the Hon'ble Madras High Court in the case of Areva T&D (India) Ltd. vs. JCIT (287 ITR 555), wherein delay of 231 days was condoned by the Hon'ble High Court which caused due to wrong advise given by the assessee's counsel. Similarly, the assessee Swati Mehta also filed condonation petition along with affidavit explaining the reasons for the delay which are identical to the reasons explained by the assessee Sonia Mehta.

2. On hearing both the sides and after perusing the petition for condonation of delay and also the affidavit and the case law relied on. We are of the view that the assessees were prevented with sufficient cause in filing the appeal with delay. Thus, the delay in filing the appeal before the Tribunal by both these assessees is condoned and the appeals are admitted for hearing on merits.

3. Coming to merits, the Ld. Counsel for the assessee referring to ground no.3 of grounds of appeal in the case of Sonia Mehta and ground no.4 in the case of Swati Mehta stated that in these two appeals the assessees are challenging the order of the Ld. CIT(Appeals) on the ground that approval u/s 153D of the Act has

been granted without application of mind and is invalid, bad in law and consequently the assessment order passed pursuant to such an invalid approval is also bad in law. Ld. Counsel for the assessee referring to the approval granted u/s 153D which is placed at page 29 of the submissions of the Paper Book submitted that this approval is a common approval in both the assessee's appeals for various assessment years from AY 2011-12 to 2017-18 and such a common approval was held to be bad in law by the Hon'ble Delhi High Court in the cases of PCIT Vs. Anuj Bansal (2024) (165 taxmann.com 2) & PCIT vs. Shiv Kumar Nayyar (2024) (163 taxmann.com 9).

4. On the other hand, the Ld. DR made the following written submissions: -

“MAY IT PLEASE YOUR HONOURS’

1. That, the Assessee, in the above-captioned appeal, has raised Ground No. 1 concerning the issue of approval u/s 153D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), alleging that the Ld. CIT(A) has erred in his finding on the issue of approval u/s 153D of the Act. However, the undersigned most respectfully submits that the Ld. CIT (A) vide his order dated 09.09.2022 in Para 6.1 to 6.4, Pg. No. 8 to 10, has rightly upheld the additions for the year under consideration while holding that the allegations of the Assessee with respect to approval u/s 153D of the Act has no legs to stand and that the approval u/s 153D of the Act being an official act, it is to be presumed that before granting approval, the Range Head has looked into the records and applied his mind. Hence, it is humbly submitted that the ground of appeal filed by the Assessee concerning the issue of approval of u/s 153D of the Act are without merit and may not be admitted.

2. *Without prejudice to foregoing objections, it is respectfully submitted that the assessment orders clearly states that the assessment order have been passed with the prior approval of the Addl. CIT, Central Range-5, New Delhi, accorded u/s 153D of the Act and communicated vide F. No. Addl. CIT/CR-5/153D/2018-19/948 dated 15.12.2018. Hence, it is respectfully prayed that the appeal be adjudicated on merits of the case.*

3. *Further, on perusal of the approval letter u/s 153D of the Act, dated 15.12.2018, granted by Addl. CIT, Central Range-05, New Delhi, in the case of Ms. Sonia Mehta [PAN: ALAPN177A] for A.Y 2011-12 to 2016-17 & 2017-18, categorically mentions the assessment records in these cases were sent by the AO alongwith draft assessment orders . It can also be seen that the AO had sought approval u/s 153D of the Act vide his letter dated 13.12.2018 and the Range Head granted the said approval vide letter dated 15.12.2018. Hence, it is right to suggest that the Range Head had perused the material available on record and the approval u/s 153D of the Act can't be said to be mechanical in nature or without application of mind. [Copy of approval letter u/s 153D of the Act dated 15.12.2018 is Annexed herewith as ANNEXURE-A]*

4. *Further, in view of the CBDT's guidelines being F. No. 286/161/2006-IT (Inv. II) dated 22.12.2006, Para 1.7, mandates that assessment in all cases be it search of a group or an assessee, assessment are framed simultaneously to ensure coordinated decision-making and eliminate the possibility of assessments being made in the wrong hands or for the incorrect assessment year(s). It is respectfully submitted that, in search cases, the Range Head (Addl./Joint CIT) is fully aware of the progress of the assessment proceedings, the relevant issues concerning different assessee, and the nature and content of the seized material.*

The said guidelines explicitly emphasize the close coordination required in search and seizure assessments. Therefore, it is reasonable to conclude that, in accordance with prevailing administrative practices and guidelines, the approving authority has a comprehensive understanding of the issues involved in a particular case well in advance, prior to the case being submitted to him for approval under section 153D of the Act. The CBDT guideline is a crucial document that provides insight into the manner in which search assessments are handled by field officers. Hence, by any stretch of imagination,

it cannot be inferred that the Range Head was not in a position to independently apply his mind in a judicious manner while granting approval under section 153D of the Act and that the approval granted by the Range Head u/s 153D was in a routine and casual manner without considering the facts of the case. [CBDT guidelines being F. No. 286/161/2006-IT (Inv. II) dated 22.12.2006 is annexed herewith as ANNEXURE-B).

5. *Furthermore, reliance is being placed upon the decision of Hon'ble ITAT in the case of Smt. Usha Satish Salvi, IT A No. 4237-4239/MUM/2023, A.Y 2012-13 to 2014-15, dated 23.01.2025, wherein on the issue of approval u/s 153D of the Act has been considered at Para.8 to 8.2, Pg. No. 12 to 17 therein. In this decision, Hon'ble ITAT has considered various decisions of Hon'ble Courts as well as the affidavits of the AO and Range head regarding regular discussions between them prior to approval u/s 153D of the Act and the Hon'ble Tribunal had decided the issue in favour of the Department even in the case wherein common approval had been granted for all search cases of the assessee. [Copy of decision in Smt. Usha Satish Salvi (Supra) is annexed herewith as ANNEXURE-C1.*

6. *Furthermore, it is respectfully submitted that each approval must be assessed in light of the specific facts of the case, including the number of issues involved, the nature of those issues, the modus operandi, the number of cases, and the interrelationship among the facts of such cases. In instances where identical issues are involved, with the same modus operandi and cases pertaining to the same assessee, it would not be unreasonable to presume that the approving authority can judiciously apply its independent mind to such cases in a single day. Thus, the Range head approving all or a r number of cases of an assessee on a single day ought not to be seen as non-application of mind, particularly when the Range Head has perused the records and engaged in discussions with the Assessing Officer from time to time as per the CBDT guidelines referred above.*

7. *Furthermore, it is pertinent to mention here that the assessee has merely contented that the approval u/s 153D of the Act was mechanical in nature, without furnishing any supporting documentation or specific evidence to substantiate such a claim. Whereas on the other hand the AO specifically stated in the Assessment Order that the said assessment order was passed with the prior approval of Addl. JCIT vide letter dated 15.12.2018. Hence, it is most respectfully submitted*

that a mere assertion of a mechanical approval, in absence of any supporting evidence, cannot be accepted as sufficient to question the approval granted u/s 153D of the Act by the Range Head.

In view of the foregoing submissions, it is most respectfully submitted that the contentions of the assessee on the issue of approval of u/s 153D of the Act may please be rejected and the order of the AO may please be upheld.”

5. Heard rival submissions, perused the orders of the authorities below and the submissions made before us. In these appeals i.e. Smt. Sonia Mehta & Swati Mehta approval u/s 153D was granted by the Addl. CIT, Central Range-5, New Delhi on 15.12.2018 approving the draft assessment orders by way of a common approval for various assessment years i.e. from assessment years 2011-12 to 2017-18 as under:

Office of the
Addl. Commissioner of Income Tax,
Central Range-5, 1st Floor, Room No. Room No. 101
A.R.A. Centre, E-2, Jhandewalan Extn. New Delhi-110055

F.No. Addl. CIT/C.R-5/153D/2018-19/948 Dated: 15.12.2018

To

The Assistant Commissioner of Income Tax,
Central Circle-17,
New Delhi

Sub: Approval u/s 153D of the Income Tax Act, 1961 for making assessment u/s 153A/143(3)- reg.

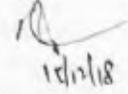
Ref: Your letter No. 3426 dated: 13.12.2018

Please refer to your letter mentioned above, whereby you have submitted draft assessment orders to be passed seeking approval u/s 153D of the I.T. Act, 1961 in the following cases:-

S. No.	Name of the assessee	PAN	Asstt. Years	Proceedings u/s
1	Smt. Swati Mehta	DEKPN0271IN	2011-12 to 2016-17	153A/143(3)
2	Smt. Swati Mehta	DEKPN0271IN	2017-18	143(3)
3	Smt. Sonia Mehta	ALAPN1777A	2011-12 to 2016-17	153A/143(3)
4	Smt. Sonia Mehta	ALAPN1777A	2017-18	143(3)

As proposed, approval to the above draft assessment orders are hereby accorded with the direction to ensure that the orders are passed well before the limitation. The approval accorded by the undersigned u/s 153D of the Act should be mentioned in the concluding para of the draft assessment order. Further, the copies of the final orders so passed be sent to this office for records. The assessment records in all the above cases are returned herewith.

Encl: As above.



(M. Barnwal)

Addl. Commissioner of Income Tax,
Central Range-5, New Delhi

6. Whether a common approval granted for various assessment years is a valid approval or not came up for consideration before various High Courts including the Hon'ble Jurisdictional Delhi High Court in the case of PCIT vs. Anuj Bansal (supra) & PCIT vs. Shiv Kumar Nayyar (supra). We also observed that similar issue came up for consideration in the following cases:

1. *“PCIT vs. Siddharth Gupta (450 ITR 526) Revenue’s SLP dismissed by Hon’ble Supreme Court in SLP(Civil) Diary Nos. 43280/2023 dated 09.08.2024 (page 182 of PB);*
2. *PCIT vs. Subodh Aggarwal (450 ITR 526) (All.);*
3. *PCIT vs. Sapna Gupta (145 taxmann.com 288) (All.);*
4. *Hon’ble Third Member in the case of Shri Dheeraj Choudhary vs. ACIT in ITA Nos. 6158 to 6160 and 6214 to 6216/Del/2018 dated 12.09.2025.*
5. *Tish Consultants P. Ltd. vs. DCIT ITA Nos. 2310 & 2311/Del/2025 dated 16.06.2025.”*

7. Recently Hon'ble Third Member in the case of Shri Dheeraj Choudhary vs. ACIT in ITA Nos. 6158 to 6160/Del/2018 and 6214 to 6216/Del/2018 dated 12.09.2025 held that common approval given by the Addl. CIT u/s 153D of the Act for various assessment years is bad in law and consequently the assessments were quashed observing as under:

“PER MAHAVIR SINGH, VICE PRESIDENT (AS THIRD MEMBER)

By the order of President, ITAT vide U.O. No.F.28-Cent.Jd(AT)/2025 dated 24th March, 2025, the undersigned has been nominated to adjudicate the difference of opinion between the learned Judicial Member and learned Accountant Member on the following question:-

“As to whether under the present facts and circumstances of the matters, the approval granted by the ACIT, dated 27.12.2016 under Section 153D of the Income Tax Act, 1961 are sustainable in the eyes of law or not.”

2. Brief facts are that a search under Section 132 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was carried out on the assessee group of cases on 27th April, 2014. Consequently, for the assessment years 2009-10 to 2015-16, notices under Section 153A of the Act were issued by the Revenue to the assessee. The assessee, during the course of assessment proceedings, submitted that the original returns filed be considered as returns filed in response to notices under Section 153A of the Act. Accordingly, assessments were framed by the ACIT, Central Circle-8, New Delhi for the relevant assessment years 2009-10 to 2015-16 vide different orders dated 27th December, 2016 under Section 153A read with Section 143(3) of the Act. Aggrieved by the additions made by the Assessing Officer, the assessee preferred appeals before learned CIT(A) and learned CIT(A) also passed appellate orders for these above assessment years. Aggrieved against the appellate orders, assessee preferred appeals before the Tribunal. The assessee, vide letter dated 27th October, 2021, for these assessment years, raised additional ground in all these appeals. The ground as raised is identical and hence, I will take the ground raised in assessment year 2009-10, which reads as under:-

“3. The CIT(A) has erred in law in confirming the addition made by the AO, without considering that the mandatory approval given by the Addl. CIT in this case u/s 153D has been given, in a complete mechanical manner, without application of mind and the same therefore makes the entire assessment order bad in law and void ab initio.”

3. This ground was adjudicated by the learned Judicial Member and learned Accountant Member after admitting the same and there is no dispute about admissibility of this ground. Before me, learned Counsel for the assessee filed copy of approval (which is in Hindi language but assessee filed a translated copy), which reads as under:-

“F.No./A.C.I.T./C.R.-2/2016-17/1029

Dated:- 27-12-2016

To,

*The Assistant Commissioner of Income Tax
(Central) (Circle)-8, New Delhi.*

Subject:- Karan Luthra Group Income Tax Rules 153D for approval and closing proceedings.

Please refer to letter F.No. Assistant Commissioner of Income Tax/Central Circle-08/2016-17/1311, dated - 27/12/2016 received in this office from Assistant Commissioner of Income Tax/Central Circle-08, New Delhi regarding the above subject. These draft orders are sent by you for approval under section 153D.

S.No.	Name of the Assessee	Section	PAN	AY	Filed Income	Assessed Income
1.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2009-10	137940	1340304
2.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2010-11	307943	10241352
3.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2011-12	403908	15000460
4.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2012-13	438939	23094073
5.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2013-14	1018269	10903269
6.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2014-15	584183	30911700
7.	Mr. Dheeraj Choudhary	153A	AASPK9267B	2015-16	1004820	321698040

The above proposed orders are approved with the direction that the assessment orders be passed before the prescribed time limit. It is also specified that a copy of the final orders passed be sent to this office.

(Rinku Singh)

Additional Commissioner of Income Tax

Central Range-2, New Delhi”

4. *Learned Counsel stated that the copy of approval is obtained through RTI and Department, vide letter dated 2nd August, 2021, provided this approval. Accordingly, the additional grounds are raised vide application dated 27th October, 2021. Learned Counsel for the assessee made argument that as per the mandate of Section 153D of the Act, the approval is to be granted to the assessment order by the Additional CIT/JCIT after due application of mind. Learned Counsel for the assessee stated that this approval dated 27.12.2016 was granted in lieu of proposal sent by the Assessing Officer i.e. the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi dated 27.12.2016. It means, according to learned Counsel, the Additional CIT granted approval of these seven draft assessment orders on the same date. He further explained that as per this proposal, the Assessing Officer, no assessments records, search materials, replies filed by assessee or any material related to these assessments was provided or examined by the 41 ITA Nos. 6158, 6159, 6160, 6214, 6215 & 6216/Del/2018 Dheeraj Chaudhary Additional CIT. In view of these facts, learned Counsel argued that that this issue is now settled by the decision of Hon'ble Delhi High Court in the case of PCIT(Central)-2 Vs. Anuj Bansal - [2024] 165 taxmann.com 2 (Delhi) and PCIT Vs. Shiv Kumar Nayyar - [2024] 163 taxmann.com 9 (Delhi). Even this issue has been dealt with by Hon'ble Orissa High Court in the case of ACIT Vs. Serajuddin & Co. - [2023] 150 taxmann.com 146(Orissa). Similar view is taken by Hon'ble Allahabad High Court in the case of PCIT Vs. Sapna Gupta - [2023] 147 taxmann.com 288 (Allahabad). Learned Counsel argued that the jurisprudence arising out of the above case laws is that an approval under Section 153D of the Act is considered to be as given with no application of mind and given in a mechanical manner when the approval itself does not reflect any application of mind. He narrated the facts of the present case stating that on 27th December, 2016, the Assessing Officer sent the draft assessment order to the Additional CIT for approval and on the very same date i.e., 27th December, 2016, the Additional CIT granted approval. He produced before us the said letter of the Assessing Officer along with approval granted by the Additional CIT. From a perusal of the above said approval, it was argued that there is not even a token of mention of the draft orders having been perused by the Additional CIT, rather, the letter simply grants approval. He argued that even the bare minimum requirement of the approving authority, having to indicate what the thought process was involved was, is missing in the aforementioned approval order. In the approval order, there is no whisper in regard to the fact that the Additional CIT has examined the seized documents or the proposed additions made in the draft assessment order as the same was forwarded to him for her perusal. From the approval, it is clear that there is no reason given and it is bare minimum for the approving authority that there should have been some indication that the approving authority has examined the*

draft orders and finds that it meets the requirement of the Act. In terms of the above, learned Counsel for the assessee stated that the above approvals are mechanical and without application of mind and hence, the assessment orders approved without application of mind is to be quashed. He supported the order of learned Judicial Member.

5. On the other hand, learned CIT-DR Ms. Pooja Swaroop submitted that as pointed out during the course of hearing, there is a mistake in the question of law framed, as reproduced below:-

“As to whether under the present facts and circumstances of the matters, the approval granted by the ACIT, dated 27.12.2016 under Section 153D of the Income Tax Act 1961 are sustainable in the eyes of law or not.”

She submitted that approvals under Section 153D of the Act are granted by the Joint/Additional CIT. However, in the present case, ACIT has been stated, which is incorrect, because ACIT is actually Assistant Commissioner of Income Tax and not Additional Commissioner of Income Tax. Without prejudice to the above, she drawn our attention to Paragraph 11 and 14 to 17 of the draft order of learned Accountant Member. She also produced copies of relevant guidelines enunciated by the Search & Seizure Manual and relevant SOPs for search assessments issued by the CBDT. She also referred to Appendix-V of the Assessment Manual issued by the Income-tax Department in regard to search and seizure assessments dated 22nd December, 2006 vide 43 F.No.286/161/2006-IT(Inv.II). She particularly referred to Paragraph 1.3 and argued that the Range Head i.e., Additional CIT/JCIT is involved in scrutinizing the seized material and issuance of notices under Section 153A, 153C and 148 of the Act and also where assessment in other than the searched person is to be done. The relevant Paragraph 1.3 referred by her reads as under:-

“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:

- i. 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 centralized.”*

6. Subsequently, she referred to Paragraph 2.9 and stated that in case the Assessing Officer is not in agreement with any

findings/conclusions drawn in the Appraisal Report, the matter should be brought to the knowledge of the Additional CIT/JCIT who should resolve the issue with the concerned Addl./Joint DIT(Inv) and also with CIT(Central) or DIT(Inv). She further referred to Paragraph 2.10 of the Manual and stated that even the Additional CIT/JCIT can issue instructions to the Assessing Officer in terms of Section 144A of the Act. She stated that even the Additional CIT/JCIT is involved in the preparation of final assessment order by way of instructing the Assessing Officer issuing final show cause notice. She referred to Paragraph 3.2 of the Manual, which reads as under:-

“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.”*

In view of the above, she prayed that approval under Section 153D of the Act is neither invalid nor bad in law nor given without application of mind by the Additional CIT, as emphasized by the learned Accountant Member in his order.

7. I have heard the rival submissions and gone through the facts and circumstances of the case. Admitted facts are that for all the relevant six assessment years, only one approval is granted by the Additional CIT as is available on record, which is a part of this order at Paragraph 5. The provisions of Section 153D of the Act where prior approval is made necessary for assessments in search and seizure cases is introduced by the legislature by the Finance Act, 2007 with effect from 1st June, 2007. The relevant provisions of Section 153D read as under:-

“153D. 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 153A, or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.”

8. As argued by the learned Counsel for the assessee, in view of this provision, I noted that an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of search assessments. Keeping in view the basic fundamental features of search assessments i.e., Section 153A of the Act, if the provisions of Section 153D is scrutinized, it would become manifest that an

important phrase is employed in the text of Section 153D, which is “each assessment year”. The bare reading of Section 153D of the Act makes it clear that separate approval of draft assessment order in each year is to be obtained. The Hon’ble Allahabad High Court in the case of PCIT Vs. Sapna Gupta - [2023] 147 taxmann.com 288 (Allahabad), while adjudicating this issue, has considered the important concept of each assessment year for the purpose of approval to be granted under Section 153D, as under:-

“19. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of “each assessment year” referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of “each assessment year” falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

20. 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.

21. In the instant case, the draft assessment order in 85 cases, i.e. for 85 assessment years placed before the Approving Authority on 30-12-2017 was approved on same day i.e. 30-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.”

9. In the present case before me also, as is evident from the copy of approval, as reproduced above, granted by the Additional CIT, is for all the six assessment years vide one approval. Hence, on this count also, the approval granted by the Additional CIT is bad in law and consequent assessment order passed in all these six assessment years is bad in law.

10. Coming to the fact that the Assessing Officer while sending draft assessment orders has not enclosed any assessment folder, assessment material, search material seized from the assessee's premises and other related material including the replies filed by the assessee qua the additions made by the Assessing Officer. It is noted that the Assessing Officer has made additions for the respective assessment years which is given in the proposal for approval sent by the Assessing Officer. The approval granted has already been reproduced by me in this order at Paragraph 5, but, the proposal for approval under Section 153D of the Act sent by the Assessing Officer is being reproduced for the sake of brevity and clarity as under:-

“F.No.ACIT/Central Cir.-08/2016-17/1311 Dated: 27.12.2016

To,
The Addl. Commissioner of Income Tax,
Central Range-02, New Delhi.

Madam,

Subject :- Proposal for approval u/s 153D of the I.T. Act, 1961 in the case of Sh. Dheeraj Chaudhary [PAN : AASPK9267B], Flat No.- 1A, Empire Estate, Sultanpur, New Delhi - 110030 - Reg.

Kindly refer to the above.

Please find enclosed herewith draft assessment orders in the case of above mentioned assessee for the assessment years 2009- 10 to 2015-16 (being search case) for your kind approval as required u/s 153D of the Income Tax Act-1961.

Name of the Assessee	PAN	AY	Section	Returned Income	Assessed Income
Sh. Dheeraj Choudhary	AASPK9267B	2009-10	153A	Rs.1,37,940/-	Rs.13,40,304/-
Sh. Dheeraj Choudhary	AASPK9267B	2010-11	153A	Rs.3,07,943/-	Rs.1,02,41,352/-
Sh. Dheeraj Choudhary	AASPK9267B	2011-12	153A	Rs.4,03,908/-	Rs.1,50,00,460/-
Sh. Dheeraj Choudhary	AASPK9267B	2012-13	153A	Rs.4,38,939/-	Rs.2,30,94,073/-
Sh. Dheeraj Choudhary	AASPK9267B	2013-14	153A	Rs.10,18,269/-	Rs.1,09,03,269/-
Sh. Dheeraj Choudhary	AASPK9267B	2014-15	153A	Rs.5,84,183/-	Rs.3,09,11,700/-
Sh. Dheeraj Choudhary	AASPK9267B	2015-16	153A	Rs.10,04,820/-	Rs.2,21,68,040/-

Yours Faithfully,
Sd/-

(Pratibha Singh)

Asst. Commissioner of Income Tax
Central Circle-08, New Delhi”

11. From the above proposal, it is clear that the same is not accompanied by any assessment folder, seized material or any other related documents for completion of assessment. It means that before the Additional CIT, only a proposal vide letter F.No.ACIT/Central Cir.- 08/2016-17/1311 dated 27th December, 2016 was sent by the Assessing Officer. In the given facts, whether this approval granted by the Additional CIT is mechanical or there is due application of mind or not.

12. I have gone through the case law of Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), wherein Hon'ble High Court has considered the meaning of approval and what must contain while granting of approval as discussed by Hon'ble Supreme Court in the case of Rajesh Kumar Vs. DCIT - [2006] 157 Taxman 168 (SC), wherein Hon'ble Supreme Court, in the context of Section 142(2A) of the Act which empowers the Assessing Officer to direct a special audit and obtaining a prior approval, has explained the approval as under:-

“58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might

have been achieved upon production of some materials for understanding the books of accounts and/or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given.”

13. Further, Hon’ble Orissa High Court in the case of Serajuddin & Co. (supra) has also considered the CBDT Manual of Office Procedure issued in February, 2003 in exercise of powers under Section 119 of the Act and reproduced Para 9 of Chapter 3 of Volume-II(Technical) of the Manual, which reads as under:-

“9. Approval for assessment - An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/Addl.CIT (for the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. 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. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself.”

14. Further, in the case of Serajuddin & Co. (supra), Hon’ble Orissa High Court has also considered the issue of approval, according to the Revenue, it is itself not justiciable. Hon’ble Supreme Court has considered where approval granted is mechanical and it would vitiate the assessment order itself. Hon’ble Supreme Court, in the case of Sahara India (Firm) Vs. CIT - [2008] 169 Taxman 328 (SC), has considered this issue as under:-

“8. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision 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 ritual. Needless to emphasize that before granting approval, the Chief Commissioner or the Commissioner, 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. The approval must reflect the application of mind to the facts of the case.”

15. Further, Hon'ble Supreme Court has reiterated the view expressed in *Rajesh Kumar (supra)* as under:-

*“29. In *Rajesh Kumar (2007) 2 SCC 181* it has been held that in view of section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income-tax Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of section 196 of I.P.C. and every Income-tax Authority is a court for the purpose of section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in *Rajesh Kumar's* case (*supra*), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see :*Maneka Gandhi v. Union of India [1978] 1 SCC 248* and *S.L. Kapoor v. Jagmohan [1980] 4 SCC 379*).*

*30. As already noted above, the expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under section 142(2A) does entail civil consequences, the rule *audi alteram partem* is required to be observed.”*

16. Further, Hon'ble Orissa High Court in the case of *Serajuddin & Co. (supra)*, has considered the case of Hon'ble Delhi High Court in the case of *Yum! Restaurants Asia Pte.Ltd. Vs. DCIT - [2017] 397 ITR 665 (Delhi)*, which has dealt with the requirement of approval/sanction under Section 151(2) of the Act for initiating

proceedings under Section 147 read with Section 148 of the Act. Hon'ble Delhi High Court observed as under:-

“11. The purpose of section 151 of the Act is to introduce a supervisory check over the work of the AO, particularly, in the context of reopening of assessment. The law expects the AO to exercise the power under section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the AO, then the law expects the superior officer to be able to correct that error. This explains why section 151(1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the AO where the return originally filed was assessed under Section 143(3) of the Act. Further, where the reopening of an assessment is sought to be made after the expiry of four years from the end of the relevant AY, a further check by the further superior officer is contemplated.”

17. Further, Hon'ble Delhi High Court in the case of *PCIT Vs. Shiv Kumar Nayyar - [2024] 163 taxmann.com 9 (Delhi)* and *PCIT(Central-2) Vs. Anuj Bansal - [2024] 165 taxmann.com 2(Delhi)*, has considered the identical issue wherein it was emphasized that approval was granted without examining the assessment records or the searched material and, Hon'ble High Court in Paragraph 13, extracted the findings of the Tribunal as under:-

“13. In another words, it was emphasized that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

“17.1 However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs.16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs.1,65,07,560/- had he applied his mind. The addition of Rs.15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter

of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl.CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed.”

18. On the other hand, learned CIT-DR relied upon the decision of Hon'ble Supreme Court in the case of Spacewood Furnishers (P) Ltd. - [2015] 374 ITR 595 (SC) and Mumbai ITAT decision in the case of Pratibha Pipes and Structural Ltd. in ITA No.3874/Mum/2015. She also relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kelvinator of India Ltd. - [2002] 256 ITR 1(Delhi). She also relied on the decision of Hon'ble Supreme Court in the case of Kunhayammed Vs. State of Kerala - [2000] 245 ITR 360(SC) and Khoday Distilleries Ltd. Vs. MahadeshwaraSahakaraSakkareKarkhane Ltd. - [2019] 104 taxmann.com 25(SC).

19. I noted that the case law cited by the learned CIT-DR of Spacewood Furnishers (P) Ltd. (supra) relates to warrant of authorization issued under Section 132 of the Act for carrying of search by the Income-tax Department and whether the assessee has right to inspection of documents or communication of reasons for belief at the stage of issuing of authorization. Hon'ble Supreme Court has categorically said No but also said that the requisite material may have to be disclosed at the stage of commencement of assessment proceedings. Hence, this case cannot be equated with the present controversy regarding approval under Section 153D of the Act. Regarding the case law of this Tribunal in the case of Pratibha Pipes &Structurals Ltd. (supra), the only issue before the Tribunal was whether the approval under Section 153D is granted or not. In the given facts and circumstances of that case, the Tribunal reached to a conclusion that there is approval granted under Section 153D of the Act and nothing else. Hence, on facts, this is clearly distinguishable. As regards the decision of Kelvinator of India Ltd. (supra), that was the case of reopening and whether the reason to belief of Assessing Officer is founded on an information which has

been received by the Assessing Officer after completion of assessment and that can be a sound foundation for exercising power under Section 147 read with Section 148 of the Act. Hence, this decision also cannot be equated with the approval as amended under Section 153D of the Act. As regards the other decisions cited by the learned CIT-DR of Kunhayammed (supra) and Khoday Distilleries Ltd. (supra), these relate to the concept of merger of High Court order in question with Supreme Court's order while dismissing the SLP. Here, that is not the question, rather, the question is whether approval is mechanical or not. Whether approval granted under Section 153D of the Act is on application of mind or not in the given facts and circumstances of the case. Hence, these decisions are clearly distinguishable on facts and principle of law.

20. I have gone through the order of learned Accountant Member and noted that in Paragraph 7, it is noted that the approval accorded by the Additional CIT under Section 153D of the Act is nothing but the culmination of day to day involvement of the Assessing Officer and the Additional CIT in search assessments. The relevant procedure noted by the learned Accountant Member reads as "The fact is that the AO and the Addl.CIT works as team members and the AO works under the supervision of the Addl. CIT. The team work gets culmination by the approval under section 153D of the Act. Such involvement of the 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 change hands for the first time between the AO and the Addl.CIT at the time of approval of the search assessment. The detail mentioned above is based on my personal experience while working in each hierarchy (AO onwards) of the Central Charges of the Income Tax Department." The second aspect considered by the learned Accountant Member is that approval under Section 153D of the Act by the Additional CIT is merely administrative in nature to safeguard internal checks and balances without affecting the quasi-judicial powers of the Assessing Officer and creating any prejudice to the assessee. It was further noted by the learned AM that while granting approval under Section 153D of the Act, the Additional CIT does not act as a reviewing/appellate authority to allow or disallow the additions proposed by the Assessing Officer.

21. I note the above observations of learned Accountant Member and is of the view that assessment proceedings or any proceedings under the Act before the Assessing Officer which affect the levy of tax on the subject are judicial in nature. It is well-settled that the Assessing Officer upon whom jurisdiction has been conferred to make all orders judicially, has to act independently. The Assessing Officer, while framing assessment, cannot act on the advice given by an outsider even though he may be an authority higher in rank to him in official hierarchy. Higher authorities that include Additional

CIT/JCIT under whom the Assessing Officer is administratively under control, are not entitled to give opinion or advice in regard to assessment proceedings being quasi-judicial in nature. This is, however, subject to the provisions of Section 144A of the Act, where the assessee or the Assessing Officer suo-moto can refer the matter but, for that, he has to invoke this provision. This view is supported by Hon'ble Bombay High Court in the case of Dinshaw Darabshaw Shroff Vs. CIT - [1943] 11 ITR 172 (Bom), wherein it is held that although the Assessing Officer making an assessment is not acting as a court of law, it is clear that while framing assessment is acting in quasi-judicial capacity, and he ought to conform to the more elementary rules of judicial procedure, and in particular to conduct the case himself, and not allow somebody else, even his superior officer, to interfere in the conduct of the case. What to talk of superior authority, Hon'ble Supreme Court in the case of Union of India Vs. Tata Engineering & Locomotive Co. Ltd. - AIR 1998 SC 287, 288, held that the Assessing Officer is entitled to complete the assessment as per the provisions of Section 143(3) of the Act and, for this purpose, he can call for and examine whatever document he considers relevant. Hon'ble Supreme Court held that, if the Assessing Officer fails to follow any judgment of the High Court or of the Supreme Court, the assessee has adequate statutory remedies by way of an appeal and revision against the assessment order but, the Court should not try to control the mode and manner in which an assessment should be made. Hence, the higher authority including the Additional CIT/JCIT or CIT or CCIT, being administrative controlling authorities of the Assessing Officer, are not entitled to interfere in the judicial process of the Assessing Officer while framing assessment. In view of the above, I am of the view that, while making an assessment, the Assessing Officer is solely to be guided by the provisions of law and he cannot avail of any instructions or directions given by his higher authority including CBDT in making a particular assessment in a particular way. While passing assessment orders, he is only bound by what, if any, has been directed under Section 144A of the Act by his Additional CIT/JCIT or the instructions issued by the CBDT under Section 119 of the Act or what has been decided by the appellate authorities as mentioned in the Act. He has also to follow the precedence established by Hon'ble High Courts or the Supreme Court. The proceeding under Section 153D for granting approval is entirely different from the process of making assessment. Once draft assessment is prepared, the process of approval starts under Section 153D of the Act. Then the authority prescribed under Section 153D i.e., the Additional CIT/JCIT has to apply his mind for grant of approval after verifying the assessment records, seized records, etc.

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.

Now, in view of the above discussion and legal position, I answer the question as under:-

Question framed by the Bench	Answer to the Question
As to whether under the present facts and circumstances of the matters, the approval granted by the ACIT, dated 27.12.2016 under section 153D	In the given facts and circumstances of the case and discussion carried above, the approval granted by Additional CIT dated 27.12.2016 u/s

of the Income Tax Act, 1961 are sustainable in the eyes of law or not.	153D of the Act is not sustainable in the eyes of law.
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In terms of the above, I concur with the decision of learned Judicial Member quashing the above assessments.

The matter shall now be placed before the regular Bench for passing appropriate orders in accordance with the majority opinion.

PER BENCH:

These appeals were filed by the assessee against the orders all dated 31.07.2018 passed by the CIT(A)-31, New Delhi, arising out of the orders passed by the ACIT, Central Circle-8, New Delhi under Section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for the assessment years 2009-10 to 2014-15. 60

After hearing the appeals, the Judicial Member allowed the appeals preferred by the assessee. The Accountant Member opined otherwise and wrote a separate order. On account of difference of opinion between the Members constituting the Bench, a reference was made to the Hon'ble President ITAT u/s 255(4) of the Act. The Hon'ble President vide order dated 24.03.2025 nominated Third Member to decide the reference. The Id. Third Member vide order dated 10.09.2025 concurred with the view of Judicial Member. Consequent to the opinion of Third Member, appeals of the assessee are allowed.

7. Order pronounced in open court on 12.09.2025"

8. Respectfully following the decisions of the Hon'ble Delhi High Court in the case of PCIT vs. Anuj Bansal (supra) and PCIT vs. Shiv Kumar Nayyar (supra) and the Third Member of Delhi Bench in the case of Shri Dheeraj Chaudhary vs. ACIT in ITA Nos. 6158 to 6160/Del/2018 & 6214 to 6216/Del/2018 dated 12.09.2025. We hold that the approval granted u/s 153D in these appeals of the assessee is in mechanical manner without due application of mind and is in violation of provision u/s 153D of the Act. Consequently the assessments framed u/s 143(3) for the AY 2017-18 dated 16.12.2018

in both these cases under appeal before us are hereby quashed. Ground no. 3 and ground no.4 of grounds of appeal of the Assessee Smt. Sonia Mehta & Smt. Swati Mehta respectively are allowed.

9. As we have quashed the assessment allowing ground nos. 3 & 4 of grounds of appeal of both these assesseees, all other technical grounds as well as grounds on merits are not gone into as it would be of only academic exercise at this stage and therefore they are left open.

10. In the result, the appeals of the assesseees are partly allowed as indicated above.

Order pronounced in the open court on 27.10.2025

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 27.10.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**