

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

M.P. Nos. 56 to 58/Bang/2024 (in ITA Nos. 372 to 374/Bang/2011)
Assessment Years : 2006-07 to 2008-09

M/s. MSPL Ltd., No. 117, Baldota Bhawan, Maharishi Karve Road, Churchgate, Mumbai – 400 020. PAN: AABCM1040N	Vs.	The Assistant Commissioner of Income Tax, Central Circle – 2(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri J.D. Mistri, Sr. Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	30-01-2026
Date of Pronouncement	:	11-02-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the miscellaneous applications filed by the assessee against the common order passed by this Tribunal in ITA Nos. 372 to 374/Bang/2011 dated 14/08/2024.

2. The present miscellaneous petitions were filed against the common order of this Tribunal and also by the very same assessee and therefore all the three miscellaneous applications are taken up for hearing together and decided accordingly.

3. The assessee had challenged the orders of the Ld.CIT(A) dated 03/02/2011 before this Tribunal in which the Ld.CIT(A) had confirmed the orders of the AO. The assessee had raised several legal grounds in the appeals and subsequently, filed additional grounds on 24/01/2012. The assessee also filed applications to admit the additional grounds. The assessee had in addition to the grounds raised in form 36, had raised the following additional grounds.

“1. The assessment order passed under section 153A is illegal and bad in law as it deals with disallowances, not based on any incriminating material found during the course of search.

2. The assessment order passed under section 153A is illegal and bad in law as it has been passed in breach of section 153D.

3. For the above and any other reasons which may be adduced at the time of hearing, it is prayed that the Order of the Assessing officer be directed to set aside.

4. The Appellant craves leave to add, to alter or amend all or any of the aforesaid grounds of appeal.”

4. The Tribunal while deciding the appeal, had disposed the appeals with the following finding.

“11. It is also worthy to note that this plea was never raised before the CIT(A). However, being a legal plea, it can always be raised before the Tribunal at any time of the appellate proceedings, provided no fresh facts are to be looked into. Further we find force in the contention of the learned DR in his written submissions that without seeing the copy of approval under section 153D, it is not justifiable to comment whether the same was mechanical or after due application of mind. Therefore, in the interest of justice, we remit this matter back to the file of CIT(A) with a direction that the Ld CIT(A) will call for the assessment record and observe as to the wordings of the approval (bearing number 51(2)/Addl/CIT/CR/09-10/20 dated 31.12.2009) used by authority, whether it was a consolidated approval for all years or separate etc. If this document is there, then the CIT(A) would decide the issue in accordance with law as declared by Hon’ble Orrisa High Court, Delhi High Court and Allahabad High Court. In case there is no such letter 51(2)/Addl/CIT/CR/09-10/20

dated 31.12.2009 then also the CIT(A) will also ponder on the issue as per the law. Since we have set aside the matter for reconsideration on the legal issue raised in additional ground application as ground number-2, we are not deciding the other issues raised in additional ground application as well as grounds relating to the merits of the case.”

5. As seen from the said finding, the Tribunal had considered the written submissions filed by the Ld.DR in which he has stated that without seeing the copy of the approval u/s. 153D, it is not possible to comment whether the same was mechanical or after due application of mind. Therefore, the Tribunal had remitted the issue to the file of the Ld.CIT(A) with a direction to verify the assessment records and if the approval has been found, then decide the issue in accordance with law as declared by the Hon'ble Orissa High Court, Hon'ble Delhi High Court and Hon'ble Allahabad High Court. This Tribunal further observed that in case there is no such letter, the Ld.CIT(A) will also ponder on the issue as per the law.

6. The assessee had challenged the said findings by filing these miscellaneous petitions on the ground that when the department was not able to produce the copy of the approval u/s. 153D of the Act, then direction given by the Tribunal to the Ld.CIT(A) to call for the assessment records and thereafter consider the wording used by the authority in the approval is not correct. The Ld.AR also submitted that when the department was not able to produce the copy of the approval u/s. 153D of the Act, the normal presumption would go against the revenue. Instead of doing that, the Tribunal had miserably failed in giving such directions to the Ld.CIT(A) which is not in accordance with law. The Ld.AR submitted that what kind of ponder will the Ld.CIT(A) do when there is no such letter available in the assessment records. Therefore, the Ld.AR submitted that the entire assessments are bad in law since the approval granted u/s. 153D of the Act was not made available before this Tribunal and therefore the allegation that the approval is a mechanical one is liable to be sustained. The Ld AR also submitted that the Tribunal had not considered the Additional grounds and the rebuttals filed on 29/07/2024 while passing the order. The Ld.AR also

submitted that this Tribunal had not adjudicated the issue of mechanical approval granted by the Ld.Addl.CIT even though the same was raised in the additional ground and also submitted before this Tribunal and therefore the order of this Tribunal is liable to be modified by rectifying the said defect. The Ld.AR also submitted that the Tribunal had made some observations which are contrary to the record and therefore requested for correcting the same in the order. Similar defects on facts were also pointed out by the Ld.AR and prayed to rectify the said defects also. The Ld.AR also relied on the several documents in support of these miscellaneous petitions and submitted that the orders of this Tribunal dated 14/08/2024 is to be recalled for the non consideration of the additional grounds and the rebuttal filed on 29/07/2024.

7. The Ld.DR submitted that this Tribunal had only remitted this issue to the file of the Ld.CIT(A) for verifying the records and thereafter pass orders and therefore no prejudice would be caused to the applicants.

8. We have heard the arguments of both sides and perused the materials available on record.

9. We have perused the entire records including the form 35 and the additional grounds and the other documents filed in support of the appeals filed by the assessee. We have also perused the judgments relied on by the Ld.AR as well as the Ld.DR. The main grievance of the assessee is that the approval granted u/s. 153D is bad in law since the same is a consolidated one and therefore it is a mechanical approval and therefore the assessment should not be sustained. The another ground raised by the assessee is that the assessment order passed u/s. 153A is an illegal one and bad in law since there was no recovery of any incriminating materials found during the course of search. In the present case, the Ld.DR also not produced the approval granted by the authority to disprove the contentions raised by the assessee. In fact in paragraph number 10, this Tribunal had observed that the Bench is handicapped as there is no copy of approval before them.

From the said finding, it is clear that while deciding the appeals, the approval u/s. 153D was not placed before this Tribunal. When the main allegation raised by the assessee was not disproved by the revenue, the Tribunal could have decided the issue based on the materials instead of remitting this issue to the file of the Ld.CIT(A). Therefore, we find some force in the arguments made by the Ld.AR and therefore we are of the view that the order of the Tribunal in ITA Nos. 372 to 374/Bang/2011 dated 14/08/2024 is to be recalled and the appeal should be heard and decided on merits based on the documents available before it. Further, this Tribunal had recorded that this issue is covered by the judgments of the various Hon'ble High Courts and further when the Ld.DR was not able to produce the copy of the approval, this Tribunal should have decided the issue based on the materials available before it. Despite recording that this issue is covered by the decisions of the Hon'ble High Courts, not deciding the issue based on the said decisions is also an error apparent on the face of the record. Therefore even on this score, the order needs to be recalled.

10. In the result, we recall the order passed by this Tribunal in ITA Nos. 372 to 374/Bang/2011 dated 14/08/2024.

11. In the result, all the three miscellaneous petitions filed by the assessee are allowed.

Order pronounced in the open court on 11th February, 2026.

Sd/-
(PRASHANT MAHARISHI)
Vice – President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 11th February, 2026.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore