

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

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER &  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No.2471/Del/2025  
[Assessment Year: 2019-20]**

Sudesh Kumar 289/1, Katra Peran Tilak Bazar, Delhi-110006	Vs	DCIT, Central Circle Range- 202 Delhi
PAN No. ANJPK1024K		
Appellant		Respondent

Assessee by	Ms. Priyanka, CA
Revenue by	Written adjournment application by the CIT (DR)/ Shri Rajesh Kumar Dhanesta, Sr. DR.

<b>Date of Hearing</b>	<b>29.10.2025</b>
<b>Date of Pronouncement</b>	<b>19.12.2025</b>

**ORDER**

**PER AMITABH SHUKLA, AM,**

The captioned appeal has been preferred by the assessee against order dated 19.02.2025 of the Commissioner of Income Tax (Appeals)-3, Delhi [hereinafter referred to as 'ld. CIT(A)'] arising out of assessment order dated 21.06.2021 passed u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') pertaining to Assessment Year 2019-20.

2. The assessee has raised following grounds of appeal:-

*1. The Ld. Commissioner of Income Tax (Appeals)-3 (the "CIT-A") was not justified in law and on facts in confirming the order of the Ld. Deputy Commissioner of Income Tax, Central (the DCIT) without appreciating*

*the submissions of the appellant along with the supporting evidence placed on record during the course of the assessment as well as appeal proceedings.*

*2. The Ld. CIT was not justified in law and on facts in confirming the order of the L.d. DCIT which has been passed pursuant to a notice issued and proceedings conducted without having proper jurisdiction in the matter.*

*3. The Ld. CIT was not justified in law and on facts in confirming the order of the Ld. DCIT in making an addition of Rs. 1,09,50,000, under section 69A of the Act, ignoring the facts, submissions and contention of the appellant that the same was his business income.*

*4. The Ld. CIT was not justified in law and on facts in confirming the order of the Ld. DCIT invoking the provisions of section 115BBE and applying a higher rate of tax, i.e. 60% in place of normal tax rate of 30%.*

*5. The Ld. CIT was not justified in law and in facts on applying interest under section 234A, B and C of the Act, ignoring the fact that the cash seized by the Department was in its possession and the appellant had offered the income for taxation requesting for appropriation of the cash in possession of the Department towards the tax due on such income.*

*6. The Ld. CIT was not justified in law and on facts in initiating the penalty proceedings under section 271AAC of the Act ignoring the fact that the appellant had offered the income for taxation in the return of income filed by him and requesting to adjust the tax thereon against the cash seized by the Department and therefore, in their possession and hence, no penalty was applicable under the aforementioned section.*

*7. The Ld. CIT was not justified in law and on facts in confirming the order of the Ld. DCIT ignoring the fact that sufficient opportunity of being heard was not afforded to the appellant during the assessment as well as appeal proceedings and hence, violating the principles of natural justice.*

3. Further, the assessee has raised following additional grounds of appeal contesting the order on legal issues of infirmity in the approval granted under section 153D of the Act:-

*The impugned assessment is invalid in law as the same has been passed after taking approval u/s 153D of the Act granted without application of mind by the Additional Commissioner of Income Tax through a common communication dated 08.06.2021 vide F.No.Addl.CIT/CR/MRT/Approval/153D/2021-22/124 for various AY's i.e. AY 2013-14 to AY 2019-20 in the appellant's case and the simultaneous approval granted in one more case by the same approval letter and on the same date."*

4. We have noted that the legal ground raised by the assessee as an additional ground, strikes at the very root of the assessment order and hence we have chosen to consider the legal ground first. As per brief factual matrix of the case order under section 153A r.w.s. 143(3) was passed by the Id. AO on 21.06.2021. In this case, the assessee had filed its Return of Income on 16.01.2020 declaring income of Rs.4,42,080/-. Meanwhile, survey under section 133A was conducted on 31.10.2018 upon one M/s Faqir Chand Lockers and Vaults Pvt. Ltd.(FCLVPL), engaged in the business of providing safe deposits lockers. The Id. AO noted that an amount of Rs.1,09,50,000/- kept as cash in the impugned locker no.132(Type-D) belonging to the assessee with the FCLVPL represented unaccounted income and hence proceeded to add the same under section 69A r.w.s. 115BBE of the Act. As evident from para-6 of the impugned order, the Id. AO had obtained prior written approval of his supervisory Additional Commissioner of Income Tax, Central Range-Meerut, through communication dated F No.Addl CIT/CR/MRT/Approval /153D/2021-22/124 dated 08.06.2021.

5. It is the case of the appellant assessee through additional ground of appeal that the approval under section 153D dated 08.06.2021 (supra) is a mechanical approval and hence hit by the decision of this Tribunal as in the case of Shri Dheeraj Chaudhary in ITA No.6158/Del/2018 (178 taxmann.com 360). The Id. Counsel argued that the impugned decision of

the Hon'ble Co-ordinate Bench has been confirmed by the Hon'ble Third Member. It was argued that the facts of the present case are totally identical with those available in the case of Shri Dheeraj Chaudhary(supra) and therefore the ratio held therein would be applicable in the assessee's case. The ld. Counsel accordingly pleaded for the quashing of the impugned order under section 153A/143(3) dated 21.06.2021. On the issue of maintainability of additional ground, the ld. Counsel placed reliance upon the decision of the Hon'ble Apex Court in the case of Subbanna V Kudapa Subbanna & Ors. 1965 AIR 1325 holding that a question of law can be raised at any stage of the proceedings. Further reliance was also placed upon the decision of Hon'ble Apex Court in the case of NTPC Ltd. 229 ITR 383(SC). It was accordingly requested that as the matter is fully covered by the decision of the Co-ordinate Bench of this Tribunal and strengthened by Third Member decision, Revenue's request for adjournment does not merits consideration. In support of its contention, the ld. Counsel for the assessee has placed on record a copy of approval under section 153D dated 08.06.2021, inter alia, indicating that approval was accorded in two cases including that of the assessee qua batch of assessment orders for AYs 2013-14 to 2019-20.

6. The ld. Sr. DR alternatively placed reliance upon the orders of lower authorities. Reference was also made to the another decision of a Co-ordinate Bench of this Tribunal on the impugned subject favouring Revenue.

It was submitted that Revenue would like to file written submissions in this case shortly, which was conceded.

7. We have heard rival submission in the light of the materials available on record. At the outset we have noted that the additional ground raised by the appellant assessee is fully maintainable and hence we have admitted the same and proceeded to adjudicate this appeal accordingly. As regards the reliance of the Revenue on the another decision of a Co-ordinate Bench of this Tribunal on the impugned subject favouring Revenue, we have noted that the decision of this Tribunal in the case of Shri Dheeraj Chaudhary in ITA No.6158/Del/2018 (178 taxmann.com 360) which has also been confirmed by the Hon'ble Third Member stands at a higher precedence and value than that of the decision relied upon by Id. DR. We have further noted that the decision in the case of Shri Dheeraj Chaudhary (supra) has been made after vividly analyzing the facts of the case and judicial precedents, including those of the Hon'ble jurisdictional High Court, governing the matter. Thus, it was held as under:-

*“22. I noted that the common thread discussed by Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), by Hon'ble Delhi High Court in the case of Anuj Bansal (supra) and by Hon'ble Allahabad High Court in the case of Sapna Gupta (supra) is that the requirement of previous approval of assessment by the Additional CIT/Joint CIT in terms of provisions of Section 153D of the Act being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty formality. Needless to say that before granting approval, the Additional CIT/Joint CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer and the approval must*

*reflect the application of mind to the facts of the case. The CBDT itself recognized the importance of this provision and the above laid down principle and hence issued Manual of Office Procedure in February, 2023 in exercise of powers under Section 119 of the Act. Vide Para 9 of Chapter 3 of Volume-II (Technical), a clear procedure is devised i.e., how an approval is to be granted for draft assessment for passing of assessment order in search cases. According to the Manual, the Assessing Officer should submit the draft assessment order for such approval well in time along with docketed in the order sheet, a copy of the draft assessment order, covering letter filed in the relevant miscellaneous records folder. Even, it is noted that due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. It is further noted that once such approval is granted, it must be in writing and filed in the relevant folder indicating above after making due entry in the order sheet. This is the mandate provided in the office manual of the Department. In view of above, I am of the view that the 'approval', as mandated u/s 153D of the Act, signifies a product of human thoughts based on the given set of facts and interpretation of the applicable law. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness. It also prevents and avoids inconsistent and divergent views. The power of approval to the specified authority i.e., Superior authority has been envisaged with the objectives that no illegality or biasness, to either of the sides i.e., the assessee or the Revenue, remains.*

*23. In the present case before me, the above procedure is not at all followed as is evident from the proposal sent by the Assessing Officer as reproduced in Paragraph 10. It means that the approval granted is mechanical in manner and without application of mind by the approving authority i.e., by the Additional CIT.....”*

8. We have noted that the facts of the present case are identical to those in the case of Shri Dheeraj Chaudhary (supra). No distinguishment of facts has been pointed out by the Revenue. Accordingly, in respectful compliance to the decision in the case of Shri Dheeraj Chaudhary (supra), we are of the considered view that the approval under section 153D dated 08.06.2021 falls in the category of mechanical approval and deserves to be quashed. It is a settled principle of law that ‘*sublato fundamento cadit opus*’ meaning when the foundation goes, the superstructure also goes. It is a fundamental legal doctrine, used in jurisprudence to express the principle that if the initial

action or basis of a legal proceeding is unlawful or flawed, all subsequent actions, orders, and consequences stemming from it are automatically rendered null and void. The order under section 153A r.w.s. 143(3) dated 21.06.2021 is resting upon the impugned approval under section 153D which has been found to be not in conformity with the provisions of law. Accordingly, the approval under section 153D dated 08.06.2021 is quashed. The consequent order under section 153A r.w.s. 143(3) dated 21.06.2021 would also attain a nullity. The additional grounds raised by the appellant is therefore allowed.

9. As the additional raised by the appellant on the legal issue stands allowed, all other grounds of appeal raised by the appellant qua the merits of the addition have become purely academic in nature and hence left open.

10. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 19<sup>th</sup> December, 2025.

**Sd/-**  
**[YOGESH KUMAR U.S.]**  
**JUDICIAL MEMBER**

**Dated:** 19.12.2025

*Shashi*

Copy forwarded to:

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

**Sd/-**  
**[AMITABH SHUKLA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi