

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**(THROUGH VIRTUAL HEARING)**

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA Nos.332 & 333/CTK/2025  
(निर्धारण वर्ष / Assessment Years: 2017-18 & 2018-19)

MSL Fish Traders Private Limited, Room No.14, Fish Market, Unit-4, Bhubaneswar.	Vs	DCIT, Central Circle-2, Bhubaneswar.
PAN No. : <b>AAJCM 1080 E</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri D.Parida, CA and Shri Chitrasen Parida, Adv
राजस्व की ओर से /Revenue by	:	Shri Ashim Kumar Chakraborty, Id CIT DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	3 /12/2025
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	3 /12/2025

**आदेश / ORDER**

**Per Bench :**

These are appeals filed by the assessee against the separate orders dated 31.3.2025 passed by Id CIT(A), Bhubaneswar-2 in Appeal No.CIT(A), Bhubaneswar-2/11252/2017-18 for the assessment years 2017-18 & 2018-19, respectively.

2. Shri D.Parida, and Shri Chitrasen Parida, Id ARs appeared for the assessee and Shri Ashim Kumar Chakraborty, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that the assessee has filed written submission, which reads as follows:

"1. That, the appellant is a private limited Company engaged in the business of fish trading, e-filed the return of income for the aforesaid A.Y. 2017-18 on 30.10.2017 with gross total income of Rs.12,43,250/-.

2. That, a search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out at the business premises of the appellant Company on 16.11.2018. Consequent upon the search & seizure operation, a notice u/s 153A of the Act was issued on 07.01.2020 to file the return and in response, the appellant filed a return of income on 06.05.2020 declaring income of Rs.96,38,670/-. The appellant company attended the hearings and complied all the requirements as sought for by the Ld. A.O. from time to time. That, the Ld. A.O completed assessment u/s 153A of the Act at an assessed income of Rs.8,50,56,534/- vide order dated 20.05.2021. thereby making an addition of Rs.6,69,50,000/- on account of unexplained investment u/s 69 of the Act in respect of purchase of Bhusandpur land on the basis of notebook/diary found during the course of search and seizure written by the cashier and Rs.84,67,864/- on account of commission income on presumption and without having any material basis.

3. That, the appellant being aggrieved against the abovesaid assessment order passed by the Ld. A.O preferred an appeal u/s 246A of the Act before the Ld. Commissioner of Income Tax (Appeal), Bhubaneswar-2 [in short 'CIT(A)'] and in response to statutory notice of hearing the appellant duly complied the same and thereafter the Id. CIT(A) partly allowed the appeal of the appellant vide Order dated 31.03.2025, upheld the addition in respect of land of Rs.74,00,000/- and Commission income of Rs.84,67,864/- as unexplained money.

4. That, being aggrieved against the abovesaid appeal order passed by the Id. CIT(A), the appellant has come up before your Honour with the present appeal.

In view of the above appeal, the appellant is producing grounds of appeal wise submissions for your Honour's kind consideration:

Grounds No.1: That the order passed by the learned Commissioner of Income Tax (Appeal), Bhubaneswar-2 dated 31.03.2025 vide DIN & Order No: ITBA/APL/S/250/2024-25/1075354490(1) u/s 250 of the Income Tax Act, 1961 with regard to confirming the addition of unexplained investment partially and commission income is excessive, arbitrary and bad in law.

General in nature

Grounds No.2: That the learned CIT (Appeals) has grossly erred both in fact and in law in confirming the impugned addition to the extent of Rs.74,00,000/- out of total addition of Rs.6,69,50,000/- made by the learned Assessing officer as unexplained investment in purchase of land at Bhusandapur on the basis of note book found from an employee when no deed or any corroborative documents for purchase or investment in land were found during the search and seizure operation nor any inquiry made by the learned Assessing officer in the assessment and without

considering the submission made by the assessee during the appellate proceeding, as a result the additions to the extent upheld by the learned CIT(Appeals) purely based on loose sheet must be held no nest in law and liable to be deleted.

1. That the addition was made by the L.d. A.O. on the basis of note book/diary seized and identified as MFT-51(Page 45 & 46). Copies of the seized documents enclosed at PB page no-76.

2. The aforesaid seized diary was maintained by the cashier Sri Bhimsen Mangaraj as stated by him in his statement recorded during the course of search on 16.11.2018.

3. That, the idiosyncratic addition of Rs.6,69,50,000/- was made in respect of investment in land at Bhusandpur when there was in fact no such purchase of land nor any investment made there at Bhusandpur more so the land in question does not exist. Neither the Ld. A.O. nor the Ld. CIT (Appeals) found such land purchased or investment made at Bhusandpur. Therefore, the addition made on mere speculation is liable to be deleted. The assessee relies on the following judgement on the identical issue:

Honourable HIGH COURT OF PUNJAB & HARYANA, [2008] 168 Taxman 150 (Punjab & Haryana) in the case Commissioner of Income Tax v. Ravi Kumar has held as such,

"8. In the present case, the assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips could prove. In view thereof, the provisions of section 694 of the Act had rightly not been applied by the Tribunal to the facts of the case in hand. Accordingly, question No. 1 is answered against the revenue and in favour of the assessee."

4. That, the addition has been made mere on the basis of the Note sheet/Diary maintained by a staff Sri Bhimasen Mangaraj for his own benefit and his only statement recorded during the search. There is no corroborative or direct evidence to presume that the notings/jottings had materialised into transactions giving rise to income not disclosed in the regular books of account of the assessee.

5. That, there is mismatch between the transactions made by the abbreviated names mentioned in the aforesaid seized documents "MFT-51(Page 45 & 46)" and the owners/directors of the Company as stated in

the statement recorded of Sri Bhimasen Mangaraj. Copy of statement enclosed herewith as Annexure-1. There is no nexus between the transactions mentioned in the seized documents and the assessee. No documents/particulars of payment made for purchase of land or any investment have been unearthed during the search, in the post search inquiry or during the assessment proceedings. No attempt has been made by the Revenue to link the transactions mentioned in the seized documents with the abbreviated form. Therefore, the addition made on mere speculation is not sustainable in the eyes of law. The assessee relies on the following judgement on the similar issue:

Honourable HIGH COURT OF GUJARAT, 288 CTR (Guj)579: (2016) 140 DTR (Guj) 235, in the case of Chetnaben J.Shah LR of Jagdishchandra K. Shah vs. Income Tax Officer, has held as such;

"6. We have heard learned counsel for the respective parties and perused the records of the case. We are of the view that the CIT(A) has rightly appreciated the case based on the sound principles of law and has also considered the statement made by the assessee at the relevant point of time. We are of the view that in light of the observations made by this Court in the case of Kailashben Manharlal Chokshi vs. CIT (supra), mere speculation cannot be a ground for addition of income. There must be some material substance either in the form of documents or the like to arrive at a ground for addition of income. Considering the ratio laid down in the above decision and in the facts of the present case, we are of the view that the issue raised in this appeal is required to be answered in favour of the assessee and against the Department.'

6. The assessee has also been deprived of cross examination of Sri Bhimsen Mangaraj during the course of appeal hearings or remand proceedings. The Assessee asked for an opportunity of cross examination before the Ld. CIT(Appeals). Copy enclosed at PB Page-56. Without giving an opportunity of cross examination, addition is not sustainable. The assessee relies on the following judgements on the identical issue.

- A) The Honourable Supreme Court, (2015)281 CTR 214/ 127 DTR 241 (SC) in the case of Andaman Timber Industries v. CCE;
- B) The Honourable Supreme Court in the case of Kishan Chand Chellaram v.CIT (1980) 125 ITR 713 (SC);

C) The Honourable Supreme Court in the case of Commissioner of Income Tax-7, New Delhi Vs. Odeon Builders (P.) Ltd, [2019] 110 taxmann.com 64 (SC)

7. That, the Note book/diary insofar as maintained by the staff without the knowledge of the assessee, itself cannot be evidence for making the alleged addition. Rather, it is dumb documents as the transactions mentioned in the said diary don't speak anything independently nor indicate from whom collected/received and to whom paid. There is no further corroborative evidence found by the Ld. A.O. to conclude that the amount stated therein are paid for purchase of Bhusandpur land or invested there after collection from whom. The Hon'ble Delhi High Court in the case of CIT v. Girish Chaudhary, [2007] 163 Taxman 608 (Delhi) has held that the revenue has to prove the undisclosed income beyond doubt. Further it was held that the document should be a speaking one and it should contain narration in respect of various figures noted therein. Otherwise, the same should be considered as dumb document on which reliance could not be placed upon.

8. That, therefore the loose sheet/diary noting made by the cashier and his only statement, without corroborated by other independent and cogent evidence and without giving opportunity for cross examination, cannot be the sole basis for the impugned addition. Entries in loose papers/ sheets are irrelevant and inadmissible as evidence. Such loose papers are not "books of account" and the entries therein are not sufficient to charge a person with liability. The assessee relies upon the case laws of the Honourable Supreme Court and various High Courts upon the identical issue as given below:

a) The Hon'ble Supreme Court in Common Cause (A Registered Society) v. UOI [2017] 77 taxmann.com 245/245 Taxman 214/394 ITR 220 (SC) has held as such;

"16. With respect to the kind of materials which have been placed on record, this Court in V.C Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible

17. It has further been laid down in V.C. Shukla (Supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets.xxxxxxxxxx"

b) The Hon'ble High Court of Karnataka in the case of Deputy Commissioner of Income Tax, CIRCLE-1(4), 2. The Commissioner of Income tax (Appeals)-11 Vs. 1. Sri Balbir Singh and 2. Sunil Kumar Sharma, [2024] 159 taxmann.com 179 (Karnataka) [SLP DISSMISSED BY THE HONOURABLE SUPREME COURT] has held as such;

"26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent /Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under Section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

Grounds No.3: That the Learned Assessing officer has grossly erred in law and on facts in making commission income on the basis of loose sheets on presumption and added a sum of Rs. 84,67,864/- to which the learned CIT(Appeals) has confirmed as unexplained money u/s 69A of the Act without having any corroborated evidences, without considering the remand report remarks and without considering the submission made by the assessee during the appellate proceeding.

a) That, the addition of alleged commission of Rs.84,67,864/- is based on the seized documents identified as MFT-34 & MFT-7. An extract of the seized documents and copies of the relevant pages of the seized documents enclosed at PB Page no.77 to 86. It is pertinent to mention that the aforesaid seized documents represent the rough sales day book wherein the sum total of sales of Rs.67,33,01,126/- has been accepted

by the Ld. A.O. for making the assessment. (Para 4A & Para 5, Page 4 & 5 of the assessment order).

b) That, the assessee being the wholesaler of fish cannot earn commission from its own customers. Rather, these transactions are collection of sale proceeds. Seized document is silent about the nature of transactions or no where it is written that the amount recorded are of commission nature. The Ld. A.O. has assumed it to be commission without having any material basis.

c) That, in the remand report, the Ld. A.O. stated that the said amount can not be called commission income (Page 11 & 12 of the Appeal order).

d) That, the amount mentioned in the seized documents can at best be called as collection of sale proceeds. The alleged commission figure of Rs.84,67,864/- includes Rs.11,85,626/- and Rs.31,10,000/- in the name of D. Suthamraju and Raju babu respective is highly unbelievable to be commission paid by these two people to the assessee.

e) That, the assessee has already offered an additional income to the tune of Rs.83,95,420/- calculated to be 2.254% on the unaccounted sale of Rs.37,25,81,193/- from the seized documents MFT-34 & MFT-7 to which the Ld. A.O. has been pleased to accept (Para 4 & 5 of the assessment order). Hence, these alleged commission noting mentioned in the same seized documents MFT-34 & MFT-7 cannot be treated separately. The Ld. A.O. cannot use one part of the seized documents and ignore the other parts. The assessee relies on the similar issue adjudicated by The Honourable Supreme Court and High Court in the following judgements:

The Hon'ble Supreme Court in Mehta Parikh & Co. v. Commissioner of Income-tax 30 ITR 181 (SC) has held as such; "The High Court recognised this position in effect but went wrong in applying the true principles of interference with such findings of fact to the present case. The attempt which was made by the High Court to probe into the mind of the Tribunal by trying to discard the affidavit of Govindprasad Ramjivan Nivetia in regard to the payment of Rs. 15,000 to the appellants in 15 currency notes of Rs. 1,000 each on 6th January, 1946, and thus reducing the aggregate sum of Rs. 43,500 to Rs. 28,500 and justifying the figure of Rs. 31,000 arrived at by the Tribunal was really far-fetched and contrary to the terms of the Tribunal's order itself, the Tribunal not having given any inkling, whatever, of what was at the back of its mind when it fixed upon the figure Rs. 31,000. Really speaking the Tribunal had not indicated upon what material it held that Rs. 30,000 should be

treated as secret profit or profits from undisclosed sources and the order passed by it was bad. The appellants had furnished a reasonable explanation for the possession of the high denomination notes of the face value of Rs. 61,000 and there was no justification for having accepted it in part and discarded it in relation to a sum of Rs. 30,000. The case was analogous to the one before the Patna High Court in *Chunilal Ticamchand Coal Co. Lid. v. Commissioner of Income-tax, Bihar and Orissa* [1955] 27 ITR 602, and should have been similarly decided in favour of the appellants."

The Hon'ble High Court of Gujarat in *Glass Lines Equipments Co. Ltd. v. Commissioner of Income-tax*, 119 TAXMAN 813 (GUJ.) has held as such; "9. In view of the settled legal position, it was not open to either Commissioner (Appeals) or the Tribunal to ignore a part of the contents of the affidavit. We are conscious of the fact that the findings recorded by the Commissioner (Appeals) and the Tribunal are concurrent as regards the facts and evidence on record and but for the averments made in the affidavit which have been ignored, we would not have interfered with the said findings. It is well-settled cannon of interpretation that a document has to be read as a whole: it is not permissible to accept a part and ignore the rest of the document."

Grounds No.4: That the learned Assessing Officer has passed the impugned assessment order without getting proper approval u/s 153D of the Act, thus making the assessment null and void and liable to be quashed.

1. That, the assessment for the A.Y.2017-18 has been made u/s 153A of the I.T. Act, 1961 and in terms of Sec. 153D of the Income tax Act, 1961, approval from not below the rank of Joint Commissioner of Income Tax has to be mandatorily obtained for each assessment years. Approval u/s 153D albeit has been accorded by the Addl. CIT, Central Range, Bhubaneswar but the same is not a valid one. Copy of the said approval u/s 153D of the Act is enclosed at PB page No-94.

2. That, the aforesaid approval is defective inasmuch as of multiple defects as there was no application of mind, a non-speaking one and the same is given in a consolidated manner for multiple years of assessment without issuance of DIN.

2.1. Non-application of mind, non-speaking approval and consolidated approval:

a) As mentioned in the approval the Ld. A.O. has sent the draft assessment orders on 10.5.2021 and the Ld. Addl. CIT has approved it on 12.5.2021 after a cursory look within a very short period of time.

b) Assessment order drafted erroneously with such a huge addition of Rs.6,69,50,000/- in respect of unexplained investment in land which has been approved by the Ld. JCIT perfunctorily, when Rs.6,08,50,000/- was not pertaining to the period of assessment which was clearly mentioned and apparent from the seized documents identified as MFT-51 and consequently also deleted by the Ld. CIT(Appeals) on the very same ground. The Deptt. was pleased to accept the deletion made by the Ld. CIT(Appeals) vide appeal order dated 25.3.2025. Hence, the Ld. Addl. CIT has not at all perused the seized documents with the draft assessment order but accorded approval mechanically to the erroneous draft assessment order.

c) The Ld. JCIT has given approval in a couple of days to the addition of Rs.84,67,864/- made by the Ld. A.O. based on the seized documents identified as MFT-07,12,34 & 56 which are of 534 pages itself out of the total seized documents of 10,497 pages. This is not possible humanly to believe that after perusal of such voluminous documents the draft assessment order has been approved by the Ld. JCIT in a couple of days.

d) There was no mention of any findings of the Ld. Addl. CIT for the Ld. A.O. in the said approval except the assessed income figures insofar as without giving any reasons.

e) That in terms of the provisions of section 153D of the Act, in the case of assessment made u/s 153A, approval should be accorded for each assessment year separately but in the case of the assessee approval has been given by the Ld. Addl. CIT in a single page in the consolidated manner for the multiple assessment years i.e A.Y.2016-17, A.Y.2017-18 & 2018-19.

f) The assessee relies on the judgements in the identical issue and under the similar circumstances as given below:

1. The Honourable Coordinate Bench in the case of Soumendra Kumar Mohanty Vs DCIT, Central Circle-2, Bhubaneswar, ITA Nos. 284-289/CTK/2025 & Modern Engineering and Management Foundation Vs DCIT, Central Circle-2, Bhubaneswar, ITA No.290/CTK/2025 after respectfully following the judgement of the Jurisdictional High Court of Orissa, Cuttack which has been affirmed by the Honourable Supreme Court in the case of M/s Serajuddin & Co has held as such;

"13. This clearly shows that the Id. JCIT has found no suggestion to give the AO in regard to the assessment much less any discussion with the AO

in regard to the draft assessment orders proposed. When this is considered in line with the decision of the Hon'ble Delhi High Court in the case of Shiv Kumar Nayyar (supra), which has been extracted above, it clearly shows that the Id. JCIT has given approval for multiple assessment years by a single approval letter. This is not permissible and consequently respectfully following the decision of the Hon'ble Delhi High Court in the case of Shiv Kumar Nayyar (supra), the approval granted by the Id. JCIT in the case of assessee u/s. 153D is held to be invalid and the same stands quashed.

14. When the said approval is examined in the line of the decision of the Hon'ble Jurisdictional High Court in the case of Serajuddin & Co. (supra), it clearly shows that under similar circumstances, the Hon'ble Jurisdictional High Court has categorically held that the approval granted is invalid. In these circumstances, on the ground that there has been no application of mind by the Id. JCIT and the approval has been granted in a mechanical manner, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of M/s Serajuddin & Co. which has been affirmed by the Hon'ble Supreme Court by dismissing the SLP filed by the revenue, the approval granted by the Id. JCIT for the impugned assessment years in the case of the assessee stands quashed. 15. It must also be mentioned here that the coordinate bench of the Tribunal in the case of Choudhury Swapan Kumar, passed in ITA No.493/CTK/2024, order dated 29.01.2025 along with other connected 55 ITA Nos.284-290/CTK/2025 appeals, has under similar circumstances, quashed the approval granted w/s. 153D of the Act by holding from para 7 to 15 as under:-xxxxxxxxxxxxxxxx

16. This order of the Tribunal has not been challenged before the Hon'ble High Court also. In these circumstances, respectfully following the decision of the Hon'ble Delhi High Court, as referred to supra, the approval granted by the Id. JCIT in the case of the assessee for the impugned assessment years under consideration stands quashed on account of multiple approvals for multiple assessment years. Also respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of M/s Serajuddin & Co., referred to supra, on account of non-application of mind and granting the approval in a mechanical manner, the approval granted by the Id. JCIT in the case of the assessee for the impugned assessment years under consideration stands quashed."

2. The Honourable High Court of Delhi in the case of Principal Commissioner of Income-tax (Central)-2 Vs Anuj Bansal, [2024] 165 taxmann.com 2 (Delhi) has held as such;

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

"17.1 However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Learned Addl. CIT

before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 1534 r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal.

17. Accordingly, the appeal is closed."

2.2. Without issuance of DIN:

a) The aforesaid approval u/s 153D of the Act granted by the Ld. Addl. CIT was not system generated but issued manually without DIN.

b) The CBDT Circular no. 19/2019 (Enclosed herewith as Annexure-2) casts obligations that every income tax authority shall allot a new computer-generated Document Identification Number (DIN) in respect of every communication relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

c) The CBDT circular also provides that any such order, notice, correspondence, approval etc. which does not bear the DIN in the body of communication shall be treated as invalid in the eyes of law and shall be deemed to have never been received.

d) The excerpts of the aforesaid circular issued by The CBDT is given below:

"2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication."

e) Any other person as stipulated in the aforesaid circular includes also the income tax Authority as the very purpose of this circular in respect of issuance of DIN is to maintain audit trail of all communication. Hence, the communication between the Income Tax Authorities are also bound by the requirements of issuance of DIN in the case of approval granted or obtained u/s 153D of the Act.

f) As there was no issuance of DIN in the case of the assessee, the approval should be considered as not granted u/s 153D of the Act.

PRAYER

In the fact and circumstances of the case stated above and the grounds mentioned, the appellant prays before your Honours be pleased enough to consider the submission of the appellant and be further pleased enough to allow the appeal and for this act of your honour's kindness the appellant shall remain ever grateful.

4. It was the submission that there was a search and seizure operation in the case of the assessee on 16.11.2018. It was the submission that as a consequence of search, assessment to be completed u/s.153A of the Act on 20.5.2021. It was the submission that the assessee is challenging the approval granted u/s.153D of the Act. Ld AR drew our attention to the approval which is shown at page 94 of paper book, which reads as follows:

GOVERNMENT OF INDIA  
OFFICE OF THE ADDITIONAL COMMISSIONER OF INCOME TAX (CENTRAL), BHUBANESWAR,  
AAYAKAR BHAWAN ANNEXE, RAJASWA VIHAR, BHUBANESWAR-751007  
Ph.& Fax No. 0674-2589279; email: [bhubaneswar.addlct.cen@incometax.gov.in](mailto:bhubaneswar.addlct.cen@incometax.gov.in)  
No. Range(Central)/BBSR/153D Approval/2021-22/184 Date : 12.05.2021

To  
The Assistant Commissioner of Income Tax,  
Central Circle - 2, Bhubaneswar  
Aayakar Bhawan, Annexe,  
Bhubaneswar - 751007

Sub : Approval of Draft Assessment Order u/s 153D in the case of  
"MSL Fish Traders Pvt Ltd" (AAJCM1080E) for A.Y's 2016-17 to 2018-19

Ref : Letter No. ACIT/CC-2/153D Approval/BBSR/2021-22/27 dt. 10.05.2021

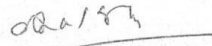
Please refer to the above.

The draft Assessment Orders in respect of the above referred assessee submitted by you along with the assessment records for A.Y's 2016-17 to 2018-19 and annexed with your letters under reference seeking approval u/s 153D of the Income Tax Act, 1961, have been perused along with the relevant Appraisal Report. Discussions were also made with you on different occasions before the receipt of the draft orders.

Sl No	Name of the Assessee	PAN	Assessment Year	Total Income to be Assessed (In Rs.)	Section of the Income Tax Act, 1961, under which order is proposed to be passed
(1)	(2)	(3)	(4)	(5)	(6)
1.	MSL Fish Traders Pvt Ltd	AAJCM1080E	2016-17	77,95,326	u/s 153A/143(3)
2.	MSL Fish Traders Pvt Ltd	AAJCM1080E	2017-18	8,50,56,534	u/s 153A/143(3)
3.	MSL Fish Traders Pvt Ltd	AAJCM1080E	2018-19	1,81,71,980	u/s 153A/143(3)

Approval under section 153D of the Income Tax Act, 1961, is hereby accorded in respect of the assessee as per the details mentioned in the above table for A.Ys 2016-17 to 2018-19. The assessment records in three (3) parts for A.Ys 2016-17 to 2018-19 are returned herewith.

Recd.  
Encl : As above  
12/05/2021

  
(A K Chakraborty)  
Additional Commissioner of Income Tax(Central)  
Bhubaneswar

True Copy Certified

Dy./Asst. Commissioner of Income Tax  
19/5/22

5. It was the submission that this approval is not after application of mind. He placed the reliance on the decision of Hon'ble Jurisdictional High Court of Orissa in the case of ACIT vs Serajuddin & Co. (2023) 150 taxmann.com 146 (Orissa),/454 ITR 312 (HC) wherein, in paras 22 to 25, Hon'ble High Court has held as follows:

"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 CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' 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 AO 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.

23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Additional CIT seeking his approval or of the Additional CIT having granted such approval. Interestingly, the assessment orders were passed on 30th December 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.

24. The above manual is meant as a guideline to the AOs. Since it was issued by the CBDT, the powers for issuing such guidelines can be traced to Section 119 of the Act. It has been held in a series of judgments that the instructions under Section 119 of the Act are certainly binding on the Department. In Commissioner of Customs v. Indian Oil Corporation Ltd. 2004 (165) E.L.T. 257 (S.C.) the Supreme Court observed as under:

"Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before

a Bench of three Judges in Central Board of Central Excise, Vadodara v. Dhiren Chemicals Industries: 2002 (143) ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam 2003 (5) SCC 528. The principles laid down by all these decisions are:

(1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. (3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of Section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves."

6. It was the submission that the SLP filed by the department against the decision of the Hon'ble Jurisdictional High Court has been rejected by the Hon'ble Supreme Court reported in (2024) 463 ITR 698 (SC). It was the submission that in view of the invalid approval under section 153D, same is liable to be quashed and consequential order also.

7. In reply, Id CIT DR that he is the authority who had granted the approval. He specifically mentions that before granting approval, discussions

were made with the Assessing Officer on different occasions before receipt of the draft order. It was the submission that it was only after application of mind, approval had been granted. It was the submission that the order of the Id CIT(A) is liable to be upheld.

8. We have considered the rival submissions. A perusal of the decision of Hon'ble Jurisdictional High Court in the case of Serajuddin & Co.(supra) shows that the Hon'ble High Court has considered the fact that there is not even a token mention of the draft orders having been passed by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. In the impugned approval also, it does not show what was thought given by the approving authority. Even though the letter does talk of the approving authority, perusing the draft order alongwith relevant proposal are not anything further is coming out of the said approval order. In these circumstances, following the principles laid down by the Hon'ble Jurisdictional High Court in the case of Serajuddin & Co.(supra) we are of the view that the approval granted is unsustainable and consequently is liable to be quashed and we do so. Further, as the approval has been quashed, consequential assessment order also would stand quashed.

9. In the result, both the appeals of the assessee stand allowed.

Order dictated and pronounced in the open court on 3/12/2025.

**Sd/-**

(राजेश कुमार)

**(RAJESH KUMAR)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

(जार्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

दिनांक Dated 3/12/2025

*B.K.Parida, Sr.P.S(OS)*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- MSL Fish Traders  
Private Limited, Room No.14, Fish Market, Unit-4,  
Bhubaneswar
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-2,  
Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A), Bhubaneswar-  
2
4. आयकर आयुक्त / CIT **2, Bhubaneswar**
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक  
/ DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.  
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण,

कटक/ITAT, Cuttack