

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI**

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

**ITA No.5294/Del/2019
[Assessment Year: 2008-09]**

M/s Best City Projects India Pvt. Ltd. Plot No.H-8, 1 st Floor, Best Plaza, Netaji Subhash Place, Pitampura, New Delhi-110034	Vs	Income Tax Officer, Ward-4(3), Room No.385A, C.R. Building, New Delhi 110002
PAN-AACCB7635D		
Appellant		Respondent

Assessee by	Shri Salil Kapoor, Shri Shivam Yadav Shri Sumit Lal Chandani, Ms. Ananya Kapoor, Advocates.
Revenue by	Ms. Rajinder Kaur, CIT(DR)

Date of Hearing	30.07.2025
Date of Pronouncement	27.10.2025

ORDER

PER AMITABH SHUKLA, AM,

This appeal has been preferred by the assessee against order dated 08.03.2019 of the Id. Commissioner of Income Tax(Appeals)-12, (hereinafter referred to as 'Id. CIT(A)') New Delhi, arising out of assessment order dated 22.12.2017 passed u/s 254/143(3)/153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by Income Tax Officer, Ward-4(3), New Delhi, pertaining to Assessment Year 2008-09.

2. The assessee has raised following grounds of appeal contesting the order of Ld. First Appellate Authority.

1. *The Ld/- CIT(A) has erred in law and facts of the case, confirming to the action of Ld/- AO by ignoring the submission made and supporting documents provided by the appellant company and has further erred in sustaining the addition of Rs. 90,00,000/- received as an advance against sale of the project treating as unexplained credit u/s 68 of the Act, which is highly arbitrary, unjustified, bad- in law, uncalled for and merely on presumption of the Ld/- AO.*

2. *The Ld/- CIT(A) has erred in law and facts of the case in confirming the action of the Ld/- AO of making an addition of Rs.90,00,000/- received as advance for sale of land alleging that the same as an unexplained cash credit, without bringing on record anything contrary to the evidence furnished by the assessee, which is highly arbitrary, unjustified, bad- in law, uncalled for and merely on presumption of the Ld/- AO.*

3. *Notwithstanding to the above, the Ld/- AO has erred in making the addition of Rs. 90,00,000/- in order passed u/s 143(3)/153A of the Act, in pursuance to section 254 which is not based upon any seized material found in the course of search conducted on 15.09.2008 which is illegal, bad-in-law and uncalled for.*

3. The assessee has also raised additional ground of appeal, which reads as under:-

5. *That the assessment order dated 22.12.2017 passed u/s 254/143(3)/153A of the Income Tax Act, 1961 ("the Act") by the Assessing Officer ("A.O.") and the additions/disallowances made therein are illegal, bad in law, barred by time limitation and without jurisdiction and the same are liable to be deleted.*

6. *That in view of the facts and circumstances of the case, and in law, the A.O. had erred in not taking statutory approval under section 153D of the Income Tax Act, 1961 for passing the assessment order. Thus, the impugned assessment order is illegal, bad in law, and liable to be quashed.*

7. Without prejudice to the above, the approval if any taken under Section 153D of the Act is illegal, bad in law, without application of mind and mechanical in nature.

4. Through the aforesaid additional ground of appeal, the assessee has challenged the validity of order u/s 254/143(3)/153A dated 22.12.2017 passed by the AO without obtaining prior approval u/s 153D of the Act. The principle issue that has come to be decided now, first is as to whether prior approval u/s 153D of the Act was necessary in the assessment proceedings before the AO, which were consequence to remission of the matter by the ITAT. The specific statutory provisions of section 153D which are seminal to the issue are reproduced hereunder:-

“Prior approval necessary for assessment in cases of search or requisition.

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:

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 144BA.”

5. Before proceeding further, we deem it appropriate to recapitulate the brief factual matrix of the case. Search and seizure action u/s 132 of the Act was conducted on 15.09.2008 upon the assessee dealing in the business of real estate development. Subsequently, notice u/s 153A, post approval u/s 153D, was issued on 01.05.2009. Order u/s 153A r.w.s. 143(3) was passed whereby an addition of Rs.90 lakhs was made in the hands of the assessee u/s 68 of the Act. The assessee’s appeal was dismissed by the Ld. CIT(A). In appeal, a Co-

ordinate Bench of the Tribunal in ITA No.1754/Del/2014, dated 11.08.2016

remanded the matter back to the ld. AO with the following directions:-

“5. We have considered the rival submissions and have perused the order of the Assessing Officer and learned CIT(A). We find that learned CIT(A) has admitted the agreement to sell between the assessee and M/s Greencity Buildtech Limited as additional evidence. However, after admitting the same, learned CIT(A) failed to consider the same in its totality. On one hand, learned CIT(A) admitted the same but, at the same time, he doubted the authenticity of agreement to sell. He also failed to notice the important fact that as per agreement to sell, the assessee had agreed to sell 10 acres of land for a sum of `20,96,32,500/-. Though M/s Greencity Buildtech Limited had given the advance of `90 lakhs but they had to pay more than `20 crores to the assessee. Therefore, the presumption that the assessee was to pay the amount and M/s Greencity Buildtech Limited was to receive the amount is contrary to the agreement to sell. In our opinion, it would meet the ends of justice if the orders of lower authorities are set aside and matter is restored to the file of the Assessing Officer. We order accordingly and direct the Assessing Officer to allow adequate opportunity of being heard to the assessee. We also direct the assessee to produce all the evidences before the Assessing Officer in support of its contention that the sum of `90 lakhs was received as advance from M/s Greencity Buildtech Limited. It will also produce necessary evidence to establish the creditworthiness of M/s Greencity Buildtech Limited. Thereafter, the Assessing Officer will readjudicate the issue in accordance with law after considering all the material as may be placed before him by the assessee.”

6. Pursuant to above directions of this Tribunal, the Ld. AO passed his order u/s 254 r.w.s. 143(3) r.w.s. 153A of the Act dated 22.12.2017 where he proceeded to repeat the addition of Rs.90 lakhs earlier observing as under:-

“4. In order to give effect to the finding of the Ld. ITAT a notice u/s 143(3) of IT Act, was issued on 28.08.2017 and Sh. Rajat Agarwal & Sh. Rajesh Arrora C.A./A.R. appeared from time to time and filed the details and submissions, but no confirmations from the party of cash credit M/s Greencity Buildtech Ltd. was furnished, which have been placed on record.

4.1 In order to verify the transaction an enquiry notice u/s 133(6) of IT Act, was sent to M/s Greencity Buildtech Ltd. From whom unsecured loan of Rs.90 lacs, was received by the assessee.

S.No.	Notice u/s	Date of Issue	Dated Fixed	Remarks
1.	U/s 133(6)	16.11.2017	21.11.2017	Left
2.	U/s 133(6)	05.12.2017	11.12.2017	No Such Person
3.	Through Dir. Sunita Chaudhary	05.12.2017	11.12.2017	No Such Person
4.	Jeetendra Chaudhary	05.12.2017	11.12.2017	No Such Person
5.	Sanjay Bansal	05.12.2017	11.12.2017	No Compliance

These notices u/s 133(6) of IT Act, were sent on various dates as detailed below:-

These notices were sent to the party and Directors calling for the following

- 1. Details of Transaction held with M/s Best City Projects India Pvt. Ltd. during the F.Y. 2007-08. Relevant to A.Y. 2008-09 with supporting documents entered into between the parties, if any.*
- 2. Furnish the copy of ITR, Computation of Income, P&L A/c Balance sheet with all schedule and annexure for the A. Y. 2008-09.*
- 3. Copy of Account of the transactions conducted with M/s Best City Projects India Pvt. Ltd during the F.Y. 2007-08 relevant to the A.Y. 2008-09.*
- 4. Copy of Bank Statement, Highlighting the Transactions conducted with the M/s Best City Projects India Pvt. Ltd. during the F.Y. 2007-08 relevant to the A. Y. 2008-09.*
- 5. Further, summons u/s 131 of It Act, were also sent on .05.12.2017 to the Directors Sh. Sunita Chaudhary, Jetendra Chaudhary & Sanjay Bansal for appearance on 12.12.2017 but the summons have been received back with unserved sent through speed post with the postal remarks "No Such Person" from two parties but Sh. Sanjay Bansal did not appear on the given date as summons has not been received back in respect of the Director.*
- 6. On 05.12.2017 Sh. Rajat Aggarwal & Sh. Rajesh Arora, CA/A.R. appeared and were informed that notices u/s 133(6) of IT Act, is issued have received back on 15.12.2017. Sh. Rajat Aggarwal, CA/AR appeared and was informed about the non service of summons and none appeared in respect of summons in the name of Sh. Sanjay Bansal Director. The AR was asked to produce the Director of M/s Greencity Buildtech Pvt. Ltd. for personal deposition on 15.12.2017. The AR of the assessee has failed to produce the Director till this date. In the absence of genuineness of the cash credit the same remain verifiable.*

7. In view of the facts of the case, in the re-assessment proceedings, the assessee has failed to establish the genuineness of the claim of Cash Credit of Rs. 90 Lacs. Hence to the amount of Rs. 90 Lacs is treated on cash credit and added to the income u/s 68 of the IT Act..”

7. Further, the Id. CIT(A) through his order dated 08.03.2019 dismissed the appeal of the assessee observing as under:-

“7.6 I have considered the facts of the case and the submission of the Appellant. While deciding the appeal of the Assessee, the Hon'ble ITAT directed the Assessing Officer to allow adequate opportunity of being heard to the Assessee. The Assessing Officer has provided adequate opportunity to the Assessee to prove that receipt of Rs.90,00,000/- was an advance receipt as part execution of the sale deed. The Assessing Officer issued notices u/s 133(6) to the directors of M/s Green City Buildtech Limited. The Assessing Officer issued a summons u/s 131 of the IT Act to the directors of M/s Green City Buildtech Limited to investigate into the facts. The return of notices or no response was intimated to the Assessee by the Assessing Officer. Hence, it can be said that the Assessing Officer has fully complied with the directions of the Hon' ble ITAT.

7.7 The Hon'ble ITAT directed the Appellant to produce all the evidences in support of its contention that sum of Rs.90,00,000/- was received as advance from M/s Green City Buildtech Limited. The Appellant failed to submit any other evidence than those which were produced during the first innings of the assessment proceedings. The second direction given by the Hon'ble ITAT to the Appellant was to furnish necessary evidence to establish the creditworthiness of M/s Green City Buildtech Limited. From the details collected from the record, it may be seen that no such evidences were produced by the Appellant before the Assessing Officer.

7.8 It is important to note that M/s Green City Buildtech Limited had allegedly given advance of Rs.90,00,000/- as part of the execution of agreement to sell 10 acres of land for total consideration of Rs.20,96,32,500/-. If the agreement has not been executed for any reasons, the other party would try to claim the amount back. But neither the Assessee has returned the amount of Rs.90,00,000/- nor has any proof been submitted that M/s Green City Buildtech Limited is making any efforts in this regard.

7.9 The present appeal filed by the Appellant is against the order of the Assessing Officer who was complying with the directions given by the Hon'ble ITAT. As stated above, the Assessing Officer has fully complied with the said directions but the Appellant could not comply with such directions. Hence, the decisions cited by the Appellant are distinguishable on facts. Therefore, the addition of Rs.90,00,000/- is confirmed....”

8. The ld. DR has vehemently argued qua consideration of additional ground of appeal. It has been claimed that no injury is caused to the assessee by not obtaining approval u/s 153D by the AO during the remand proceedings. It has been fiercely submitted that there is no statutory requirement of obtaining any approval u/s 153D by the AO during the remand proceedings. In support of its contentions, the ld. DR placed reliance upon the order of the Hon'ble Punjab & Haryana High Court in the case of Osho Forge Limited as at 410 ITR 198. The ld. DR drew our attention to para 8 to 12 of the impugned order.

“8. Although the assessee claims that three substantial questions of law arise, in fact the issue involved in the present appeal is:—

"Whether under Section 153D of the Act there is a requirement of fresh approval for complying with the remand directions under Section 263, in a case where the assessment under Section 153A of the Act was originally framed after compliance of Section 153D of the Act?"

9. We answer the question against the assessee.

Section 153D is 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:)"

10. As per Section 153-D, no order of assessment under Sections 153A and 153B can be passed by the A.O. without prior approval of the Joint Commissioner.

11. The assessment order dated 24.12.2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated 24.12.2010. Thereafter the said order was taken up in revision. The order was set aside and the matter was remitted to the A.O. to pass a fresh assessment order. The approval under Section 153D was not set aside. There was no question thereupon of the A.O. seeking fresh approval under Section

153D. The order dated 18.03.2014 passed by the A.O. was in compliance with the remand directions. It was not a case of the A.O. assuming jurisdiction under Section 153A of the Act. That stage was over when order dated 24.12.2010 was passed. The A.O. was complying with the directions of the revisional authority. Section 153D of the Act is only applicable for passing an assessment order or re-assessment order. There is no requirement under Section 153D for prior approval for complying the remand directions. The approval dated 24.12.2010 in fact was to the effect that assessment of assessee can be passed under Section 153A. Remand direction was that the assessment under Section 153A should be framed again. There was no occasion of fresh assumption of jurisdiction to frame assessment. Rather it was in continuation of earlier proceeding which was duly approved. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Additional Commissioner Officer lower in rank than Commissioner for complying with the directions given by the Commissioner.

12. The CIT (Appeals) allowed the appeals of the assessee on the basis that compliance of Section 153D of the Act was mandatory. It is not the issue whether the provision is procedural or the requirement of approval is mandatory. The fact is that Section 153D of the Act had been duly complied with by the A.O. The contention raised that even an order of remand cannot be passed without complying with Section 153D of the Act is beyond the scope of the section. The Tribunal rightly held that Section 153D of the Act is for assuming jurisdiction to pass an assessment order under Section 153A of the Act and the A.O. would not loose the jurisdiction to frame assessment while complying with remand order..”.

9. The Id. Counsel for the assessee vehemently argued that it was statutorily mandatory for the Id. AO to have obtained approval u/s 153D of the Act before passing the impugned order dated 22.12.2017. It was argued that the order of Hon’ble Tribunal in ITA No.1754/Del/2014 (supra) constituted a direction for “reassessment” within the meaning of section 153D of the Act. In support of his contentions, the Id. AR placed reliance upon the decision of Hon’ble Delhi High Court in the case of PCIT vs Headstrong Service India Private Limited (ITA No.77/2019), of this Tribunal ACIT vs SS. Buildcon Pvt. Ltd. in ITA No.1987/Del/2016 and of Ranchi Tribunal in the case of Anup Kumar Chaterjee vs ACIT in ITA(SS)A Nos.70 to 74/RAN/2019.

10. Thus, we have noted that there are few issues seminal to the controversy that require examination. The first being as to whether it was mandatory for the Ld.AO, in remand proceedings, to have taken approval of Competent Authority u/s 153D, whether the Co-ordinate bench of this Tribunal in the order in ITA No.1754/Del/2014 (supra) ordered assessment denovo, whether the order of assessment denovo by the Tribunal constitutes an assessment or re-assessment as mandated u/s 153D, whether the order of Hon'ble Punjab & Haryana High Court in the case of Osho Forge Limited (supra) takes precedence over the decision of this Tribunal in the case at ITA No.1987/Del/2016 (supra) and of the Ranchi Tribunal.

11. We have noted that the directions of this Tribunal in ITA No.1754 (supra) were clear inasmuch as the Ld.AO was directed to re-adjudicate the matter in accordance with law after considering material provided by the assessee and by giving him an adequate opportunity of being heard. The impugned directions were given as the assessee had pleaded before the Hon'ble Co-ordinate Bench that it was not able to produce adequate and appropriate evidences before the lower authorities and that to the effect its right to natural justice was injured. Thus, there is no dispute as to the directions of this Tribunal in ITA 1754(supra).

12. The question that however, does arise is as to whether the Ld.AO was required to have obtained approval u/s 153D of the Competent Authority before passing an order u/s 254, giving effect to Tribunal's directions or not ?. Thus, whether the remand proceedings would constitute a case of a fresh "assessment or re-assessment" prescribed u/s 153D or the approval u/s 153D originally granted to the AO would suffice ?. We have noted that the Hon'ble Co-ordinate Bench of this Tribunal in ITA No.1987/Del/2016 and of Ranchi Tribunal in

ITA (SS) No.70 to 74/RAN/2019 have held the view that an AO is required to obtain approval u/s 153D in all cases where the Tribunal had directed denovo assessment. Thus, in ITA No.1987/Del/2016 (supra) it was held as under:-

“.....3. Learned CIT(DR), first of all, invites our attention to the Revenue’s third substantive ground seeking to reverse the CIT(A)’s lower appellate discussion quashing the impugned second round assessment dated 11.06.2015 as not framed after obtaining due approval under section 153D of the Act as under:

“13. I have considered the legal claim of the appellant company, the comments of the AO on the issue submitted during appellate proceedings and the rejoinder of the appellant company on the same. The AO has contended that the approval u/s. 153D is not required as assessment proceedings had not been set aside or annulled and the Hon'ble ITAT had given a time period of 120 days with specific directions to verify certain matters and the assessment had not been set aside to be framed de-novo. The AO also placed reliance on circular no. 3 dated 12.03.2008 of CBDT which does not specify that it was required, further, it contended by the AO that the provisions of section 153D were applicable when assessment was framed for the first time or reassessment. The AO highlighted a situation wherein the CIT (A) passes an order u/s. 250 with the direction to allow the claim after verifying the evidence and in such a situation, the AO opined that there would be no need to take approval u/s. 153D as the directions of CIT (A) cannot be subjected to approval of Joint/Additional CIT. It was on similar analogy that the specific directions of Hon'ble ITAT or High Court to the AO would not require approval u/s. 153D. The AO, therefore, claimed that the assessment had not been set aside by the Hon'ble ITAT and only certain specific verifications were to be carried out. The AR, on the other hand, has contested the viewpoint of the AO as highlighted above, by submitting that the directions of the Hon'ble ITAT to frame the assessment as early as possible preferably within the specified time of 90 days was only recommendatory in nature as the AO took more than a year to frame the assessment. It was highlighted that the first notice u/s. 142(1) had been issued on 29.05.2014 and the order under consideration had been passed on 11.06.2015. The AR has contended that the AO's reliance on the circular no. 3 issued by CBDT dated 12.03.2008 was misplaced as the impugned order cannot be anything other than either the assessment or reassessment. The AR also highlighted the relevant portion of the order of the Hon'ble ITAT dated 31.03.2014 to contend that assessment under appeal had been set aside to the file of the AO which meant that a fresh assessment had to be framed.

14. The critical issue in the given circumstances, as highlighted above, is that whether the Hon'ble ITAT's order had set aside the assessment or the AO had merely given an appeal effect to the order of the Hon'ble ITAT. It is quite apparent that in

consequence of the order of the Hon'ble ITAT dated 31.03.2014, the demand against the appellant company, as confirmed by CIT (A) had been reduced to Nil in the demand and collection register of the AO. This means that the original order passed by the AO was set aside and in consequence thereof the demand against the assessee also become Nil. The order of assessment passed by the AO on 11.06.2015 led to creation of fresh demand against the assessee and the said order has been the subject matter of appeal before CIT (A). It is quite clear from the notice of demand u/s. 156 issued by the AO to the appellant company dated 11.06.2015 that the demand of Rs. 32,34,69,151/- had been raised in consequence of the assessment order and the assessee vide point no. 6 of the said notice was given an option to appeal against the assessment before the CIT (A)-26, New Delhi within 30 days of the said notice. If the contention of the AO that no fresh assessment or reassessment had been done then there would not have been any need to mention the right of the assessee to file appeal before the CIT (A). If the view of the AO is to be seen as correct then no appeal would be maintainable before the CIT (A) and the assessee would have to take alternative remedy to go to the Hon'ble High Court. This clearly shows that the Hon'ble ITAT vide their order dated 31.03.2014 had set aside the matter back to the file of the AO with specific directions to carry our investigations giving due opportunity to the assessee and then frame the assessment afresh. The matter had, therefore, been disposed off accordingly and the AO had to carry out the process of investigation as stipulated in the Income Tax Act by issuing notice u/s. 142(1) and frame the assessment u/s. 143(3)/153A. The Hon'ble High Court of Delhi in the case of Pr. CIT, Delhi vs. C P Financial Consumer Finance India P. Ltd. In ITA NO. 275/2015 has deliberated upon similar issue wherein the facts have been recorded as under: -

"(i). Briefly stated, the relevant facts are that the assessee had claimed a deduction of Rs. 48,38,636/- being the amount paid to Direct Selling Agents, as selling expenses, although, in its books the same had been considered as deferred revenue expenditure. AO had passed an assessment order dated 28th February, 2000 disallowing the assessee's claim in respect of commission paid to Direct Agents In addition, the AO also disallowed an expenditure of Rs. 35,91,227/- incurred by the assessee for purchase of software. The AO held that the nature of these expenses was capital and not revenue.

(ii). The assessee appealed against the aforesaid additions/disallowances made by the AO before the CIT (A). However, the assessee was not successful and the CIT (A) confirmed the disallowance made by the AO. Aggrieved by the aforesaid decision, the assessee preferred an appeal before the Tribunal, being ITA No. 263/Del/2004. By an order dated 31.07.2009, the Tribunal remanded the matter to the AO to re examine the nature of the expenditure pertaining to software and commission paid to direct selling agents.

(iii). On remand, the AO passed an order dated 20th January, 2010, allowing the expenditure incurred by the assessee on account of commission paid to direct selling agents and for purchase of software.

15. It was contended before the Hon'ble Court by the revenue that the order dated 20.01.2010 by the AO was an administrative order. The appellant, on the other hand, contended before the court, on the basis of decision of Hon'ble Bombay High Court in the case of Caltex Oil Refining India P. Ltd. Vs. CIT, 2002 ITR 375, that the nature of order passed by the AO in consequence of the order of the tribunal was not administrative. The Hon'ble Bench, in para 12 of the order made the following observations: -

(1). The contention that the order dated 20 January, 2010 was only an administrative Order, to give effect to the order dated 31 July, 2009 passed by the Tribunal is also without any merit. The AO, being an authority under the Act, performs the function as specified in the Act. The AO has the power to make an assessment under section 143 or 144 of the Act. It is the said assessment which is examined by the Appellate Authority. The Appellate Authority has power either confirm, reduce, enhance or set aside the assessment. In the event, the Appellate Authority remands the matter to the AO, the AO is required to commence proceedings in terms of the directions of the Appellate Authority. Such proceedings are not administrative but have to be conducted in accordance with the provisions of the Act and the order would be an order of assessment under section 143/144 of the Act. In Caltex Oil Refining (supra) a Division Bench of Bombay High Court had explained the above in the following words: - "

So far as the first submission, which relates to the nature of a order passed by the ITO in consequence of orders of the appellate authorities with a view to giving effect to the direction contained therein, it is difficult to hold that such an order is an administrative order. The power of the ITO is to make assessment under section 143 or 144. It is that assessment which is the subject matter of appeal. The appellate authority, on a appeal against an order of assessment has power to confirm, reduce, enhance or annul the assessment or to set aside the assessment and refer the case back to the ITO for making a fresh assessment in accordance with the directions given by such authority (section 251). Evidently the effect of an appellate order is that the assessment either stands confirmed, reduced or enhanced or it stands annulled or set aside. In case of confirmation, reduction or enhancement the original order of assessment stands modified to the extent of the directions given by the appellate authority. In the case of annulment, the order becomes non est. In case an order is set aside, the authority has to start the entire process afresh and make a fresh order of assessment complying with the directions given by the appellate authority. It is, thus, clear that what remains as a final order after giving effect to the orders of the

appellate authorities is an order of assessment u/s 143 or 144. It cannot be anything else."

(ii) We concur with the aforesaid view and are unable to accept that the AO's order dated 20th January, 2010 was only an administrative order to give effect to the order of the Tribunal. At this stage, it is also relevant to note that the order dated 20th January, 2010 was captioned as "Order u/s 254/250/147/143(3) of the Income Tax Act, 1961". It is, thus, apparent that the Order itself indicated that it was not an administrative order but an Assessment Order under Section 143(3) of the Act. In the circumstances, it is not be open for the Revenue to contend to the contrary."

16. In view of the above detailed facts and circumstances of the case and the analysis of provisions of the Income Tax Act as well as the judicial pronouncements on the issue, it is unacceptable that the order under consideration passed by the AO was meant to give an appeal effect and was not in the category of assessment or reassessment. This being so, the mandatory requirement to take approval u/s 153D could not be dispensed with. In view of this, the order passed by the AO has to be quashed."

4. Mr. Javed Akhtar, CIT(DR), vehemently submits that learned Assessing Officer's impugned second round assessment nowhere required the prescribed authority's section 153D approval once again, since dealing in remand proceedings only as per the tribunal's first round directions. He next contends that the CIT(A) first of all ought not to have quashed the impugned assessment for want of a valid section 153D approval since such an issue is only procedural in nature. And also that even if such an approval is required in second round proceedings, it is only a procedural defect than that vitiating the entire proceedings.

5. We have given our thoughtful consideration to the Revenue's forgoing vehement submissions on the issue of section 153D approval and find no merit therein. This is for the precise reason that as evident from the above extracted detailed discussion, learned Assessing Officer had framed nothing else but a second round assessment vide order dated 11.06.2015 without getting it approved under section 153D of the Act. It would be indeed not out of the context to observe here that the CIT(A)'s lower appellate proceedings on this issue witnessed remand proceedings as wherein the Assessing Officer had been very fair that his second round assessment stood framed without section 153D approval.

6. This being the clinching case and in light of judicial precedents quoted in the lower appellate findings, we are of the considered view that any assessment; be it first round or otherwise framed under section 153A of the Act without getting approval under section 153D of Act, is not sustainable in law. The CIT(A)'s impugned lower appellate discussion quashing the second-round assessment herein stands upheld in very terms. Ordered accordingly.

13. Similar view has also been noted in the decision in ITA (SS) No.70-74/Ran/2019. On perusal of the above decision alludes that as per the decision of Co-ordinate Benches of these Tribunal it is necessary for the Ld.AO to obtain fresh approval u/s 153D even in cases where assessments are done consequent to remand by an appellate authority.

14. Coming to the reliance of the assessee upon the order of Hon'ble Delhi High Court in the case of Headstrong Serves India Pvt.Ltd. (supra), we have noted that the same is totally distinguished. The issue of necessity of the Ld.AO to have obtained approval u/s 153D before passing an order pursuant to the directions of Hon'ble ITAT, was not the matter for decision of their Lordship. The issue therein was as to whether an AO is bound by the scheme of things mandated in the Income Tax Act. Thus, Hon'ble High Court decided that the prescription contained in section 144C of the Act is sacrosanct and cannot be violated. In the impugned case the AO had passed final assessment order without passing the required draft assessment order. Hon'ble High Court ordered that since passing of draft assessment order and the consequential option of the taxpayer to approach the dispute resolution panel comprises an mandatory stipulation in the Act, the same cannot be ignored.

15. We have also noted that the Hon'ble Punjab & Haryana High Court in their decisions in the case of Osho Forge Limited (supra) have held as under:-

“8. Although the assessee claims that three substantial questions of law arise, in fact the issue involved in the present appeal is:—

"Whether under Section 153D of the Act there is a requirement of fresh approval for complying with the remand directions under Section 263, in a case where the assessment under Section 153A of the Act was originally framed after compliance of Section 153D of the Act?"

9. We answer the question against the assessee.

Section 153D is 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:)"

10. As per Section 153-D, no order of assessment under Sections 153A and 153B can be passed by the A.O. without prior approval of the Joint Commissioner.

11. The assessment order dated 24.12.2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated 24.12.2010. Thereafter the said order was taken up in revision. The order was set aside and the matter was remitted to the A.O. to pass a fresh assessment order. The approval under Section 153D was not set aside. There was no question thereupon of the A.O. seeking fresh approval under Section 153D. The order dated 18.03.2014 passed by the A.O. was in compliance with the remand directions. It was not a case of the A.O. assuming jurisdiction under Section 153A of the Act. That stage was over when order dated 24.12.2010 was passed. The A.O. was complying with the directions of the revisional authority. Section 153D of the Act is only applicable for passing an assessment order or re-assessment order. There is no requirement under Section 153D for prior approval for complying the remand directions. The approval dated 24.12.2010 in fact was to the effect that assessment of assessee can be passed under Section 153A. Remand direction was that the assessment under Section 153A should be framed again. There was no occasion of fresh assumption of jurisdiction to frame assessment. Rather it was in continuation of earlier proceeding which was duly approved. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Additional Commissioner Officer lower in rank than Commissioner for complying with the directions given by the Commissioner.

12. The CIT (Appeals) allowed the appeals of the assessee on the basis that compliance of Section 153D of the Act was mandatory. It is not the issue whether the provision is procedural or the requirement of approval is mandatory. The fact is that Section 153D of the Act had been duly complied with by the A.O. The contention raised that even an order of remand cannot be passed without complying with Section 153D of the Act is beyond the scope of the section. The Tribunal rightly held that Section 153D of the Act is for assuming jurisdiction to pass an assessment order under Section 153A of the Act and the A.O. would not loose the jurisdiction to frame assessment while complying with remand order..”.

16. We have noted that the impugned decision of Hon'ble Punjab & Haryana High Court on the issue of obtaining approval u/s 153D by an AO has given a divergent finding. It has been clearly held that once the original assessment

order u/s 143(3) r.w.s. 153A was passed after obtaining due approval of competent authority and the said approval u/s 153D was not set aside by the revisionary appellate authority, there was no need for the Ld.AO to have obtained fresh approval u/s 153D. It was ruled that remand directions to frame an assessment u/s 153A did not occasioned, assumption of fresh jurisdiction to frame an assessment. We have noted that the facts of the present appeal are identical to those available in the decision in the case of Osho Forge Limited (supra). There is nothing on record to suggest that the approval u/s 153D was set aside.

17. This now brings us to the issue of judicial discipline and which of the two orders are to be followed. Thus, whether the decision of Hon'ble Co-ordinate Bench of this Tribunal and/or Ranchi Tribunal is to be followed or that of Hon'ble Punjab & Haryana High Court is to be followed. It is settled principal of law that orders of Jurisdictional High Court have binding precedent value upon all the authorities under its jurisdiction. Similarly orders of Tribunal would have a value of persuasive binding upon its Benches so far as facts of the case are not distinguishable. However, it is also settled principal of law that orders of an Hon'ble non-jurisdictional High Court would take precedence as having higher persuasive value over those of the orders pronounced by Hon'ble Co-ordinate Benches of a Tribunal. The impugned order of a Hon'ble non-jurisdictional High Court would have further enhanced persuasive value if it is passed by a Double Bench. We have noted that the order in the case of Osho Forge Limited (supra) has been passed by a Division Bench comprising Hon'ble Chief Justice and another Hon'ble Judge. Accordingly, we are of the view that respectful reliance is required to be placed upon the decision of Hon'ble Punjab & Haryana High Court in the case of Osho Forge Limited (supra) while deciding the controversy at hand. As discussed herein above, Hon'ble Punjab & Haryana High Court has held that there is no requirement for

obtaining any approval u/s 153D by Ld.AO in cases remanded by appellate authority to the Ld.AO. In respectful compliance to the impugned decision, we hold that there was no such requirement in this case also. **The additional ground raised by the assessee on the issue of non-availability of any approval u/s 153D is therefore, dismissed.**

18. Coming to the merits of the present case contested by the assessee through its ground of appeal Nos. 1 to 3, we have noted that there is no case made out in assessee's favour. We have noted from the order of this Tribunal in ITA No.1754/Del/2014 (supra) that the Co-ordinate Bench of this Tribunal in para 5 of their order (supra) had, accepting the plea of assessee of non-submission of crucial evidences, directed it to produce all the evidences qua advance of Rs. 90 Lakhs from Green City Build Tech Ltd. before the AO and who was directed to re-adjudicate the matter in accordance with law. Thus, the primary responsibility was of the assessee to have produced all the documents in support of its case before the AO to facilitate a judicious re-adjudication. We have noted from para 4 to para 7 of the order of Ld.AO dated 22.12.2017 that the assessee was not forthcoming in providing confirmations from the said Green City Build Tech Ltd. The Ld.AO attempted to inquire the matter u/s 133(6)/ 131 to the company including its Directors which remained un-complied. Thus, it is clear that the assessee or its associate party failed to satisfy the AO regarding the genuineness of cash credit of Rs. 90 Lakhs as required u/s 68. We have also noted that in the above background, the decision of Ld.CIT(A), in para 7.6 to 7.9 (supra) of his order in confirming the action of Ld.AO qua the impugned addition of Rs.90 Lakhs also cannot be faulted. It has also been noted that no attempt was made by the assessee to furnish any evidence before the Ld.CIT(A) also.

19. Thus, in a scenario wherein the assessee chooses to not comply with the directions of the Tribunal in providing necessary evidences in support of its claims to the lower authorities, no fault can be attached to the revenue authorities. The assessee cannot now claim that revenue authorities have transgressed their jurisdiction and caused injury to it by passing an arbitrary and unjustified order which is bad in law. The Hon'ble Tribunal had given full liberty to the assessee for defending its case through evidences, which was not adequately availed. Nothing has been brought on record by the assessee that it or its associates were prevented with any justifiable reasons to present the evidences and details called for by the Ld.AO and their production before lower authorities. Accordingly, we are of the considered view that there is no case for any intervention in the order of Ld.CIT(A) at this stage and the same is based upon correct understanding and appreciation of the facts of the case. The order of Ld.CIT(A) is therefore, sustained and all the grounds of appeal No.1 to 3 raised by the assessee are dismissed.

20. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 27th October, 2025.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[AMITABH SHUKLA]
ACCOUNTANT MEMBER**

Dated: 27 .10.2025

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,