



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI G. D. PADAMAHSHALI, ACCOUNTANT MEMBER  
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

IT(SS)A Nos.679 & 680/LKW/2019  
Assessment Years: 2015-16 & 2017-18

M/s Quality Structures Pvt. Ltd. 27, M. G. Marg, Cantt. Kanpur	v.	The DCIT Central Circle II Kanpur
PAN:AADCJ0409L		
(Appellant)		(Respondent)

Appellant by:	Shri Swaran Singh, C.A.		
Respondent by:	Shri Neil Jain, CIT(DR)		
Date of hearing:	08	07	2024
Date of pronouncement:	30	09	2024

**ORDER**

**PER SUBHASH MALGURIA, J.M.:**

These two appeals have been filed by the assessee against the respective orders of the ld. CIT(A)-IV, Kanpur dated 22.10.2019 for the assessment years 2015-16 and 2017-18. The grounds raised by the assessee in both the appeals are common, except the difference in amount. For the sake of reference, the grounds raised by the assessee in ITA No.679/LKW/2019 are reproduced hereunder:

- 1. That the Ld. AO has erred in law and on facts in completing the assessment under Section 153A of the Income Tax Act, 1961 in gross violation of Section 153C of the Income Tax Act, 1961, therefore the impugned assessment order is illegal, void-ab-initio and liable to be quashed.*
- 2. That the Ld. Commissioner of Income Tax(Appeals) has erred in law and on facts in sustaining the addition of*

*Rs.1,12,00,000/- made by the Ld. A.O., solely on the basis of document(s) seized during the course of search conducted in the case of third person, without recording satisfaction as contemplated u/s 153C of the Income Tax Act, 1961 and without issuing notice u/s 153C of the Income Tax Act, 1961, hence the addition of Rs.1,12,00,000/- made u/s 153A of the Income Tax Act, 1961 on account of alleged receipt of cash from M/s Bharat Engg. Works u/s 69A of the Income Tax Act, 1961, is illegal, bad in law and liable to be quashed/deleted.*

- 3. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the addition of Rs.1,12,00,000/-made by the Ld. AO u/s 69A of the Income Tax Act, 1961, without appreciating that no incriminating material, document(s)/evidence was found from the premises of the appellant (searched person) during the course of search, therefore, firstly, the impugned assessment made u/s 153A of the Income Tax Act, 1961 and secondly the addition of Rs.1,12,00,000/- are illegal, void-ab-initio, bad in law and liable to be quashed/deleted.*
- 4. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the addition of Rs.1,12,00,000/-, made by the Ld. AD u/s 69A of the Income Tax Act, 1961 1961, on account of alleged receipt of cash from M/s Bharat Engg. Works, in the Assessment Year 2015-16, hence the same is liable to be deleted.*
- 5. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in rejecting the ground of appeal no. 8 raised by the appellant, before him, challenging the validity of assumption of jurisdiction by the Ld. A.O. and validity of impugned assessment order pursuant to an illegal order passed u/s 127 of the Income Tax Act, 1961, dated 20.12.2016.*
- 6. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the impugned assessment order and without appreciating the fact that*

*the approval granted by the Ld. Addl. CIT, Central, Kanpur u/s 153D of the Income Tax Act, 1961 is mechanical in nature, therefore the same is illegal and non-est and consequential assessment made on the basis thereof is also illegal and deserves to be annulled.*

- 7. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the arbitrary addition amounting to Rs.1,12,00,000/- made by the Ld. AO, being alleged unaccounted cash received from M/s Bharat Engineering Works, by invoking provisions of Section 69A of the Income Tax Act, 1961, therefore the said addition is liable to be deleted.*
- 8. That Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in not considering the submissions made by the appellant and arbitrarily concluding that the appellant could not submit anything to substantiate that the contents of the seized documents are recorded in the regular books of accounts.*
- 9. That Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining the arbitrary additions made by the Ld. A.O. in the income of the appellant which are contrary to the principles of natural justice and equity, unsustainable and deserve to be deleted.*
- 10. That any other relief or reliefs as may be deemed fit on the facts on record, be granted.*

2. For the sake of convenience, first we will deal with the issue involved in ITA No.679/LKW/2019.

3. Arguing ground No.6 first, the ld. counsel for the assessee submitted that the brief facts of the case are that the assessee is a Private Limited company engaged in the business of manufacturing of Steel Tublar. A search and seizure operation was carried out by the Department under section 132 of the Income Tax Act, 1961 in Premier/Sigma group of cases on

23.8.2016 and the assesseees were required to file income tax returns under section 153A of the Act. In response to the notices, the assesseees, vide letter dated 26.4.2018 enclosed the copy of return for the year under consideration filed on 30.10.2015, declaring a total loss of Rs.3,694/- and stated that the return filed on 30.10.2015 be treated as the return filed in compliance to the notice issued under section 153A of the Act.

4. The assessment in this case was completed under sections 153A of the Act by the Dy. CIT, Central Circle-2, Kanpur vide order dated 30.12.2018 and addition Rs.1,12,00,000/- was made under section 69A of the Act. It was submitted before us that as per the provisions of law, in search cases, the Assessing Officer, before passing assessment order framed under sections 153A, 153C and 143(3) is required to take the approval from the Jt. CIT under section 153D of the Act if the Assessing Officer is below the rank of Jt. CIT and in this respect our attention was invited to the provisions of section 153D of the Act. It was submitted that the Jt. CIT, that is, the approving authority, before granting approval, is required to see all search material including incriminating material, seized documents, appraisal report, enquiries made by the Investigation Wing, the various enquiries made by the Assessing Officer during the assessment proceedings and the replies submitted by the assessee, and, after due application of mind and after ascertaining that the Assessing Officer has appreciated the search material and other evidences in the proper perspective, has to give approval to the draft assessment order and it is only thereafter, the Assessing Officer can pass the assessment order.

5. The ld. Counsel for the assessee has submitted that in this case, the Assessing Officer is below the rank of Jt. CIT and,

therefore, approval under section 153D was a prerequisite before passing the final assessment order. It was submitted that the Assessing Officer passed the draft assessment order on 30.12.2018 and on the same day, approval under section 153D was granted and final assessment order was also passed by the Assessing Officer on the same day. In this respect, our attention was invited to copy of approval letter dated 30.12.2018 placed at pages 14 to 16 of the assessee's Paper Book. The Id. Counsel for the assessee has submitted that as per this approval letter, the Addl. CIT granted approval under section 153D in the case of 67 assesseees, which included the present assessee, listed at Sr. Nos. 60 to 62, 65 and 66. It is humanly impossible to go through 67 draft assessment orders on a single day. Besides 19,995 pages of Panchanama, out of which 1943 pages were of the assessee and 2000 pages of replies filed by various assesseees, in the case of Sigma Group, there were seized documents belonging to other Groups also, the approval of which has also been given through the same approval letter. It is humanly not possible to examine colossal numbers of loose papers in one single day. Whenever a superior authority grants approval to an order of a subordinate authority, the superior authority must apply his mind to all the material on record, and the basis of the order made by the subordinate authority, and the superior authority must ensure that the subordinate authority has followed due process of law and has not taken arbitrary decisions. The obligation of the approving authority is of two fold, i.e., on the one hand, he has to apply his mind to ensure the interest of the Revenue being watched against any omission or negligence by the Assessing Officer in taxing the right income in the hands of the right person, and in right Assessment Year and, on the other hand, the

superior authority is also responsible and duty-bound to do justice with the tax payer by granting protection against arbitrariness or creation of baseless tax liability on the assessee.

6. The Id. Counsel for the assessee has further invited our attention to the CBDT manual of Office Procedure Volume-II (Technical), which specify that "...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...".

7. It was argued that in the case of search, qua assessment orders, whether framed under section 153A or section 153C of the Act, the Joint Commissioner, i.e., the approving authority, is required to see that whether the additions which have been made in the hands of assessee are based properly on incriminating material found during the course of search, observations/comments in the appraisal report and further enquiries made by the Assessing Officer during the course of

assessment proceedings. The Joint Commissioner is also required to verify whether the required procedure has been followed by the Assessing Officer or not, at the time of framing the assessment.

8. The ld. counsel for the assessee, inviting our attention to the order dated 3.8.2021 of the Lucknow Bench of the ITAT in the case of Shri Navin Jain vs. Dy. CIT in IT(SS)A No.s 639 to 641/LKW/2018, submitted that separate approval letter in respect of “each” assessment year for “each” assessee was not granted, which is necessary. It was submitted that the Addl. CIT, in the cases at hand granted approval for all the assessees for all the assessment years through a single approval letter, which is against the intent of law and therefore also, the approval given by the Addl. CIT is non-est and the consequential assessment made on the basis of such approval is illegal and deserves to be annulled.

9. The ld. CIT, D.R., on the other hand, has argued that proper approval, as required under the provisions of section 153D of the I.T. Act, has been obtained by the Assessing Officers. It was submitted that the approval was taken well within the time before limitation and the higher authority has fully applied his mind while granting the approval. It was submitted that though the Jt. CIT has not written in so many words about his satisfaction for granting approval, the fact remains that he has granted approval to the draft assessment order and only after that, the Assessing Officer has passed the final assessment order and therefore, ground No. 6 of the appeals be dismissed and appeals be heard on merits.

10. We have heard the rival parties and have gone through the material on record. We find that in this case, in view of a

search carried out on the Sigma Group, the assessments of various assesseees were reopened and various assesseees were required to file income tax returns as required under the provisions of section 153A of the Act. The search was started on 23.8.2016 and it continued upto 25.8.2016, and therefore, the assessment year 2017-18 became the search year and the years preceding the search year became the subject matter of reopening under section 153A of the Act. Since the controversy involved herein is with regard to the approval under section 153D of the Act, it would be appropriate to first visit the provisions of section 153D of the Act, which, for the sake of completeness are reproduced below:

*Prior approval necessary for assessment in cases of search or requisition.*

*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.*

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

11. The above provisions of section 153D of the Act were inserted by the Finance Act, 2007 with effect from 1.6.2007. In our meek understanding of the said provisions, we are of the considered opinion that the Legislature wanted that the assessment/re-assessment of the search cases should be made



and the order should be passed with the prior approval of the superior authority.

12. In the group of cases of Shri Navin Jain and others in I.T.(SS)A. Nos.639 to 641/Lkw/2019, etc., vide order dated 3.8.2021, for Assessment Years 2015-16 to 2017-18, on which reliance has been placed by the ld. counsel for the assessee, a similar issue has been considered by the Lucknow Bench of the Tribunal, wherein also, the approval under section 153D of the Act was given through the same letter dated 30.12.2018 by the ACIT, Central, Kanpur and the Ground raised in this regard by the assessee was allowed, and the assessment orders were annulled by us. While allowing the Ground raised by the assessee, the Tribunal had also considered various cases laws, including that of the Hon'ble Supreme Court. For the sake of ready reference, the findings of the Tribunal in that case are reproduced as under:

*"9. We have heard the rival parties and have gone through the material placed on record. We find that in these cases, in view of a search carried out on the Sigma Group, the assessments of various assesseees were reopened and various assesseees were required to file income tax returns as required under the provisions of section 153A of the Act. The search was conducted on 23/08/2016 which continued upto 25/08/2016 and therefore, assessment year 2017-18 became the search year and the years preceding the search year became the subject matter of reopening u/s 153A of the Act. The issue raised by Learned counsel for the assessee is that the approval granted by the Addl. CIT is bad in law as it is humanly impossible to go through documents exceeding 17,800 in a single day and then grant approval on the same day. Since the controversy involved here is with respect to approval u/s 153D of the Act, it would be appropriate to first visit the provisions of section 153D of the Act, which for the sake of completeness are reproduced below:*

*"SECTION 153D.*

*Prior approval necessary for assessment in cases of search or requisition [No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [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.] [Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or Commissioner] under sub-section (12) of section 144BA.]"*

*9.1 The above provisions of section 153D of the Act were inserted by Finance Act, 2007 with effect from 01/06/2007. In our humble understanding of the said provisions, we are of the opinion that the Legislature wanted the assessment/reassessment of the search cases should be made and order should be passed with the prior approval of superior authority. The word approval has not been defined in the Income Tax Act but the general meaning of word approval can be understood from Black Law of Dictionary which defines approval as:*

*"The Act of confirming, rectifying, sanctioning or consenting to some act or thing done by another. To approve means to be satisfied with, to confirm, rectify, sanction or 'consent to some act or thing done by another, to consent officially, to rectify, to confirm, to pronounce good, thing or Judgment of, admitting propriety or excels or to pleas with."*

*9.2 The Hon'ble Supreme Court of South Carolina in State vs. Duckett 133 SC 85 [SC 1925], 130 SE 340 decided on 05.11.1925 held that approval implies knowledge and, the exercise or discretion after knowledge.*

*9.3 Further Hon'ble Supreme Court in the case of Vijayadevi Naval Kishore Bharatia vs. Land Acquisition Officer [2003] 5 SCC 83 has held as under:*

*"Whenever there is an administrative approval given by higher authority, higher authority applies its mind to see whether the proposed Award is acceptable to the Government or not ? Such Authority may satisfy itself as to the material relied upon by the Adjudicator, but, the*

*Approving Authority cannot reverse the finding, as he is an Appellate Authority for the purpose of remanding the matter to the Adjudicating Authority as can be done by the Appellate Authority. Further, the Approving Authority also cannot exercise its power of prior approval to give directions to the Adjudicating Authority in what beneficial to accept/ appreciate the material on record in regard to the compensation payable. Otherwise, it would tantamount to blurring the distinction between Approving Authority and Appellate Authority".*

9.4 Further Hon'ble Gauhati High Court in the case of Dharampal Satyapal Ltd., vs., Union of India [2019] 366 ELT 253 (Gau.) Manu/GH/07070/2018 in para-28 has held as under :

*"When an Authority is required to give his approval, it is also to be understood that such Authority makes an application of mind as to whether the matter that is required to be approved satisfies all the requirements of Law or procedure to which it may be subjected. In other words, grant of approval and application of mind as to whether such approval is to be granted must co- exist and, therefore, where an Authority grants an approval it is also to be construed that there was due application of mind that the subject matter approved and satisfies all the legal and procedural requirements."*

*Therefore, from the definition of approval as per above authorities, its meaning with respect to approval u/s 153D means that the superior authority should apply his mind on the material on the basis of which the Assessing Officer is making or passing assessment order and after due application of mind to material in the hands of the Department and after going through the explanation by the assessee and documentary evidence and other relevant material, the superior authority has to grant approval u/s 153D for passing assessment/reassessment order in search cases. The approval u/s 153D of the Act cannot be treated mere formality only and the purpose of inserting this provision is two fold i.e. one before approving the senior authority will ensure that the assessee should be protected against the undue and irrelevant addition and disallowances and the approving authority will also ensure that proper enquiry or investigations are carried out by the Assessing Officer on the relevant materials including material in the hands of the Department. Secondly, the Assessing Officer*

also keeps in mind the interest of Revenue. Therefore, the said provision provides application of mind by the approving authority of the Department.

Therefore, the provision of section 153D of the Act cannot be treated as mere formality and mandate therein is required to be followed by the approving authority in a judicious manner by due application of mind in a manner of a quasi judicial authority. We are cautious about the fact that reasons for granting approval may not be a subject matter of challenge or not required to be mentioned in the order of approval but the manner and material on the basis of which approval has been granted can be challenged by the assessee. The scope and issue agitated by the assessee by way of legal ground in the present cases is not that of granting of approval but the main grievance of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized material. We are inclined to hold 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 u/s 153D of the Act and mandate of enactment by the Legislature will be defeated. It is a trite law that for granting approval u/s 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 rationale of word "Each" as specifically referred to in Section 153D and Section 153A deserves to be given effective/proper meaning so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. The meaning of 'approval', as contemplated u/s 153D of the Act, is that the Jt. CIT is required to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind and to ascertain as to whether the entire facts have been properly appreciated by the Assessing Officer. The Jt. CIT is also required to verify whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. Thus, the approval cannot be a mere discretion or formality but quasi judicial function based on reasoning. In our view, when the Legislature has enacted the provision to be exercised by the higher authority to pass assessment order in the search cases then it is the duty of the Jt. CIT to exercise such power by applying his judicious mind. The obligation of the approval of the approving

authority is of two fold i.e. on one hand, he has to apply his mind to ensure the interest of the Revenue against any omission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year and on the other hand, superior authority is also responsible and duty bound to do justice with the tax payer by granting protection against arbitrary or creating baseless tax liability on the assessee. The provisions contained from section 153A to section 153D contain features by which the assessee is to be given separate notice for assessment for each year as specified u/s 153A of the Act. Secondly, the assessee has to file separate ITR for each year as specified in section 153A of the Act. Thirdly, separate assessment orders are to be passed for each year as specified in section 153A of the Act. There is an important concept mentioned in section 153A of the Act, abated and non abated which is peculiar to the scheme of section 153A of the Act. Keeping in view the above basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that very important phrase as deployed in text of Section 153D, is "Each" assessment year. The word "Each" has been used extensively and this word needs to be given due weightage and adequate meaning and as such for each year separate approval is to be given under section 153D of the I.T. Act which is lacking in the present cases. There are many other provisions where statutory approval is required from higher authorities. Few of them are noted like in Section 151 and Section 274 etc., respectively dealing with the approvals on reopening cases and penalty cases. When Section 153D is juxtaposed with Section 151 and Section 274, most important differences which is peculiar to Section 153D is the word "Each". Word each is not used in Section 151 and Section 274 and the word "Each" is specially and consciously referred to in Section 153D so that assessee-wise and year-wise application of mind on the part of the approving authority is there which is in accordance with the overall scheme of Section 153A to Section 153D of the I.T. Act. Hon'ble Allahabad High Court in the case of Shri Mohd. Ayub vs. ITO [2012] 346 ITR 30 (Alld) dealt with non issue of separate notice under section 148 of the I.T. Act and held it to be invalid because each assessment year was to be taken as an independent unit of assessment and therefore, if the above settled position is tested with the provisions of Section 153D, it would emerge that when in a case where

requirement of separate notice under section 148 of the I.T. Act was given absolute primacy therefore, in the context of Section 153D of the I.T. Act (where each word is expressly used and which is a year centric special scheme of assessment with concept of abated/non-abated assessments) there is absolute necessity of separate approval for each year and for each assessee. In the present cases Jt. CIT has given approval u/s 153D of the Act for all the years altogether involved in search and the approving authority in a mechanical manner and as an idle formality has granted approval. In one line the approving authority has given blank go ahead to pass order under section 153A without even taking minimum possible pains to take appropriate note of year-wise income as computed. The legislative intent behind Section 153D can be discerned/gathered from the CBDT Circular No.3/2008 dated 12.03.2008 in which it is highlighted that approval of the approving authority is mandatory. For the sake of completeness, the contents of Circular No. 3/2008 are reproduced below:

"50. Assessment of search cases Orders of assessment and reassessment to be approved by the Joint Commissioner.

50.1 The existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A does not provide for any approval for such assessment.

50.2 A new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

50.3 Applicability-These amendments will take effect from the 1st day of June, 2007."

9.5 It is evident from the CBDT Circular that the legislature in its highest wisdom made it compulsory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority could apply his mind on the materials and other circumstances on the basis of which the officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority have to approve the assessment order. The object of entrusting the duty of approval of assessment in search cases is that the Jt. CIT, with his experience and understanding could scrutinize the seized documents and any other material forming the foundation of assessment. It is an elementary law that whenever any statutory obligation is casted upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. The approval granted under section 153D of the Act should necessary reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self defending. In the above background of law and in the light of order dated 30.12.2018 passed under section 153D of the Act, which gives legality to the impugned assessment orders, question which arises for our consideration is whether the approval granted by the Additional CIT, Central, Kanpur vide his order dated 30.12.2018 can be held to be granted after due application of mind and can be held to be valid in the eyes of law. Learned counsel for the assessee, during the proceedings before us had filed a chart showing number of documents seized during search belonging to the group totaling 15,800 pages. Besides the above documents, replies filed by assesseees belonging to the group consisted of about 200 pages and in fact there were documents belonging to other group also, the approval of which has also been granted along with assesseees on the same day through the same approval letter. Therefore, keeping in view huge number of documents involved, it is humanely impossible for a person to apply his mind on all cases individually and that too in a single day. For the sake of completeness, the said approval dated 30/12/2018 has been made part of this order and is reproduced below:

The contents of the approval speaks for itself loud and clear. The following inferences are inevitable from the bare reading of the said order. The draft assessment orders were placed

before the Additional CIT, Central, Range- Kanpur on 30/12/2018 for the first time and on the same day approval was granted. As clearly mentioned in the approval under challenge, prior to this date the case was never discussed with the authority granting the approval. The Additional CIT without any consideration on merits in respect of the issues on which addition was made, granted the approval and such approval is an eyewash and idle formality and such a mechanically granted approval is no approval in the eyes of law. The entire gamete of law, as contemplated u/s 153D of the Act, has been considered by Delhi Bench of the Tribunal in a bunch of 52 appeals in I.T.A. No.1813/Del/2019 in the case of Sanjay Duggal and Others wherein the Hon'ble Bench vide order dated 19/01/2021 has quashed the assessment orders by holding that the approval granted u/s 153D of the Act was in a mechanical manner and thus cannot be held to be an approval as required u/s 153D of the Act. The relevant findings of the Tribunal are contained in para 11 onwards, which for the sake of completeness are reproduced below:

"11. We have considered the rival submissions and perused the written submissions filed by the parties and considered the material on record. It is an admitted fact that search and seizure action were carried-out in the cases of the assesseees on 29.12.2015. Section 153A have been inserted into the Income Tax Act w.e.f. 01.06.2003. Prior to that there were provisions contained under section 158BC being the special procedure for assessment of search cases. Thus, the provisions of Section 153A to 153D are applicable in the case of assesseees. According to Section 153A of the I.T. Act, there should be a search initiated under section 132 of the I.T. Act and panchanama drawn, the A.O. shall have to issue notice to the assessee requiring him to furnish the return of income within the specified time in respect of each assessment year falling within six assessment years. The A.O. shall assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Provided that the A.O. shall assess or re-assess the total income in respect of each assessment year falling within such six assessment years. It is further provided that assessment or re-assessment, if any, relevant to any assessment year falling within the period of six assessment years referred to in this Section pending on the date of initiation of the search under section 132 or making



of requisition under section 132A as the case may be, shall abated. Thus, when provisions of Section 153A are applicable in a case of assessee, A.O. shall have to give separate notice of each assessment year and assessee shall have to be directed to file return of income for each year and separate orders shall have to be passed for each assessment year. In Section 153A of the I.T. Act, the A.O. shall have to see whether there are abated or non-abated assessments which was not provided in earlier provisions for block assessments. The Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla [2016] 380 ITR 573 (Del.) considered the issue of abated and non-abated assessments and with regard to completed assessments held that the same can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search which was not produced or not already disclosed or made known in the course of original assessment. It is also held in the same Judgment that in so far as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall have to be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on record by the A.O. Therefore, these were the mandatory provisions contained in Section 153A which shall have to be satisfied by the A.O. before proceeding to frame assessment in the cases of persons searched under section 132 of the I.T. Act, 1961. Further safeguard have been provided for framing the assessments under section 153A that prior approval shall be necessary for assessments in the cases of the search or requisitioned, under section 153D of the IT. Act. Section 153D of the I.T. Act is reproduced as under :

"153D - No Order of assessment or re-assessment 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 (ii) of Section 153B except with the prior approval of the Joint Commissioner.

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

11.1. It is an admitted fact that in all the above appeals assessments under section 153A have been framed by ACIT, Central Circle, New Delhi, therefore, prior approval of the JCIT in respect of each assessment year referred to under section 153A or 153B shall have to be obtained. Thus, no order of assessment or re-assessment shall be passed by the A.O. in the present cases in respect of each assessment years under section 153A/153B of the I.T. Act, 1961, except with the prior approval of the Joint Commissioner. Learned Counsel for the Assessee has argued that the approval under section 153D have been granted by the JCIT without going through the seized material, appraisal report and other material on record. Thus, the approval is granted in a most mechanical manner and without application of mind. Therefore, same is invalid, bad in Law and void ab initio and as such all assessments under section 153A got vitiated and as such A.O. was not having jurisdiction to pass the assessment orders under section 153A of the I.T. Act, 1961.

11.2. The meaning of the word "Approval" as defined in Black Law Dictionary is -

*"The Act of confirming, rectifying, sanctioning or consenting to some act or thing done by another. To approve means to be satisfied with, to confirm, rectify, sanction or 'consent to some act or thing done by another, to consent officially, to rectify, to confirm, to pronounce good, thing or Judgment of, admitting propriety or excels or to pleas with."*

11.3. The Hon'ble Supreme Court of South Carolina in *State vs., Duckett* 133 SC 85 [SC 1925], 130 SE 340 decided on 05.11.1925 held that "Approval implies knowledge and, the exercise or discretion after knowledge."

11.4. The Hon'ble Supreme Court in the case of Vijayadevi Naval Kishore Bharatia vs., Land Acquisition Officer [2003] 5 SCC 83 wherein it has been held that :

*"Whenever there is an administrative approval given by higher authority, higher authority applies its mind to see whether the proposed Award is acceptable to the Government or not ? Such Authority may satisfy itself as to the material relied upon by the Adjudicator, but, the Approving Authority cannot reverse the finding, as he is an Appellate Authority for the purpose of remanding the matter to the Adjudicating Authority as can be done by the*

*Appellate Authority. Further, the Approving Authority also cannot exercise its power of prior approval to give directions to the Adjudicating Authority in what beneficial to accept/ appreciate the material on record in regard to the compensation payable. Otherwise, it would tantamount to blurring the distinction between Approving Authority and Appellate Authority".*

11.5. *The Hon'ble Gauhati High Court in the case of Dharampal Satyapal Ltd., vs., Union of India [2019] 366 ELT 253 (Gau.) Manu/GH/07070/2018 in para-28 has held as under :*

*"When an Authority is required to give his approval, it is also to be understood that such Authority makes an application of mind as to whether the matter that is required to be approved satisfies all the requirements of Law or procedure to which it may be subjected. In other words, grant of approval and application of mind as to whether such approval is to be granted must co- exist and, therefore, where an Authority grants an approval it is also to be construed that there was due application of mind that the subject matter approved and satisfies all the legal and procedural requirements."*

11.6. *Therefore, in the cases of search, assessment orders whether framed under section 153A or 153C, the Joint Commissioner [Approving Authority] is required to see that whether the additions have been made in the hands of assessee are based properly on incriminating material found during the course of search, observations/comments in the appraisal report, the seized documents and further enquiries made by the A.O. during the course of assessment proceedings. Therefore, necessarily at the time of grant of approval of the assessment made by the A.O, the Joint Commissioner is required to verify the above issues, apply his mind that whether they have been properly appreciated by the A.O. while framing the assessment orders or not. The JCIT is also required to verify whether the required procedure have been followed by the A.O. or not at the time of framing of the assessments. Thus, the approval cannot be a mere discretion or formality, but, is mandatory being Quasi Judicial function and it should be based on reasoning. In our view, when the legislature has enacted some provision to be exercised by the higher Revenue Authority enabling the A.O. to pass assessment order or reassessment order in search cases, then, it is the duty of the JCIT to exercise such powers*

*by applying his judicious mind. We are of the view that the obligation of the approval of the Approving Authority is of two folds ; on one hand, he has to apply his mind to secure in build for the Department against any omission or negligence by the A.O. in taxing right income in the hands of right person and in right assessment year and on the other hand, JCIT is also responsible and duty bound to do justice with the tax payer [Assessee] by granting protection against arbitrary or unjust or unsustainable exercise and decision by the A.O. creating baseless tax liability on the assessee and thus, the JCIT has to discharge his duty as per Law. Thus, granting approval under section 153D of the I.T. Act is not a mere formality, but, it is a supervisory act which requires proper application of administrative and judicial skill by the JCIT on the application of mind and this exercise should be discernable from the Orders of the approval under section 153D of the I.T. Act."*

*9.7 Further we find that I.T.A.T. Cuttack Bench in the case of Geetarani Panda vs. ACIT in I.T.A. No.01/CTK/2019 vide order dated 05/07/2018 has held as under:*

*"24. In our considered view, the provisions contained in Section 153D as enacted by the Parliament cannot be treated as an empty formality. The provision has certain purpose. It is apparent that the purpose behind the enactment of the above provision in the Statute by the Parliament are two folds. Firstly, the approval of the Senior Authority will ensure that the assessee is not prejudiced by the undue or irrelevant addition or assessment. Secondly, the approval by Senior Authority will also ensure that proper enquiry or investigation are carried out by the Assessing Authority. Thus, the above provision provides for mental application of a Senior Officer of the Department, which in turn, provides safeguard to both i.e. Revenue as well as the assessee. Therefore, this important provision laid down by the legislature cannot be treated as a mere empty formality. The same view was expressed by the Pune Benches of the Tribunal in the case of Akil Gulamali Somji vs ITO, in IT Appeal Nos.455 to 458 (Pune) of 2010 order dated 30.3.2012, wherein, it was held that when the approval was granted without proper application of mind, the order of assessment will be bad in law. The Hon'ble Bombay High Court in the case of CIT-II Vs Shri Akil Gulamali Somji, in Income Tax Appeal (L) No.1416 of 2012 order dated*

15.1.2013 concurred with the view of the Tribunal that not following of the provisions of section 153D of the Act will render the related order of assessment void."

9.8 Further we find that I.T.A.T. Mumbai Bench in the case of Shreelekha Dammani vs. DCIT in I.T.A. No.4061/Mum/2012 vide order dated 19/08/2015 has decided the issue in favour of the assessee by holding as under:

"12. Coming to the facts of the case in hand in the light of the analytical discussion hereinabove and as mentioned elsewhere, the Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left, inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of any application of mind, is mechanical and without considering the materials on record. In our considered opinion, the power vested in the Joint Commissioner/Addl Commissioner to grant or not to grant approval is coupled with a duty. The Addl Commissioner/Joint Commissioner is required to apply his mind to the proposals put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. Commissioner before granting the approval. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w. Sec. 153 A of the Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed.

13. The ld. Departmental Representative has strongly relied upon the decision of the Tribunal Mumbai Bench in the case of Rafique Abdul Hamid Kokani Vs DCIT 113 Taxman 37, Hon'ble High Court of Karnataka in the case of Rishabchand Bhansali Vs DCIT 136 Taxman 579 and Hon'ble High Court of Madras in the case of Sakthivel Bankers Vs Asstt. Commissioner 124 Taxman 227.

13.1. We have carefully perused the decisions placed on record by the Ld. DR. We find that all the decisions relied upon by the Ld. DR are misplaced inasmuch as all these decisions relate to the issue whether the Joint CIT/CIT has to

*give an opportunity of being heard to the assessee before granting the approval. This is not the issue before us as the Ld. Counsel has never argued that the assessee was not given any opportunity of being heard. These decisions therefore would not do any good to the Revenue.*

*14. Since we have annulled the assessment order, we do not find it necessary to decide the issues raised on merits of the case."*

*9.9 In this case, the Addl. Commissioner has showed his inability to analyze the issues of draft order clearly stating that no much time was left as the draft order was placed before him on 31/12/2010 and approval was granted on the same day. In the case before us the Addl. CIT has though not expressly expressed his inability to analyze the issues of draft order but it is abundantly clear that he had not analyzed the issues in the draft order as in the present cases the approval has been given in 67 cases on the same date which is humanly impossible. If an ACIT cannot express his opinion on a single case in one day how another ACIT can express his opinion in 67 cases in a single day.*

*9.10 The Hon'ble Bombay High Court has dismissed the appeal of the Department filed against the above order of the Mumbai Tribunal in the case of Shreelekha Damani vide judgment dated 27/11/2018. The findings of Hon'ble Bombay High Court are reproduced below:*

*"7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st 3 of 4 Uday S. Jagtap 668-16-ITXA-15=.doc December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough*

*time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises."*

*9.11 Similar are the findings of I.T.A.T. Jodhpur Bench in the case of Indra Bansal & Ors. vs. ACIT in I.T.A. Nos. 321 to 324 in which the Tribunal held as under:*

*"6. We have heard the rival contentions and have perused the material on record. The main contention of learned Authorised Representative is that reasonable time was not available with the Joint Commissioner for the grant of necessary approval as envisaged under section 153D of the Act. We have perused the forwarding letter dt. 30-3-2013 seeking approval of the draft assessment order. The date of receipt of this letter in the office of Joint Commissioner is indisputably on 31-3-2013 which is apparent from the date stamped on it by the office of the Joint Commissioner. Thus, this leaves no doubt that the letter requesting grant of approval and the granting of approval, both, are within one day of each other. This lends credence to the contention of the learned Authorized Representative that the draft assessment order was approved without much deliberation by the Joint Commissioner. Further, the time of the fax granting approval is 6.56 a.m. on 31-3-2013 which is prior to the office hours and, thus, it brings out a reasonable doubt that the approval was granted even before the letter requesting the approval was received in the office of the Joint Commissioner. Further, the response received by the assessee in response to his application under Right to Information Act, 2005 also establishes the correctness of the claim of the assessee that the assessment records were not before the Joint Commissioner when the approval was granted as the records were with the Range Office in Jodhpur whereas the approval was sent by fax on the morning of 31-3-2013 from Udaipur. Thus, it is our considered opinion that the Joint Commissioner had granted approval in a mechanical manner without examining the case records because the approval has been granted at 6.56 a.m. on 31-3-2013 from Udaipur wherein it has already been mentioned that the assessment records were being returned whereas the draft assessment order along with the*

assessment records were handed over to the office of the Joint Commissioner on 31-3-2013 and as such it was physically impossible that all the case records along with the draft assessment order were received by the Joint Commissioner at Udaipur.

Tribunal, Mumbai Bench in the case of *Smt. Shreelekha Damani v. Dy. CIT (2015) 125 DTR (Mumbai)(Trib) 263 : (2015) 173 TTJ (Mumbai) 332* has held that the legislative intent behind the insertion of section 153D of the Act was that the assessments in search and seizure cases should be made with the prior approval of superior authority which means that the superior authorities should apply their mind to the material on the basis of which the assessing officer is making the assessment. In this case, the Addl. CIT had expressed his inability to analyze the issues of the draft order on merits clearly stating that not much time was left and granted the approval under section 153D of the Act on the same day and Tribunal, Mumbai Bench held that the approval granted by Addl. CIT was mechanical and had been passed without considering the material on record and was, therefore, devoid of any application of mind. The impugned assessment order was annulled.

Similarly, Tribunal, Allahabad Bench in *Verma Roadways v. Asstt. CIT (2001) 70 TTJ (All) 728; (2000) 75ITD 183 (All)* held that while granting approval, Commissioner is required to examine the material before approving the assessment order. In this case, Tribunal, Allahabad Bench was examining the issue of approval under section 158BG of the Act and it opined that the object for entrusting the job of approval to a superior and a very reasonable (sic-responsible) officer of the rank of Commissioner is that he with his ability, experience and maturity of understanding can scrutinize the documents, can appreciate its factual and legal aspects and can properly supervise the entire progress of assessment. Tribunal, Allahabad Bench held that the concerned authority while granting the approval is expected to examine the entire material before approving the assessment order and further that whenever any statutory obligation is cast on any authority, such authority is legally required to discharge the obligation not mechanically, nor formally but by application of mind.

Similarly, the Hon'ble Apex Court in the case of *Sahara India (Firm) v. CIT & Anr. (2008) 216 CTR (SC) 303 : (2008) 7 DTR*



(SC) 27: (2008) 300 ITR 403 (SC), while discussing the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act, opined that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of said provision being an inbuilt protection against arbitrary or unjust exercise of power by the assessing officer, casts a very heavy duty on the said high-ranking authority to see it that the approval envisaged in the section is not turned into an empty ritual. The Hon'ble Apex Court held 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.

Coming to the facts of the case, it is apparent from the documents on record that the approval was given by the Joint Commissioner in hasty manner without even going through the records as the records were in Jodhpur while the Joint Commissioner was camping at Udaipur. The entire exercise of seeking and granting of approval in all the 2 cases was completed in one single day itself i.e., 31-3-2013. Thus, it is apparent that the Joint Commissioner did not have adequate time to apply his mind to the material on the basis of which the assessing officer had made the draft assessment orders. Tribunal, Mumbai Bench and Tribunal, Allahabad Bench in their orders, as discussed in the preceding paragraphs, have laid down that the power to grant approval is not to be exercised casually and in routine manner and further the concerned authority, while granting approval, is expected to examine the entire material before approving the assessment order. It has also been laid down that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. In all the cases before us, the Department could not demonstrate, by cogent evidence, that the Joint Commissioner had adequate time with him so as to grant approval after duly examining the material prior to approving the assessment order. The circumstances indicate that this exercise was carried out by the Joint Commissioner in a mechanical manner without proper application of mind. Accordingly, respectfully following the ratio of the Co-ordinate Benches of Mumbai and Allahabad as afore-mentioned and also applying the ratio of the judgment of the Hon'ble Apex Court in the case of Sahara India (Firm) v. CIT (supra), we hold that the Joint

*Commissioner has failed to grant approval in terms of section 153D of the Act i.e., after application of mind but has rather carried out exercise in utmost haste and in a mechanical manner and, therefore, the approval so granted by him is not an approval which can be sustained. Accordingly, assessments in three COs and nineteen appeals of the assessee(s), on identical facts, are liable to be annulled as suffering from the incurable defect of the approval not being proper. Accordingly, we annul the assessment orders in CO Nos. 8 to 10/Jodh/2016 and ITA Nos. 325 to 331/Jodh/2016. Thus, all the three COs and the nineteen appeals of the assessee, as aforesaid, are allowed."*

*10. Similarly we find that Hon'ble Supreme Court in the case of 'Sahara India vs. CIT & Others' [2008] 216 CTR 303 (S.C.) : [2008] 7 DTR (SC) 27:*

*[2008] 300 ITR 403 (SC) while discussing the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act, opined that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of said provision being an inbuilt protection against arbitrary or unjust exercise of power by the assessing officer, casts a very heavy duty on the said high-ranking authority to see it that the approval envisaged in the section is not turned into an empty ritual. The Hon'ble Apex Court held 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.*

*11. In view of these facts and circumstances and in view of judicial precedents relied on by Learned A. R. Ground No.5 in appeals is allowed and the assessments orders are annulled. Rest of the grounds were not argued by Learned A. R. therefore, rest of the grounds are dismissed as not pressed."*

13. In view of these facts and circumstances and respectfully following the order of the Tribunal in the case of Shri Navin Jain and others (supra), the grievance of the assessee by way of Ground no.6 is allowed and the assessment order is annulled.

14. The facts in IT(SS)A No.680/LKW/2019, filed by the assesseees for Assessment Year 2017-18, is, as stated in para No. 3 & 4 above, exactly similar to those attending IT(SS)A No.679/LKW/2019 (supra). Therefore, our above observations and findings with regard to IT(SS)A No.679/LKW/2019 shall apply equally to IT(SS)A Nos.680/LKW/2019. Accordingly, the grievance of the assesseees by way of Ground no.4 in IT(SS)A Nos.680/LKW/2019 is allowed and the assessment order is annulled. In the specific facts and circumstances of the present case before us and in view of the foregoing discussions, the appeals of the assessee are allowed.

15. In the result, the appeals of the assessee stand allowed.

Order pronounced in the open Court on 30/09/2024.

SD/-  
[G. D. PADAMAHSHALI]  
ACCOUNTANT MEMBER

SD/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

DATED:30/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar