

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI)**

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

ITA No. 739/Del/2023 (A.Y. 2013-14)

ITA No. 740/Del/2023 (A.Y. 2014-15)

ITA No. 741/Del/2023 (A.Y. 2015-16)

ITA No. 742/Del/2023 (A.Y. 2016-17)

Raghav Bahl Apartment No. KCB-012, Tower-B 12 th Floor, DLF King Court, W Block, Greater Kailash-II, New Delhi PAN: AALPB0480G	Vs	DCIT Second Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh
Appellant		Respondent

ITA No. 995/Del/2023 (A.Y. 2015-16)

DCIT Second Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh	Vs	Raghav Bahl, Apartment No. KCB-012, Tower-B 12 th Floor, DLF King Court, W Block, Greater Kailash-II, New Delhi PAN: AALPB0480G
Appellant		Respondent

Assessee by	Sh. Gagan Khandelwal, Adv & Sh. Rajiv Khandelwal, CA and Sh. Jaind Kumar Jaiswal, Adv	
Revenue by	Ms. Pooja Swaroop, CIT DR	
Date of Hearing	18/09/2025	
Date of Pronouncement	07/11/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The Assessee filed captioned Appeals pertaining to Assessment Years 2013-14, 2014-15, 2015-16 and 2017-18 and the Revenue filed an Appeal for Assessment Year 2015-16 assailing the orders of Ld.

Commissioner of Income Tax (Appeals)-4, Kanpur,(Ld. CIT(A)' for short), dated 23/01/2023, 25/01/2023, 23/01/2023 and 23/01/2023 respectively.

2. Similar issues are involved in all the above appeals and assessee has raised identical grounds of appeal. For the sake of convenience, grounds of appeals raised by the Assessee in the Appeal for AY 2013-14 is reproduced as under:-

“1. That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while upholding the Assessment Orders without appreciating that Assessment order as uploaded on the ITBA portal is incomplete, thus, the same is illegal and bad in law whereas the physical order issued without mentioning Document Identification Number (DIN) in the body of the Order has no sanctity in the eyes of law. Therefore, the Assessment Order passed online as well as physically is bad in law and may please be quashed.

2. That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while upholding the Assessment Orders without appreciating that the same is barred by limitation under section 153B of the Income Tax Act, 1961 as the online order have not been uploaded entirely within the limitation prescribed under section 153B of the Act whereas the physical order have not been dispatched within said time limit. As such, the Assessment Order passed online as well as physically is barred by limitation and may please be quashed.

3. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while upholding the assessment framed under section 153A read with section 143(3) of the Income Tax Act, 1961 in absence of any incriminating material being found and seized during the course of Search proceedings. As such, the assessment framed is illegal, arbitrary and unjustified and may please be quashed.

4. That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while upholding the Assessment Order without appreciating that the mandatory notice under section 143(2) of the Income Tax Act, 1961 was not issued after filing of return under section 153A of the Act. As such, the Assessment Order is bad in law and may please be quashed.

5. That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while sustaining the Assessment Order without appreciating the fact that the Officer passing the Assessment order and the Officer approving the Assessment order u/s 153D of the Income Tax Act, 1961 are placed at same

hierarchy in the Income Tax Department which is purely against the basic premise of said provision of the Act. As such, the Assessment Order passed in contravention of basic premise of provisions of section 153D of the Act is illegal and may please be quashed.

6. *That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while sustaining the Assessment Order without appreciating that the mandatory approval under Section 153D of the Income Tax Act, 1961 have been given in mechanical manner without application of mind and the copy of approval has not been provided to the Appellant despite being requested for during the course of impugned appellate proceedings. As such, the Assessment Order is illegal and may please be quashed.*

7. *That the Commissioner of Income Tax (Appeals) has erred in law and facts of the case while sustaining the Assessment order without appreciating that the same have been passed by the office of Deputy Commissioner of Income Tax but the officer holding such office was Joint Commissioner of Income Tax whereas no order u/s 120 of the Income Tax Act, 1961 mandating said person being an authority higher in rank to hold the office of Deputy Commissioner of Income Tax has been brought on record. As such, the Assessment Order passed without valid jurisdiction is illegal and may please be quashed.*

8. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while confirming the addition made by the Ld. AO amounting to Rs. 10,85,20,412/- u/s 69A of the Income Tax Act, 1961 on account of alleged unaccounted income received under the garb of exempted Long-Term Capital Gains without appreciating the submissions of the Appellant. As such, the addition of Rs. 10,85,20,412/- is bad in law and may please be deleted.*

9. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while confirming the addition of Rs. 10,85,20,412/ u/s 69A of the Income Tax Act. 1961 on account of alleged unaccounted income received under the garb of exempted Long-Term Capital Gains in violation of the principle of natural justice being made on the basis of ex-parte material and statement of third parties without confronting said material and statements with the Appellant in its entirety and providing opportunity of cross examination. As such, the addition of Rs. 10,85,20,412/- is bad in law and may please be deleted.*

10. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while sustaining the addition of Rs. 32,55,612/-u/s 69C of the Income Tax Act, 1961 made on account of alleged commission estimated at the rate of 3% of the alleged illegitimate long-term capital gain considering the same accommodation entry without any tangible basis as or evidence. As such, the addition of Rs. 32,55,612/- is bad in law and may please be deleted.*

11. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while considering the purchased consideration of Rs. 7,28,087/- paid for impugned shares as ingenuine without any basis. As such, an amount of Rs. 7,28,087/- may please be allowed as purchase consideration of shares.*

3. Brief facts of the case are that, a search and seizure operation conducted u/s 132 of the Income Tax Act, 1961 ('Act' for short) on 11/10/2018 in the premises of the Assessee comprising M/s PMC Group cases. Various residential and business premises of the Assessee were covered under the search operation. During the course of search operation, various incriminating material/information belonging to the Assessee were found and seized. An approval u/s 153D of the Act dated 30/09/2021 has been accorded by the Additional Commissioner of Income Tax, Central Range, Meerut for assessment years 2013-14 to 2019-20 in the case of the Assessee and for Assessment Year 2013-14 to 2019-20 in the case of one Ms. Ritu Kapoor. Based on the said approval granted u/s 153D of the Act, the assessment proceedings have been initiated against the Assessee for the assessment years under consideration. Assessment orders came to be passed for Assessment Years 2013-14 to 2016-17 on 30/09/2021 by making certain additions. As against the assessment orders, Assessee preferred four Appeals before the Ld. CIT(A). The Ld. CIT(A) confirmed certain additions made by the A.O. vide orders impugned, which are called in question before us in the captioned Appeals filed by the Assessee.

4. The Revenue has also filed an Appeal against the order of the Ld. CIT(A) pertaining to Assessment Year 2015-16, challenging the deletion of certain addition/disallowance made by the Ld. CIT(A).

5. The Ld. Counsel for the Assessee addressing on the Ground No. 3 of the Appeals, submitted that the Additions could have been done against the assessee under section 153A of the Act de hors any incriminating material found during the course of search and seizure operation conducted on the PMC Group of Companies. Ld. Counsel, relying on the ratio laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell (P) Ltd., reported in (454 ITR 212 (SC)), sought for quashing the assessment orders.

6. Further submitted that, even for the sake of argument, if at all additions to be made by the A.O. on the basis of the statement on oath of Mr. Raj Kumar Modi, it could have been made only under Section 153C of the Act, but not under Section of 153A r.w. Section 143(3) of the Act. Thus submitted the A.O. committed error in faming the Assessments under Section 153A of the Act. The Ld. AR relied on the Orders of the Tribunal in the case of Gulshan Investment Pvt. Ltd. JCIT(OSD), Central Circle-1, Noida, in ITA No. 3872/Del/2024 and other connected matters

dated 16/04/2025, Trilok Chander Chaudhary Vs. ACIT in ITA No. 5870/Del/2017 dated 20/08/2019 and Om Prakash Tantia Vs. DCIT in ITA No. 4737/Del/2018 dated 07/03/2025 and other connected matters decided the issue in favour of Chaudhary in ITA No. 5870/Del/2017. Thus, sought for allowing Ground No. 3 of the Assessee's Appeals.

7. Per contra, the Ld. DR relying on the orders of the lower authorities, submitted that the additions have been rightly made under Section 153A of the Act as the statement of Mr. Raj Kumar Modi corroborated and coupled with the seized Documents, constitute 'incriminating material', which were made has basis for making addition by the A.O., therefore the Ground No. 3 of the Assessee in all the appeals are devoid of merits, thus, sought for dismissal of Ground No. 3.

8. We have heard both the parties and perused the material available on record. As could be seen from the assessment orders, the additions have been made de-hors the incriminating material available on record. The Revenue has not pointed out any of the incriminating documents seized during the search and seizer operation, which was relied by the A.O. for making the additions. The only basis for making the additions is the statement of Mr. Raj Kumar Modi. It is well settled Law that assessment made de-hors the incriminating material found during the course of

search will not sustain as held in by the Honble Supreme court in the case of Abhisar buildwell (Supra).

9. The Ld. AR has also put forth one more proposition that even for the sake of argument, if the additions were to be made by the Assessing Officer, on the basis of statement of Mr. Raj Kumar Modi, it could be made only by following the mandate of Section 153C of the Act and not under Section 153A of the Act.

10. The coordinate Bench of the Tribunal in the case of Gulshan Investment Pvt. Ltd. in ITA No. 3872/Del/2024 (supra), which emerges from the very same search and seizure operation, wherein the additions have been made based on the statement of very same person Mr. Raj Kumar Modi, decided the similar issue in favour of the assessee and set aside the assessment order in following manners:-

“14.1. In the instant case, as could be seen from the conclusions drawn by the AO as summarized by ld. CIT(A), it is an admitted position that no loose paper or document or any money bullion, jewellery valuable article or thing was found and seized from the possession of the assessee based on which additions could be made in the order passed u/s 153A of the Act in the hands of assessee company. The entire additions made can be bifurcated in three categories which are:

A. Addition of Rs. 8.75 Crores and Rs. 35.00 lacs as commission and disallowance of interest paid at Rs.10.01,590/- based on the statement of Sh. Raj Kumar Modi recorded during the course of search in the case of PMC group wherein Shri Raj Kumar Modi admitted to have been engaged in providing accommodation entry in the shape of LTCG/STCG/ unsecured loans.

B. Addition of Rs. 2.65 crores and of Rs. 10.60 lacs as 4% commission were also made towards unsecured loan taken from one company namely M/s Unisys Software & Holdings Industries Ltd. which was alleged as controlled and managed by Sh. JagdishPurohit, whose statement were also recorded u/s 132(4) during the course of search carried out in his case independently in the

year 2015 and made sole basis for making addition in the hands of the assessee company.

C. Further an addition of Rs.75.00 lacs was also made for unsecured loan received from M/s SukumaInfosolutions Pvt. Ltd. by holding that the loner has no creditworthiness without referring to any incriminating material found as a result of search in the case of the assessee.

14.2. Under the category "C" above, an addition of Rs.75.00 lacs was made by holding the unsecured loan received from M/s SukumaInfosolutions Pvt. Ltd. as unexplained however, from the perusal of the assessment order or the appellate order, it is seen that in nowhere the lower authorities had referred any incriminating material found as a result of search in the case of assessee indicating this loan as bogus. The order passed u/s 153A of the Act is for Ay 2013-14 which is unabated and completed year. The Hon'ble Supreme Court in the case of AbhisarBuildwell (supra) has held that the addition u/s 153A should be made based on the incriminating material found from the person searched during the course of search. As such, their Lordships has held as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect assessments/unabated of assessments. Meaning thereby, in respect of completed completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

14.3. Since in the present case no incriminating material was found from the possession of the assessee company and its directors with regard to the unsecured loan of Rs. 75.00 lacs from M/s M/s SukumaInfosolutions Pvt. Ltd., therefore, by respectfully following the ratio laid down by Hon'ble Apex Court in the case of AbhisarBuildwell (supra) we hold that no addition could be made in the order passed u/s 153A of the Act. Accordingly, the addition of Rs.75.00 lacs is hereby deleted.

14.4. Under category "A" & "B" above, the additions were made on the basis of the statements of Shri Raj Kumar Modi and Shri JagdishPurohit, recorded u/s 132(4)

during the course of search carried out in their own cases by the department. It is also relevant to state that such statements were retracted by both Sh. Raj Kumar Modi and Shri JagdishPurohit within a short period of time during the post search investigation proceedings.

14.5. It is also seen that both Shri Raj Kumar Modi and Shri JagdishPurohit are not at all related to the assessee company in any manner and therefore, they are foreign parties with respect to the assessee company. The Ld. CIT(A) confirming the action of the AO in using such statements in the hands of the assessee company for making addition in the order passed u/s 153A. The ld. CIT(A) relied upon the judgments of Hon'ble Allahabad High Court in the case of Tapasya Projects Ltd. Vs. ACIT [2009] Tax LR 30, wherein the Hon'ble Court has held as under

"The word person as used in Section 153A cannot be given a restricted interpretation so as to exclude the servants and agents of that person because of the obvious undesirable result to which such strict interpretation would lead. Thus, the search conducted on the premises of the directors has to be treated to be a search initiated in respect of the petitioner company."

14.6. From the perusal of the observations of the Hon'ble High Court, we find that the Hon'ble High Court has held that the company could be considered as searched in case where the search was carried out on its servant and agents such as Director of the company. In the instant case, as observed above, the statements of two independent and non-related parties i.e. of Sh. Raj Kumar Modi and Sh. JagdishPurohit were used by the AO for making additions in the order passed u/s 153A in the hands of the assessee company. These two persons are neither the servants of the assessee company as they were not the employees nor the Director nor related to the assessee company in any manner, therefore, the ratio laid down by Hon'ble Allahabad High Court in the case of Tapasya Projects (supra) is not applicable to the instant case.

14.7. The Hon,ble Punjab & Haryana High Court in the case of PCIT vs. M3M India Holdings in ITA No.97/2023 has held as under:

"14. Further contention of the appellant with regard to as assertion section of incriminating material being found in the premises of the respondent, however, is without any basis. We have carefully gone through the Satisfaction Report and found f that only incriminating material which has been made the basis for initiating proceedings under Section 153 A of the Act is the so called laptop of one Bina Shah recovered from Mumbai. We also noticed that recovery of the said Laptop is not from the office belonging to the assessee. The search operation in which the laptop was recovered was of different firm and it was not during the course of search operation conducted against the respondent-firm respondent firm or its partners that incriminating DB material was recovered. If there was any indication of violation of provisions of the Act or suppression of income or any other incriminating material, which may have been recovered from the premises, the proceedings under Section 153-A can be said to be justified and legal. However, since no such material was collected or found from the premises

of the respondent-assessee, assessee, we are unable to sustain the proceedings initiated under Section 153-A of the Act.”

14.8. It is further seen that Assessing Officer has referred WhatsApp chats of few persons wherein movement of cash is stated to have been found recorded in the mobile phone found from the possession of Shri Raj Kumar Modi. Further from the perusal of such chat as appearing in the assessment order, it is seen that these chats are for the period from May 2017 to November, 2017 which period is falling under financial year 2017-18 relevant to Asst. Year 2018-19 and not for any Assessment Year before us. Also such chat was since found from the mobile phone of third person, the same cannot be made basis of the additions in the assessment completed u/s 153A of the Act.

14.9. It is also seen that the Assessing Officer in para 4.6 of the order has referred that the statement of Sh. Raj Kumar Modi wherein in reply to question No. 80 he identified Sh. Anoop Jain, Director of the assessee company as one of the beneficiary of LTCG of more than 35 Crores. From the perusal of the assessment order, it is seen that no addition with respect to long term capital gain is made in the case of assessee, therefore, these statements are not relevant to the facts of the instant case.

14.10. In the instant case, the best course of action would be u/s 153C after following the procedure of recording of satisfaction to this effect as provided by the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra). The assessing officer should have completed the proceedings initiated in terms of the notice issued u/s 153A of the Act for the year under appeal since it is an unabated assessment year, and then must followed the procedure as laid down by the hon'ble supreme court in the case of Calcutta Knitwears (supra), which was not followed by the AO thus now no action could be taken u/s 153C of the Act also for the year under appeal. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153C of the Act w.e.f. 01.06.2015. Clause 36 reads as under:

“Clause 36 of the Bill seeks to amend section 153C of the Incometax Act relating to assessment of income of any other person. The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person. It is proposed to amend sub-section (1) of the said section so as to provide that where the Assessing Officer is satisfied that, (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the of account or documents or assets, seized or

requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets, seized or requisitioned, have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. This amendment will take effect from 1st June, 2015.”

14.11. *On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining / relating to a person other than the person searched from the searched premises as was referred u/s 153A of the Act was to be handed over by the investigation wing to the AO of such other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s 153C of the Act and then to assess / reassess income of such other not searched person.*

14.12. *The Hon'ble Jurisdictional High Court in the case of PCIT (Central)-3 vs. Anand Kumar Jain (HUF) [ITA 23, 26- 31/2021] has held as under:*

“Even if a search was conducted upon the premises of the assessee, if the AO was relying upon the incriminating material found from the search of third party, then the same cannot be used for assessment u/s 153A and AO should have restored to section 153C of the Act.

14.13. *The Co-ordinate Bench of ITAT in the case of Trilok Chand Chaudhary, New Delhi vs ACIT, Central Circle- 26, New Delhi on 20 August, 2019 under identical circumstances has held as under:*

“In our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of thirdparty, then provision of section 153C of the Act would be applicable and have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings under section 153A in hand, which were initiated by way of notice dated 30/06/2014 and thereafter, he was at liberty to take action under section 153C of the Act for bringing the material found from the premise of Sh. Ashok Chaudhri to tax in the hands of the assessee. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person.”

14.14. *Similarly, the Co-ordinate Bench of ITAT Delhi in the case of PCIT vs. Shivalik Mahajan in ITA No.5585/Del/2015 has held as under:*

“Obviously, the reference to the incriminating material in the above decisions of Hon'ble Jurisdictional High Court is in regard to incriminating material found as a result of search of the assessee's premises and not of any other assessee. The legislature has provided Section 153C by invoking the same the Revenue can utilize the incriminating material found in the case of search of any other person to the different assessee.”

14.15. Similar view is expressed by the Coordinate Bench of ITAT Delhi in its recent judgment in the case of Om Prakash Tantiavs DCIT in ITA NO.4737/Del/2018 vide order dated 07.03.2025.

14.16 Thus, it could be safely concluded that in the assessment order passed u/s 153A of the Act on the basis of an income-tax search conducted on the assessee, the impugned amount of undisclosed/unexplained income, allegedly based on some incriminating material in the shape of statement of third persons recorded elsewhere, could not be assessed in the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of the section 153C of the Act and then to pass a separate assessment order u/s 153A r.w.s. 153C of the Act. Had recourse to section 153C of the Act been adopted by the revenue, then it would be in accordance with the decision of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra). Admittedly, no money, bullion, valuable article or thing or property which was not disclosed or would not be disclosed was found during the search carried out by the department in the case of the assessee. Under these circumstances, by respectfully following the decisions of Hon'ble Jurisdictional High Court in the case of Anand Jain, HUF (supra) and coordinate benches of the Tribunal in various cases, we hold that no addition could be made in the assessment completed u/s 153A of the Act on the basis of statements of third party recorded during the search in their own case and the incriminating material, if any, found during the course of search of the assessee could only be utilized for making addition.

14.17. In view of the above facts and discussions made, we direct to delete the additions as referred in category 'A' & 'B' in para 14.1 above. Further vide para 14.3 above, we have already directed to delete the addition of Rs.75.00 lacs as referred in category 'C' above, therefore, the entire additions made under all the three categories are hereby deleted.”

11. The above ratio has also been followed by the Tribunal in the case of Trilok Chander Chaudhary Vs. ACIT in ITA No. 5870/Del/2017 dated 20/08/2019 and Om Prakash Tantia Vs. DCIT in ITA No. 4737/Del/2018 dated 07/03/2025 and other connected matters decided the issue in favour of Chaudhary in ITA No. 5870/Del/2017.

12. In view of the above, we find merit in the Ground No. 3 of the Assessee as the assessments have been made de-hors the incriminating materials found during the course of search, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra) is squarely applicable. Apart from the same, the A.O. should have made the assessments under Section 153C of the Act instead of 153A of the Act, therefore, the assessment orders sustained by the CIT(A) are liable to be set aside. Accordingly, the Ground No. 3 of the Assessee's Appeals are allowed.

13. Ld. Counsel for the Assessee addressing on the Grounds No. 5 and 6 of the Appeals, submitted that the Ld. CIT(A) has erred both on facts and in law in confirming the orders passed by the A.O. despite the fact that assessments have been passed based on the approval accorded u/s 153D of the Act in violation of the provisions of the law and without applying mind. Further submitted that a consolidated approval has been granted for two Assessee comprising of 14 Assessment Years in total and the approval u/s 153D of the Act has been accorded on the very same day of seeking approval u/s 153D of the Act by the Joint Commissioner of Income Tax. The Ld. Counsel for the Assessee further submitted that the approval accorded u/s 153D of the Act is a mechanical and arbitrary approval without their being any application of

mind and also without satisfying the statutory pre-conditions of the Act as such the assessment so framed is null and void. The Ld. Counsel relying on the Judgment of the Jurisdictional High court in the case of Pr. Commissioner of Income Tax Vs. Shiv Kumar Nayyar reported in 163 taxmann.com⁹ dated 15/05/2024 in ITA No. 285/2024 (CMP No. 28994/2024) and other Judicial pronouncements, sought for allowing the Appeal and prayed for quashing the assessment order.

14. Per contra, The Ld. Department's Representative submitted that the role of the Ld. ACIT, Central Range is totally different from the role of an ACIT in the normal range. The Central Range, the ld. ACIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires. The ld. ACIT in Central Range also examined the seized documents in detail in respect of each Assessment Years immediately after receipt of the appraisal report and provided able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to Assesseees, examining the replies filed by the Assesseees and drawing conclusions thereon. Thus, submitted that it is very easy for the ld. ACIT to grant approval of the draft assessment orders on the same day since the Ld. ACIT is involved with the

assessment proceedings right from the inception. Therefore, submitted that the by contention of the Assessee's Representative that the Ld. ACIT has given mechanical approval has no force and the approval has been accorded by duly applied the mind.

15. Further, the Ld. DR vehemently argued that bare reading of provisions of section 153D of the Act, which provides only about existence of approval from the ld. ACIT. There is no mention of application of mind on the part of the ld. ACIT or the approving authority in the said section. The expression "application of mind" is only provided by the judicial decisions and not provided in the statute. Further submitted that, the literal interpretation is to be given to the provisions of section 153D of the Act which does not provide for application of mind of the approving authority and hence any other interpretation contrary to the same would only result in re-writing the law. The Ld. DR also argued that in some of the cases the Assessee files details at the last moment and that is why the approval is obtained from Ld. ACIT in the last moment. The Ld. Department's Representative has also submitted that the Ground challenging the approval issued u/s 153D of the Act has not been raised before the Ld. CIT(A), which cannot be raised before the Tribunal in the belated stage. The Ld. Department's Representative further submitted that the approval has

been accorded jointly in respect of two Assesseees pertaining to 14 Assessment Years as the assessments have been carried out based on the single search and seizure operation and the seized documents are having bearing on multiple Assessment Years and same are pertaining to both the Assesseees, therefore, it is a need to accord single and consolidated approval which has been correctly accorded by the ACIT. The Ld. Department's Representative further submitted that, the intention of legislature is to recover just tax by the Department from the Assessee, which cannot be curtailed on the basis of the technicalities and submitted that in the present Appeals huge tax demands are arising and the Revenue has very good case on merit. Thus, the Ld. Department's Representative sought for dismissal of the Grounds of Appeal challenging the approval granted u/s 153D of the Act.

16. We have carefully considered the submissions of the parties and also verified material available on record and the case laws cited. The legal objection of transgression of requirement of approval under s. 153D of the Act is in question which has the effect on the very substratum of the assessments and consequential appellate proceedings.

17. For the purpose of deciding the issue of legality or otherwise of approval accorded u/s 153D of the Act and the consequential

assessment proceedings, we shall straightway advert to the approval accorded u/s 153D of the Act. For the sake of ready reference, the approval accorded under Section 153D of the Act dated 30/09/2021 by the Addl. CIT, Central Range-Meerut addressed to the Joint Commissioner of Income Tax (OSD), Central Circle-1, Noida is reproduced hereunder:-

**Time Barring
Limitation Matter**
30 SEP 2021


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

F. No. Addl. CIT/CR/MRT/Approval/153D/2021-22/851 Dated: 30.09.2021

To,
The Joint Commissioner of Income Tax (OSD),
Central Circle-1,
Noida.

Subject: Approval u/s 153D of the Income Tax Act, 1961 in the case of Raghav Bahl Group of cases D.O.S. 11.10.2018 sub group Bahl – reg.

Please refer to your office letters F. No. JCIT(OSD)/CC-1/Noida/153D/PMC/2021-22/326 & 330 dated 30.09.2021 on the above-mentioned subject.

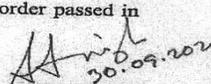
2. In the context of captioned matter, the AO has submitted the draft orders before me seeking approval u/s 153D in cases vide his letter dated 30.09.2021. I have gone through the draft orders. I earlier had occasions during the year to go through the seized material, appraisal reports during the discussions/communications with AO (from time to time throughout the year which were held personally/telephonically/electronically/ written) for the purpose of monitoring in relation to the above cases. The grant of approval u/s 153D is a culmination of all the discussions and monitoring carried out cumulatively throughout the year. I, therefore, grant the approval u/s 153D to pass the final assessment order in following cases: -

S. No.	Name of the assessee	PAN	A.Y.	U/s	Vol.
1.	Raghav Bahl	AALPB0480G	2013-14 to 2019-20	153A/143(3)	07
2.	Ritu Kapur	AHQPK4186N	2013-14 to 2019-20	153A /143(3)	07

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

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

Encls: as above (along with case records)


30.09.2021
(Smita Singh)
Addl. Commissioner of Income Tax
Central Range, Meerut

18. On a bare perusal of the approval dated 30/09/2021 addressed by Addl. CIT, Central Range-Meerut to the Joint Commissioner of Income Tax (OSD), Central Circle-1, Noida, it emerges that the approval has been accorded on the very same day of seeking the approval u/s 153D of the Act and the assessment orders have been also passed on the very same day i.e. on 30/09/2021 in respect of four Assessment Years involved in the present Appeals. The Addl. CIT, has not uttered a word on the subject matter of additions in the approval letter. The approval is in the nature of Performa approval; the approval granted smacks of mechanical or perfunctory approval in a symbolic exercise of powers vested under Section 153D of the Act. Apart from the same, single approval has been granted for 14 Assessment Years pertaining to two Assesseees.

19. The Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax Vs. Shiv Kumar Nayyar (supra) held as under:-

"11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for "each assessment year" referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of PCIT v. Sapna Gupta [2022 SCC OnLine All 1294] which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- "each assessment year" used in the language of Section 153D of the Act. The relevant paragraphs of the said decision are reproduced as under:-

"13. It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power. ***

19. The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A." [Emphasis supplied]

12. It is observed that the Court in the case of Sapna Gupta (supra) refused to interdict the order of the ITAT, which had held that the approval under Section 153D of the Act therein was granted without any independent application of mind. The Court took a view that the approving authority had wielded the power to accord approval mechanically, inasmuch as, it was humanly impossible for the said authority to have perused and appraised the records of 85 cases in a single day. It was explicitly held that the authority granting approval has to apply its mind for "each assessment year" for "each assessee" separately.

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of Asst. CIT v. Serajuddin and Co. [2023 SCC

OnLineOri 992] to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

"22. As rightly pointed out by learned counsel for the assessee there is not even a token mention of the draft orders having been perused by the Additional Commissioner of Income-tax. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like "seen" or "approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein,

(i) the Assessing Officer should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind ; (ii) the final approval must be in writing ; (iii) the fact that approval has been obtained, should be mentioned in the body of the assessment order." [Emphasis supplied]

14. During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of Serajuddin (supra), came to be dismissed by the Supreme Court vide order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.

15. A similar view was taken by this Court in the case of Anuj Bansal (supra), whereby, it was reiterated that the exercise of powers under Section 153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that

grant of approval under Section 153D of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

16. In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-

"10. We have gone through the approval granted by the ld. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. NeetuNayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. NeetuNayyar from Central Public Information Officer who is none other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. NeetuNayyar. The remaining cases may belong to some other assesseees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

17. Notably, the order of approval dated 30.12.2020 which was produced before us by the learned counsel for the assessee clearly

signifies that a single approval has been granted for AYs 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.”

20. Significantly, the Hon’ble Orissa High Court in the case of *ACIT vs Serajuddin & Co. 454 ITR 312 (Orissa)* had an occasion to examine substantial question of law on the propriety of approval granted under Section 153D of the Act. The Hon’ble Orissa High Court made wide ranging observations towards the manner and legality of approval under s. 153D of the Act. The Hon’ble High Court *inter-alia* observed that the approval under Section 153D of the Act being mandatory, while elaborate reasons need not be given, there has to be some indication that approving authority has examined draft orders and finds that it meets the requirement of law. The approving authority is expected to indicate his thought process while granting approval, held that it is not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the Court finds that the approval is granted mechanically, it would vitiate the assessment order itself. The approval letter simply grants approval. In other words, even the bare minimum requirement of approving authority having to indicate what thought process involved

leading to the aforementioned approval has not been provided. As explained, the mere repeating of words of the Statue or mere rubber stamping of the communication seeking sanction by using similar words like 'approval' will not, by itself, meet the requirement of law. The Hon'ble Court made reference to manual issued by the CBDT in the context of erstwhile section 158BG of the Act and observed that such manual serves as a guideline to the AOs. Since it was issued by CBDT, the powers of issuing such guidelines can be traced to section 119 of the Act. The Hon'ble High Court also held that non-compliance of requirement of section 153D of the Act is not a mere procedural irregularity and lapse committed by Revenue may vitiate the assessment order.

21. The ratio of judgment delivered in the case of *ACIT vs Serajuddin & Co. Kolkata*; *PCIT vs Anuj Bansal*; *PCIT vs Shiv Kumar Nayyar*; and *PCIT vs Subhash Dabas* (supra) have held in chorus that the approval granted under s. 153D of the Act, if granted mechanically, will vitiate the assessment order itself. The SLP filed against the aforesaid judgment in the case of *ACIT vs Serajuddin & Co. Kolkata* was dismissed as reported in (2024) 163 taxmann.com 118 (SC).

22. As noted above, in the instant case, single approval u/s 153D has been accorded in respect of 14 Assessment Years pertaining to two Assesseees; there is no mentioning of any communication between A.O. and the Additional commissioner of Income Tax, Circle Range, Meerut to prove the involvement of the superior authority in the approval granted by the ACIT. Further, there is no mentioning of case record perused by the approving authority. In the absence of any contrary jurisprudence brought to the notice of the Bench and by applying the ratio of judgments cited above, we are of the opinion that, the assessment orders based on ritualistic approval stands vitiated and thus the Assessment Orders are liable to be quashed. Accordingly we allow the Ground No. 5 & 6 of the Assessee's appeals.

23. Since, we have quashed the Assessment Orders for Assessment Year 2013-14 to 2016-17 by allowing Ground No. 3, 5 and 6 of Assessee's Appeals, we do not find necessary to adjudicate on other legal and factual contentions raised in the other grounds of Appeals of the Assessee.

24. In the result, Appeals filed by the Assessee in ITA Nos. 739/Del/2023, 740/Del/2023, 741/Del/2023 and 742/Del/2023 are allowed.

25. As we have quashed the Assessment Order pertaining to Assessment Year 2015-16, the Appeal filed by the Revenue for Assessment Year 2015-16 becomes in-fructuous. Accordingly Appeal of the Revenue in ITA No. 995/Del/2023 is hereby dismissed.

Order pronounced in the open court on 07th November, 2025

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:-07 .11.2025

R.N, Sr.P.S*

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI