

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 1420/DEL/2023 A.Y. 2007-08
ITA No. 1421/DEL/2023 A.Y. 2008-09**

MDLR Airline (P) Ltd., Flat no. 4, R.R. Apartments, 3-4, Mangalpuri, Mehrauli, New Delhi-110030. PAN- AAECM5231C	<u>Vs</u>	DCIT, Central Circle-14, New Delhi.
APPELLANT		RESPONDENT

AND

**ITA No. 1718/DEL/2023 A.Y. 2007-08
ITA No. 1719/DEL/2023 A.Y. 2008-09**

DCIT, Central Circle-14, New Delhi.	<u>Vs</u>	MDLR Airline (P) Ltd., Flat no. 4, R.R. Apartments, 3-4, Mangalpuri, Mehrauli, New Delhi-110030. PAN- AAECM5231C
APPELLANT		RESPONDENT

Assessee represented by	Shri Gautam Jain, Adv.;; Shri Lalit Mohan, CA; & Shri Parth Singhal, Adv.
Department represented by	Shri Subhra Jyoti Chakraborty, CIT(DR)
Date of hearing	18.04.2024
Date of pronouncement	29.04.2024

ORDER

PER BENCH.:

Captioned cross-appeals arise out of two separate orders of learned Commissioner of Income-tax (Appeals)-28, New Delhi, pertaining to assessment years 2007-08 and 2008-09.

ITA nos. 1420/Del/2023 & 1421/Del/2023 (Assessee's appeals for assessment years 2007-08 & 2008-09):

2. In the aforesaid appeals, qua ground no. 1 in ITA no. 1420/Del/2023 and ground no. 19 in ITA no. 1421/Del/2023, the assessee has challenged the validity of the impugned assessment orders on the ground of invalid approval granted u/s 153D of the Income-tax Act, 1961. Since the issue raised in these grounds is a purely legal and jurisdictional issue, going to the root of the matter, we proceed to adjudicate it at the very outset. For deciding this issue, few relevant facts need to be discussed.

2.1 The assessee is a resident corporate entity, stated to be engaged in the business of carriage of goods and passengers by air. As stated by the Assessing Officer, the objects of the assessee, in brief, are to carry on the business of chartered services, ground handling of international aircraft; to maintain, repair aircrafts etc.

2.1 Be that as it may, pursuant to a search and seizure operation, carried out u/s 132 of the Act on the assessee, proceedings u/s 153A of the Act were initiated against the assessee. In course of the assessment proceedings, assessee's case was referred for Special Audit in terms of Section 142(2A) of the Act. As observed by the Assessing Officer, assessee did not comply with the queries raised by the Assessing Officer as well as the Special Auditor. Thus, ultimately, assessment orders were passed u/s 153A read with Section 143(3) read with section 144 of the Act on 4.8.2010. Against the assessment orders so passed, assessee preferred revision application u/s 264 of the Act. While disposing of the revision applications, learned Commissioner of Income Tax set aside the assessment orders with direction to the Assessing Officer to complete them de novo after providing due and reasonable opportunity of being heard to the assessee. In pursuance to the directions of learned Commissioner u/s 264 of the Act, assessment proceedings for the impugned assessment years were taken up again by the Assessing Officer. However, he ultimately completed the assessments vide orders dated 21.3.2013, more or less, repeating the additions made in the original assessment orders. Against the assessment orders so passed, assessee preferred appeals before learned First Appellate Authority, inter alia, on the ground that the assessment orders are invalid due to lack of proper approval u/s 153D of the Act. Learned First Appellate

Authority, however, did not find any infirmity in the approval granted u/s 153D of the Act.

3. Before us, learned counsel appearing for the assessee, drew our attention to communication dated 21.3.2013 issued by the Additional Commissioner of Income-tax, Central Range-2, New Delhi to the Deputy Commissioner of Income-tax, Central Circle-15, New Delhi, granting approval u/s 153D of the Act in respect of draft assessment order relating to six different assesseees involving different assessment years and submitted that the approval granted u/s 153D of the Act revealed mechanical approach of the Approving Authority and complete non-application of mind. He submitted, the approval granted clearly reveals that the Approving Authority has not examined either the seized materials or the assessment records before approving the draft assessment orders in terms of Section 153D of the Act. Thus, he submitted, due to lack of proper approval u/s 153D of the Act, the assessment orders are also invalid, hence require to be quashed. He submitted, while considering the validity of the assessment orders passed under similar facts and circumstances in case of other group entities arising out of very same approval, the Tribunal has held that the approval granted being not in accordance with law, is invalid. Consequently, the assessment orders passed in pursuance to such approval are also invalid. In this context he drew our attention

to decision of the coordinate Bench in case of MDLR Hotels Pvt. Ltd. & ors. Vs. Assistant Commissioner of Income Tax & ors., (2023) 67 CCH 0100.

3.1 Proceeding further, he submitted, the aforesaid view expressed by the Tribunal has been affirmed by the Hon'ble Delhi High Court in case of PCIT vs. Anuj Bansal 2023 SCC OnLine Del 4159; and in case of PCIT vs. Anuj Bansal ITA 8/2024, order dated 28.03.2024. He also relied on the following decisions:

- PCIT v. Subodh Agarwal [2023] 149 taxmann.com 373 (Allahabad);
- ACIT v. Serajuddin & Co. [2023] 150 taxmann.com 146 (Orissa).

4. Per contra, learned Departmental Representative strongly relied upon the observations of learned First Appellate Authority.

5. We have considered rival submissions in the light of judicial precedents relied upon and perused the materials on record. As discussed earlier, the preliminary issue arising for consideration is whether the approval granted u/s 153D of the Act is in terms with the provisions contained therein and musters judicial scrutiny.

5.1 A reading of Section 153D of the Act makes it clear that no order of assessment or reassessment in a search related case can be passed except with the prior approval of the Competent Authority. While interpreting the meaning of 'approval' in the context of Section 153D of the Act, it has been laid down by

different courts and the Tribunal that though the word 'approval' has not been defined under the provisions of the Act, however, as per the dictionary meaning of the word and judicial interpretation, grant of approval means due application of mind on the subject matter of approval which satisfies all the legal and procedural requirements. In case of ACIT v. Serajuddin & Co. (supra), Hon'ble Orissa High Court, while interpreting the meaning of approval u/s 153D of the Act has observed that approval of a superior officer cannot be a mechanical exercise. His approval must indicate the thought process involved while granting approval. The approval must indicate that the Approving Authority has examined the draft assessment order and finds that it meets the requirements of law. The Approving Authority cannot act merely as a rubber stamp while granting approval.

5.2 Pertinently, the aforesaid decision of the Hon'ble Orissa High Court has attained finality due to dismissal of the SLP filed by the Revenue by the Hon'ble Supreme Court.

5.3 In case of PCIT v. Anuj Bansal (supra), the Hon'ble Jurisdictional High Court has approved the view of the Tribunal in holding that where the approval is granted without examining the assessment records and seized material, that too a single approval in case of various assessees and multiple assessment years, it does not meet the requirement of Section 153D of the Act. It is worth mentioning, the approval dated 21.03.2013, which is the subject matter under consideration in the

present appeals was also under challenge before the coordinate Bench in case of MDLR Hotels Pvt. Ltd. & ors. Vs. Assistant Commissioner of Income Tax & ors. (supra). While dealing with the validity of the very same approval, the Coordinate Bench has held the approval to be invalid qua the assessment orders. The following observations of the Coordinate Bench in this context are of paramount importance:

“13. We have given thoughtful consideration to the orders of the authorities below and have carefully perused all the relevant documentary evidences brought on record. We have also gone through each and every approval granted by the Additional Commissioner of Income tax, Central Range 2, New Delhi vis-a-vis, each and every proposal made by the DCIT, Central Circle-15, New Delhi.

14. The issue which we have to decide is, can these approvals be treated as fulfilling the mandate of provisions of section 153D of the Act vis-à-vis legislative intent of the said section in the statute. Section 153D of the Act reads as under:

"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 section 1534 or the assessment year referred to in clause (b) of sub-section (1) of section 1538, 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."

15. The Legislative intent can be gathered from the CBDT Circular No. 3 of 2008 dated 12.3.2008 which reads as under:

"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 6 ITA. No.4061/Mum/2012 section 132 or requisition is made under section 132A. does not provide for any approval for such assessment.

50.2 A new section 1530 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) section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

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

16. The Legislative intent is clear from the above, in as much as, prior to the insertion of Sec. 153D of the Act, there was no provision for taking approval in cases of assessment and reassessment in cases where search has been conducted. Thus, the legislature wanted the assessments/ reassessments of search and seizure cases should be made with the prior approval of superior authorities which also means that the superior authorities should apply their minds on the material 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 authorities have to approve the assessment order.

17. The question before us is "has this been done in the present case". The language of the approval

18. In light of the afore-stated relevant provisions and legislative intent, approval dated 08.03.2013 is in respect of 62 assessment orders as exhibited at pages 136 and 137 of the Index to Convenience Compilation furnished by the Id. counsel for the assessee. Approval dated 15.03.2013 is in respect of

37 assessment orders as exhibited at pages 138 and 139. Approval dated 18.03.2013 is in respect of 54 assessment orders as exhibited at pages 140 and 141. Approval dated 21.03.2013 is in respect of 24 assessment orders as exhibited at pages 142 and 143 and approval dated 25.02.2013 is in respect of 69 assessment orders as per exhibits in the Convenient Compilation.

19. Thus, the worthy Additional Commissioner of Income tax, Central Range 2, New Delhi gave approval to 246 assessment order by a single approval letter U / s 153D of the Act by mentioning as under:

"The above draft orders, as proposed, are hereby accorded approval with the direction to ensure that the orders are passed well before limitation period. Further, copies of final orders so passed be sent to this office for record."

20. In our considered opinion, there is no whisper of any seized material sent by the Assessing Officer with his proposal requesting the approval u/s 153D of the Act. All the requests for approval are exhibited at pages 123 to 135 of the Convenience Compilation.

21. Even the approval granted by the Additional Commissioner of Income tax, Central Range - 2, New Delhi does not refer to any seized material/assessment records or any other documents which could suggest that the Additional Commissioner of Income tax, Central Range 2, New Delhi has duly applied his mind before granting approvals.

22. At this stage, it is paramount to note that all the orders framed by the Assessing Officer are pursuant to orders of the CIT u/s 264 of the Act. Therefore, the Additional Commissioner of Income tax, Central Range - 2, New Delhi should have been more cautious since his superior authority has set aside the assessment with specific directions.

23. Now, let us consider some analogous provisions in the Act.

24. Sec. 142(2A) of the Act reads as under:

"If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of

the accounts, doubts 7 ITA. No. 4061/Mum/2012 about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require."

25. *In this section also the AO may direct the assessee to get the accounts audited by an Accountant with the previous approval of the Principal Chief Commissioner or Chief Commissioner. This provision has been elaborately considered by the Hon'ble Supreme Court in the case of Sahara India Vs CIT 169 Taxman 328 wherein at para-6, the Hon'ble Supreme Court observed as under:*

"A bare perusal of the provisions of sub-section (2A) of the Act would show that the opinion of the Assessing Officer that it is necessary to get the accounts of assessee audited by an Accountant has to be formed only by having regard to: (i) the nature and complexity of the accounts of the assessee; and (ii) the interests of the revenue. The word "and" signifies conjunction and not disjunction. In other words, the twin conditions of "nature and complexity of the accounts" and "the interests of the revenue" are the prerequisites for exercise of power under section 142(2A) of the Act. Undoubtedly, the object behind enacting the said provision is to assist the Assessing Officer in framing a correct and proper assessment based on the accounts maintained by the assessee and when he finds the accounts of the assessee to be complex, in order to protect the interests of the revenue, recourse to the said provision can be had. The word "complexity" used in section 142(2A) is not defined or explained in the Act. As observed in Swadeshi Cotton Mills Co. Ltd. v. CIT [1988] 171 ITR 634 1 (All.), it is a nebulous word. Its dictionary meaning is: "The state or quality of being intricate or complex or that is difficult to understand. However, all that is difficult to understand should not

be regarded as complex. What is complex to one may be simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it, may not be really so if one tries to understand it carefully." Thus, before dubbing the accounts to be complex or difficult to understand, there has to be a genuine and honest attempt on the part of the Assessing Officer to understand accounts maintained by the assessee; appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. But opinion required to be formed by the Assessing Officer for exercise of power under the said provision must be based on objective criteria and not on the basis of subjective satisfaction. 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 emphasise 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."

26. *Thus, even the Hon'ble Supreme Court has clearly laid down that the approval must reflect the application of mind to the facts of the case.*

27. *Similarly, the Hon'ble High Court of Calcutta in the case of Peerless General Finance & Investment Co. Ltd. Vs DCIT 236 ITR 671 has made the following observations which are pertinent to the facts of the case in hand before us:*

"The factual matrix of the matter clearly shows that a proposal was made on March 10, 1998, and no prior approval therefore was granted by the Chief Commissioner of Income tax but merely one G. P. Agarwal was nominated.

An argument has been advanced to the effect that by making such a nomination, approval will be deemed to have 9 ITA. No.4061/Mum/2012 been granted. The answer to the said contention must be rendered in the negative. The Chief Commissioner of Income tax before granting such approval must have before him the materials on the basis whereof an opinion had been formed. A prior approval can be granted only when the materials for appointment of the extraordinary procedure is required to be taken by the Assessing Officer. The Assessing Officer, therefore, was required to place all materials before the Commissioner of Income-tax or the Chief Commissioner of Income-tax, as the case may be, to show that he intends to take recourse to the said provision having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue. No such materials had been placed before the Chief Commissioner of Income-tax. It further appears that even no previous approval was sought for but merely a proposal was placed for perusal of the Chief Commissioner of Income-tax and for appointment of a special auditor. The Chief Commissioner of Income-tax, therefore, did not apply his mind at all as regards the prerequisite for grant of previous approval and mechanically appointed Sri G. P. Agarwal, as a special auditor. The said order depicts a total non-application of mind on the part of the Assessing Officer as also the Chief Commissioner of Income-tax."

28. Another section relevant to the facts in issue is Sec. 158BG which read as under:

"The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner or Deputy Commissioner or an Assistant Director or Deputy Director, as the case may be: Provided that no such order shall be passed without the previous approval of-- (a) the Commissioner or the Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; (b) the Joint Commissioner or the Joint Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets 10 ITA. No.4061/Mum/2012 requisitioned under section 132A, on or after the

1st day of January, 1997." 11.8. In this section also it is provided that the order cannot be passed without the previous approval. This section was thoroughly scrutinized by the Tribunal Madras Bench in the case of Kirtilal Kalidas & Co. Vs DCIT 67ITD 573, at para-41 of its order the observations of the Tribunal are as under: "In these cases, the Commissioner has passed an order granting approval under section 158BG of the Act through a single order passed on 31-3-1997 without giving any reason whatsoever. As we have recorded elsewhere above, the draft assessment orders of the block period in all these cases were made on 31-3-1997 and on the very same day, i.e., on 31-3-1997 the Commissioner grants approval and that too without giving or recording any reasons whatsoever. The approval order does not disclose the points which were considered by the Commissioner and the reasons for accepting them. In our view, this is totally an unsatisfactory method of granting approval in exercise of judicial power vested in the Commissioner. 11.9. This decision of the Tribunal was considered by Allahabad Bench of the Tribunal in the case of Verma Roadways Vs ACIT 75 ITD 183 wherein also the assessee-appellant has challenged the validity of approval to the assessment order accorded by the CIT Kanpur. The Tribunal at Para-47 has held as under: "Coming to the aspect of the application of mind, while granting approval, we are of the view that requirement of approval pre-supposes a proper and thorough scrutiny and application of mind. In the case of Kirtilal Kalidas & Co. (supra), the I.T.A.T Madras Bench 'A' has observed that the function to be performed by the Commissioner in granting previous approval requires an enquiry and judicial approach on the entire facts, materials and evidence. It has been further observed that in law where any act or function requires application of mind and Judicial discretion or approach by any authority, it partakes and assumes the character and status of a judicial or at least quasi-judicial act, particularly because their Act, function, is likely to affect the rights of affected persons."

29. Similarly, u/s. 151 of the Act it is provided that no notice shall be issued u/s. 148 unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied that it is a fit case for the issue of such notice. The sanction under this section was considered by the Tribunal, Mumbai Bench in the case of Shri Amarial Bajaj in ITA No. 611/M/2004 wherein at para-8, the Tribunal has

considered the decision of the Hon'ble High Court of Delhi Bench in the case of *United Electrical Co.* 258 ITR 317 which read as under:

"The proviso to sub-section (1) of section 151 of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-built safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment"

The Hon'ble High Court further observed that:

"what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. 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 Additional Commissioner before granting the approval."

30. *The Hon'ble Allahabad High Court in the case of Siddharth Gupta ITA No. 90 of 2022 vide order dated 12.12.22 had the occasion to consider an identical issue. The most relevant findings /observations of the Hon'ble High Court read as under:*

"The submission is that the substantial question of law which arises for consideration before this Court is about the justification of the act of the Tribunal in ignoring the findings recorded by the Assessing

Officer and setting-aside the assessment orders on the sole ground of defect in the approval to the draft assessment orders granted by the competent Approving Authority. Learned counsel for the Assessee, however, defended the order of the tribunal for the reasoning given therein.

Considering the submissions of the learned counsels for the parties and having perused the order of the Tribunal, in view of the undisputed facts before us about the manner in which the approval to the draft assessment orders was granted under Section 153D for the assessment proceedings, by two letters dated 30.12.2017 and 31.12.2017, in 123 cases placed before the approving authority in two days, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeals.

To answer the same, we are required to go through the relevant provisions of the Income Tax Act. Section 132 provides the procedure for search and seizure operations in consequence of the information in possession of the Income Tax Authorities. Section 153A prescribes assessment in case of search or requisition. Section 153A provides that in the case of a person where a search is initiated under Section 132, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, 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), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may apply accordingly as if such return were a return required to be furnished under Section 139.

Section 153D relevant for our purposes is to be noted herein under:

"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.

The Tribunal while quashing the assessment orders had relied upon its earlier decision in Navin Jain and Others (Supra) wherein a detailed discussion has been made with regard to the requirement of prior approval of superior authority on the draft assessment order under Section 153D, before passing the assessment order by the Assessing Officer. It was noted that the word 'approval' though has not been defined in the Income Tax Act but the general meaning of the word 'approval' in Black's Law Dictionary, 6th Edition was to be seen. The decision of the Apex Court in Vijayadevi Naval Kishore Bharatia vs. Land Acquisition Officer (2003) 5 SCC 83 wherein the distinction between Approving Authority and Appellate Authority was drawn, had been noted. The decision of the High Court of Gauhati in Dharampal Satyapal Ltd. vs. Union of India (2019) 366 ELT 253 (Gau.) has been noted to record that grant of approval means due application of mind on the subject matter approved which satisfies all the legal and procedural requirements. There is an exhaustive discussion on the requirement of prior approval under Section 153D of the Act and it was noted that the requirement of approval cannot be treated as mere formality and the mandate of the Act that the Approving Authority has to act in a judicious manner by due application of mind in a manner of a quasi judicial authority, has been considered.

It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the

Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power

It was noted that the obligations of the approval of the Approving Authority serves two purposes:

(i) On the 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.

(ii) 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 Tribunal has further noted that the provisions contained in Sections 153A to Section 153D provide for separate notice to be given to assessee for assessment for each year as specified in Section 153A of the Act; the assessee has to file separate ITR for each year as specified in Section 153A of the Act; separate assessment orders are to be passed for each year as specified in Section 153A of the Act.

It was observed that this is an important concept mentioned in Section 153A of the Act, which is peculiar to the scheme of the said Section. Keeping in view of this basic fundamental features of Section 153A, if Section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of Section 153D, which is

"each assessment year". The reading of the provisions in Section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under Section 153D of the Income Tax Act. In its erudite judgement with the discussion on the legislative intent of Section 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of Sahara India vs. CIT and Others (2008) 300 ITR 403 (SC) where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of Section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built 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 that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein 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 above discussion made in the judgement of Tribunal dated 3.08.2021 in the case of Navin Jain Vs. Dy. C.I.T. (Supra) has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under Section 153D of the Act would vitiate the entire proceedings in the instant case. For the reasoning given in the case of Navin Jain (Supra), as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of Section 153D of the Income Tax Act.

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).

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 orders under Section 153A.

In the instant case, the draft assessment orders in 123 cases, i.e. for 123 assessment years placed before the Approving Authority on 30.12.2017 and 31.12.2017 were approved on 31.12.2017, 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

123 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.

As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeals being in the nature of second appeal. No substantial question of law arises for consideration before us.

The Appeals are dismissed being devoid of merit."

31. In the present batch of appeals also, the Additional CIT has given approval in batches of 69, 62, 37, 54 and 24 assessment orders. As observed by the Hon'ble Allahabad High Court [supra) it is humanly impossible to go through the records of more than 50 cases in one day to apply independent mind to appraise the material before the Assessing Officer. Therefore, we have no hesitation to hold that the approval was mechanical."

5.4 Keeping in perspective the legal position enunciated in the judicial precedents discussed above, if we examine the facts of the present appeal, it is to be noted that the Assessing Officer, vide letters dated 21.03.2013 sent draft assessment orders in respect of six different assessees for various assessment years for approval of the Additional Commissioner in terms of section 153D of the Act. Perusal of copies of the aforesaid letters placed in the paper book reveals that the Assessing Officer has simply sent the draft assessment orders without the assessment records and seized material. Interestingly enough, on the very same day i.e. 21.03.2013 the Additional Commissioner has granted approval u/s 153D of the

Act in respect of six different assessees involving multiple assessment years. Approval granted u/s 153D, a copy of which is available at page 33 of the paper book, reads as under:

*“OFFICE OF THE
ADDL. COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-2, ROOM NO. 343, ARA CENTRE,
E-2, JHANDEWALAN, NEW DELHI*

F.NO. 153D/CC-15/MDLR/12-13/1117

Dated: 21.03.2013

*To,
The Deputy Commissioner of Income Tax,
Central Circle-15, Delhi
New Delhi*

*Sub: Approval u/s 153D of the Income tax Act in the MDLR Group of cases – reg.
This is in reference to your letter no. DCIT/CC-15/153D-MDLR/12-13/3620 dated 21.03.2013 received this office 21.03.2013, letter No. DCIT/CC-15/153D-MDLR/12-13/3623 dated 21.03.2013 received this office 21.03.2013 and letter no. DCIT/CC-15/153D-MDLR/12-13/3624 dated 21.03.2013 received this office 21.03.2013, whereby you have submitted draft assessment order giving effect to order u/s 264 seeking approval u/s 153D of the IT Act, 1961 in the following cases:-*

<i>Sl. No.</i>	<i>Name of the assessee company</i>	<i>PAN</i>	<i>A.Y</i>	<i>ORDER</i>
1	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2002-03	<i>u/s 144 r.w.s. 153A consequent upon order u/s 264 passed by the CIT setting aside the original assessment</i>
2	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2003-04	-DO-
3	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2004-05	-DO-
4	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2005-06	-DO-
5	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2006-07	-DO-
6	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2007-08	-DO-
7	SHRI GOPAL KUMAR GOYAL	AEFPG4870J	2008-09	-DO-
8	M/S MDLR AIRLINES P LTD	AAECM5231C	2006-07	-DO-
9	M/S MDLR AIRLINES P	AAECM5231C	2007-08	-DO-

	<i>LTD</i>			
10	<i>M/S MDLR AIRLINES P LTD</i>	<i>AAECM5231C</i>	<i>2008-09</i>	<i>-DO-</i>
11	<i>M/S MM BUILDCON P LTD</i>	<i>AAECM0924E</i>	<i>2005-06</i>	<i>-DO-</i>
12	<i>M/S MM BUILDCON P LTD</i>	<i>AAECM0924E</i>	<i>2006-07</i>	<i>-DO-</i>
13	<i>M/S MM BUILDCON P LTD</i>	<i>AAECM0924E</i>	<i>2007-08</i>	<i>-DO-</i>
14	<i>M/S MM BUILDCON P LTD</i>	<i>AAECM0924E</i>	<i>2008-09</i>	<i>-DO-</i>
15	<i>M/S OMSHIV BUILDTECH P LTD</i>	<i>AAACO7989B</i>	<i>2007-08</i>	<i>-DO-</i>
16	<i>M/S OMSHIV BUILDTECH P LTD</i>	<i>AAACO7989B</i>	<i>2008-09</i>	<i>-DO-</i>
17	<i>M/S MDLR DEVELOPERS & PROMOTERS P LTD</i>	<i>AAECM0201E</i>	<i>2005-06</i>	<i>-DO-</i>
18	<i>M/S MDLR DEVELOPERS & PROMOTERS P LTD</i>	<i>AAECM0201E</i>	<i>2006-07</i>	<i>-DO-</i>
19	<i>M/S MDLR DEVELOPERS & PROMOTERS P LTD</i>	<i>AAECM0201E</i>	<i>2007-08</i>	<i>-DO-</i>
20	<i>M/S MDLR DEVELOPERS & PROMOTERS P LTD</i>	<i>AAECM0201E</i>	<i>2008-09</i>	<i>-DO-</i>
21	<i>M/S NAGESHWAR BUILDERS P LTD</i>	<i>AACCN0116B</i>	<i>2005-06</i>	<i>-DO-</i>
22	<i>M/S NAGESHWAR BUILDERS P LTD</i>	<i>AACCN0116B</i>	<i>2006-07</i>	<i>-DO-</i>
23	<i>M/S NAGESHWAR BUILDERS P LTD</i>	<i>AACCN0116B</i>	<i>2007-08</i>	<i>-DO-</i>
24	<i>M/S NAGESHWAR BUILDERS P LTD</i>	<i>AACCN0116B</i>	<i>2008-09</i>	<i>-DO-</i>

The above draft orders as proposed are hereby accorded approval with the direction to sure that orders are passed well before the limitation. Further, the copies of the final orders passed be sent to this office for records.

*Sd/-
(Shashi Bhushan Shukla)
Addl. Commissioner of Income Tax,
Central Range-2, New Delhi.”*

5.5 A careful reading of the approval granted u/s 153D of the Act clearly indicates that the Approving Authority has neither examined the assessment records nor the seized materials. In fact, the letter of the Assessing Officer seeking

approval also makes it clear that only draft assessment orders were sent for approval without any assessment record or seized material. It is further clear that on the very same day the letter of the Assessing Officer with draft assessment orders were received, approval u/s 153D of the Act was granted by the Approving Authority. The aforesaid facts clearly reveal that the Approving Authority, while granting approval u/s 153D of the Act has acted as a mere rubber stamp. The approval granted is completely mechanical without application of mind. Thus, in our view, the approval granted u/s 153D of the Act is not in accordance with the provisions contained u/s 153D of the Act, keeping in view the ratio laid down in various judicial precedents discussed herein above. Thus, in our view, the approval granted u/s 153D of the Act is invalid. Consequently, the assessment orders passed in pursuance to such approval are also invalid. Hence, deserves to be quashed. Accordingly, we do so. The impugned orders of learned First Appellate Authority are set aside.

6. Since we have quashed the assessment orders while deciding the legal grounds raised by the assessee, the grounds raised on merits have become purely academic, hence do not require adjudication.

7. In the result, assessee's appeals are allowed as indicated above.

ITA nos. 1718 & 1719/Del/2023 (Revenue's appeals for A.Y. 2007-08 & 2008-09):

8. In view of our decision in assessee's appeals (supra), these appeals of the Revenue have become infructuous, hence dismissed.

9. To sum up, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order pronounced in open court on 29.04.2024.

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 29.04.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI