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

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
&
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No. 3592 & 3593/DEL/2023
[Assessment Years: 2013-14 & 2014-15]

DILEEP KUMAR GUPTA 311, Sanjay Enclave, Adarsh Nagar, Northwest Delhi. **PAN No. AADPG 4888K**	Vs	**DCIT** Central Cirle-31 New Delhi
(APPELLANT)		**(RESPONDENT)**

Appellant by	Shri Pranav Yadav, Adv
Respondent by	Ms. Pooja Swaroop, CIT DR

Date of Hearing	07.01.2026
Date of Pronouncement	21.01.2026

ORDER

PER MANISH AGARWAL, AM :

Both the captioned appeals are filed by assessee against the separate orders, both dated 14.11.2023 of Ld. Commissioner of Income Tax (A)-30, New Delhi ["Ld. CIT(A)"] in Appeal No. 10108/2012-13 and 10115/2013-14 passed u/s 250 of the Income Tax Act, 1961 ["the Act"] arising out of different assessment orders, both dated 30.03.2022 passed u/s 153A r.w.s. 143(3) of the Act pertaining to Assessment Years 2013-14 & 2014-15 respectively.

2. The issues involved in both the appeals are common, interlinked and related to the same assessee, therefore, they have been heard together and accordingly, adjudicated by a common order.

3. First we take up appeal of the assessee in ITA No. 3592/Del/2023 [Assessment Year 2013-14].

ITA No.3592/Del/2023 [Assessment Year 2013-14]

4. Brief facts of the case are that the assessee filed his return of income u/s 139 of the Act on 26.03.2014, declaring income of INR 23,88,250/-. A search action u/s 132 was conducted on 06.01.2021 at the residence/business premises of Hans Group of which assessee is one of the member and his residential premises was also covered. As a result of search notice u/s 153A of the Act was issued on 14.03.2022, in response to which return was e-filed on 24.03.2022, declaring income of INR 23,88,250/- Thereafter notice u/s 143(2) was issued on 26.03.2022 followed by notices u/s 142(1) along with a questionnaire were issued from time to time. In response to these notices, assessee submitted the requisite details & clarifications. After considering the same, AO assessed the income of the assessee at INR 24,21,128/- vide assessment order dated 30.03.2022 passed u/s 153A r.w.s. 143(3) of the Act.

5. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 14.11.2023, dismissed the appeal of the assessee.

6. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *"On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.*

2. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is non-est as it does not have DIN on the body of the assessment order and CIT(A) erred in not holding so.*

3. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition OF Rs. 32,878/- made by the assessing officer on account of alleged cash commission income.*

4. *On the facts and circumstances of the case and in law, the addition of Rs. 32,878/- made by the assessing officer is beyond the scope of provisions of section 153A of the Act and CIT (A) erred in not holding so."*

7. In support of the **Ground of appeal No.1** taken, Ld.AR submits that approval granted by Ld. Joint CIT, Central Range-8, New Delhi is mechanical approval. Ld.AR drew out attention to the decision of Co-ordinate Bench of ITAT, Delhi Tribunal in assessee's own case for AY 2015-16 to 2021-22 in ITA No.148 to 153/Del/2025 wherein Co-ordinate Bench quashed the assessment orders for AY 2015-16 to 2019-20 and 2019-20 and allowed the grounds of appeal raised by the assessee with regard to mechanical approval granted u/s 153D of the Act. Ld. AR thus prayed that approval in the present case is also the similar thus the same deserves to be hold bad in law and the order passed based on such invalid approval be quashed.

8. On the other hand, Ld. CIT DR for the Revenue supports the order of AO and submits that approval was not granted on the same day and not mechanical approval. Ld.CIT DR filed a written submission which is reproduced as under:-

2. In this regard, Search and seizure action u/s 132 of the Act was conducted on the Hans group of cases on 06.01.2021 where case of the assessee was also covered. The case of the above referred assessee was assessed u/s 143(3) rws 153A of the Act for AY 2011-12 to AY 2016-17 and 2020-21 on account of providing accommodation entry for bogus LTGC for the Jaiswal family and earning commission income thereon @1.25% which was not recorded in the books of accounts. The CIT(A) upheld the orders of the AO.

3. Before the Hon'ble Tribunal, the assessee has preferred above referred appeals against the orders of the Ld. CIT(A). Main contentions of the assessee **is invalid order on account of DIN and "mechanical" approval u/s 153D of the Act.**

4. The Revenue hereby submits the arguments for Section 153D of the Act.

5. **In this regard, the following documents have been submitted by the AO, the same have been attached with this email:**
(i) Letters of the AO seeking approval u/s 153D of the Act,
(ii) Approval accorded u/s 153D of the Act by the Jt. / Addl. CIT / Range Head
(iii) Duly sworn affidavit (under Rule 10, ITAT Rules, 1963) in original by the AO
(iv) Letter of the DCIT, CC-31 , Delhi, dated 20.01.2025

6. **On perusal of the above it can be seen that :**
(i) The AO has sought approval u/s 153D of the Act from the Jt./Addl. CIT for SINGLE ASSESSEE.

(ii) The Jt./Addl. CIT accorded approval u/s 153D of the Act for SINGLE ASSESSEE for SINGLE AY.

(iii) The Jt./Addl. CITin his order of approval u/s 153D of the Act has stated, as reproduced below:

"2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Apparaisal Report and relevant seized documents perused by you & brought to the notice undersigned..."

7. The **search and seizure manual of the Income tax Department** mandates, as reproduced below:

"1.3 On receipt of the appraisal report and seized material, the Assessing Officer and Range Head should jointly scrutinize the appraisal report and seized material and prepare an Examination Note to decide:
i. Cases where notices u/s 153A of the Income- tax Act, 1961 (the Act) are required to be issued.
ii. Cases where notices u/s 153C of the Act are required to be issued.
iii. Cases where notices u/s 148 of the Act are required to be issued.
iv. Cases where seized material pertains to persons other than those whose cases have been centralised.
...
2.2 A detailed questionnaire should be prepared mentioning details of the Annexures relating to the seized material and the assessee's explanation sought on the entries therein. The questionnaire should also contain the queries on the basis of documents attached with the return. If considered necessary, directions under section 144A of the Act should be given by the Range Head.
...
3.2 All the issues and evidence that is going to be relied upon in the assessment order should be made available to the assessee. The final show cause notice should be prepared in consultation with the Addl. CIT and should contain:
i. The proposed structure of the order;
ii. The evidence in possession of the department;
iii. The case laws being relied upon;
iv. The opportunity of rebuttal being provided to the assessee. ...."

8. An **Appraisal Report** is a report prepared by the search conducting Assistant/Deputy Director of Income Tax (Investigation) highlighting the incriminating material along with the outcome of the investigations from the day of commencement of search operations to the culmination of the Appraisal Report. A copy of the Appraisal Report is provided to the AO, Jt. / Addl. CIT and the jurisdictional Principal Commissioner of Income Tax. This report is in the nature of a comprehensive report for the Search Unit (Investigation Directorate) and the Assessment Unit (Central Charge) of the Income Tax Department. Thereafter, the AO along with the Jt. / Addl. CIT gets involved in issuing statutory notices, preparing the Action Points, drafting Questionaries, etc. Neither the AO nor the Jt. / Addl. CIT works in isolation as far as search assessments are concerned. Basically, they work as team during the course of search assessments. The approval accorded by the Jt. / Addl. CIT under section 153D of the Act is nothing but the culmination of day-to-day involvement of the AO and the Jt. / Addl. CIT in search assessments. The fact is that the AO and the Jt. / Addl. CIT

work as team members and the AO works under the supervision of the Jt. / Addl. CIT. The teamwork gets culmination by the approval under section 153D of the Act. Such involvement of the Jt. / Addl. CIT in the search assessment is in routine in the Central Charges of the Income Tax Department where the search assessments are completed. It is not a case where the assessment records, other files, investigation folders, etc. of a search case are discussed for the first time between the AO and the Jt. / Addl. CIT at the time of approval of the search assessment.

9. As per the **SOP prescribed in the Search & Seizure Manual and other instructions/guidelines issued by the CBDT**, there is close monitoring of search assessments by the Jt. / Addl. CIT by way of internal correspondence folder(s), order sheet noting, meeting(s), discussions, electronic communications, etc. from time to time throughout the year. Since the Jt. / Addl. CIT and the AO of the present case were in rooms apart in the same building, therefore, movement of records, etc. by hand over phone also could not be ruled out. Since, the Jt. / Addl. CIT, as per the SOP issued by the CBDT for search assessments, could not be ruled out to be not actively involved in the search assessments, therefore, the issues emerged in the search assessments were on his/her tips at the time of granting approval under section 153D of the Act. It is also not the case that the Jt. / Addl. CIT has come to know of the facts/details of assessment proceedings at the time of approval under section 153D of the Act. The entire process of monitoring is a continuous process even before the receipt of draft order seeking the approval under section 153D of the Act. The approval under section 153D of the Act is culmination of joint exercise carried out as team lead by the Jt. / Addl. CIT. The AO had worked under the supervision of the Jt. / Addl. CIT.

10. A Range Head is fully involved in guiding and supervising the assessment proceedings. Discussions and consultation between the AO and the Range Heads are sometimes not formally put in the form of letters on record. It is not the Jt. /Addl. CIT is seeing issues for the first time which are in the draft order as alleged by the assessee. No government officer or even a layman will sign a legal paper/sensitive order without seeing and applying his/her mind where he can be held responsible/ accountable later.

11. As per the Wharton's concise Law Dictionary the word **'satisfied'** means being free of anxiety, doubt, perplexity, suspense or uncertainty, whereas **'approval'** means "to have or express a favourable opinion or to accept as satisfactory". The **'sanction'** requires and independent perusal of facts and record and also the recital of the reasons for granting approval. As seen from the meaning of the words 'satisfied', 'approval' and 'sanction' they constitute a hierarchy of endorsement of a proposed action. The word **'approval' under section 153D of the Act is not a sanction.** Sanction requires a more independent application of mind with respect to facts and provisions of law, whereas the 'approval' as contemplated under section 153D of the Act, being administrative in nature, the preliminary satisfaction of the Jt. / Addl. CIT is required to the extent that the AO has looked into all seized material and has given proper opportunity of being heard to the assessee by confronting the evidences and the proposed additions. **The Jt. / Addl. CIT, while granting approval under section 153D of the Act, does not enter into the realm of deciding whether the additions proposed by the AO is legally sustainable**.

12. The **CBDT Circular No. 3 of 2008, dated 12.03.2008** mentions the legislative intent of section 153D of the Act. Further, the section **153D of the Act does not lay the procedure**

and manner of granting approval under section 153D of the Act. The approval under section 153D of the Act by the Jt. / Addl. CIT is **merely administrative in nature to safeguard internal checks & balances without affecting the quasi-judicial powers of the AO or creating any prejudice to assessee.** In fact, while granting approval under section 153D of the Act, **the Jt. / Addl. CIT does not act as a Reviewing/ Appellate Authority to allow or disallow the additions proposed by the AO.**

13. The manner of arriving satisfaction for granting administrative approval itself could not have been matter of adjudication in the draft order in view of ratio laid by **the Hon'ble Supreme Court in the case of DG-IT(Inv.) Pune vs. Space Wood Funishers Pvt. Ltd. in Civil Appeal No. 4394 of 2015 [para 12]** and **Mumbai ITAT decision in the case of Pratibha Pipes & Structural Ltd. In ITA No. 3874/Mum/2015.**

14. **The Hon'ble Supreme Court,** in the cases of **State of Bihar vs PP Sharma AIR 1991 SC 1260, State of MP vs Harishankar Bhagwan (2010) 8 SCC 655, CS Krishnamurthy vs State of Karnataka AIR 2005 SC 2790 and State of Maharashtra vs. Ishwar Piraji Kalpatri AIR 1996 SC 722** has held that even in cases where the sanction order does not demonstrate the independent perusal of material and does not carry recital of reasons in view of the statutory presumption under section 114(e) of the Indian Evidence Act, 1872 but if it is established that all the relevant material were duly put up for perusal before the authority, then the sanction cannot be considered as vitiated.

15. The **Hon'ble Delhi High Court (Full Bench),** in the case of **Kelvinator of India Ltd. 123 Taxmann 433 (FB),** on the basis of the statutory presumption under section 114(e) of the Indian Evidence Act, 1872, had drawn a presumption in the Income Tax matter that all official actions were performed regularly unless controverted by the corroboratory evidence. Thus, in the present case, the onus is on the corroboratory evidence. Thus, in the present case, the onus is on the assessee to rebut that the Jt./Addl. CIT while approving the case had not applied his mind.

16. The Ld. AR has failed to cite any facts in the assessment order which may shown non-application of mind of the Jt. / Addl. CIT while granting approval under section 153D of the Act. The **Hon'ble High Court of Delhi, in the case of Principal Commissioner of Income-tax (Central)-2 vs. Anuj Bansal [2024] 466 ITR 251 (Delhi)[13-07-2023])** has cited many instances of inaccuracy/mistake/error/lapses, etc. in the approval under section 153D of the Act and the details mentioned in the assessment order to hold that there was non-application of mind of the Jt. / Addl. CIT while granting approval under section 153D of the Act. However, here **in present case, the Ld. AR failed to demonstrate such instances of inaccuracy/mistake/error/lapses, etc. in the approval under section 153D of the Act and the details mentioned in the assessment order. Hence, the facts of this case are distinguishable from the case of Anuj Bansal (supra).** Therefore, the decision of the Hon'ble High in the case of Anuj Bansal (supra) is not applicable in the present case. Rather, this case supports the view that in view of the decision of the Hon'ble Delhi High Court (Full Bench) in the case of Kelvinator of India Ltd. (supra) and the fact that the Ld. AR failed to pin point any inaccuracy/mistake/error/lapses, etc. in the approval under section 153D of the Act and the details mentioned in the assessment order. Similarly, the decision of the **Hon'ble Orrisa High Court in the case of (ACIT vs. Serajuddin & Co. [2023] 454 ITR 312 (Orissa)[15-03-2023])is also DISTINGUISHABLE on the facts as the Ld. AR failed to demonstrate**

that the search assessment orders did not mention the approval of the Jt. / Addl. CIT. In the present case, **the Ld. AR failed to establish that the guidelines enunciated by the Search & Seizure Manual, Circular-3 of 2008 and SOP for search assessments have been flouted by the AO and the Jt. / Addl. CIT and there was no application of mind by them.**

17. It is equally a well-settled position on the law of precedent that **a ruling of a court is to be read, understood and interpreted in the context of not only the issue that was under adjudication but also in the context of the points of arguments canvassed by both the sides.** Though there is plethora of judicial precedents on this aspect, it will suffice here to reproduce the relevant part of the judgment of the **Hon'ble Supreme Court in the case of Sun Engineering Works (P) Ltd., 198 ITR 297,** which is self-explanatory:
"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. ...".

18. In the case of **UOI & Ors. V. Dhanwanti Devi & Ors, 6 SCC 44, the Hon'ble Supreme Court** observed as under:

"9. ..... What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.
10. Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents....."

19. The dismissal of SLP has no binding force in terms of Article 141 of the Constitution of India. Consequently, it has no binding precedent value, in contradiction with a reasoned order of the Hon'ble Supreme Court or an order passed in appeal. Reliance is placed on the decisions of the **Hon'ble Supreme Court in the cases of Kunhayammed 245 ITR 360 and Khoday Distilleries Ltd. 104 taxmann.com 25 (SC). The Hon'ble Supreme Court, in the case of State of Orrisa and Another v. Dhirendra Sundar Das and Others – [(2019) 6 SCC 270 (SC)]** has clarified this position with the following observations at para 9.27:

"9.27 It is a well settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees' Welfare Association v. Union of India & Anr. and State of Punjab v. Davinder Pal Singh Bhullar, that the dismissal of a S.L.P. in limine simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution."

Thus, it is humbly submitted that in the present appeals, only facts of the case should be discussed and examined and they only should determine the fate of these appeal.

20. On perusal of all the documents submitted before Your Honours it is evident that:
(i) The AO has sought approval u/s 153D of the Act from the Jt./Addl. CIT for SINGLE ASSESSEE.

(ii) The Jt./Addl. CIT accorded approval u/s 153D of the Act for SINGLE ASSESSEE for SINGLE AY.

(iii) The Jt./Addl. CITin his order of approval u/s 153D of the Act has stated, as reproduced below:

"2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Apparaisal Report and relevant seized documents perused by you & brought to the notice undersigned..."

21. Thus, it is established beyond doubt that:
(i) the search assessment u/s 153A of the Act had been conducted in conformity with the instructions given in the Search and Seizure Manual and relevant CBDT circulars and instructions of the Income tax department.

(ii) The Jt.CIT/Addl.CIT had perused all case records of all AYs independently and has accorded approval for SINGLE ASSESSEE and SINGLE AY.
(iii) The AR has not been able to point out any defects in the assessment order or in the assessment proceedings or that there was no interaction between the AO and the Jt./Addl.CIT and that there was mechanical application of mind

(iv) Facts of the present case are clearly and beyond doubt distinguishable from facts of the decision of Hon'ble Delhi HC in Anuj Bansal (supra) and of Hon'ble Orissa HC in Serajuddin (supra)

22. **In view of the above, there is no doubt that approval u/s 153D of the Act was not mechanical. It was given after proper perusal of case records and interaction with the AO and with proper application of mind as per circumstances of the case as discussed in preceding paras.**

23. This written submission is being made in hard copy during hearing and is over and above the oral submissions and arguments by Revenue on merits of the case during the course of hearing.

24. Regarding the **DIN matter**, your kind attention is drawn to letter of the DCIT, CC-31, Delhi dated 20.01.2025 wherein he has stated, as reproduced below:
"2.5 the assessment orders u/s 153A of the Income Tax Act, 1961 were passed through manual order functionality of ITBA and uploaded on ITBA portal on 30.03.2022 in the case of Dileep Kumar Gupta for AYs 2013-14 and 2014-15. Consequently, below specified DINs were generated on 30.12.2019 (relevant screenshots of ITBA portal enclosed a day before the time

barring date. Orders were passed on ITBA through manual functionality of ITBA and uploaded on ITBA because ITBA was not allowing to generate orders through regular ITBA system.

AY	*DIN*	*Date of generation*
2013-14	*ITBA/AST/M/153A/2021-22/1042202496(1)*	*30.03.2022*
2014-15	*ITBA/AST/M/153A/2021-22/1042206460(1)*	*30.03.2022*

Thereafter, accounting of the assessment order was closed by CPC on 31.03.2022 and intimation letters (Copy attached as Annexure-6) communicating the DIN of the assessment orders dated 30.03.2022 were generated on 31.03.2022. These letters form integral part communication of assessment order to the assessee. To verify the same, copy of order sheet generated from ITBA portal for AY 2013-14 is enclosed as Annexure-7 and for AY 2014-15 is enclosed as Annexure-8. "

25. This written submission is being made in hard copy during hearing and is over and above the oral submissions and arguments by Revenue on merits of the case during the course of hearing.

9. Heard both the parties and perused the material available on record. Before going further, we first consider the letter sent by the AO seeking approval u/s 153D of the Act which is reproduced as under:

Office of the
Deputy Commissioner of Income-tax,
Central Circle-31 New Delhi, Room No. 343, 3rd Floor,
ARA Centre, E-2, Jhandewalan Extension, New Delhi-110055

F. No. DCIT/CC-31/ 153D/2021-22/ 1111 Dated: 28.03.2022

To,

The Joint Commissioner of Income Tax,
Central Range-8,
New Delhi.

Sir,

Sub: Request for approval u/s 153D of the Income Tax Act, 1961 in the case of Dileep Kumar Gupta (PAN: AADPG4888K) for the AY 2011-12 to 2016-17 and 2020-21– Reg –

***

Kindly refer to above.

2. The above noted case is covered under the provisions of Section 153A of the Act, as a result of search operation under section 132 in the case of Hans Group of cases. After scrutiny of the case assessment orders for the assessment years 2011-12 to 2016-17 and 2020-21 have been drafted and submitted (in duplicate) for approval as per the provisions of section 153D of the Income Tax Act, 1961.

3. Kindly accord the necessary approval for issue of the following assessment orders.

S.No.	Name of the assessee.	PAN	Asstt. Year.	u/s	Returned u/s 139	Returned u/s 153A	Addition Made	Assessed Income
1	Dileep Kumar Gupta	AADPG4888K	2011 12	153A r.w.s. 143(3)	Not filed	7,20,450/-	49,917/-	7,70,367/-
2	Dileep Kumar Gupta	AADPG4888K	2012-13	153A r.w.s. 143(3)	11,35,150/-	11,35,150/-	18,668/-	11,53,818/-
3	Dileep Kumar Gupta	AADPG4888K	2013-14	153A r.w.s. 143(3)	23,88,250/-	23,88,250/-	32,878/-	24,21,128/-
4	Dileep Kumar Gupta	AADPG4888K	2014-15	153A r.w.s. 143(3)	10,83,520/-	10,79,670/-	88,005/-	11,71,525/-
5	Dileep Kumar Gupta	AADPG4888K	2015-16	153A r.w.s. 143(3)	11,93,530/-	11,93,530/-	52,80,016/-	64,91,630/-
6	Dileep Kumar Gupta	AADPG4888K	2016-17	153A r.w.s. 143(3)	33,77,060/-	34,08,510/-	53,45,015/-	87,53,527/-
7	Dileep Kumar Gupta	AADPG4888K	2020-21	153A r.w.s. 143(3)	31,43,000/-	31,51,690/-	NIL	31,51,690/-

Encl: Draft assessment order and assessment records.

Yours faithfully

संयुक्त आयकर आयुक्त
28 MAR 2022
प्राप्ति

(Kapil Kumar Singh)
Deputy Commissioner of Income-tax,
Central Circle-31, New Delhi.

10. The approval granted by Ld. JCIT, Central Range 8, New Delhi in the case of assessee vide letter dt. 29.03.2022 is reproduced as under:

कार्यालय
संयुक्त आयकर आयुक्त, केन्द्रीय रेंज-8,
कमरा संख्या-328 तृतीय तल, ए.आर.ए. सेंटर, झण्डेवालान एक्सटेंशन, नई दिल्ली
दूरभाष-011-23593442

F. No.: JCIT/CR-8/153D/2021-22/3040 **Dated: 29.03.2022**

To,

The Dy. Commissioner of Income Tax,
Central Circle-31,
New Delhi.

Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of Dileep Kumar Gupta (PAN: AADPG4888K) for the A.Y. 2014-15 - Regarding.

Please refer to your office letter F. No. DCIT/CC-31/153D/2021-22/1111 dated 28.03.2022, seeking approval u/s 153D of the Income Tax Act, 1961 in the case of Dileep Kumar Gupta.

2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.

Name of the assessee	PAN	A.Y.	U/S	Returned Income		Addition made	Assessed Income
				u/s 139	u/s 153A		
Dileep Kumar Gupta	AADPG4888K	2014-15	153A r.w.s. 143(3)	10,83,520/-	10,79,670/-	88,005/-	11,71,525/-

3. Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal for retention of seized material should also be forwarded to this office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the interest of revenue, permission u/s 281B from Pr. CIT(C)-3, New Delhi should be taken. Office note indicating additions in relevant assessment years should be indicated in all Assessment Years. You have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data. You have also certified to the undersigned that all information available in AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment order.

4. Please ensure that penalty is levied under proper section of the Income Tax Act, 1961.

29 MAR 2022

(Sunil Kumar Yadav)
Jt. Commissioner of Income Tax,
Central Range-8, New Delhi.

11. In the case of assessee himself for the subsequent assessment years, the coordinate bench in ITA Nos. 148 to

153/Del/2025 vide order dt. 19.11.2025 has held the approval granted u/s 153D as mechanical and quashed the order passed us/ 153A of the Act. The relevant observations of the coordinate bench are as under:

> "3. We have heard the rival submissions and perused the material available on record. The facts for AY 2015-16 are taken up first for adjudication and the decision rendered thereon shall apply with equal force for all assessment years herein, except with variance in figures. The original return for AY 2015-16 was filed u/s 139 of the Act on 12.03.2016 declared total income of ₹11,93,530/-. The assessment was completed u/s 143(3) of the Act on 25.10.2017 for AY 2015-16 determining the total income of ₹12,11,614/-. A search and seizure operation was conducted u/s 132 of the Act on 06.01.2021 at the residential/business premises of Hans Group. Pursuant to the search, notice u/s 153A of the Act was issued to the assessee on 09.11.2021. In response to the notice u/s 153A of the Act, the assessee filed his return of income on 26.12.2021 declaring total income of ₹11,93,530/-. The assessment was completed u/s 153A r.w.s. 143(3) of the Act on 30.03.2022, after obtaining prior approval of the ld JCIT on 29.03.2022. Now, the short question arose for our consideration is as to whether the approval granted u/s 153D of the Act by the ld JCIT could be construed as have been granted in a mechanical manner or not. For the sake of convenience, the approval granted by the ld JCIT u/s 153D of the Act is reproduced below:-

कार्यालय
संयुक्त आयकर आयुक्त, केन्द्रीय रेंज-8,
कमरा संख्या-328 तृतीय तल, ए.आर.ए. सेंटर, झण्डेवालान एक्सटेंशन, नई दिल्ली
दूरभाष-011-23593442

F. No.: JCIT/CR-8/153D/2021-22/3041 **Dated: 29.03.2022**

To,

The Dy. Commissioner of Income Tax,
Central Circle-31,
New Delhi.

Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of Dileep Kumar Gupta (PAN: AADPG4888K) for the A.Y. 2015-16 - Regarding.

Please refer to your office letter F. No. DCIT/CC-31/153D/2021-22/1111 dated 28.03.2022, seeking approval u/s 153D of the Income Tax Act, 1961 in the case of Dileep Kumar Gupta.

2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.

Name of the assessee	PAN	A.Y.	U/S	Returned Income		Addition made	Assessed Income
				u/s 139	u/s 153A		
Dileep Kumar Gupta	AADPG4888K	2015-16	153A r.w.s. 143(3)	11,93,530/-	11,93,530/-	52,80,016/-	64,91,630/-

3. Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal for retention of seized material should also be forwarded to this office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the interest of revenue, permission u/s 281B from Pr. CIT(C)-3, New Delhi should be taken. Office note indicating additions in relevant assessment years should be indicated in all Assessment Years. You have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data. You have also certified to the undersigned that all information available in AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment order.

4. Please ensure that penalty is levied under proper section of the Income Tax Act, 1961.

(Sunil Kumar Yadav)
Jt. Commissioner of Income Tax,
Central Range-8, New Delhi.

29 MAR 2022
2881

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4. We find that similar approval has been granted for AYs 2011-12 to 2021-22 by the ld JCIT independently for each assessment year. The ld AR placed on record the order sheet entries, on perusal of which, there is absolutely no mention in the order sheet regarding the forwarding of seized documents, assessment folders, investigation report etc to the ld JCIT for obtaining approval u/s 153D of the Act by the ld JCIT. Further, it is a fact that the ld AO had sought for approval u/s 153D of the Act by

forwarding the draft assessment order alone for the years under consideration vide letter dated 28.03.2022 upto AY 2019-20 and on 30.03.2022 for AY 2021-22. Evidences in this regard were duly placed o record before us. It is the case of the ld AR that an approval u/s 153D of the Act had been granted by the ld JCIT on 29.03.2022 up to AY 2019-20 and on 31.03.2022 for AY 2021-22 of more than 100 assessees on the same date. On perusal of the aforesaid approval granted u/s 153D of the Act, wherein it has been stated that the draft assessment order as proposed by the ld AO had been amended by the ld JCIT and that the amended draft order has been accorded approval u/s 153D of the Act by the ld JCIT. But it is pertinent to note that nowhere in the order sheet noting suggests even forwarding of original draft assessment order by the ld AO to the ld JCIT. This goes to prove that a standard format is being used by the ld JCIT for granting approval u/s 153D of the Act as the contents written thereof are not supported by the order sheet notings placed on the record. The ld JCIT granted approval u/s 153D of the Act by relying on the certificate given by the ld AO with regard to the perusal of the verification of the seized documents by the ld AO. This goes to prove that that ld JCIT had not examined the seized documents while granting approval u/s 153D of the Act. The ld AR before us placed on record the coordinate decision of Delhi Tribunal in the case of Manoj Kumar Singh vs DCIT in ITA No. 2237/Del/2025 and ITA No. 3717/Del/2025 for AY 2012-13 dated 19.09.2025, wherein the very same JCIT, Central Circle -8 New Delhi had accorded approval u/s 153D of the Act on 30.03.2022. The relevant operative portion of the order is reproduced as under:-

> *"7. Ld. Sr. Counsel has submitted that the approval has been granted in consolidated manner and taking the Bench across pages 1 to 2 of the paper book, having letter seeking approval and pages 3-12 of PB, the impugned approval letters, it was submitted that separate approvals for AY 2011-12 to AY 2020-21 were issued u/s 153D of the Act on 30.03.2022 and all are verbatim similar, which shows there was non-application of mind and in a routine manner, the approvals were granted. The ld. Sr. Counsel submitted that in fact, the said approving authority has granted numerous approvals u/s 153D of the Act on 30.03.2022 and a list of same has been provided at pages 13 and 14 of the paper book. The ld. Sr. Counsel relied on a catena of decisions of Coordinate Benches at Delhi and decision of Hon'ble Delhi High Court in the case of Pr. CIT vs Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Delhi) and Hon'ble Supreme Court in the case of M/s Serajuddin and Company 163 taxmann.com 118, which has sustained decision of Hon'ble Orissa High Court, to submit that the law is now settled that approval granted u/s 153D of the Act should exhibit*

application of mind and cannot be a routine feature of completing the search assessment.

8. The ld. DR has opposed the aforesaid contentions and has submitted that approval granted is administrative in nature and there is no strict format for grant of the approval. It was submitted that approval mentions specific fact about the draft assessment order "as amended" being approved and further that evidences including electronic evidences were considered. It was further submitted that the procedure of search assessment includes active participation of the approving authority and therefore approving authority can be presumed to be sufficiently aware of the incriminating materials. It was submitted that particularly in the case of the present assessee, the approval was sought on 28.03.2022 and approval has been granted on 30.03.2022, thus, there was sufficient opportunity with competent authority to further go into the draft assessment orders.

9. However, leaving apart the contentions of ld. Sr. Counsel that tenor of approval does not show application of mind or that multiple approval were granted so to presume that there was not application of mind what we find after taking into consideration, the copy of approval granted for relevant assessment years, is that approving authority has mentioned that the impugned letter of approval that the approval has been granted to the draft assessment order 'as amended'. This phrase 'as amended' is quite ambiguous, and actually nothing could be explained or justified by ld. DR for using these words and thus rather than helping the case of Revenue and Ld. DR, it puts the case of the Revenue in docks as there is nothing in letter dated 28.03.22 by the AO to mention that at any stage before 28.03.22, there was any communication between the two authorities. The AO merely mentions that cases of assessee for AYs 2011-12 to 2021 are being put up for approval. It does not even mention of forwarding records and that any previous direction on the drafts is given effect. There is no mention that any time between this letter dated 28.03.2022 or 30.03.2022, the two authorities have gone through the draft assessment order afresh, so as to justify the use of words 'as amended' in the approval letter.

10. It can be further appreciated from the material on record and discussion aforesaid that this is a case where excessive reliance has been placed on the electronic/digital evidence, and the approving authority does not mention in the approval letter that electronic evidences were examined

and were tested on principles of law governing the relevancy and admissibility of electronic evidences seized during search or analyzed later on. Rather, the approving authority by mentioning para-3 of the approval letter that "you have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/pen drives/mobile data & any other electronic data" admits that without any independent verification, the AO's certification was relied to accept that the electronic evidences were collected and relied in accordance with law.

11. The ld. Sr. Counsel has pointed out that so far as the addition of Rs.2,69,06,780/- is considered, which has been restricted partly by the ld. CIT(A), from the assessment order, even the CIT(A) was unable to make out as to how this amount of Rs.2,69,06,780/- was arrived on the basis of electronic evidences and allegedly contains various payments have been made for personal expenses. In this regard, if we appreciate the order of the ld. CIT(A), we find that even a remand report was called from the AO to explain the rational of additions but no clarification was given by the AO and the relevant findings of the ld. CIT(A) in para 18.4 is reproduced as under:-

> *"As per the first remand report, AO stated that the rationale of additions made has been already mentioned assessment order. Further, letter was issued for seeking report for clarifications on the basis of addition from AO vide F. No. 243/RR/CIT(A) - 30/ Delhi/2024-25/207 dated 17.10.204, but the clarifications were not given by AO till date. In para 33 of the assessment order, the year-wise details of unexplained expenditure in cash is given which is without any detailed working and bifurcation. The said table is extracted here as under from AO's order: -*

Assessment Year	Amount (in Rs.)
2011-12	6,99,67,910/-
2012-13	2,69,06,780/-
2013-14	11,87,34,210/-
2014-15	19,45,74,000/-
2015-16	4,84,67,930/-
2016-17	1,98,61,880/-
2017-18	1,89,44,720/-
2018-19	7,59,26,530/-

2019-20	6,65,35,410/-
2020-21	9,65,03,710/-
2021-22	63,39,100/-
Total	74,27,62,170/-

> *Since, the working is not available on records till date, I am constrained decide on the basis of available facts on record. Even appellant denied have received any bifurcation of the same. Thus, the only recourse is to rely and peruse the available records.*
>
> *ii. As per assessment order, the AO made an addition of Rs. 2,69,06,780/-based on excel data 'MyData xIsx' and 'Sunnyxisx' which contain various of payments have been made for personal expenses. Appellant contended that there is no basis of calculation of unexplained expenditure, which is correct."*

11.1 This shows that AO has made certain conclusions which are not even substantiated from the analysis of evidences and prima facie non comprehensible, and same could have escaped the attention of authority granting approval u/s 153D of the Act, if there was non-application of mind to the contents of draft assessment order.

12. In this context, we may also note that Digital Evidence Investigation Manual,2014 (hereinafter called 'the Manual') of the Central Board of Direct Taxes provides a detailed procedure with regard to collection of digital evidences and the manner in which the same has to be relied during the assessment proceedings. The Manual is self contained code where Board has consciously and very articulately examined various facet of collection, examining and reproducing the digital evidences, on the basis of judicial decisions and provisions of law as enshrined in Evidence Act or Information Technology Act. To bolster this conclusion of ours, we would like to observe that the CBDT in its Manual while feeling the relevance of the question with regard to admissibility of electronic evidences and taking note of sea change in the information and technology used in the business transactions has observed as to how in a relevant statutory provisions have been made with regard to recognizing electronic record as evidence and as for convenience we reproduce the aforesaid from para 1.1 of the Manual:-

> *"The law of the country has also taken cognizance of this reality. The Information Technology Act, 2000 has been enacted recognizing electronic records as evidence, governing access to and acquisition of digital and electronic evidence from individuals, corporate bodies and/or from the public domain. By way of this enactment, amendments were also brought in other laws like Indian Penal Code, Indian Evidence Act and Criminal Procedure*

Code, (Cr.PC). The Income-tax Act, 1961 has also been amended thrice by way of Finance Act 2001, Finance Act 2002 and Finance Act 2009 thereby according recognition to electronic evidence, facilitating access to them and giving when need be, powers to impound and seize them. By Finance Act, 2001, Clause (22AA) was inserted in Section 2 to provide that the term "document" in Income Tax Act, 1961, includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000. By Finance Act, 2002, Clause (iib) was inserted in Sub-Section (1) of Section 132 requiring any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents; and by Finance Act, 2009, clause (c) was inserted in sub-section (1) of Section 282 providing that service of notice in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000) will constitute valid service."

13. Further it can be observed that in para 1.5 the objectives of the Manual are mentioned which states that the aim of this Manual is to apprise the user of "basic legal provisions relating to digital evidence in Income-tax Act and other laws including Information Technology Act and Indian Evidence Act."

14. Then, we would like to reproduce from this Manual as to how the Board perceived the relevance of various provisions of the different statutes and how specifically referred to the provisions of section 65A and 65B of the Indian Evidence Act, 1872 and directed that "accordingly while handling any digital evidence, the procedure has to be in consonance of these provisions.". The relevant part in para 2.7.3 is as follows:-

"2.7.1 The Information Technology Act-2000 has been enacted to provide legal recognition to transactions carried out by means of electronic data interchange and other means of electronic communication, which involve the use of alternatives to paper-based methods of communication and storage of information. The same enactment has also brought amendments in the Indian Penal Code, 1861, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

2.7.2 As far as Income-tax Act, 1961 is concerned, it has been amended thrice by way of Finance Act, 2001, Finance Act, 2002 and Finance Act, 2009 respectively.

- *By way of first amendment, provisions of sub-section (12A) of section 2 was inserted to give legal recognition to the books of account maintained on computer and sub-section (22A) to section 2 was inserted to provide definition of 'document' which included "electronic record" as defined under Information Technology Act 2000.*

Under Information Technology Act 2000 an electronic record has been defined to include data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro file. This definition of electronic record is wide enough to cover person in possession of computer, storage device, server, mobile phone, i-Pod or any such device.

The above amendment has thus specifically given recognition to electronic record as admissible evidence at par with a 'document'. Further, the powers to impound/copy a document during a survey action u/s 133A and power to seize a document during a search and seizure operation has also been automatically extended to electronic records as a result of the amendment.

- *By way of second amendment, provisions of section 132 (l)(iib) were inserted facilitating access to the electronic devices including computer, containing document or books of accounts in the form of electronic records by making it obligatory for the person under control of such device to afford the necessary facility to inspect such records.*

By Finance Act, 2009, clause (c) was inserted in sub-section (1) of Section 282 providing that service of notice in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000) will constitute valid service.

2.7.3 Under Indian Evidence Act there are several references to documents and records and entries in books of account and their recognition as evidence. By way of the THE SECOND SCHEDULE to the Information Technology Act Amendments to the Indian Evidence Act have been brought in so as to, incorporate reference to Electronic Records along with the document giving recognition to the electronic records as evidence.

Further, special provisions as to evidence relating to electronic record have been inserted in the Indian Evidence Act, 1872 in the form of section 65A & 65B, after section 65. These provisions are very important. They govern the integrity of the electronic record as evidence, as well as, the process for creating electronic record. Importantly, they impart faithful output of computer the same evidentiary value as original without further proof or production of original. Accordingly, while handling any digital evidence, the procedure has to be in consonance of these provisions.

2.7.4 Under Indian Penal Code several acts of omission and commission relating to various documents and records are treated as

offences. By way of the THE FIRST SCHEDULE to the Information Technology Act, Amendments to the Indian Penal Code have been brought in, so as to incorporate reference to Electronic Records along with the document."

15. Now, the Manual very categorically lays down the importance of chain of custody and how the Manual lays down procedure to be followed by authorities for reporting and analysis of digital evidences and as to how the AO has to deal with the digital evidences and its analyse in the assessment order and what is the importance of chain of custody of digital evidences. The relevant para 9.1 and 9.6 of the Manual which:-

"9.1 Reporting of Analysis of Digital Evidence in the Assessment Order should be done in a simple lucid manner, so that any person can understand. The report should give description of the items, process adapted for analysis, chain of custody on the movement of digital evidence, hard and soft copies of the findings, glossary of terms etc .The presentation and use of digital evidence in assessment order and presentation of the same in court of the law in matters of appeal involves stating the credibility of the processes employed during analysis for testing the authenticity of the data.

Some guidelines that assessing officer need to follow when using the Digital Evidence Analysis in the assessment order etc, are as follows:

- *Brief description of the case, details/description of the objects, date and time of collection of the objects, Status of the objects when collected (On or Off), Seized from - person, organization, location etc should be included in the Assessment Order.*

- *Digital Evidence Collection Form, Mobile Phone Evidence Collection Form should be enclosed in the order to show the initial state of the Digital Evidence.*

- *Digital Forensic Report(Given by Forensic Examiner) containing details of hash value and the details of all mahazar drawn to open the digital evidence at various times to gather further evidences should be included as an annexure to the assessment order. If the chain of custody form is present, the same can be annexed to the assessment order. This will establish the integrity of the data before any court of law.*

- *The Key digital evidences retrieved if deleted along with the description of the same, in case of business application software, a note on how the business application software is and the technical details of all critical components.*

- *Whether these digital evidences have been confronted to the assessee under any section of the law? The relevant portions of the*

statement under various sections of Income Tax Act should be included in the order.

- *Circumstantial evidences and other key physical evidences seized/impounded should be linked to the digital evidence. Usually the physical evidences like loose papers, sheets gives details of one particular transaction, while the .digital evidences may help in unearthing the entire consolidated data*

for the whole year. Such digital evidences should be linked to the physical evidences seized during the course of search to establish the genuineness of the data and also to quantify to the total unaccounted income.

"9.6 Handling the digital evidence at a later stage

In the Income Tax Department, the digital evidence stored is used in the assessment proceedings and at later stages in case of legal tangles. In order to maintain the sanctity of data stored/seized, there is a need to maintain a chain of custody while handling the digital evidence during the course of assessment proceedings and at later stages. Due to the lengthy legal proceedings involved, it may be needed to retain evidence indefinitely.

Hence, a chain of custody of digital evidence should be created in order to know the details of who is accessing data, if anyone who accessed the data had tampered with the data etc."

16. However, after examining the assessment order, we are of the considered view that it is not a case where a single issues was involved or same set of incriminating evidence, being some physical evidences, was relied by the AO. The incriminating evidences were multiple electronic evidences found form multiple digital devices thus in regard to same the approving authority should have made sure, before granting of approval, that at time of search and thereafter the investigation wing authorities and so also the AO has duly followed the instructions of the Board as laid in the Manual. The aforesaid directions of Board in para 9.1 and 9.6 of the Manual, requiring as to what all material should be annexed to the assessment order in case the assessment is outcome of electronic or digital evidences seems to be completely ignored by the AO. Even if for sake of arguments it is accepted that they are not instructions u/s 119 of the Act, but then that does not lead to inference that the instructions of Board could be neglected by AO and while granting approval u/s 153D of the Act, too, the same can be left out of consideration by the competent authority on assumption that it is merely an administrative function. Rather, as discussed here above the approving authority casually records that veracity of electronic evidences have been accepted as certified by

the AO. Same only leads to one conclusion that approval was mechanical.

17. The law in this regard has quite crystallized by now. 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 s. 153D of the Act. The Hon'ble High Court made wide ranging observations towards the manner and legality of approval under s. 153D of the Act by observing that the approval under s. 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 justifiable. Where the Court finds that the approval is granted mechanically, it would vitiate the assessment order itself. The Hon'ble High Court inter-alia observed that there is no even a token mention that draft order has been perused by the Ld. Addl. CIT. 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. The SLP filed against the aforesaid judgment in the case of ACIT vsSerajuddin& Co. Kolkata was dismissed as reported in (2024) 163 taxmann.com 118 (SC).

18. Though there are catena of decision of coordinate bench in favour of assessees, we rely Hon'ble Jurisdictional High Court decision in case of Shiv Kumar NayarPCIT vs Shiv Kumar Nayyar reported in 163 taxmann.com 9 which has also relied this decision in case of Serajuddin(supra) and held in para 10 to 15 as follow;

"10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying

intent of the relevant provision of the Act i.e., Section 153D, which is culled out as under:-

"153-D. Prior approval necessary for assessment in cases or requisition.—No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [subsection (1) of Section 153-A] or the assessment year referred to in clause (b) of sub-section (1) of Section 153-B, except with the prior approval of the Joint Commissioner :

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or Commissioner] under sub-section (12) of Section 144-BA."

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, 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.

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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. [2023SCC 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 reasoned 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 section158BG 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 dated28.11.2023 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."*
>
> *19. In the light of the aforesaid, we are inclined to sustain the ground no.2, which vitiates the whole assessment proceedings and consequential orders. Accordingly, the appeal of the assessee is allowed and consequently, the appeal of the Revenue deserves to be dismissed. Resultantly, the impugned assessment order is quashed.* "

5. The ld DR before us filed a detailed written submission to support the argument that the approval has been granted u/s 153D of the Act after due application of mind as under:-

"B. With regard to issue regarding 153D approval, it is submitted that

1. Copy of approval is placed as Annexure 'A'. The learned Joint Commissioner of Income-tax received proposal for approval alongwith draft assessment order and sized material on 28.03.2025 and the JCIT accorded approval after due application of mind on 29.03.2025. It may also be noted that the JCIT has granted approval for single asseessee with single Assessment Year with the following remarks in Para 2 and 3 of the JCIT approval:-

> *2. Approval is hereby accorded u/s 153D of the Income Tax Act, 1961 to the draft assessment order as amended in the following case, on the basis of the detailed discussion with you time to time, information available on record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.*
> *3. Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal for retention of seized material should also be forwarded to this office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the interest of revenue, permission u/s 2818 from Pr. CIT(C)-3, New Delhi should be taken. Office note indicating additions in relevant assessment years should be indicated in all Assessment Years. You have certified about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/pen drives/mobile data & any other electronic data. You have also certified to the undersigned that all information available in AIR/CIB/from other Law Enforcement*

Agencies have been properly scrutinized by you before finalizing the draft assessment order."

2. Section 153 D of the Act was inserted vide amendment in Finance Act 2007 provides for the prior approval for the assessment in cases of search or requisition. Prior to the amendment vide Finance Act 2007 the existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment. Accordingly new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 1324. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

3. Section 153D of the Act is for administrative purposes and does not require that an opportunity of hearing is required to be given to the assessee. The Hon'ble Supreme Court in S. Narayanappa vs. CIT 63 ITR 219 (SC) as to whether such approval is merely an administrative act or whether such approval can be brought under judicial scrutiny. The apex court held that the stage of obtaining approval from higher authority was administrative in character and not a quasi judicial act. What is to be seen is whether the Approving Authority is competent to grant approval is important and under scheme of things the JCIT is the competent authority to grant approval u/s 153D of the Act. In view of the above, it is submitted that aforementioned ground of appeal on the issue of invalid approval under section 153D of the IT Act may kindly be dismissed for the reason mentioned above.

3.1 The Hon'ble High Court of Karnatka in Rishabhchand Bhansali vs. DCIT in 136 taxman 579 held the approval granted by the JCIT is an administrative act and does not create any right to the appellant. The Hon'ble High Court noted"

"4. Section 158BG provides that no order of assessment for the Block period shall be passed by the Assessing Officer without the previous approval of the Joint Commissioner in respect of a search initiated under section 132. The assessee contends that before granting previous approval under section 158BG for an order of assessment made under section 158BC, the Joint Commissioner should have given a hearing to the assessee. It is submitted that the power to grant

previous approval under section 158BG is an amalgam of appellate and revisional power and therefore, the right to a hearing should be read into section 158BG. It is also contended that the Tribunal failed to consider this ground though specifically urged before it.

4.1 Chapter XIV-B contains a special procedure for assessment of search cases. Section 158BC prescribes the procedure for block assessment. Clause (c) of section 158BC enables the Assessing Officer, on determination of the undisclosed income of the block period, to pass an order of assessment and determine the tax payable by him on the basis of such assessment. Clause (b) requires the Assessing Officer to proceed in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 and section 144, while determining the undisclosed income of the block period. It is thus evident that the procedure clearly contemplates the Assessing Officer giving a hearing to the assessee before making an assessment order in regard to the block period.

4.2 Clause (k) of section 246A provides for an appeal against the order of assessment for the block period made by the Assessing Officer under clause (c) of section 158BC, Sub-section (2) of section 250 provides for a hearing of the appeal. Thus, the assessee is heard by the Assessing Officer before making the assessment order under section 158BC. If the assessee is aggrieved by the assessment order he had a remedy by way of an appeal under section 246A where also he is heard. There is no need therefore for the Joint Commissioner, to give a hearing before giving previous approval under section 158BG. Firstly, the statute does not provide for such a hearing; secondly, principles of natural justice also do not require such a hearing having regard to the fact that the assessee gets a hearing before the assessment and also a hearing if he files an appeal against the order of assessment; and thirdly the order passed by the Joint Commissioner granting previous approval under the proviso to section 158BG is in exercise of administrative power on being satisfied that the order of assessment has been made in accordance with the provisions of Chapter XIV-B. The previous approval is purely an internal matter and it does not decide upon any rights of the assessee. The Joint Commissioner, while examining the matter under the proviso to section 158BG does not examine or adjudicate upon the rights or obligations of the assessee, but only considers whether the Assessing Officer has fulfilled the requirements of Chapter XIV-B.

4.3 In V.C. Shukla v. State AIR 1980 SC 962, the Supreme Court gave the following example:

In cases where law requires sanction to be given by the appointing authority before a prosecution can be launched against a Government

servant, it has never been suggested that the accused must be heard before sanction is accorded.....

4.4 Where a statute requires the Executive to take an administrative action after being satisfied or after forming an opinion as to the existence of a state of circumstances, the action is based on the subjective satisfaction. It is well-settled that any administrative actions based either on policy or on subjective assessment, if does not prejudicially affect any vested right or interest, need not be preceded by a hearing, unless the statute specifically provides for the same. Therefore, in the absence of any provision for opportunity of hearing in section 158BG, there is no need for the Joint Commissioner to give a hearing to the assessee before granting "previous approval under section 158BG. The first question is, therefore, answered against the asseeeee."

3.2 The Hon'ble ITAT Mumbai in the case of Smt. Usha Satish Salvi vs ACIT Central Circle-4(4), Mumbai in ITA Nos. 4239,4237 4238/Mum/2023 dated 23.01.2025 has examined all the following judgements of the Tribunal and Hon'ble High Courts [Para 6.2] and rejected the objection raised by the assessee that approval granted u/s 153D of the Act has been accorded on presumption and without application of mind rather opined that approval was granted by the Addi CIT after due application of mind:

6.2 (1) Decision dated 06/06/2024 of Delhi bench of the Tribunal in the case Singh Duggal in ITA No. 860 to 863/Del/2021 for AY of Shri Guvinder 2012-13 to 2018-19.

(ii) Decision dated 29/04/2024 of Delhi Bench of Tribunal in the case of MDLR Airline (P) Ltd. in ITA No. 1420 & 1421/Del/2023 for AY 2007-08 and 2008-09,

(iii) Decision of Hon'ble Allahabad High Court in the case of PCIT vs Sapna ITA No. 88 of 2022.

(iv) Decision of Hon'ble Delhi High Court in the case of PCIT vs Shiv Kumar in ITA 285/2004 & CM Appela 28994/2024

(v) Ltd in ITA Decision of Mumbai Bench of Tribunal in the case of Arch Phamalabs No. 6656/Mum/2017 for AY 2011-12 and other appeals.

(vi) Decision of Hon'ble Delhi High Court in the case of PCIT Vs M/s Hotels ITA 593/2023

(vii) Veena Singh Decision dated 24/04/2024 of Delhi Bench of Tribunal in the case of in ITA No. 294 & 295/Del/2022 for AY 2016-17 and 2017-18.

2. Without prejudice to above objection, It is submitted that combined reading of letter dated 29.03.2022 (from A.Y 2015-16 to 2019-20) and 31.03.2022 (for A.Y 2021-22) giving approval under section 153 D of the I.T. Act and letter dated 28.03.2022 seeking approval under section 153D of the I.T, make it amply evident that in the instant case, approving authority i.e. Joint Commissioner of Income Tax, Central Range-8, New Delhi had applied his mind independently in judicious manner while granting approval, for the reasons discussed below:

(i) It needs to be noted from the letter seeking approval that the Assessing Officer had sent draft Assessment order in the case of Assessee along with the relevant assessment record to the approving authority.

(ii) From content (Para 2) of approval letter dated 29.03.2022 (from A.Y 2015- 16 to 2019-20) and 31.03.2022 (for A.Y 2021-22) issued by the approving authority i.e. Joint Commissioner of Income Tax, it is evident that the approving authority accorded approval only after considering all the issues appearing from the material on record and relevant copies of all seized documents were duly examined and verified before passing the order implying that the Joint CIT applied his independent mind to findings of the AO judiciously and did not accord approval in mechanical manner.

(iii) Further, from the content of approval letter, it is also noticed that based on the material including assessment records, the Joint CIT also reached to the conclusion that the Assessing Officer had given proper opportunity of being heard to the assessee.

In the given facts, the Joint CIT had applied his mind on the issues involved and accorded his approval in accordance with the provisions of the Act.

It is not a gainsaying that the Joint CIT hold the concurrent jurisdiction and that the assessment is a continuous process involving administrative as well statutory roles being donned by the Joint CIT. And it is incumbent on the approving authority to examine and monitor the assessments which can't be denied if the same is not reduced in writing at every point of time till the finalization of the assessment. The approval of the approving authority underlines that he has examined the assessment records, relevant copies of seized documents and the relevant issues arising from the material on record judiciously in independent manner by way of due application of mind. It would not be out of place to mention here that the appellant has not come out with any case that there is case of non-application of mind. The appellant has to positively prove that there is a case of non-application of mind in light of the submission that the approval u/s 153D is an administrative approval.

Here, it would not be out of place to highlight that the relevant seized documents in a case are always part of the assessment records as per practice, and requirement of the work. They are not kept separately as relevant seized material is frequently referred to by the assessing officer during the course of assessment proceedings and also made part of assessment order most of the time. In fact, as per the law, seized material is considered as part of records before Assessing Officer and all such seized records, return of income, notices etc. used during an assessment proceeding when considered collectively is known as 'Assessment record'.

Therefore, from the letter seeking approval, it is evident that the entire assessment records which included seized material was placed before the approving authority for the purpose of taking decision with regard to approval under section 153D of the Act.

In view of the same, it cannot be inferred in any manner from the letter seeking approval by the AO and the letter granting approval by the Joint CIT that approval under section 153D of the Act was granted in mechanical manner without independent application of mind by the Joint CIT.

3. It would also be pertinent to submit that in these cases, letter granting approval in the instant case mentioned name of assessee only. This cases were approved by the approving authority vide aforesaid letter dated 29.03.2022 and 31.03.2022 (for A.Y 2021-22). As can be seen from the approvals received in the case:-

Sl. No.	**Name of the Case**	**A.Y**	**Reference of 153D approval**
1	*Dileep Kumar Gupta*	*2015-16*	*JCIT/CR-8/153D/2021-22/3041 dated 29.03.2022*
2		*2016-17*	*JCIT/CR-8/ 153D/2021-22/3042 dated 29.03.2022*
3		*2017-18*	*JCIT/CR-8/153D/2021-22/3058 dated 29.03.2022*
4		*2018-19*	*JCIT/CR-8/153D/2021-22/3059 dated 29.03.2022*
5		*2019-20*	*JCIT/CR-8/ 153D/2021-22/3060 dated 29.03.2022*
6		*2021-22*	*JCIT/CR-8/153D/2021 -22/3218 dated 31.03.2022*

Thus, it cannot be considered by any stretch of imagination that the approving authority was not in a position to apply his mind to the facts of the case and issues involved while granting approval under section 153D of the Act. The approving authority had sufficient time to go through all the records and relevant material to arrive at decision granting approval Under Section 153D of the I.T Act in judicious manner in the instant case.

Further, in search cases, a Joint CIT is well aware about progress of the assessment proceedings, relevant issues of different assessee, nature and content of the seized material in light of the fact that the as per the CBDT guideline F. No. 286/161/2006-IT (Inv. II) dt. 22.12.2006, copy of appraisal

report is shared by Investigation Wing with both that the assessing officer and Joint CIT. In fact, CBDT guideline dt. 22.12.2006 (Copy enclosed) on the subject of the search and Seizure Assessments clearly outlines such close coordination. Thus, as per the prevailing Practice and Guidelines, the approving authority has good idea of issues involved in particular case before hand i.e. much before the cases are sent to him for approval Under Section 153D of the Act. This guideline of CBDT is relevant piece of information, which throws light on the way search assessments are taken up by the filed officers.

Therefore in light of such peculiar fact of instant case, it cannot be inferred that the Joint CIT was not in a position to independently apply his mind in judicial manner to the case of assessee on the same day.

4. In this regard, it is further submitted that on perusal of case laws on the issue of requirements for proper approval under section 153D, it is found that Honhle jurisdictional high court has emphatically held that such an issue is essentially a question of fact and has to be decided based of factual matrix of a particular case. Further, it has been held that approval cannot be reduced to a mechanical exercise and approving authority is required to apply his/her independent mind while granting such an approval. Thus, all the cases have been decided on this point by Hon'ble Tribunal and Hon'ble High court in light of peculiar facts of those cases only. Some of such peculiar facts of such cases are outlined here in under to emphasize upon distinguishing nature of facts of instant cases from those cases. :

Case Name and Citation	**Peculiar Facts of cases in mentioned in first col.**	**Distinguishing facts of the instant case**
HIGH COURT OF DELHI in the case of PCIT vs. Anuj Bansal ITA 368/2023 Dated July 13,2023	*-No Assessment records were sent along with draft assessment order* *-There were infirmities in the figures of Original Return of income and Assessed income.* *-Addl. CIT did not apply his mind as he did not notice such errors/infirmities.*	*Appellant has not been able to prove that its case and facts are in alliance with the cited case. Further, there is nothing on the record to suggest that in the instant case of the assessee, there were some factual infirmities in the order granting approval. None of the peculiar factual aspects are present in the instant case.* *Therefore, the case of Anuj Bansal had distinguishable facts than those of instant case.*

HIGH COURT OF DELHI in the case ***of Principal Commissioner of Income-tax v. Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Delhi)***	*The approval order failed 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, in this case of Shiv Kumar Nayyar, there was no fact brought on the record by the Revenue to prove that identical issues (involving similar facts) were involved in different cases submitted for approval by the AO. It was in absence of such factual information that granting of approval for 43 cases in a single day was viewed by the Hon'ble High Court.***	*Further, in the instant case, approval is given* ***for the case of assessee only. Therefore, facts of the instant case are distinguishable.***
ITAT NEW DELHI in the case of Seh Realtors Pvt. Ltd. v. ACIT Central Circle-8 ITA no.2503/Del/2017 Dated 23.07.2024	***The approving authority had granted approval in 232 cases in a single day. Therefore, issue of judicious approval for such large number of cases from the angle of human limitations was an issue before Hon'ble Bench.***	***In the instant case, approval is given for the case of assessee only and that too in each separate Assessment year. Therefore, facts of the instant case are distinguishable.***

Further, reliance is also placed on the judgement of Hon'ble Kerala High Court in OP(C) No. 340 of 2019 against the order in IA 3123/2018 in OS 125/2018 of II Additional Sub Court, Ernakulam dated 23.06.2022, wherein it is held that the

"5 Courts should endeavor to dispose of a case on merits rather than on default."

The Apex Court in the case of Improvement Trust, Ludhiyana vs Ujagar Singh & Ors on 09.06.2010 in Civil Appeal NO. 2395 of 2008 also held that

" After all, justice can be done only when the matter is fought on merits and in accordance with law rather to dispose it of on such technicalities and that too at the threshold. Both sides had tried to argue the matter on merits but we refrain ourselves from touching the merits of the matter as that can best be done by the Executing Court which had denied an opportunity to the appellant to lead evidence and to prove the issues so formulated.

In our opinion, ends of justice would he met by setting aside the impugned orders and matter is emitted to the Executing Court to consider and dispose

of appellant's objections filed under Order 21 Rule 90 of CPC on merits and in accordance with law, at an early date. It is pertinent to point out that unless malafides are writ large on the conduct of the party, generally as a normal 1 rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technalities."

5. It is farther submitted that there cannot be any presumption drawn against the approving authority with regard to application of mind merely on the ground that number of cases approved in a day were high. There cannot be any threshold limit set for the same. How many cases will be considered unreasonably high and how many cases will be considered reasonable? It is submitted that every approval needs to be examined in light of its peculiar facts such as number of issue involved, nature of issue involved, modus-operandi involved, number of cases involved and inter-relationship among facts of such cases. If identical issues are involved involving same modus-operandi and cases are of same search group only, it would not be unreasonable to consider that an approving authority will be able to apply its independent mind judiciously to relatively larger number of cases in a single day. Ultimately, it boils down to factual matrix of the cases sent for approval. In the instant case, in light of the factual matrix that additions were made in different cases of the group on the same ground based on same factual position with regard to same accommodation entry provider and involving same modus-operandi, it would be justified to consider that the approving authority would have been in a position to apply his mind to all such cases sent for approval by the AO on the same day, particularly when number of such cases is not too high and facts/issues involved are in the knowledge of approving authority beforehand i.e. before receiving proposal for approval.

6. Therefore, in view of the above discussion, it is respectfully submitted that the fact of the instant cases are significantly distinguishable from the fact all those cases where Hon'ble Courts and Hon'ble Tribunal have held approval under section 153D as a mechanical approval without due application of mind by the approving authority. Moreover, content of the approval letter clearly establishes that while granting approval, the approving authority had considered facts of the case, assessment records and seized documents and had applied his mind independently."

6. We find that the aforesaid submissions of the ld DR were considered by the coordinate bench decision of the Delhi Tribunal in the case of Shri Himanshu Verma Vs. ACIT dated 29.04.2025 reported in (2025) TMI 1296-ITAT Delhi. Further, we find that the issue in dispute is also decided in favour of the assessee by the recent Third Member decision of the Delhi Tribunal in the case of Dheeraj Chaudhary Vs. ACIT 178 taxmann.com 360 (Delhi Tribunal) (TM) dated 10.09.2025. For the sake of convenience, relevant Third member decision of Delhi Tribunal is reproduced below:-

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

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

To,

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

Madam,

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

Kindly refer to the above.

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

Name of the assessee	*PAN*	*A.Y.*	*Section*	*Returned Income*	*Assessed Income*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2009-10*	*153A*	*Rs.1,37,940/-*	*Rs.13,40,304/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2010-11*	*153A*	*Rs.3,07,943/-*	*Rs.1,02,41,352/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2011-12*	*153A*	*Rs.4,03,908/-*	*Rs.1,50,00,460/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2012-13*	*153A*	*Rs.4,38,939/-*	*Rs.2,30,94,073/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2013-14*	*153A*	*Rs.10,18,269/-*	*Rs.1,09,03,269/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2014-15*	*153A*	*Rs.5,84,183/-*	*Rs.3,09,11,700/-*
Sh. Dheeraj Chaudhary	*AASPK9267B*	*2015-16*	*143(3)*	*Rs.10,04,820/-*	*Rs.2,21,68,040/-*

Yours Faithfully,
Sd/-
(Pratibha Singh)

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

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

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

> *"58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given."*

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

> *"9. Approval for assessment – An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/Addl.CIT (for the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such*

> *approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself."*

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

> *"8. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasize that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."*

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

> *"29. In Rajesh Kumar (2007) 2 SCC 181 it has been held that in view of section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income-tax Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of section 196 of I.P.C. and every Income-tax Authority is a court for the purpose of section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case (supra), but having*

> *held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see :Maneka Gandhi v. Union of India [1978] 1 SCC 248 and S.L. Kapoor v. Jagmohan [1980] 4 SCC 379).*
>
> *30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under section 142(2A) does entail civil consequences, the rule audialterampartem is required to be observed."*

16. Further, Hon'ble Orissa High Court in the case of Serajuddin& Co. (supra), has considered the case of Hon'ble Delhi High Court in the case of Yum! Restaurants Asia Pte.Ltd. Vs. DCIT – [2017] 397 ITR 665 (Delhi), which has dealt with the requirement of approval/sanction under Section 151(2) of the Act for initiating proceedings under Section 147 read with Section 148 of the Act. Hon'ble Delhi High Court observed as under:-

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

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

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

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

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

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

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

19. I noted that the case law cited by the learned CIT-DR of Spacewood Furnishers (P) Ltd. (supra) relates to warrant of authorization issued under Section 132 of the Act for carrying of search by the Income-tax Department and whether the assessee has right to inspection of documents or communication of reasons for belief at the stage of issuing of authorization. Hon'ble Supreme Court has categorically said No but also said that the requisite material may have to be disclosed at the stage of commencement of assessment proceedings. Hence, this case cannot be equated with the present controversy regarding approval under Section 153D of the Act. Regarding the case law of this Tribunal in the case of Pratibha Pipes & Structurals Ltd. (supra), the only issue before the Tribunal was whether the approval under Section 153D is granted or not. In the given facts and circumstances of that case, the Tribunal reached to a conclusion that there is approval granted under Section 153D of the Act and nothing else. Hence, on facts, this is clearly distinguishable. As regards the decision of Kelvinator of India Ltd. (supra), that was the case of reopening and whether the reason to belief of Assessing Officer is founded on an information which has been received by the Assessing Officer after completion of assessment and that can be a sound foundation for exercising power under Section 147 read with Section 148 of the Act. Hence, this decision also cannot be equated with the approval as amended under Section 153D of the Act. As regards the other decisions cited by the learned CIT-DR of Kunhayammed (supra) and Khoday Distilleries Ltd. (supra), these relate to the concept of merger of High Court order in question with Supreme Court's order while dismissing the SLP. Here, that is not the question, rather, the question is whether approval is mechanical or not. Whether approval granted under Section 153D of the Act is on application of mind or not in the given facts and circumstances of the case. Hence, these decisions are clearly distinguishable on facts and principle of law.

20. I have gone through the order of learned Accountant Member and noted that in Paragraph 7, it is noted that the approval accorded by the Additional CIT under Section 153D of the Act is nothing but the culmination of day to day involvement of the Assessing Officer and the Additional CIT in search assessments. The relevant procedure noted by the learned Accountant Member reads as "The fact is that the AO and the Addl.CIT works as team members and the AO works under the supervision of the Addl. CIT. The team work gets culmination by the approval under section 153D of the Act. Such involvement of the Addl.CIT in the search assessment is in routine in the Central Charges of the Income Tax Department where the search assessments are completed. It is not a case where the assessment records, other files, investigation folders, etc. of a search case change hands for the first time between the AO and the Addl.CIT at the time of approval of the search assessment. The detail mentioned above is based on my personal experience while working in each hierarchy (AO onwards) of the Central Charges of the Income Tax Department." The second aspect

considered by the learned Accountant Member is that approval under Section 153D of the Act by the Additional CIT is merely administrative in nature to safeguard internal checks and balances without affecting the quasi-judicial powers of the Assessing Officer and creating any prejudice to the assessee. It was further noted by the learned AM that while granting approval under Section 153D of the Act, the Additional CIT does not act as a reviewing/appellate authority to allow or disallow the additions proposed by the Assessing Officer.

21. I note the above observations of learned Accountant Member and is of the view that assessment proceedings or any proceedings under the Act before the Assessing Officer which affect the levy of tax on the subject are judicial in nature. It is well-settled that the Assessing Officer upon whom jurisdiction has been conferred to make all orders judicially, has to act independently. The Assessing Officer, while framing assessment, cannot act on the advice given by an outsider even though he may be an authority higher in rank to him in official hierarchy. Higher authorities that include Additional CIT/JCIT under whom the Assessing Officer is administratively under control, are not entitled to give opinion or advice in regard to assessment proceedings being quasi-judicial in nature. This is, however, subject to the provisions of Section 144A of the Act, where the assessee or the Assessing Officer suo-moto can refer the matter but, for that, he has to invoke this provision. This view is supported by Hon'ble Bombay High Court in the case of DinshawDarabshaw Shroff Vs. CIT – [1943] 11 ITR 172 (Bom), wherein it is held that although the Assessing Officer making an assessment is not acting as a court of law, it is clear that while framing assessment is acting in quasi-judicial capacity, and he ought to conform to the more elementary rules of judicial procedure, and in particular to conduct the case himself, and not allow somebody else, even his superior officer, to interfere in the conduct of the case. What to talk of superior authority, Hon'ble Supreme Court in the case of Union of India Vs. Tata Engineering & Locomotive Co.Ltd. – AIR 1998 SC 287, 288, held that the Assessing Officer is entitled to complete the assessment as per the provisions of Section 143(3) of the Act and, for this purpose, he can call for and examine whatever document he considers relevant. Hon'ble Supreme Court held that, if the Assessing Officer fails to follow any judgment of the High Court or of the Supreme Court, the assessee has adequate statutory remedies by way of an appeal and revision against the assessment order but, the Court should not try to control the mode and manner in which an assessment should be made. Hence, the higher authority including the Additional CIT/JCIT or CIT or CCIT, being administrative controlling authorities of the Assessing Officer, are not entitled to interfere in the judicial process of the Assessing Officer while framing assessment. In view of the above, I am of the view that, while making an assessment, the Assessing Officer is solely to be guided by the provisions of law and he cannot avail of any instructions or directions given by his higher authority including CBDT in making a particular assessment in a particular way. While

passing assessment orders, he is only bound by what, if any, has been directed under Section 144A of the Act by his Additional CIT/JCIT or the instructions issued by the CBDT under Section 119 of the Act or what has been decided by the appellate authorities as mentioned in the Act. He has also to follow the precedence established by Hon'ble High Courts or the Supreme Court. The proceeding under Section 153D for granting approval is entirely different from the process of making assessment. Once draft assessment is prepared, the process of approval starts under Section 153D of the Act. Then the authority prescribed under Section 153D i.e., the Additional CIT/JCIT has to apply his mind for grant of approval after verifying the assessment records, seized records, etc.

22. I noted that the common thread discussed by Hon'ble Orissa High Court in the case of Serajuddin& Co. (supra), by Hon'ble Delhi High Court in the case of Anuj Bansal (supra) and by Hon'ble Allahabad High Court in the case of Sapna Gupta (supra) is that the requirement of previous approval of assessment by the Additional CIT/Joint CIT in terms of provisions of Section 153D of the Act being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty formality. Needless to say that before granting approval, the Additional CIT/Joint CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer and the approval must reflect the application of mind to the facts of the case. The CBDT itself recognized the importance of this provision and the above laid down principle and hence issued Manual of Office Procedure in February, 2023 in exercise of powers under Section 119 of the Act. Vide Para 9 of Chapter 3 of Volume-II (Technical), a clear procedure is devised i.e., how an approval is to be granted for draft assessment for passing of assessment order in search cases. According to the Manual, the Assessing Officer should submit the draft assessment order for such approval well in time along with docketed in the order sheet, a copy of the draft assessment order, covering letter filed in the relevant miscellaneous records folder. Even, it is noted that due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. It is further noted that once such approval is granted, it must be in writing and filed in the relevant folder indicating above after making due entry in the order sheet. This is the mandate provided in the office manual of the Department. In view of above, I am of the view that the 'approval', as mandated u/s 153D of the Act, signifies a product of human thoughts based on the given set of facts and interpretation of the applicable law. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness. It also prevents and avoids inconsistent and divergent views. The power of approval to the specified authority i.e., Superior authority has been

envisaged with the objectives that no illegality or biasness, to either of the sides i.e., the assessee or the Revenue, remains.

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

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

Question framed by the Bench	***Answer to the Question***
As to whether under the present facts and circumstances of the matters, the approval granted by the ACIT, dated 27.12.2016 under Section 153D of the Income Tax Act, 1961 are sustainable in the eyes of law or not.	*In the given facts and circumstances of the case and discussion carried above, the approval granted by Additional CIT dated 27.12.2016 u/s 153D of the Act is not sustainable in the eyes of law.*

In terms of the above, I concur with the decision of learned Judicial Member quashing the above assessments."

7. Respectfully following the Third Member decision of the Delhi Tribunal and various judicial precedents relied upon hereinabove, we hold that the approval granted u/s 153D of the Act by the ld JCIT is to be construed to have been granted in a mechanical manner without due application of mind, thereby making the approval proceeding by higher ranking authority an empty ritual and such an approval has neither being mandated by the provisions of the Act nor endorsed by the decision of the Hon'ble Orisha High Court in the case of Serajuddin ; Hon'ble Delhi High Court in the case of Anuj Bansal referred supra ; decision of the Hon'ble Delhi High Court in the case of Shiv Kumar Nayyar referred supra, among others. It is pertinent to note that the Special Leave Petition (SLP) preferred by the revenue against all these decisions had been dismissed by the Hon'ble Supreme Court and hence the decision of the Hon'ble Delhi High Courts and Hon'ble Orissa High Court referred supra had attained finality. Hence, the assessment framed for AYs 2015-16 to 2019-20 and AY 2021-22 are hereby declared as void ab initio and are hereby quashed. Accordingly, grounds raised by the assessee with regard to mechanical approval granted under section 153D for all the AYs are allowed.

8. Since, the entire assessment is quashed, the adjudication of other grounds become academic in nature and hence, they are left open."

12. Admittedly, facts of the present case are identical and the approval granted by the ld. JCIT in this year is also identical to

the approval given for AY 2015-16 thus, by respectfully following the judgement of Hon'ble High Courts and the decision of the Co-ordinate Bench in assessee's own case as noted above, the assessment order passed u/s 153A without having any valid approval of draft assessment order, stands vitiated and thus, quashed by allowing Ground of appeal No. 1 taken by the Assessee.

13. Since we have already quashed the assessment order by allowing ground of appeal No. 1 taken by the assessee, other grounds of appeal taken by the assessee become academic and thus not adjudicated.

14. In the result, appeal of the assessee is allowed.

15. Now we take up appeal of the assessee in ITA No.3593/Del/2023 [Assessment Year 2014-15].

ITA No.3593/Del/2023 [Assessment Year 2014-15]

16. In this appeal, assessee has raised following grounds of appeal:-

1. "On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is non-est as it does not have DIN on the body of the assessment order and CIT(A) erred in not holding so.

3. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition OF Rs. 88,005/- made by the assessing officer on account of alleged cash commission income.

4. On the facts and circumstances of the case and in law, the addition of Rs. 88,005/- made by the assessing officer is beyond the scope of provisions of section 153A of the Act and CIT (A) erred in not holding so."

17. Before us, both the parties consented that in this case, facts are identical with the facts in **ITA No.3592/Del/2023 [Assessment Year 2013-14]**. Since while deciding the appeal of the assessee in ITA No.3592/Del/2023 [Assessment Year 2013-14], we have already quashed the proceedings initiated u/s 153A of the Act during the year after considering the arguments of the assessee and Revenue. The respective sides have canvassed similar plea. In view of the similarity of facts, our decision in ITA No.3592/Del/2023 [Assessment Year 2013-14] would apply ***Mutatis Mutandis*** in this appeal also, filed by the assessee.

18. In the result, appeal filed by the assessee is allowed.

19. In the final result, captioned appeals of the assessee in **ITA Nos.3592 & 3593/Del/2023 [Assessment Years 2013-14 & 2014-15]** respectively, are allowed.

Order pronounced in the Open Court on 21.01.2026.

Sd/-	***Sd/-***
(ANUBHAV SHARMA)	**(MANISH AGARWAL)**
Judicial Member	**Accountant Member**

Dated: 21.01.2026
Mittali/Amit Kumar

Copy forwarded to:

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

Asstt. Registrar,

ITAT, New Delhi