

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

Before Sh. S. Rifaur Rahman, Accountant Member
&
Sh. Sudhir Kumar, Judicial Member

ITA No. 6881/Del/2014 : Asstt. Year : 2010-11

DCIT, CENTRAL CIRCLE-20, 3 RD FLOOR, ROOM NO. 360, E-2 ARA CENTRE, JHANDEWALAN NEW DELHI – 110 055	Vs	RAMESH SHARMA, 19, PORVI MARG, 3 RD FLOOR, VASANT VIHAR, NEW DELHI – 110 057 (PAN: AKYPS3876J)
(APPELLANT)		(RESPONDENT)

Assessee by : **Sh. Salil Agarwal, Sr. Adv. &
Sh. Shailesh Gupta, Adv.**
Revenue by : **Ms. Monika Singh, CIT(DR)**

Date of Hearing: 15.01.2026	Date of Pronouncement: 23.01.2026
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ORDER

Per Sudhir Kumar, Judicial Member:

This appeal filed by the Revenue against the order of the Ld. CIT(A)-XXXII, New Delhi dated 30.9.2014 relating to assessment year 2010-11 on the following grounds:-

1. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 4,27,91,467/- made by AO on account of unconfirmed and mismatch of sundry creditors.
2. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 19,79,468/- made by AO on account of 30% disallowance of petty sundry creditors.

3. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 1,73,20,197/- made by AO on account of 30% of disallowance of job charges.
4. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 3,65,48,404/- made by AO on account of enhancement of income by 10% of the declared gross profit.
5. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 92,77,004/- made by AO on account of unexplained imprest account.
6. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 10,80,546/- made by AO on account of seized documents.
7. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 70,911/- made by AO on account of disallowance of excess and recovery.
8. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 32,62,614/- made by the AO on account of disallowance of purchases of fixed assets and claim of depreciation thereon.
9. The Ld. CIT(A) erred in law and on fact of the case in deleting the addition of Rs. 6,00,000/- out of total addition of Rs. 12,00,000/- made by AO on account of low withdrawals.
10. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 66,889/- made by AO on account of PF & ESI.

11. The Id. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 9,46,255/- made by AO on account of difference in valuation of property.

(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

2. Brief facts of the case are that the assessee is an individual and engaged in the business of civil construction and also is an interior and exterior decorator. The assessee is carrying on this business as a proprietor in the name of Sharma Construction. A search and seizure operation u/s. 132 was conducted by the Investigation Wing of the Department in M/s Raus Infra Group of cases on 15.06.2011 and since the assessee was a member of this group, his premises were also simultaneously searched. Thereafter, the case of the assessee was centralized with the AO of Central Circle-16, New Delhi vide order dated 21.8.2012. Subsequently, a notice u/s. 153A dated 27.8.2012 was issued and served upon the assessee. In response to the same, the assessee filed his return of income on 4.12.2012 declaring an income of Rs. 2,91,49,048/-. Thereafter, notices u/s. 143(2) and 142(1) alongwith the detailed questionnaire were issued and served upon the assessee. In response to the same, the ARs of the assessee attended the assessment proceedings and filed various information and explanations. Thereupon, the assessment was completed in terms of an order u/s. 153A r.w.s. 143(3) of the I.T. Act, 1961 at a total income of Rs. 14,338,63,000/- as against the returned income of Rs. 2,91,49,048/- wherein various additions have been made mentioned in the assessment order.

Against the above action of the Assessing Officer, assessee preferred the appeal before the Ld. CIT(A), who vide impugned order dated 30.9.2014 partly allowed the appeal of the assessee. Aggrieved, the Revenue is in appeal before us. However, at the time of hearing, the Assessee has filed an application under Rule 27 of the ITAT Rules, 1963 by stating as under:-

- “1. The captioned appeal filed by the revenue is fixed for hearing on 15.01.2025, however, the assessee-respondent seeks to rely upon the order of the Ld. CIT(A) deleting the additions on merit, by contending that the order of Ld. CIT(A) need be upheld even on the ground that the assessment so framed is without jurisdiction as the same is a legal ground and can even be taken at any stage of the proceedings even d-horse Rule 27 of I.T. Rules, being legal in nature.*
- 2. It is most respectfully submitted that since the assessee had succeeded in the appeal fully on merits, it did not prefer an appeal. However, the Revenue has since filed the instant appeal, the assessee-respondent seeks to support the order of the Ld. CIT(A) as provided in Rule 27 of the ITAT, as such, in view of rule 27 of the ITAT Rules, 1963, the respondent seeks to raise, urge and argue the ground challenging the initiation of proceedings, in an appeal filed by the revenue.*
- 3. It is thus prayed, this application be taken as a notice of motion to raise the following legal ground, in support of the order of the Ld. CIT(A).*

“Additional Ground No. 1 That on the facts and circumstances of the case the approval accorded

under section 153D of the Act (if any) is a mechanical and arbitrary approval without there being any application of mind and also without satisfying the statutory preconditions of the Act and as such, the assessment so framed is null and void and deserves to be quashed.”

4. *It is submitted that this submission is being made in view of Rule 27 of the Income Tax Appellate Tribunal Rules and is otherwise well settled proposition of law that the respondent is entitled to raise a legal ground at any stage of the proceedings even though he may not have filed an appeal against such order. The judicial pronouncement are as under:-*

1. *83 ITR 223 (Bom) (B.R. Bamsi vs. CIT)*
2. *129 ITR 475 (All) (Moralia & Sons vs. CIT)*
3. *220 ITR 398 (Ker) 9CIT vs. Cochin Refineries Ltd.)*
4. *176 CTR 406 (Gau) (Assam Company (I) Ltd. vs. CIT)*
5. *102 ITD 189 (Del) (ITO vs. Gurvinder Kaur)*
6. *284 ITR 80 (SC) CIT vs. Varas International P. ltd.*
7. *149 Taxmann 456 (Guj) Kharid Vechan Sangh Ltd. vs. CIT.*
8. *397 ITR 282 (All) CIT vs. Jindal Polyester Ltd.*

The respondent thus prays that it be permitted to urge the aforesaid grounds as raised and mentioned in para 3 above.

3. We have carefully considered the prayer for admission of additional ground and heard both the counsels on the issue. In our considered opinion in the light of the Hon'ble Apex Court decision in the case of NTPC Ltd. vs. CIT (1998) 229 ITR 0383 (SC), we admit the following additional ground raised by the assessee as the same is a purely legal ground and goes to the root of the matter.

“Additional Ground No. 1 That on the facts and circumstances of the case the approval accorded under section 153D of the Act (if any) is a mechanical and arbitrary approval without there being any application of mind and also without satisfying the statutory preconditions of the Act and as such, the assessment so framed is null and void and deserves to be quashed.”

4. At the outset, Ld. Sr. Counsel for the assessee in support of the aforesaid Additional Ground No. 1 so raised in Rule 27 application by the assessee-respondent, submitted that in the instant matter, approval under section 153D of the Act is a common approval bearing common numbers i.e. 153D/CC-16/2013-14/1334 dated 30.03.2013. It was further submitted that the said common approval pertains to 7 assessment years i.e. AY 2006-07 to 2012-13, which has been accorded by Ld. Addl. CIT under section 153D of the Act. To support his contention, he filed the copies of assessment years under section 153A/143(3) of the Act in the aforesaid matters at Paper Book Serial No. 2 to 8 at pages 11, 22, 32, 44, 58, 64 and 68 which shows that common approval is accorded by the Addl. CIT. Even though, the copy of approval u/s. 153D has not been submitted by the Revenue, despite specific directions given by the Hon'ble Bench on various occasions. However, still bare perusal of the common approval number makes it amply clear that the

approval accorded under section 153D of the Act in the instant case is a mechanical approval without there being separate approval for “each assessment year”. He relied upon the decision of the Coordinate Bench in the case of the assessee’s wife namely Smt. Usha Sharma in ITA No. 480/Del/2015 under similar circumstances. He further relied upon the decision of the Coordinate Bench in the case of ACIT vs. Sant Lal Aggrawal group in ITA No. 6195/Del/2017, pertaining to same group, wherein, identical issue has been decided by the ITAT, Delhi and wherein, it has been held that approval under section 153D is bad in law and thus, assessments so made are vitiated in law, under similar circumstances. He further relied upon various case laws including the Judgment of the Jurisdictional High Court in the case of Pr. Commissioner of Income Tax Vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 dated 15/05/2024 in ITA No. 285/2024 (CMP No. 28994/2024), sought for allowing the Additional Ground of Appeal and prayed for quashing the assessment order and also dismiss the appeal of the Revenue.

5. Per contra, the Ld. Departmental Representative submitted that the draft assessment order has been perused by the Additional Commissioner of Income Tax while according approval u/s 153D of the Act, which was made available in the file and the approval has been granted and there is no absence of application of mind, thus sought for dismissal of the Additional Ground of Appeal and also requested to allow the appeal of the Revenue.

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

7. For the purpose of deciding the issue of legality of approval accorded u/s 153D of the Act and the consequential assessment proceedings, we find considerable cogency in the contention of the Ld. Sr. Counsel that in the instant matter, approval under section 153D of the Act is a common approval bearing common numbers i.e. 153D/CC-16/2013-14/1334 dated 30.03.2013. It is noted that the said common approval pertains to 6 assessment years i.e. AY 2006-07, 2007-08, 2009-10 to 2012-13, which have been accorded by Ld. Addl. CIT under section 153D of the Act. We find that in assessment orders passed under section 153A/143(3) of the Act placed at Paper Book Serial No. 2, 3, 5 to 8 at pages 11, 22, 44, 58, 64 and 68 which shows that exactly common approval with common numbers are accorded by the Addl. CIT. For the sake of clarity, we may gainfully refer here the common approval for assessment years 2006-07, 2007-08, 2009-10 to 2012-13 mentioned at page nos. 11, 22, 44, 58, 64 & 68 of the Paper Book mentioned against Serial No. 2, 3, 5 to 8 of the Paper Book of the Assessee.

“AY 2006-07 (Paper Book Page No. 11)

22. *This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.*

AY 2007-08 (Paper Book Page No. 22)

16. *This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.*

AY 2009-10 (Paper Book Page No. 44)

18. *This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi*

received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.

AY 2010-11 (Paper Book Page No. 58)

19. This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.

AY 2011-12 (Paper Book Page No. 64)

12. This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.

AY 2012-13 (Paper Book Page No. 68)

13. This order is passed after obtaining prior approval u/s. 153D of the Income Tax Act, 1961 of the Addl. Commissioner of Income Tax, Central Range-4, New Delhi received vide letter No. F.No. 153D/CC-16/2013-14/1334 dated 30.3.2014.”

7.1 On perusing the aforesaid, it is amply clear that the common approval with common numbers have been accorded under section 153D of the Act in the instant case is a mechanical approval. We further find that the Coordinate Bench in the case of the assessee's wife namely Smt. Usha Sharma in ITA No. 480/Del/2015 under similar circumstances has quashed the assessment by allowing the similar additional ground of appeal. We further find that the Coordinate Bench in the case of ACIT vs. Sant Lal Aggrawal group in ITA No. 6195/Del/2017, pertaining to same group, on identical issue has held that approval under section 153D is bad in law and thus, assessments so made are vitiated in law, under similar circumstances. We further find that the Hon'ble High Court of Delhi in the case of Pr. Commissioner of Income Tax Vs. Shiv Kumar Nayyar reported in 163 taxmann.com 9 dated 15/05/2024 in ITA No. 285/2024 (CMP No. 28994/2024), held as under:-

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

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

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been

followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.

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

[Emphasis supplied]

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

separately.

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of Asst. CIT v. Serajuddin and Co. [2023 SCC OnLine Ori 992] to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

"22. As rightly pointed out by learned counsel for the assessee there is not even a token mention of the draft orders having been perused by the Additional Commissioner of Income-tax. The letter simply grants an

approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons This is a digitally signed order.

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

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

[Emphasis supplied]

14. During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of Serajuddin (supra), came to be

dismissed by the Supreme Court vide order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.

15. A similar view was taken by this Court in the case of Anuj Bansal (supra), whereby, it was reiterated that the exercise of powers under Section 153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval under Section 153D of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

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

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

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/05/2024 at 21:34:51 that a letter dated 30.12.2018 was filed by the ld. AO before the ld. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none

other than the ld. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the ld. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assessees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like ld. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the ld. Addl. CIT has granted a single approval for all assessment years put together."

17. Notably, the order of approval dated 30.12.2020 which was produced before us by the learned counsel for the assessee clearly signifies that a single approval has been granted for AYs 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above."

8. Significantly, the Hon'ble Orissa High Court in the case of *ACIT vs Serajuddin & Co.* 454 ITR 312 (Orissa) had an occasion to examine substantial question of law on the propriety of approval granted under s. 153D of the Act. The Orissa High Court made wide ranging observations towards the manner and

legality of approval under s. 153D of the Act. The Hon'ble High Court *inter-alia* observed that the approval under 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 justiciable. 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 judgement in the case of *ACIT vs Serajuddin & Co. Kolkata* was dismissed as reported in (2024) 163 *taxmann.com* 118 (SC).

9. The ratio of judgement delivered in the case of *ACIT vs Serajuddin & Co. Kolkata; PCIT vs Anuj Bansal; PCIT vs Shiv Kumar Nayyar; and PCIT vs Subhash Dabas* (supra) has held in chorus that the approval granted under s. 153D of the Act, if granted mechanically, will vitiate the assessment order itself. Hence, applying the ratio of judgements delivered as noted above, the assessment

order based on ritualistic approval stands vitiated and thus quashed by allowing additional Ground of appeal of the Assessee.

10. Further, since we have quashed the impugned assessment order on the ground of erroneous approval accorded u/s 153D of the Act, by allowing the additional ground, the Appeal filed by the Revenue has become in-fructuous and dismissed as such.

11. In the result, the appeal of the Revenue is dismissed in the aforesaid manner.

Order Pronounced in the Open Court on 23/01/2026.

Sd/-

Sd/-

(S. Rifaur Rahman)
Accountant Member

(Sudhir Kumar)
Judicial Member

Dated: 23/01/2026

SR BHATNAGGAR

Copy forwarded to:

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

ASSISTANT REGISTRAR