

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA No. 2203/Del/2025
(Assessment Year: 2017-18)

ACIT, Central Circle-19, Delhi	Vs.	Deepa Talwar, 6/14, Shanti Niketan, New Delhi
(Appellant)		(Respondent)
		PAN: AAUPT4464F

CO 97/Del/2025
(In ITA No. 2203/Del/2025)
(Assessment Year: 2017-18)

Deepa Talwar, 6/14, Shanti Niketan, New Delhi	Vs.	ACIT, Central Circle-19, Delhi
(Appellant)		(Respondent)
PAN: AAUPT4464F		

ITA Nos. 2203 & 2221/Del/2025
(Assessment Years: 2016-17 & 2017-18)

ACIT, Central Circle-19, Delhi	Vs.	Yasmin Kapoor, C-4/6, APJ Abdul Kalam Road, New Delhi
(Appellant)		(Respondent)
		PAN: AGJPK1064B

ITA No. 3379/Del/2025
(Assessment Year: 2016-17)

Yasmin Kapoor, C-4/6, APJ Abdul Kalam Road, New Delhi	Vs.	DCIT, Central Circle-19, Delhi
(Appellant)		(Respondent)
PAN: AGJPK1064B		

Co No. 98/Del/2025
(In ITA No. 2221/Del/2025
(Assessment Year: 2017-18)

Yasmin Kapoor, C-4/6, APJ Abdul Kalam Road, New Delhi	Vs.	DCIT, Central Circle-19, Delhi
(Appellant)		(Respondent)
PAN: AGJPK1064B		

Assessee by :	Shri Sanjay Kumar Agarwal, CA Shri Lakshay Gupta, CA Shri Sumaksh Mahajan, CA
Revenue by:	Shri Jitender Singh, CIT DR Shri Nitin Kumar Jaiman, Sr. DR
Date of Hearing	23/12/2025
Date of pronouncement	30/01/2026

ORDER

PER BENCH :

1. The appeals filed by Yasmin Kapoor are as under:-

ITA/CO	CIT/PCIT	Order Dated	AO	Order dated	AY	Filed by
1542/Del/2025	PCIT-2	04.03.2025	DCIT, Central Circle-19, Delhi	28.12.2019	2016-17	Assessee
CO 98/Del/2025 in ITA No. 2221/Del/2025	CIT(A)-31, Delhi	31/01/2025	DCIT, Central Circle-19, Delhi	30.12.2019	2017-18	Assessee
3337/Del/2025	PCIT-2	04.03.2025	DCIT, Central Circle-19, Delhi	28.12.2019	2016-17	Revenue
2221/Del/2025	CIT(A)-31, Delhi	31/01/2025	DCIT, Central Circle-19, Delhi	30.12.2019	2017-18	Revenue

2. The appeals filed by Deepa Talwar are as under:-

ITA/CO	CIT/PCIT	Order Dated	AO	Order dated	AY	Filed by
2203/Del/2025	CIT(A)-31, Delhi	31/01/2025	DCIT, Central Circle-19, Delhi	28.12.2019	2017-18	Revenue
CO 97/Del/2025 in ITA No. 2203/Del/2025	CIT(A)-31, Delhi	31/01/2025	DCIT, Central Circle-19, Delhi	28.12.2019	2017-18	Assessee

3. The above appeals are filed by different assessees in different ITA Nos./ CO Nos. arising out of different CIT(A) orders [hereinafter referred to as 'Id. CIT(A)', in short] for different dates against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Assessing Officer (hereinafter referred to as 'Id. AO').

4. All these appeals are having identical issues and hence they are taken up together and disposed of by this common order for the sake of convenience.

5. In each of the Appeals of the respective assessees or in the Cross Objections of the respective assessees, we find that there is ground raised challenging the validity of search assessment per se on the ground that the mandatory approval u/s 153D of the Act has been granted by the Jt. Commissioner of Income Tax, Central Range-5, New Delhi in a mechanical manner without due application of mind, which vitiates the entire search assessment proceedings. This goes to the root of the matter and accordingly, we deem it fit and appropriate to address the same first in all the appeals. For the sake of convenience, the relevant grounds raised by the respective assessees are reproduced herein.

6. The assessee (Yasmin Kapoor) in CO 98/Del/2025 arising out of ITA No. 2221/Del/2025 for AY 2017-18 raised ground No. 3 as under:-

"3. That the impugned assessment order has been passed in gross contravention of provisions of section 153D of the act being necessary approval accorded by Ld. Jt. CIT, Central Range 5, Delhi was a mechanical approval and assessment completed on the basis of said approval is bad in law and deserves to be quashed."

7. The assessee (Yasmin Kapoor) in CO 98/Del/2025 arising out of ITA No. 1542/Del/2025 for AY 2016-17 raised ground No. 4 as under:-

"4. That the Ld. CIT(A) has erred in law and facts of the case while upholding the assessment framed under section 153A r.w.s. 143(3) of the act without appreciating the fact that the mandatory approval under Section 153D of the Income Tax Act, 1961 have been given in mechanical manner without application of mind and in contravention of pre-requisite being approval accorded vide common letter instead of independent approval for each case. As such, the assessment order passed by the Ld. AO is illegal and may please be quashed."

8. The assessee (Deepa Talwar) in CO 97/Del/2025 arising out of ITA No. 2203/Del/2025 for AY 2017-18 raised ground No. 3 as under:-

"That the impugned assessment order has been passed in gross contravention of provisions of section 153D of the act being necessary approval accorded by Ld. Jt. CIT, Central Range 5, Delhi was a mechanical approval and assessment completed on the basis of said approval is bad in law and deserves to be quashed."

9. We have heard the rival submissions and perused the material available on record. For the sake of convenience, the approval granted u/s 153D of the Act by the Id JCIT, central Range-5, New Delhi is hereby reproduced for the respective assessee:-



Office of the
Joint Commissioner of Income Tax,
Central Range-5, 2nd Floor, Room No. 242
A.R.A. Centre, E-2, Jhandewalan Extn. New Delhi-110055

F.No. Joint CIT/C.R-5/153D/2019-20/ 992

Dated: 27.12.2019

To

The Dy. Commissioner of Income Tax,
Central Circle-19,
New Delhi.

Sub: Approval u/s 153D of the Income Tax Act, 1961 for making assessment u/s 153A/143(3)- In the case of Wave Hospitality Pvt. Ltd., PAN: AAACW8616K, Yasmin Kapoor, PAN: AGJPL1064B and Deepa Talwar, PAN: AAUPT4464F -Deepak Talwar Group of cases- reg.

Please refer to your letter F.No. DCIT/CC-19/153D/2019-20/820 dated: 26.12.2019. whereby you have submitted draft assessment orders, seeking approval u/s 153D of the I.T. Act, 1961 in case of Wave Hospitality Pvt. Ltd., PAN: AAACW8616K for Assessment Years 2011-12 to 2017-18, Yasmin Kapoor, PAN: AGJPL1064B for Assessment Years 2016-17 and Deepa Talwar, PAN: AAUPT4464F for Assessment Years 2017-18 u/s 153A r.w.s 143(3) of the Act.

2. After perusing the draft assessment orders and case records for A.Ys 2011-12 to 2017-18 submitted by you, approval u/s 153D of the Income Tax Act, 1961 is accorded as under:-

S.N o.	Name	A.Y.	Section	Returned Income (Rs.)	Assessed Income (Rs.)
1	Wave Hospitality Pvt. Ltd.	2011-12	153A r.w.s 143(3)	(-)4,36,508/-	3,96,85,630/-
2	Wave Hospitality Pvt. Ltd.	2012-13	153A r.w.s 143(3)	3,58,940/-	34,34,730/-
3	Wave Hospitality Pvt. Ltd.	2013-14	153A r.w.s 143(3)	NIL	2,70,61,630/-
4	Wave Hospitality Pvt. Ltd.	2014-15	153A r.w.s 143(3)	(-) 16,74,45,901/-	(-) 14,03,52,270/-
5	Wave Hospitality Pvt. Ltd.	2015-16	153A r.w.s 143(3)	(-) 36,62,19,208/-	(-) 9,13,52,130/-
6	Wave Hospitality Pvt. Ltd.	2016-17	153A r.w.s 143(3)	(-) 27,32,74,854/-	(-) 7,02,37,850/-
7	Wave Hospitality Pvt. Ltd.	2017-18	143(3) r.w.s 153A	(-) 10,45,53,805/-	(-) 1,36,24,340/-
8	Yasmeen Kapoor	2016-17	153A r.w.s 143(3)	57,18,230/-	11,41,09,520/-
9	Deepa Talwar	2017-18	143(3) r.w.s 153A	1,55,62,670/-	5,31,46,480/-

3. The approval accorded by the undersigned u/s 153D of the Act should be mentioned in the concluding para of the draft assessment order and AO is directed to ensure that the orders are passed well before the limitation. Further, the copies of the final orders so passed be sent to this office for records. The assessment records in all the above cases are returned herewith.

4. Further, it is also directed that no order shall be passed without 'DIN' in view of the CBDT's Circular No. 19/2019 dated 14.08.2019.

Encl: As above.

o/c

(Mithun Shete)

Joint Commissioner of Income Tax,
Central Range-5, New Delhi.

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Office of the
Joint Commissioner of Income Tax,
Central Range-5, 2nd Floor, Room No. 242
A.R.A. Centre, E-2, Jhandewalan Extn. New Delhi-110055

F.No. Joint CIT/C.R-5/153D/2019-20/ 1019

Dated: 29.12.2019

To

The Dy. Commissioner of Income Tax,
Central Circle-19,
New Delhi.

Sub: Approval u/s 153D of the Income Tax Act, 1961 for making assessment u/c 153A/143(3)- in the case of Yasmin Kapoor, PAN: AGJPK1064B, Tarun Kapoor, AGQPK1672C and Rahul Khare, AAEPK5996M-Deepak Talwar Group of cases- reg.

Please refer to your letter F.No. DCIT/CC-19/153D/2019-20/822 dated: 29.12.2019 whereby you have submitted draft assessment orders, seeking approval u/s 153D of the I.T. Act, 1961 in case of Yasmin Kapoor, PAN: AGJPK1064B, Tarun Kapoor, AGQPK1672C and Rahul Khare, AAEPK5996M for Assessment Years 2017-18 u/s 143(3) r.w.s 153A of the Act.

2. After perusing the draft assessment orders and case records for A.Ys 2017-18 submitted by you, approval u/s 153D of the Income Tax Act, 1961 is accorded as under:-

S.No.	Name	A.Y.	Section	Returned Income (Rs.)	Assessed Income (Rs.)
1	Yasmin Kapoor	2017-18	143(3) r.w.s 153A	1,37,33,610/-	2,23,94,000/-
2.	Tarun Kapoor	2017-18	143(3) r.w.s 153A	47,77,960/-	47,77,960/-
3.	Rahul Khare	2017-18	143(3) r.w.s 153A	24,20,880/-	24,20,880/-

3. The approval accorded by the undersigned u/s 153D of the Act should be mentioned in the concluding para of the draft assessment order and AO is directed to ensure that the orders are passed well before the limitation. Further, the copies of the final orders so passed be sent to this office for records. The assessment records in all the above cases are returned herewith.

4. Further, it is also directed that no order shall be passed without 'DIN' in view of the CBDT's Circular No. 19/2019 dated 14.08.2019.

Encl: As above.


(Mithun Shete)

Joint Commissioner of Income Tax,
Central Range-5, New Delhi.

10. We find that the Id JCIT, Central Range-5, (hereinafter referred as Competent Authority) had granted approval for Wave Hospitality Private Limited (for 7 years); Yasmin Kapoor (for 1 year) and Deepa Talwar (for 1 year) in a single consolidated approval order u/s 153D of the Act on 27.12.2019. It is pertinent to note that letter was sent by the Id AO for seeking approval u/s 153D of the Act dated 26.12.2019 and Id JCIT had granted approval in the above cited cases on 27.12.2019. On 29.12.2019, the Id Competent Authority had granted approval for Yasmin Kapoor (for 1 year); Tarun Kapoor (for 1 year) and Rahul Khare (for 1 year) in a consolidated order dated 29.12.2019. It is pertinent to note that the letter was sent by the Id AO for seeking approval u/s 153D of the Act dated 29.12.2019 and Id JCIT had granted approval in the above cases on 29.12.2019. The Id AR filed case law compilation wherein this issue has been decided in favour of assesseees by various High Courts, including Hon'ble Jurisdictional High Court and by various Tribunals as under:-

S. No.	Case Laws on section 153D of the Act	Dated
1.	ACIT vs. Deepa Talwar CO No. 62/Del/2025	15.10.2025
2.	PCIT vs. MDLR Hotels (P.) Ltd. [2024] 166 taxmann.com 327 (Del.)	30.07.2025
3.	PCIT vs. Shiv Kumar Nayyar [2023] 147 taxmann.com 9 (Del.)	15.05.2024
4.	PCIT vs. Sapna Gupta [2023] 147 taxmann.com 288 (All.)	12.11.2022
5.	ACIT vs. Serajuddin & Co. [2023] 150 taxmann.com 146 (Ori.)	15.03.2023
6.	Rajesh Kumar Gupta v. ACIT 2025 SCC Online ITAT 902	06.02.2025
7.	Ram Narayan Bajaj vs. DCIT 2025 SCC Online ITAT 591	31.01.2025

8.	Minda Capital (P) Ltd. v. CIT 2025 SCC Online ITAT 5872	13.06.2025
9.	CIT v. Shiv Vani Buildwell (P) Ltd. 2025 SCC Online ITAT 5552	06.06.2025
10.	Vinod Kumar Bajaj v. CIT 2025 SCC Online ITAT 5019	07.05.2025
11.	M/s Sanskar Greens v. ACIT 2025 SCC Online ITAT 2773	28.03.2025
12.	ACIT v. Himanshu Verma ITA No. 1236/Del/2022	29.04.2025

11. The DR before as filed detailed written submission, which is reproduced as under:-

"Issue pertaining to Section 153 D approval:

2. Assessee raised technical issues including bulk approval and non-application of mind by the Range Head while granting approval u/s 153D on this issue written submission is as under:

3. Issue pertaining to Section 153 D approval.

3.1 With respect to the issue pertaining to grant approval u/s 153D, it is stated that the Range Head, Ld. JCIT has duly applied his mind as is evident from the approval dated 27.12.2019. Moreover, Range Head, JCIT had issued specific direction in granting approval with specific remarks. He while granting approval has specifically mentioned that the approval has been granted "in view of the details furnished, perusal of assessment records and various discussions".

3.2 From perusal of the approval letter, the following facts may be observed:

i). The AO had submitted proposal for approval along with draft order on 26.12.2019. The RANGE HEAD, JCIT granted approval on 27.12.2019 based on perusal of the thus submitted assessment records and draft Assessment order.

ii). It may also be noted that the AO had submitted only 09 case files of the Assessee company to the Range Head, JCIT for approval which he perused and gave approval.

iii). The case laws cited by the assessee are those in which approval u/s 153D was given mechanically without application of mind due to time constraint. But, the facts of the impugned case

are completely different. Perusal of 09 files is undoubtedly a humanly possible task. 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. Hence, there is no illegality in the approval at all.

3.3 It is not a gainsaying that the assessment is a continuous process involving administrative as well statutory roles being donned by the Range Head. It is incumbent upon the Range Head 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 assessee has not come out with any case that there is case of non-application of mind. The Hon'ble Supreme Court in the case of Chuharmal vs. CIT 172 ITR 250 had held that there was a presumption in law, specifically section 114(e) of the Evidence Act that Judicial and Official Acts supposed to be performed in a particular manner had actually been performed in the way they were supposed to be conducted. There could not be presumption of illegality.

3.4 There is no reason to hold the assessments to be invalid on account of any irregularity in the approval process. It was submitted that cases had come up for decision where there was absolute lack of approval and there too the Courts had not held such assessments to be invalid. The lack of approval had been held to be a procedural irregularity that was not fatal to the order passed. Our attention was invited to the judgment of the Hon'ble Karnataka High Court in the case of Gayathri Textiles vs. CIT (2000) 111 taxman 123 (Kar) wherein the Id. CIT(A) had cancelled the penalty levied under section 271(1)(c), holding that the Id. AO had not obtained the previous approval of the IAC as required under section 274(2). On appeal by the Revenue, the Tribunal had reversed the order, holding that the failure to obtain the previous permission from the IAC for imposing penalty under section 271(1)(c) was only a procedural error and it was not fatal to the order of penalty under section 271(1)(c). The Hon'ble High Court held that in the said case, the proceedings were validly initiated and the proceedings under section 271(1)(c)(iii) only require prior approval of the IAC for direction for payment of penalty and not for the initiation of proceedings.

3.5 The assessee 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.

3.6 Further, in the present case, the Range Head (RANGE HEAD, JCIT/Addl CIT) had been involved and hence, was well aware about the progress of the assessment proceedings, relevant issues of the 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 the assessing officer and Range Head, JCIT. In fact, CBDT guideline dt. 22.12.2006 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 approval granting authority was not in a position to independently apply his mind in judicial manner to the case of assessee on the same day.

3.5. 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 Hon'ble 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. -Range Head, JCIT 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 single case. Therefore, facts of the instant case are distinguishable.

*Reliance is placed in the case of **Home Finders Housing Ltd. v Income-tax Officer Ward 2(3), Chennai [2018] 93 taxmann.com 371 (Madras)** wherein it was held that in case an order is passed without following a prescribed procedure, the entire proceedings would not be vitiated.*

*26. We therefore make the position clear that non-compliance of the procedure indicated in the **GKN Driveshafts (India) Ltd. 's case (supra)** would not make the order void or non-est. Such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority.*

Later, the Hon'ble Supreme Court also dismissed the SLP raised in the matter.

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 be 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 technicalities.** "*

3.6 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 Addl CIT after due application of mind:

6.2 (i) Decision dated 06/06/2024 of Delhi bench of the Tribunal in the case of Shri Guvinder Singh Duggal in ITA No. 860 to 863/Del/2021 for AY 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 & and 2008- 09.

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

- (iv) *Decision of Hon 'ble Delhi High Court in the case of PCIT vs Shiv Kumar Nayyar in ITA 285/2004 & CMAppela 28994/2024*
- (v) *Decision of Mumbai Bench of Tribunal in the case of Arch Phamalabs Ltd in ITA 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 P Ltd in ITA 593/2023*
- (vii) *Decision dated 24/04/2024 of Delhi Bench of Tribunal in the case of Veena Singh in ITA No. 294 & 295/Del/2022for AY 2016-17 and 2017-18.*

3.7 It is submitted that Central Ranges are specialized ranges designated for assessment of search and seizure cases. The structure ensures deep involvement of the Addl. Commissioner with each case. These are not routine assessments; the number of cases is limited, and the Range Head, JCIT plays a crucial role throughout the lifecycle of the case. The assumption by the assessee that the Range Head, JCIT was a stranger to the assessment work is factually erroneous and perverse. It is further 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 issues 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.

3.8 It is submitted that Section 153D does not prescribe any specific procedure or method for the grant of approval. As long as Range Head,

JCIT is satisfied with the draft assessment order and conveys his approval, the mandate of law stands fulfilled.

3.9 In the present case, the approval was in fact granted under Section 153D. There is no finding that the assessment was so fundamentally flawed as to render it unfit for any reasonable authority to approve it. This is not a case where Approval has not been granted.

3.10 It is relevant to point out that approval u/s 153D of the Act needs to be put at a different pedestal in comparison to sanction u/s 151 of the Act. Section 151 deals with prior approval for issuing notices for reopening assessments (such as under section 148). The approval here is for cases where the Assessing Officer believes income has escaped assessment; higher authorities' consent is required before such notices are issued. If the sanction u/s 151 is not proper, the jurisdictional notice issued u/s 148 has been held to be void. However, the approval u/s 153D has to be granted by the Ld. Add. CIT once the draft assessment order is prepared by the Ld. Jurisdictional Officer making the assessments u/s 153A/153C of the Act. In this case, there is no challenge to the validity of search, procedure followed by the Department in search, however the only challenge raised by the assessee before this Hon'ble Tribunal is that the approval granted by Range Head, JCIT is mechanical. No evidence to prove the same have been sufficiently submitted by the assessee. CBDT has issued guideline for search and seizure assessments in F. No.286/161/2006-IT (Inv. II) on 22.12.2006 contained in Appendix V of the Search & Seizure Manual 2007, involves the Range Head in the assessment process right from the stage of receipt of the appraisal report and the seized material to the granting of the final approval. As brought out by the Id. DRs, it is observed that the Range Head (approving authority) is involved in scrutinizing the appraisal a report and the seized material at the time of preparation of the examination note to decide which cases were to be taken up under section 153A, 153C or section 148. Subsequently, he was also supposed to vet the action note prepared by the A within 90 days of receipt of seized material after methodological examination of the seized material and it has been brought to our knowledge by the DRs that usually these action notes are prepared by the Id. AO and the Range Head in consultation with each other. We also observe that the Range Head has been directed to ensure proper satisfaction note are recorded before issuance of notices under section 153C or under section 148. Furthermore, it appears that the Board envisaged that the Range Head was to be associated with the preparation of the detailed questionnaire and could even give directions under section 144A where it was considered necessary. Therefore, when the Range Head has been actively monitoring the assessment proceedings the whole year, then it cannot be averred that the same officer granted several other approvals during the same period resulted in non-application of mind.

3.11 *Even if the said approval is held to be mechanical, then the submissions of the Revenue is that the matters may be remanded back to the Assessing Officer for curing the defect. Hon'ble Madhya Pradesh High Court in the case of CIT vs. Vijay Dal Mills (1998) 230 ITR 301 (M.P.) following its earlier order in the case of Prabhudayal Amichand vs. CIT (1989) 180 ITR 84 (M.P.) which in turn held that a procedural irregularity not involving the question of jurisdiction can be cured. Similarly, Hon'ble Kerala High Court in the case of G. Manoharan vs. ACIT (2006) 155 taxman 569 (Ker), Hon'ble Kolkata High Court in the case of Sagar Dutta vs. CIT (2014) 44 taxman.com 311 (Calcutta) and Hon'ble Supreme Court in the case of Guduthur Bros, vs Income-Tax Officer (1960) 40 ITR 298 (SC) and the Hon'ble ITAT (Allahabad Bench) in bunch matters of Ramji Vaish v DCIT & Vijay Stone Product v ACIT (ITA Nos. 30, 31, 32, 33/ALLD/2019) had taken a similar view that in case an illegality vitiated the proceeding after it was lawfully initiated, the proceedings were to be restored back to the stage at which the illegality occurred and not quashed altogether.*

In view of the above, it is humbly prayed that the assessee's plea may kindly be rejected being devoid of merit."

12. We find that the issue in dispute is squarely covered by the decision of the Third Member case in the case of Dheeraj Chaudhary Vs. ACIIT reported in 178 taxmann.com 360 (Delhi Trib) (TM) wherein the coordinate bench of this Tribunal has held as under:-

“PER MAHAVIR SINGH, VICE PRESIDENT (AS THIRD MEMBER)

By the order of President, ITAT vide U.O. No.F.28-Cent.Jd(AT)/2025 dated 24th March, 2025, the undersigned has been nominated to adjudicate the difference of opinion between the learned Judicial Member and learned Accountant Member on the following 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.”

2. Brief facts are that a search under Section 132 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) was carried out on the assessee group of cases on 27th April, 2014. Consequently, for the assessment years 2009-10 to 2015-16, notices under Section 153A of the Act were issued by the Revenue

to the assessee. The assessee, during the course of assessment proceedings, submitted that the original returns filed be considered as returns filed in response to notices under Section 153A of the Act. Accordingly, assessments were framed by the ACIT, Central Circle-8, New Delhi for the relevant assessment years 2009-10 to 2015-16 vide different orders dated 27th December, 2016 under Section 153A read with Section 143(3) of the Act. Aggrieved by the additions made by the Assessing Officer, the assessee preferred appeals before learned CIT(A) and learned CIT(A) also passed appellate orders for these above assessment years. Aggrieved against the appellate orders, assessee preferred appeals before the Tribunal. The assessee, vide letter dated 27th October, 2021, for these assessment years, raised additional ground in all these appeals. The ground as raised is identical and hence, I will take the ground raised in assessment year 2009-10, which reads as under:-

“3. The CIT(A) has erred in law in confirming the addition made by the AO, without considering that the mandatory approval given by the Addl. CIT in this case U/s 153D has been given, in a complete mechanical manner, without application of mind and the same therefore makes the entire assessment order bad in law and void ab initio.”

3. This ground was adjudicated by the learned Judicial Member and learned Accountant Member after admitting the same and there is no dispute about admissibility of this ground. Before me, learned Counsel for the assessee filed copy of approval (which is in Hindi language but assessee filed a translated copy), which reads as under:-

“F.No./A.C.I.T./C.R.-2/2016-17/1029 Dated:- 27-12-2016

To,

The Assistant Commissioner of Income Tax
(Central) (Circle)-8, New Delhi.

Subject:- Karan Luthra Group Income Tax Rules 153D
for approval and closing proceedings.

Please refer to letter F.No. Assistant Commissioner of Income Tax/Central Circle-08/2016-17/1311, dated – 27/12/2016 received in this office from Assistant Commissioner of Income Tax/Central Circle-08, New Delhi regarding the above subject. These draft orders are sent by you for approval under section 153D.

S.No.	Name of the Assessee	Section	PAN	A.Y.	Filed Income	Assessed Income
1	Mr.	153A	AASPK9267B	2009-10	137940	1340304

	<i>DheerajChoudhary</i>					
2	<i>Mr. DheerajChoudhary</i>	153A	AASPK9267B	2010-11	307943	10241352
3	<i>Mr. DheerajChoudhary</i>	153A	AASPK9267B	2011-12	403908	15000460
4	<i>Mr. DheerajChoudhary</i>	153A	AASPK9267B	2012-13	438939	23094073
5	<i>Mr. DheerajChoudhary</i>	153A	AASPK9267B	2013-14	1018269	10903269
6	<i>Mr. DheerajChoudhary</i>	153A	AASPK9267B	2014-15	584183	30911700
7	<i>Mr. DheerajChoudhary</i>	143(3)	AASPK9267B	2015-16	1004820	221698040

The above proposed orders are approved with the direction that the assessment orders be passed before the prescribed time limit. It is also specified that a copy of the final orders passed be sent to this office.

(Rinku Singh)
Additional Commissioner of Income Tax
Central Range-2, New Delhi”

4. *Learned Counsel stated that the copy of approval is obtained through RTI and Department, vide letter dated 2nd August, 2021, provided this approval. Accordingly, the additional grounds are raised vide application dated 27th October, 2021. Learned Counsel for the assessee made argument that as per the mandate of Section 153D of the Act, the approval is to be granted to the assessment order by the Additional CIT/JCIT after due application of mind. Learned Counsel for the assessee stated that this approval dated 27.12.2016 was granted in lieu of proposal sent by the Assessing Officer i.e. the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi dated 27.12.2016. It means, according to learned Counsel, the Additional CIT granted approval of these seven draft assessment orders on the same date. He further explained that as per this proposal, the Assessing Officer, no assessments records, search materials, replies filed by assessee or any material related to these assessments was provided or examined by the Additional CIT. In view of these facts, learned Counsel argued that that this issue is now settled by the decision of Hon'ble Delhi High Court in the case of PCIT(Central)-2 Vs. Anuj Bansal – [2024] 165 taxmann.com 2 (Delhi) and PCIT Vs. Shiv Kumar Nayyar – [2024] 163 taxmann.com 9 (Delhi). Even this issue has been dealt with by Hon'ble Orissa High Court in the case of ACIT Vs. Serajuddin & Co. – [2023] 150 taxmann.com 146(Orissa). Similar view is taken by Hon'ble Allahabad High Court in the case of PCIT Vs. Sapna Gupta – [2023] 147 taxmann.com 288 (Allahabad). Learned Counsel argued that the jurisprudence arising out of the above case laws is that an approval under Section 153D of the Act is considered to be as given with no application of mind and given in a mechanical manner when the approval itself does not reflect any application of mind. He narrated the facts of the present case stating that on*

27th December, 2016, the Assessing Officer sent the draft assessment order to the Additional CIT for approval and on the very same date i.e., 27th December, 2016, the Additional CIT granted approval. He produced before us the said letter of the Assessing Officer along with approval granted by the Additional CIT. From a perusal of the above said approval, it was argued that there is not even a token of mention of the draft orders having been perused by the Additional CIT, rather, the letter simply grants approval. He argued that even the bare minimum requirement of the approving authority, having to indicate what the thought process was involved was, is missing in the aforementioned approval order. In the approval order, there is no whisper in regard to the fact that the Additional CIT has examined the seized documents or the proposed additions made in the draft assessment order as the same was forwarded to him for her perusal. From the approval, it is clear that there is no reason given and it is bare minimum for the approving authority that there should have been some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the Act. In terms of the above, learned Counsel for the assessee stated that the above approvals are mechanical and without application of mind and hence, the assessment orders approved without application of mind is to be quashed. He supported the order of learned Judicial Member.

5. On the other hand, learned CIT-DR Ms. PoojaSwaroopsubmitted that as pointed out during the course of hearing, there is a mistake in the question of law framed, as reproduced below:-

“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.”

She submitted that approvals under Section 153D of the Act are granted by the Joint/Additional CIT. However, in the present case, ACIT has been stated, which is incorrect, because ACIT is actually Assistant Commissioner of Income Tax and not Additional Commissioner of Income Tax. Without prejudice to the above, she drawn our attention to Paragraph 11 and 14 to 17 of the draft order of learned Accountant Member. She also produced copies of relevant guidelines enunciated by the Search & Seizure Manual and relevant SOPs for search assessments issued by the CBDT. She also referred to Appendix-V of the Assessment Manual issued by the Income-tax Department in regard to search and seizure assessments dated 22nd December, 2006 vide F.No.286/161/2006-IT(Inv.II). She particularly referred to Paragraph 1.3 and argued that the Range Head i.e., Additional CIT/JCIT is involved in scrutinizing the seized material and

issuance of notices under Section 153A, 153C and 148 of the Act and also where assessment in other than the searched person is to be done. The relevant Paragraph 1.3 referred by her reads as under:-

“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.”

6. Subsequently, she referred to Paragraph 2.9 and stated that in case the Assessing Officer is not in agreement with any findings/conclusions drawn in the Appraisal Report, the matter should be brought to the knowledge of the Additional CIT/JCIT who should resolve the issue with the concerned Addl./Joint DIT(Inv) and also with CIT(Central) or DIT(Inv). She further referred to Paragraph 2.10 of the Manual and stated that even the Additional CIT/JCIT can issue instructions to the Assessing Officer in terms of Section 144A of the Act. She stated that even the Additional CIT/JCIT is involved in the preparation of final assessment order by way of instructing the Assessing Officer issuing final show cause notice. She referred to Paragraph 3.2 of the Manual, which reads as under:-

“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.”

In view of the above, she prayed that approval under Section 153D of the Act is neither invalid nor bad in law nor given without

application of mind by the Additional CIT, as emphasized by the learned Accountant Member in his order.

7. *I have heard the rival submissions and gone through the facts and circumstances of the case. Admitted facts are that for all the relevant six assessment years, only one approval is granted by the Additional CIT as is available on record, which is a part of this order at Paragraph 5. The provisions of Section 153D of the Act where prior approval is made necessary for assessments in search and seizure cases is introduced by the legislature by the Finance Act, 2007 with effect from 1st June, 2007. The relevant provisions of Section 153D read as under:-*

“153D. 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 sub-section (1) of section 153A, or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.”

8. *As argued by the learned Counsel for the assessee, in view of this provision, I noted that an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of search assessments. Keeping in view the basic fundamental features of search assessments i.e., Section 153A of the Act, if the provisions of Section 153D is scrutinized, it would become manifest that an important phrase is employed in the text of Section 153D, which is “each assessment year”. The bare reading of Section 153D of the Act makes it clear that separate approval of draft assessment order in each year is to be obtained. The Hon’ble Allahabad High Court in the case of PCIT Vs. Sapna Gupta – [2023] 147 taxmann.com 288 (Allahabad), while adjudicating this issue, has considered the important concept of each assessment year for the purpose of approval to be granted under Section 153D, as under:-*

“19. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to

appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment.

Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

20. 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.

21. In the instant case, the draft assessment order in 85 cases, i.e. for 85 assessment years placed before the Approving Authority on 30-12-2017 was approved on same day i.e. 30-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 85 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record."

9. In the present case before me also, as is evident from the copy of approval, as reproduced above, granted by the Additional CIT, is for all the six assessment years vide one approval. Hence, on this count also, the approval granted by the Additional CIT is bad in law and consequent assessment order passed in all these six assessment years is bad in law.

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 approval sent 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.

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

*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 contain while 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 justifiable. 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 *audi alteram partem* 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 *Dinshaw Darabshaw 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.

The matter shall now be placed before the regular Bench for passing appropriate orders in accordance with the majority opinion.

PER BENCH:

These appeals were filed by the assessee against the orders all dated 31.07.2018 passed by the CIT(A)-31, New Delhi, arising out of the orders passed by the ACIT, Central Circle-8, New Delhi under Section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for the assessment years 2009-10 to 2014-15.

After hearing the appeals, the Judicial Member allowed the appeals preferred by the assessee. The Accountant Member opined otherwise and wrote a separate order. On account of difference of opinion between the Members constituting the Bench, a reference was made to the Hon'ble President ITAT u/s 255(4) of the Act. The Hon'ble President vide order dated 24.03.2025 nominated Third Member to decide the reference. The ld. Third Member vide order dated 10.09.2025 concurred with the view of Judicial Member. Consequent to the opinion of Third Member, appeals of the assessee are allowed."

13. We find that the entire arguments of the ld DR both oral as well as written submissions had already been considered in the aforesaid order passed by the Third Member. Further, we find that in the case of Shri Deepa Talwar, this Tribunal in CO 62/Del/2025 for AY 2014-15 dated 15.10.2025 on similar type of approval had quashed the search assessment by holding that the approval has been granted by the Competent Authority in a mechanical manner.

14. Respectfully following the aforesaid decisions, we quash the entire assessment proceedings in the absence of valid approval u/s 153D of the Act. Accordingly, the respective grounds raised by the respective assesseees are hereby allowed.

15. Since the entire assessments are quashed, the adjudication of other factual and legal grounds raised by both the parties become academic in nature and hence they are left open.

16. To sum up,

Name	ITA/CO	Filed by	AY	Result
Yasmin Kapoor	1542/Del/2025	Assessee	2016-17	Allowed

Yasmin Kapoor	3379/Del/2025	Revenue	2016-17	Dismissed
Yasmin Kapoor	2221/Del/2025	Revenue	2017-18	Dismissed
Yasmin Kapoor	CO 98/Del/2025 in ITA No. 2221/Del/2025	Assessee	2017-18	Allowed
Deepa Talwar	2203/Del/2025	Revenue	2017-18	Dismissed
Deepa Talwar	CO 97/Del/2025	Assessee	2017-18	Allowed

Order pronounced in the open court on 30/01/2026.

-Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 30/01/2026
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi