

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

<b>S.No.</b>	<b>ITA No.</b>	<b>A.Y.</b>	<b>Name of the Assessee</b>	<b>Name of the Respondent</b>
1	1813/Del/2019	2010-11	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
2	1814/Del/2019	2011-12	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
3	1815/Del/2019	2012-13	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
4	1816/Del/2019	2013-14	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
5	1817/Del/2019	2014-15	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
6	1818/Del/2019	2015-16	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	ACIT, Central Circle-4, New Delhi.
7	1608/Del/2019	2013-14	Kritika Talwar, C/o Kapil Goel, Adv., F-26/124, Sector 7, Rohini, New Delhi. PAN No. APKPT9912M	ACIT, Central Circle-4, New Delhi.
8	1609/Del/2019	2012-13	Kritika Talwar, C/o Kapil Goel, Adv., F-26/124, Sector 7, Rohini, New Delhi. PAN No. APKPT9912M	ACIT, Central Circle-4, New Delhi.

9	1819/Del/2019	2010-11	Arun Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	ACIT, Central Circle-4, New Delhi.
10	1820/Del/2019	2011-12	Arun Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	ACIT, Central Circle-4, New Delhi.
11	1821/Del/2019	2012-13	Arun Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	ACIT, Central Circle-4, New Delhi.
12	1822/Del/2019	2013-14	Arun Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	ACIT, Central Circle-4, New Delhi.
13	1618/Del/2019	2010-11	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	} ACIT, Central Circle-4, New Delhi.
14	1619/Del/2019	2011-12	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	ACIT, Central Circle-4, New Delhi.
15	1620/Del/2019	2012-13	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	ACIT, Central Circle-4, New Delhi.
16	1621/Del/2019	2014-15	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	ACIT, Central Circle-4, New Delhi.
17	1622/Del/2019	2010-11	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.
18	1623/Del/2019	2011-12	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.
19	1624/Del/2019	2012-13	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.

20	1625/Del/2019	2014-15	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.
21	1626/Del/2019	2015-16	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.
22	1627/Del/2019	2013-14	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	ACIT, Central Circle-4, New Delhi.
23	1797/Del/2019	2010-11	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	ACIT, Central Circle-4, New Delhi.
24	1798/Del/2019	2011-12	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	ACIT, Central Circle-4, New Delhi.
25	1799/Del/2019	2012-13	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	ACIT, Central Circle-4, New Delhi.
26	1800/Del/2019	2013-14	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	ACIT, Central Circle-4, New Delhi.
27	1805/Del/2019	2010-11	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	ACIT, Central Circle-4, New Delhi.
28	1806/Del/2019	2011-12	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	ACIT, Central Circle-4, New Delhi.
29	1807/Del/2019	2012-13	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	ACIT, Central Circle-4, New Delhi.
30	1808/Del/2019	2013-14	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	ACIT, Central Circle-4, New Delhi.
31	1809/Del/2019	2010-11	Poonam Duggal, 3E-42- NIT, Faridabad, Haryana. PAN No. AESPD6713K	ACIT, Central Circle-4, New Delhi.

32	1810/Del/2019	2011-12	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	ACIT, Central Circle-4, New Delhi.
33	1811/Del/2019	2012-13	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	ACIT, Central Circle-4, New Delhi.
34	1812/Del/2019	2013-14	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	ACIT, Central Circle-4, New Delhi.
35	1801/Del/2019	2010-11	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	ACIT, Central Circle-4, New Delhi.
36	1802/Del/2019	2011-12	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	ACIT, Central Circle-4, New Delhi.
37	1803/Del/2019	2012-13	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	ACIT, Central Circle-4, New Delhi.
38	1804/Del/2019	2013-14	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	ACIT, Central Circle-4, New Delhi.
39	1991/Del/2019	2015-16	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	ACIT, Central Circle-4, New Delhi.
40	1611/Del/2019	2010-11	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
41	1612/Del/2019	2011-12	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
42	1613/Del/2019	2012-13	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.

43	1614/Del/2019	2013-14	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
44	1615/Del/2019	2014-15	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
45	1616/Del/2019	2015-16	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
46	1617/Del/2019	2016-17	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	ACIT, Central Circle-4, New Delhi.
47	1823/Del/2019	2012-13	Duggal Estate Pvt. Ltd., 3/E-42, NIT, Faridabad, Haryana. PAN No. AACCD1642A	ACIT, Central Circle-4, New Delhi.
48	1824/Del/2019	2011-12	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	ACIT, Central Circle-4, New Delhi.
49	1825/Del/2019	2011-12	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	ACIT, Central Circle-4, New Delhi.
50	1826/Del/2019	2012-13	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	ACIT, Central Circle-4, New Delhi.
51	1827/Del/2019	2015-16	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	ACIT, Central Circle-4, New Delhi.
52	1828/Del/2019	2016-17	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	ACIT, Central Circle-4, New Delhi.

Assessee by	Shri Kapil Goel, Advocate Shri Sandeep Goel, Advocate Shri R S Singhvi, C.A. (for M/s. Jagatjeet Industries) Shri Satyajeet Goel, C.A. (for M/s. Jagatjeet Industries)
Revenue by	Ms. Pramita M Biswas, CIT DR

Date of hearing :	16.12.2020
Date of Pronouncement :	19.01.2021

## **ORDER**

### **PER BENCH**

All the appeals by different Assesseees are directed against the common Order of the Ld. CIT(A)-23, New Delhi, Dated 30.12.2018, for the above assessment years.

2. We have heard the Learned Representatives of all the parties through videoconferencing and perused the material on record. All parties have also filed written submissions which are also taken into consideration.

3. This Order shall dispose of all the Group 52 Appeals pertaining to Talwar and Duggal Group of Cases in which identical issues have arisen.

4. Learned Counsel for the Assessee mainly argued in ITA.No.1813/Del./2019 in respect of Shri Sanjay Duggal as a lead case and references also made to all the remaining appeals as well.

5. Ld. CIT(A) recorded the facts of the case in detail under the Head “Background of the Case” in the impugned order which refers to the factual position in respect of all the above Assesseees. The background of the facts are as under :

5.1. A search and seizure operation was conducted on 29.12.2015 against Shri Rajnish Talwar [who was Ex-General Manager (Sales) ] of M/s. Jagatjit Industries Ltd., [M/s. JIL]. Shri Sanjay Duggal [who was Ex.DGM (Sales) of JIL], their family Members and MAPSKO Group. The basic issue of search and seizure was deposit of huge money in the bank accounts of M/s. Alfa India which is proprietary concern of Shri Arun Duggal brother of Shri Sanjay Duggal and transfer of huge amounts from bank accounts of M/s. Alfa India to various bank accounts maintained by Shri

Rajnish Talwar and his family Members and Shri Sanjay Duggal and his family Members.

5.2. These accounts were maintained in various branches of South India Bank. As per the submissions made by the Assessee before the Ld. CIT(A) in the case of Shri Sanjay Duggal for the A.Y. 2010-2011, bank accounts in the name of M/s. Alfa India proprietary concern of Shri Arun Duggal, real brother of Shri Sanjay Duggal were used as conduit just to route the unaccounted money generated through the game of “rebates and discounts”. The Assessee claimed that M/s. Alfa India was never a beneficiary, and all the funds in the accounts either transferred by Shri Sanjay Duggal’s Family or Shri Rajnish Talwar’s Family.

5.3. The Search and Seizure operation was conducted because the Income Tax Department came to know that Shri Rajnish Talwar was maintaining the Savings Bank Account No.358.53.3614 with South India Bank Ltd., Chittaranjan Park, New Delhi Branch on 01.10.2008. Similarly, Shri Sanjay Duggal was maintaining a S.B.

Account No.555.53.204 with South India Bank Ltd., Faridabad Branch. On going through the transactions in the abovementioned Bank Accounts of Shri Rajnish Talwar and Shri Sanjay Duggal, it was noticed that large value fund transfers were coming in these bank accounts from a Current Account No.358.73.2431 which was in the name of M/s. Alfa India maintained with same bank [Chittaranjan Park, New Delhi Branch]. Credits in the bank account of M/s. Alfa India were received by way of proceeds of large value cheques tendered for collection in the account and this money was found transferred (from the bank account of M/s. Alfa India) to the bank accounts of Sh. Rajnish Talwar (and his family members) and Shri Sanjay Duggal (and his family members). Sh. Rajnish Talwar and Sh. Sanjay Duggal used to withdraw the funds from their (and family members) bank accounts, in cash, generally.

5.4. Further, it was found that the above mentioned process was followed in various other connected bank accounts as well. The bank accounts showing similar pattern of transaction as discussed above are detailed as below :

S.No.	Account No.	Account Name	Branch	Name of Bank
1.	419.53.1193	Rajnish Talwar	Gurgaon	South Indian Bank
2.	303.53.6305	Rajnish Talwar, Chesta Charvi	Rohini, Delhi	South Indian Bank
3.	358.53.3615	Ratna Talwar	Chittaranjan Park	South Indian Bank
4.	419.53.1194	Ratna Talwar	Gurgaon	South Indian Bank
5.	303.53.6611	Ratna Talarr	Rohini	South Indian Bank
6.	303.53.9693	Kritika Talwar	Rohini	South Indian Bank
7.	303.53.10682	Chesta Talwar	Rohini	South Indian Bank
8.	555.53.204	Sanjay Duggal	Faridabad	South Indian Bank

9.	555.53.205	Arun Duggal	Faridabad	South Indian Bank
10.	555.53.206	Neeru Duggal	Faridabad	South Indian Bank
11.	555.53.207	Nany Duggal	Faridabad	South Indian Bank
12.	555.53.208	Poonam Duggal	Faridabad	South Indian Bank
13.	555.53.209	Neha Duggal	Faridabad	South Indian Bank

5.5. In view of the large value transactions in these accounts, the South Indian Bank branch authorities had requested the account holders to submit copies of their respective PAN Cards. But every time the customers either pretended that they have no PAN card or refused to provide the PAN details. It was found by the bank authorities that the above mentioned individuals were having PAN cards. Subsequent to the request of the bank officials for the information regarding source of the funds in the account, the proprietor of the current account, i.e., M/s. Alfa India closed the A/c No. xxxx2431 on 09.08.2012. The current account in the name of M/s Alfa India received large value

credits by way of proceeds of collection cheques. All this money was transferred to 14 different bank accounts, where most of the money was withdrawn in the form of cash. These 14 bank accounts belonging to the family members of two families, i.e. the Talwars and the Duggals.

5.6. The enquiry was conducted with regard to source of credits/cheque/deposit in the bank account of M/s Alfa India, Chittaranjan Park, Delhi. The credits, in the form of cheque deposit were found to be coming from various liquor distributors, including M/s. Sohan Lal Singla AOP and M/s Om Prakash Singla AOP. It is to be noted that they are part of MAPSKO Group of Gurgaon, Faridabad and Delhi.

5.7. The enquiry was conducted against M/s Alfa India also. Prop, of M/s Alfa India, i.e. Shri. Arun Duggal was not reflecting any business income, rather salary income of modest (in the range of Rs. 3 to 4 lakhs was being shown. Enquiry from the Excise Authority, Haryana revealed that M/s Alfa India was not authorized to sell liquor. The 26AS statement of M/s Sohan Lal Singla AOP or

M/s Om Prakash Singla AOP was not reflecting the name of M/s Alfa India as collector, as per the provisions of Section 206C of the Income Tax Act, 1961 where, liquor seller is supposed to collect 1% of the total trade value as TCS from the buyer and deposit the same into the Government Account. Considering, the payment made to M/s Alfa India by M/s Sohan Lai Singla & M/s Om Prakash Singla, as bogus purchase of liquor by them, a search was conducted against MAPSKO Group, along with search & seizure operations at the residential premises of Shri Sanjay Duggal and Sh. Rajnish Talwar {ex-employees of M/s Jagatjit Industries Limited(JIL)} as they were the beneficiaries of the fund transferred from the bank account of M/s. Alfa India.

5.8. During the course of search and seizure action under section 132(1) of the Income Tax Act, 1961 against MAPSKO Group, it was gathered that M/s Om Prakash Singla AOP and M/s Sohan Lal Singla AOP were making payment to M/s Alfa India, against outstanding purchase obligation of M/s Jagatjit Industries Limited. Subsequently,

a survey U/s 133A of the Income Tax Act, 1961 was conducted at different premises of M/s Jagatjit Industries Limited, as it was found in the initial enquiry, that the receipts of M/s Alfa India was not recognized in the books of account of JIL.

5.9. In the post search and survey enquiries period, three more bank accounts of M/s Alfa India, maintained with South Indian Bank were identified and similar pattern was observed that cheques deposit from liquor distributors and ultimately transferred to the bank accounts of members of Duggal & Talwar families, from where cash was withdrawn. The details of the three new bank accounts of M/s Alfa India, discovered during the post survey period which were maintained with South India Bank, Gurgaon, Faridabad and Rohini, New Delhi i.e., A/c. Nos.xxx0213, xxxx0004 and xxx2186 respectively. In the post search and survey period, enquiry was conducted from various parties such as M/s Jagatjit Industries Limited, Shri Sanjay

Duggal, Shri Rajnish Talwar, different liquor distributors of Haryana etc.,

5.10. The enquiry was conducted to identify/determine the accuracy of the events/processes, in relation to cheque deposits into the bank accounts of M/s. Alfa India and withdrawal of cash/utilization of cash. The purpose of the enquiry was to highlight the role of different persons/entities, in relation to events relating to M/s. Alfa India. The statement given by Sh. Rajnish Talwar and Sh. Sanjay Duggal were analyzed to determine the credibility of the statement given by them in relation to cheque deposits into the bank accounts of M/s Alfa India and utilization of cash subsequent to withdrawal through the bank accounts of family members, after layering through the account of M/s Alfa India.

5.11. The statements of Shri Sanjay Duggal and Shri Rajnish Talwar have been perused by the AO, with reference to two periods, i.e., (i) during search and (ii) post-search. The AO observed that the comparison of the statements recorded at the time of search and recorded in

the post search enquiries shows glaring inconsistency/contrast with regard to utilization of cash withdrawn from the bank accounts of family members of Sh. Sanjay Duggal and Sh. Rajnish Talwar, consequent to transfer from the account of M/s Alfa India.

5.12. The AO observed that during the course of search, the replies of Shri Sanjay Duggal were very inconsistent regarding questions posed to him in respect of M/s Alfa India. His response varied as under :

- i. "Upon being asked about the activity of M/s Alfa India, Sh. Sanjay Duggal stated that M/s Alfa India was in the business of promotional activities like brand promotion through gift distribution in liquor trade on behalf of M/s Discovery Asia AOP and its member Sh. O.P. Singla. The gifts were purchased in cash, as stated by him.*

- ii. *It is to be noted that Sh. Sanjay Duggal is no way related to Sh. O.P. Singla. During the period in question when he was associated with M/s Alfa India, he was employee of M/s Jagatjit Industries Limited. The purchase of gift in cash is also not verifiable. It is understandable that he can engage in sales promotion on behalf of M/s Jagatjit Industries Limited but certainly not on behalf of Sh. O.P. Singla AOP or M/s Alfa India.*
- iii. *Upon being asked why the payment was received in the bank account of M/s Alfa India i.e. A/c no. 358.73.2431 of South Indian Bank, Sh Sanjay Duggal responded that funds into the bank account of M/s Alfa India was received against un-accounted sales made by M/s Jagatjit Industries Limited to some of the*

*parties like M/s Sohan Lai Singla AOP and M/s. Om Prakash Singla AOP.*

*iv. The A.O. has reasoned that it was not possible because perusal of books of account of M/s. Jagatjit Industries Limited, M/s. Sohan Lal Singha AOP and M/s. Om Prakash Singla AOP shows that all sale and purchase transaction were recorded therein i.e. between M/s Sohan Lai Singla AOP & M/s Jagatjit Industries Limited and between M/s Om Prakash Singla AOP & M/s Jagatjit Industries Limited.*

*v. Sh. Sanjay Duggal stated that sales were under-reported or under-invoiced in the books of account of M/s Jagatjit Industries Limited and the payments made to M/s Alfa India was to against such (out of books) portion of these sales*

*transactions.*

- vi. The AO has also noted, from the perusal of books of account of M/s Jagatjit Industries Limited, that the sales were not under-reported or under-invoiced. The collection for the sales made by the M/s. Jagatjit Industries Limited was ensured by means of collection of cheque and giving of rebate and discount to the liquor distributors. It is also noted by the AO that receipt in the bank account of M/s Alfa India has not been recognized as collection receipt in the books of account of M/s Jagatjit Industries Limited.”*

5.13. In the impugned order, the statement Dated 29.12.2015 of Shri Sanjay Duggal before DDIT (Inv.) is reproduced seeking explanation of assessee with regard to M/s. Alfa India in the business for promotional activities and to explain modus operandi adopted for making

unaccounted sales by JIL in which it was explained that M/s. JIL used to sell liquor products to Sohan Lal Singla (AOP), Om Prakash Singla (AOP) and others on credit basis while raising the bills or while receiving the payments from these AOP's, the management of the Jagatjit Industries Ltd. used to give directions to these AOP's to bifurcate the payments on pro-rata basis i.e. some amounts of the sales made to these AOP was paid to Jagatjit industries Ltd. and some amounts to either M/s. Alfa India as per the directions of management of Jagatjit Industries Ltd. Thus, substantial money is paid to M/s. JIL by these AOPs and part amount is given by cheque to M/s. Alfa India though M/s. Alfa India have not received any goods.

5.14. During the course of search operation Shri Rajnish Talwar was asked about the rationale of cheque received in the account of M/s Alfa India and its subsequent utilization. Shri Rajnish Talwar responded that the utilization was meant for incentivizing the key managerial persons belonging to L-1 license holder groups namely Sohan Lal Singla (Gurgaon), Prem Singla & Co. (Sonipat) Jai

Krishan Liquors (Faridabad), Harish Aneja & Co. (Gurgaon), Scot Yard (Gurgaon) and other wholesale and retail salesmen in Haryana. The funds in the account of M/s Alfa India was borne by M/s Jagatjit Industries Limited in the form of rebate adjustment to these wholesalers.

5.15. During Post search, when Shri Rajnish Talwar was questioned by DDIT (Inv.) with regard to end usage of cash withdrawn by the family members of Duggal and Talwar Family, there were inconsistent response in comparison to the statement given during the time of search. Post search, he stated that all the cash withdrawn, after layering through the account of M/s Alfa India, was deposited with Mr. Vinod Kumar Banga, COO, M/s JIL and only part of it was used to procure gifts to incentivize retail salesmen and retail shop in-charge in Haryana, which was procured by the Head Office and he was not aware of all the rest of the amount was used. The statement, given by him in post search period is in contrast to the statement given by him, during the course of search at his residence on 29th and 30th of December 2015, where he said that the end use

of cash withdrawn from the account of family members of Duggal and Talwar family, was for funding the payoff to key persons of liquor trade for sales promotion of M/s Jagatjit Industries Limited. The AO has noted that, no detail of beneficiary to whom pay-off/gift were made was provided by Sh. Rajnish Talwar/ Sanjay Duggal. The A.O. has further noted that Shri Talwar's claim cannot be cross verified due to non-furnishing of details by him in this regard. As per the AO, no evidence of gift purchased for distribution to key person/ sales team of distributors of M/s Jagatjit Industries Limited, was provided by Shri Rajnish Talwar. The AO also observed that it seemed odd, that gifts were procured by Head Office of M/s Jagatjit Industries Limited, as claimed by him (Sh. Talwar). The AO has also noted that no details i.e. identity and other details were provided with respect to sales team responsible for administration of gifts in the manner, claimed by Shri Rajnish Talwar, at M/s Jagatjit Industries Limited. The AO also observed that otherwise also, gifts purchased in cash, needs to be disallowed as per Section 40A(3) of the Income Tax Act, in the hands of

respective family members from whose account, cash has been withdrawn, if the claims of Sh. Rajnish Talwar were to be believed. The A.O. observed that amount in excess of Rs.53 Crores has been withdrawn through the mechanism of M/s Alfa India. However, no record/evidence of purchase of gifts or identification details of beneficiary/ sales team responsible for gifts administration has been provided by Sh. Rajnish Talwar to support his claims of utilization of cash withdrawn after layering through the account of M/s Alfa India. In the impugned order relevant extract of statement of Shri Rajnish Talwar Dated 29.02.2016 as noted above is reproduced.

5.16. Shri Sanjay Duggal was also asked about the utilization of cash in the post search period and he has stated that he was not aware of utilization of the cash, layered through the bank account of M/s Alfa India and withdrawn by the family members of Duggal and Talwar family. On one hand, the immediate boss of Shri Sanjay Duggal at M/s Jagatjit Industries Limited i.e, Shri Rajnish Talwar has stated that cash was utilized for funding pay-

off/ gift in kind for the sales personnel/ key managerial person of the distributors of M/s JIL. On the other hand, Shri Sanjay Duggal, who was part of sales team of M/s JIL is not aware of utilization of cash. It is, therefore, noted that there is apparent contradiction in the statements of Shri Sanjay Duggal and Shri Rajnish Talwar with regard to utilization of cash withdrawn through the account of M/s. Alfa India and others.

5.17. The A.O. also noted that the basis for collection of cheques into the account of M/s Alfa India was sought from, some of the distributors of liquor/IMFL who have made payment into the bank accounts of M/s Alfa India. Certain copies of instructions were produced, in limited nos. by Singla's' of MAPSKO Group on behalf of their firms as above. The copy of instructions was sought from other liquor firms as well, but it was not responded to, by them. The A.O. in view of the above discussion and perusal of the statement concluded that :

- i) Rebate and discount has not been adequately passed on from M/s Jagatjit Industries*

*Limited. As part of organizational role and responsibility at M/s Jagatjit Industries Limited, it was the duty of Sh. Sanjay Duggal and Sh. Rajnish Talwar. Enquiries conducted from third party/ M/s Jagatjit Industries Limited has revealed that negotiation/finalization of rebate and discount and its communication was the work of sales team, more precisely Sh. Rajnish Talwar and Sh. Sanjay Duggal. However, Sh Sanjay Duggal and Sh. Rajnish Talwar have been evasive with regard to their role regarding rebate and discount finalization and communication and apparently, have not stated the truth about their involvement in rebate and discount structure and administration, followed at JIL.*

*ii) The result has been excessive credit in one set of accounts which has been used to square off the debit balance of parties, from which payments have been collected in the bank accounts of M/s Alfa India, against sales made to these parties by*

*M/s Jagatjit Industries Limited. The enquiries have revealed that collection/deposit into the bank account of M/s Alfa India was done at the instructions of Sh. Sanjay Duggal & Sh. Rajnish Talwar and was based upon, fraud instructions. Representatives on behalf of liquor concerns, who have made payment into the bank account of M/s Alfa India, have contradicted the version of Sh. Sanjay Duggal and Sh. Rajnish Talwar that instructions for payment into the bank accounts of M/s Alfa India, were received from Sh. Vinod Kumar Banga. M/s Jagatjit Industries Limited has denied any role/link with M/s Alfa India or any instruction available with the distributors, with regard to payment to be made into the bank accounts of M/s Alfa India (purportedly belonging to M/s Jagatjit Industries Limited).*

*iii) The transfer instruction, are forged documents and bear the signature of Sh. Vinod Kumar Banga, Sh. Rajnish Talwar and Sh. Sanjay*

*Duggal. They have been used to cause account adjustment by means of Journal Vouchers, in order to square off credit/debit balance in the accounts of parties in the books of M/s Jagatjit Industries Limited at the end of any financial period. The customers of M/s Jagatjit Industries Limited have denied issuing transfer instructions, mandating credit transfer from their accounts to some other accounts. Even, Sh. Rajnish Talwar has said before (statement on oath) that no such instruction was received from the parties, in relation to transfer instructions (purportedly belonging to them). Forged documents i.e. Transfer instructions, have been signed by Sh. Rajnish Talwar and Sh. Sanjay Duggal. Their argument of “loss of Job Pressure”, leading to their signing of transfer instructions, which they knew very well is not true factually, is very weak. The blank transfer instructions and detailed working prepared by Sh. Sanjay Duggal, matching with contents of blank*

*transfer instructions, have been found from the e-mail id of Sh. Sanjay Duggal. Their argument that Sh. Vinod Kumar Banga, prepared it and sent to Sh. Sanjay Duggal through pen drive for verification, lacks credibility as it is against established organizational hierarchy rules.*

*iv) There is variation with regard to utilization of cash withdrawn through the channel of M/s Alfa India, during search and post-search period, in the statements of Sh. Sanjay Duggal and Sh. Rajnish Talwar. At no point of time, during the course of search, Sh. Sanjay Duggal or Sh. Rajnish Talwar, stated that cash was deposited with Mr. Vinod Kumar Banga. Contrastingly, during post-search period they stated that cash withdrawn through the channel of M/s Alfa India was deposited with Mr. Vinod Kumar Banga. No detail of beneficiary of gift related to sales promotion was provided. No detail of persons who were part of sales administration, engaged in gift distribution,*

*was provided by Sh. Rajnish Talwar. The purchase of gift is also not verifiable, due to non-furnishing of detail/evidence by SJI. Rajnish Talwar, the claims related to utilization of cash (through the channel of M/s Alfa India are un-verified/un-verifiable.*

*v) There is also harmonization in the rebate and discount value in the books of account of dealers and books of account of M/s Jagatjit Industries Limited, with respect to rebate and discount provided by M/s Jagatjit Industries Limited, after closure of M/s Alfa India bank account in the South Indian Bank, C.R. Park Branch, New Delhi. It is to be noted that Duggal and Talwar family closed their bank accounts, because of alarm raised by bank, on account of huge fund movement involving M/s Alfa India account and non-furnishing of PAN by Duggal and Talwar family.*

vi) With regard to role of dealers/distributors of M/s Jagatjit Industries Limited, making payment into the bank account of M/s Alfa India, their role appears to be suspicious, as to why they made payment into the bank accounts of M/s Alfa India, particularly in the light of undated instructions and hand written instructions. It is also to be noted that, many of the distributors, did not even produce the instructions in relations to M/s Alfa India purportedly sent by M/s Jagatjit Industries Limited. It is unbelievable that crores of Rupees was paid into the bank accounts of M/s Alfa India by these parties, without discussing/ confirming with management of M/s Jagatjit Industries Limited, even once, on the basis of dubious instructions or the instructions which have not been made available by the dealers/distributors. However, because of peculiar practice of M/s Jagatjit Industries Limited, not providing credit notes to their customers, it is impossible to prove,

*whether the dealers connived/or not with the sales team of M/s Jagatjit Industries Limited (i.e. Sh. Sanjay Duggal and Sh. Rajnish Talwar) in utilization of cash withdrawn from the account of family members of Duggal and Talwar family after layering through the account of M/s Alfa India.*

*vii) The above facts suggest the possibility of Duggal and Talwar family, being the beneficiaries of cash, arising out of machinery of M/s Alfa India (difference on account of sales promotion expense booked in the books of M/s Jagatjit Industries Limited and the actual rebate and discount communicated to its dealers/distributors). The family members of Duggal and Talwar family have not disclosed in their ITR's, the particulars of funds received, in their bank accounts, after transfer of funds from the bank account of M/s Alfa India.*

*viii) On the other hand, excess sales promotion (rebate and discount) expense is*

*reflected in the accounts of distributors in the books of account of M/s. Jagatjit Industries Limited, in the comparison to the accounts of M/s. Jagatjit Industries Limited, in the books of account of distributors (as revealed by enquiry in respect of certain distributors). There is manifestation of collection, greater than the sale value, in respect of certain distributors (minor distributors), in their accounts in the books of account of M/s Jagatjit Industries Limited, during particular financial year/years between 2008-09 to 2012-13. This excess collection has happened on account of inadequate passing of rebate and discount by M/s Jagatjit Industries Limited to its dealer/distributors.*

*ix) In practice, a quarterly statement of lifting rebate and discount is made and it is signed by the State Sales head and Director Sales of M/s Jagatjit Industries Limited and the amount is credited into the account of respective buyers. The*

*copies of quarterly statements (as stated earlier) have been impounded during the course of survey and are inventoried as Annexure A-2 in the case of JIL. The quarterly statements are designated as “Sales Promotion Schemes” (SPS) sheets and quantity of rebate and discount for each of the customers of Jagatjit Industries Limited is calculated on the basis of quantity of stock (no. of case) lifted multiplied by discount per brand. The covering letter of the SPS sheets is signed by Sh. Rajnish Talwar (State Sales Head, Haryana) and Sh. Vinod Kumar Banga (C.O.O., Director Sales) upto financial year 2013-14. The actual sheets reflecting the computation bears the signature of accountant of Kundli Depot and Sh. Sanjay Duggal, in addition to signature of Sh. Rajnish Talwar and Sh. Vinod Kumar Banga.*

*x) It may not be out of place to mention here that, that Sh. Sanjay Duggal was DGM Sales, M/s Jagatjit Industries Limited between Year*

*2010-12 and RSM Sales between Year 2008-2010.*

*Sh. Rajnish Talwar during the period, i.e. between 2008-2014 was Sales Head, Haryana. As such both were in the complete knowledge of the rebates and day working of the JIL.*

*xi) There is inconsistency in the statement of Sh. Sanjay Duggal, during the course of search, u/s 132(4) at his residential premise, with regard to deposits in the bank account of M/s Alfa India. There was variance in the statement with regard to source - i) partner capital as source of fund in the bank account of M/s Alfa India, ii) Fund received on account of unaccounted sales made by M/s Jagatjit Industries Limited iii) Funds received on account of under-reporting/under-invoicing of sales made by M/s Jagatjit Industries Limited.*

*xii) There is also variation in the response of Sh. Sanjay Duggal, during search and post-search, with regard to utilization of cash, layered through the account of M/s Alfa India. During the*

*course of search, Sh. Sanjay Duggal stated that M/s Alfa India was into sales promotion, by purchase of gift in cash on behalf of firms like M/s Discovery Asia (the statement has been contradicted by the members/promoters of firm M/s Discovery Asia). During post-search period, Sh. Sanjay Duggal has stated that cash obtained after layering through the bank account of M/s Alfa India was delivered to Mr. Vinod Kumar Banga and its utilization was not known to him.*

*xiii). There is variation in response of Sh. Rajnish Talwar, with regard to utilization of cash obtained through the mechanism of Layering through the bank account M/s Alfa India. During the course of search, Sh. Rajnish Talwar stated that cash was utilized for pay off/disbursal of incentive to the key persons in liquor trade belonging to L-1 license holder groups like M/s Sohan Lai Singla, Gurgaon, M/s Prem Singla & Co., Sonapat, M/s Jai Krishan Liquors, Faridabad, M/s*

*Harish Aneja & Co., Gurgaon, M/s Scot Yard, Gurgaon and other wholesale and retail salesman in Haryana. During the post-search period, Sh. Rajnish Talwar stated that cash was delivered to Mr. Vinod Kumar Banga and gift was purchased at the Head office level of M/s. Jagatjit Industries Limited. A part of cash proceeds was utilized for purchase of gift and he was not aware about the fate of remaining cash delivered to Mr. Vinod Kumar Banga. At no time, during the course of search, Sh. Sanjay Duggal or Sh. Rajnish Talwar stated that the cash obtained through the mechanism of M/s Alfa India was delivered to Mr. Vinod Kumar Banga.*

*xiv) No evidence/detail of gift purchase or its distribution was provided by Sh. Rajnish Talwar, despite giving of opportunity to him.*

*xv) No detail of beneficiary of gift, used during sales promotion, was provided, despite giving of opportunity.*

*xvi) No detail of persons belonging to sales team, who have administered gift distribution (as claimed by Sh. Rajnish Talwar), was provided by Sh. Rajnish Talwar, so that facts could be verified by this office.*

*xvii) It is highly improbable that HO/Head Office of M/s Jagatjit Industries Limited was buying the gifts instead of field offices/sales team.*

*xviii) Sh. Sanjay Duggal is not aware about the utilization of cash (withdrawn through the mechanism of M/s Alfa India), a part of which has been utilized for gift administration, as claimed by Sh. Rajnish Talwar. It is to be noted that Sh. Sanjay Duggal was working just under Sh. Rajnish Talwar.*

*xix) Third parties like Sh. Sohan Lai Singla and Sh. Ramesh Khurana have cited the role of Sh. Sanjay Duggal and Sh. Rajnish Talwar, contradicting the role of Mr. Vinod Kumar Banga,*

*in relation to instructions for payment into the bank accounts of M/s Alfa India, as claimed by Sh. Sanjay Duggal and Sh. Rajnish Talwar.”*

5.18. The A.O. has recorded that the copies of the statement of Current Bank A/c.Nos.xxx0213 and xxx2431 were belonging M/s. Alfa India in which the credits were coming, along with copies of the statement of bank account of M/s. Alpine and M/s. KCC (Prop. of them is Shri Rajnish Talwar) have already been supplied to Shri Rajnish Talwar. About nature and source of these credit entries reflected in these statements of bank accounts, the A.O. has categorically recorded that Shri Rajnish Talwar did not furnish any explanation except replying that these accounts and funds belonged to JIL. During the F.Y. 2008-2009, a sum of Rs.5,34,50,336/- has come to the following saving bank accounts from the bank accounts of the firm M/s. Alfa India and utilised by Shri Talwar and his family Members thereafter :

S.No.	Account No.	Account Name	Branch
1.	419.53.1193	Rajnish Talwar	Gurgaon
2.	303.53.6305	Rajnish Talwar, Chesta, Charvi	Rohini, Delhi
3.	303.53.10682	Chesta Talwar	Rohini
4.	0303.73.2290	M/s. KCC Enterprises	Rohini
5.	0419.73.318	M/s. Alpine India	Gurgaon

5.19. The chart showing the sums credited to the Talwars'saving accounts and his minor daughter Ms. Chesta Talwar along with proprietary concerns namely M/s. Alpine India and M/s. KCC India during F.Y. 2008-2009 are detailed as under :

Name	Amount
Rajnish Talwar	3,63,06,004
KCC Enterprises	51,82,332
Alpine	44,62,000
Chesta Talwar	75,00,000
Total	5,34,50,336

5.20. During the search at the residence of Shri Rajnish Talwar, these amounts were disclosed at the time of preliminary statement. The relevant statement is reproduced in the impugned order. During the subsequent statement under section 132(4) of the I.T. Act, statements of these bank accounts were confronted to Shri Rajnish Talwar

who admitted that he had opened these bank accounts in his name and in the names of the family Members and used these accounts for distributing incentives to the key managerial persons belonging to L-1 (Liquor wholesalers), license holders in Haryana as per the informal understanding between JIL and Shri Rajnish Talwar. The funds were routed from liquor wholesalers through M/s. Alfa India to the bank accounts of his family members. Shri Rajnish Tailwar also admitted that M/s. Alfa India was a dummy concern and the whole purpose of floating the same was for routing the funds to give a genuine looking cover to the expenses of liquor wholesalers. The relevant portion of his statement is reproduced in the impugned order.

5.21. During the course of search and seizure, Shri Sanjay Duggal also stated that M/s. Alfa India was a dummy concern and was used for routing the funds received from various liquor dealers specially Shri Sohan Lal Singla [AOP], Shri Om Prakash Singla [AOP] and others as per directions of JIL. Shri Sanjay Duggal specifically admitted that M/s. Alfa India did not provide any goods or

services in lieu of receipt of these funds. The relevant portion of the statement is reproduced in the appellate order. This statement of Shri Sanjay Duggal was confronted to Shri Rajnish Talwar who agreed with the version of Shri Sanjay Duggal that management of JIL was directing some parts of payments due to JIL to M/s Alfa India, Shri Rajnish Talwar, Shri Sanjay Duggal and the family Members of these two families. Shri Rajnish Talwar also admitted that no goods or services were ever provided by him or his family members or M/s Alfa India to these AOPs who are liquor wholesalers. Shri Rajnish Talwar added that these amounts were paid to him for funding pay-offs for sales promotions as per established trade practice. Shri Rajnish Talwar also stated that in order to window-dress the whole arrangement, he and his wife have shown income from trading in cloths in the A.Ys 2013-2014 and 2014-2015. The relevant portion of the statement is reproduced in the impugned order.

5.22. Copies of the statement of Shri Rajnish Talwar, Shri Sanjay Duggal, Shri Arun Duggal and Tarun Duggal are recorded on the dates as per Annexure-A attached to the Order. It is noted that it can be seen that entries recorded in the bank statements of M/s. Alfa India were confronted. Moreover, various material seized during the course of search was also confronted. From reading of these statements, it can be made-out that as a result of search and seizure operation and post-search investigation, the incriminating material has come on record to indicate that Members of Talwar Group and Duggal Group have routed unaccounted money for arranging accommodation entries in various forms including in the form of unsecured loans / share capital / premium, long term and short term capital gains. This incriminating material would have never been presented to the Department but for the search and seizure action. The incriminating material was also confronted to the main persons of the Talwar Group and Duggal Group by the Investigation Wing as per Annexure-A which is mentioned at page-28 of the impugned order.

5.23. The statement was recorded under section 131(1A) on 26.04.2016 whereby Shri Rajnish Talwar made surrender of Rs.2,63,23,399/- on account of unaccounted income routed through coloured transactions in the form of sale/purchase of shares showing [bogus] capital gains through mode of accommodation entries as under :

Name of Script	Sh. Rajnish Talwar (Rs.)	Mrs. Ratna Talwar (Rs.)	Rajnish Talwar HUF (Rs.)	Total (Rs.)
Blue Print Securities Ltd.	42,90,355/-	42,90,356/-	42,90,356/-	1,28,71,067/-
Scan Infrastructure Ltd.,	30,02,844/-	35,08,491/-	35,08,492/-	1,00,19,827/-
Divinus Fabrics Ltd.,	--	--	34,32,505/-	34,32,505/-
Grand Total				2,63,23,399/-

5.24. The A.O. given opportunities of being heard to the Assessees and assessment orders have been passed under section 153A of the I.T. Act, 1961. The A.O. in the case of Shri Sanjay Duggal and his family members made several additions which are in the nature of –

- (i) Unexplained bank deposits and interest thereon which have been enhanced later on also by the Ld. CIT(A) in A.Y. 2010-2011
- (ii) Other Years –
  - (i) Unexplained bank deposits and interest thereon
  - (ii) Unexplained HRA
  - (iii) Disallowance under section 10(38) of the I.T. Act.
  - (iv) Addition on account of advance against sale of house.
  - (v) Addition on account of unsecured loans + interest.
  - (vi) Addition on account of long term capital gains + Commission paid on the same.

5.25. In the case of Shri Rajnish Talwar and Group in A.Y. 2010-2011 following additions are made.

- (i) Addition on account of foreign travel expenses.

(ii) Unexplained bank deposits received from M/s. Alfa India under section 68 of the I.T. Act.

(iii) Addition under section 10(31A) HRA.

(iv) Interest from Bank deposits

Enhancement :

(i) Addition under section 2(22)(e) as loan received from the connecting company in which investment made out of the amount.

(ii) Enhancement to the addition under section 68 of the I.T. Act.

(iii) Other additions/enhancements

(i) Addition under section 68 of the I.T. Act.

(ii) Addition on account of interest on bank amount.

(iii) Addition under section 2(22)(e) of the I.T. Act.

(iv) Addition on account of Commission paid on obtaining accommodation entries.

(v) Addition on account of share capital/premium.

5.26. The details of Assessee-wise income returned and assessed by the A.O. in respect of 52 Assesseees are as under :

S.No.	ITA No.	A.Y.	Name of the Assessee	Returned Income	Assessed Income as per AO
1	1813/Del/2019	2010-11	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	3,16,030/-	1,18,88,190/-
2	1814/Del/2019	2011-12	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	4,28,880/-	1,12,17,710/-
3	1815/Del/2019	2012-13	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	4,96,180/-	1,02,14,050/-
4	1816/Del/2019	2013-14	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	9,69,560/-	4,34,65,330/-
5	1817/Del/2019	2014-15	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	6,05,140/-	33,29,840/-

6	1818/Del/2019	2015-16	Sanjay Duggal, 3-E/42, NIT, Faridabad, Haryana PAN No. AESPD6712J	2,78,80,620/-	3,90,39,000/-
7	1608/Del/2019	2013-14	Kritika Talwar, C/o Kapil Goel, Adv., F-26/124, Sector 7, Rohini, New Delhi. PAN No. APKPT9912M	1,80,430/-	2,17,20,020/-
8	1609/Del/2019	2012-13	Kritika Talwar, C/o Kapil Goel, Adv., F-26/124, Sector 7, Rohini, New Delhi. PAN No. APKPT9912M	7,47,710/-	74,25,260/-
9	1819/Del/2019	2010-11	Arun Duggal, 3E-42- NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	5,14,140/-	13,62,32,600/-
10	1820/Del/2019	2011-12	Arun Duggal, 3E-42- NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	1,92,540/-	18,75,06,500/-
11	1821/Del/2019	2012-13	Arun Duggal, 3E-42- NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	7,50,220/-	17,80,85,900/-
12	1822/Del/2019	2013-14	Arun Duggal, 3E-42- NIT, Faridabad, Haryana. PAN No. AGUPD5708Q	21,79,060/-	1,20,65,540/-
13	1618/Del/2019	2010-11	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	Nil	56,10,000/-
14	1619/Del/2019	2011-12	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	Nil	96,90,000/-
15	1620/Del/2019	2012-13	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	36,87,160/-	1,28,67,160/-
16	1621/Del/2019	2014-15	Ratnashri Buildtech Pvt. Ltd., C/o Kapil Goel, Adv., F- 26/124, Sector 7, Rohini, Delhi. PAN No. AADCR8863Q	50,62,260/-	56,99,390/-

17	1622/Del/2019	2010-11	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	4,79,450/-	4,34,07,330/-
18	1623/Del/2019	2011-12	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	41,49,650/-	2,44,72,270/-
19	1624/Del/2019	2012-13	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	49,58,820/-	4,13,26,760/-
20	1625/Del/2019	2014-15	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	5,97,300/-	8,47,300/-
21	1626/Del/2019	2015-16	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	3,01,790/-	23,01,790/-
22	1627/Del/2019	2013-14	Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi PAN No. ACGPT9955M	15,07,160/-	41,71,650/-
23	1797/Del/2019	2010-11	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	47,770/-	67,49,970/-
24	1798/Del/2019	2011-12	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	49,240/-	41,38,270/-
25	1799/Del/2019	2012-13	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	7,57,263/-	68,94,760/-
26	1800/Del/2019	2013-14	Neha Duggal, 3E-42, NIT, Faridabad, Haryana PAN No. AWKPD5551F	14,79,420/-	23,21,850/-

27	1805/Del/2019	2010-11	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	6,15,920/-	57,80,620/-
28	1806/Del/2019	2011-12	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	1,182/-	49,50,260/-
29	1807/Del/2019	2012-13	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	46,000/-	82,78,970/-
30	1808/Del/2019	2013-14	Nany Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AREPD9956F	754/-	13,41,510/-
31	1809/Del/2019	2010-11	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	2,07,710/-	77,98,730/-
32	1810/Del/2019	2011-12	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	2,10,130/-	74,59,340/-
33	1811/Del/2019	2012-13	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	6,99,820/-	56,47,230/-
34	1812/Del/2019	2013-14	Poonam Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AESPD6713K	22,31,910/-	30,74,390/-
35	1801/Del/2019	2010-11	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	5,37,090/-	89,91,240/-
36	1802/Del/2019	2011-12	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	2,48,990/-	61,36,200/-
37	1803/Del/2019	2012-13	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	7,16,500/-	73,59,880/-
38	1804/Del/2019	2013-14	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	15,86,960/-	24,29,290/-

39	1991/Del/2019	2015-16	Neeru Duggal, 3E-42-NIT, Faridabad, Haryana. PAN No. AHNPD0991P	7,01,040/-	44,86,380/-
40	1611/Del/2019	2010-11	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	3,16,600/-	3,56,59,579/-
41	1612/Del/2019	2011-12	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	4,84,600/-	5,50,95,760/-
42	1613/Del/2019	2012-13	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	1,13,44,520/-	4,73,71,590/-
43	1614/Del/2019	2013-14	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	22,42,480/-	1,41,22,637/-
44	1615/Del/2019	2014-15	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	15,40,950/-	22,90,950/-
45	1616/Del/2019	2015-16	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	11,66,720/-	1,34,54,431/-
46	1617/Del/2019	2016-17	Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi. PAN No. AAZPT8964F	28,55,810/-	34,05,810/-
47	1823/Del/2019	2012-13	Duggal Estate Pvt. Ltd., 3/E-42, NIT, Faridabad, Haryana. PAN No. AACCD1642A	29,53,300/-	1,02,08,300/-
48	1824/Del/2019	2011-12	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	2,07,520/-	1,80,57,520/-
49	1825/Del/2019	2011-12	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	1,88,000/-	1,65,08,000/-

50	1826/Del/2019	2012-13	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	3,96,230/-	1,82,46,230/-
51	1827/Del/2019	2015-16	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	Nil	68,26,470/-
52	1828/Del/2019	2016-17	Duggal & Sons Buildwell P. Ltd., H-1140, Nehru Colony, NH-3, Faridabad, Haryana. PAN No. AACCD5891M	Nil	79,03,530/-

5.27. The assesseees have challenged all the additions before the Ld. CIT(A). The detailed submissions of the Assesseees are noted in the impugned order in which the assesseees reiterated the pleas taken before A.O. The crux of the submissions of the Assesseees have been that no incriminating material was found during the course of search to make any addition under section 153A of the I.T. Act, 1961, therefore, assumption of jurisdiction under section 153A is bad in Law. It was also explained that Assesseees are only conduit and ultimately money flow to M/s. JIL. Thus, there is no income arises in the hands of Assesseees under section 2(24) of the I.T. Act, 1961. All the

credits in the bank accounts of the Assesseees are solely and exclusively belong to M/s. JIL. The sum and substance of the replies of the Assesseees have been that they are not real owners of these bank accounts and the transactions reflected in these bank accounts did not belong to them. The Ld. CIT(A), however, did not accept the contention of Assesseees and not only confirmed all the additions, but, also enhanced the additions on account of addition made under section 68 and enhancement of addition under section 2(22)(e) of the I.T. Act, 1961. The appeals of the Assesseees have been dismissed.

6. The Assesseees have preferred the above appeals before the Tribunal in which common issues have arisen.

6.1. It may be noted that all the Assesseees in their appeals have also raised the Grounds of Appeal in Memorandum of Appeals, challenging the approval under section 153D of the I.T. Act, 1961, to be bad in Law and *void abinitio* and as such same is not valid as per Law which is also without application of mind. Therefore, no assessments could have been framed by the A.O. under

section 153A of the I.T. Act, 1961. It is pointed-out that in the three appeals of M/s. Ratna Sri Buildtech Pvt. Ltd., for the A.Ys. 2011-2012, 2012-2013 and 2014-2015 this ground is not raised in the main appeals. All the assesseees have, therefore, filed a separate applications raising an additional ground of appeal with regard to assumption of jurisdiction by the A.O. to frame the valid assessments under section 153A for want of valid approval under section 153D of the I.T. Act, 1961, as is raised in the grounds of appeals raised in the main appeals. One of the additional ground raised in the case of Shri Sanjay Duggal is reproduced as under :

*“That assessment framed u/s. 153A/ 143(3) for the period under consideration is void ab initio being passed on basis of invalid and incomplete and inchoate (consolidated) approval u/s 153D by Add CIT Central Range 1 New Delhi (as last line of approval as provided to asses see vide RT1 Applications indicates and highlights order so approved is not final and same can be subject*

*matter offurther change by Ld AO after granting of said approval as seemingly some acts were yet to be ensured to be done by Ld A O in completion of assessment) and ergo assessment framed as confirmed by Ld CIT-A deserves to be quashed and assessment may be declared as nullity”*

6.2. Learned Counsel for the Assessee submitted that the additional ground is legal in nature and arising out of the record without reference to any undisputed question of fact. The additional ground would go to the root of the matter and would clearly show that JCIT has passed an invalid approval under section 153D of the I.T. Act. All material are available on record for deciding the additional ground of appeal. Learned Counsel for the Assessee submitted that the short and narrow legal issue of assessment being framed on the basis of an invalid approval under section 153D no longer *res integra* and is decided in following cases in assessee’s favour. In support of his contention, he has relied upon the Order of ITAT, Delhi Bench in the case of M3M India Holdings vs., DCIT 71

(Tribu.) 451 and other decisions of various Benches of the Tribunal, copies of which are filed in the paper book. In support of his contention for admission of additional ground which is legal in nature, he has relied upon Judgment of the Hon'ble Supreme Court in the case of Singhad Technical Society 397 ITR 344 (SC), Judgments of Delhi High Court in the cases of Fast Booking (I) Pvt. Ltd., 378 ITR 693 (Del.) and Silver Line 383 ITR 455 (Del.), Judgment of Hon'ble Punjab & Haryana High Court in the case of M/s. VMT Spinning Co. Ltd., 389 ITR 326 (P & H). He has, therefore, prayed that additional ground which has already taken in the Memorandum of Appeal may be admitted for disposal of the appeals.

7. On the other hand, Ld. D.R. strongly objected to the additional ground of appeal raised by the assessee and submitted that additional ground should not be admitted. Oral discussion had gone through between the A.O. and the JCIT who are having their Office in the same building and JCIT has applied his mind before granting approval. JCIT was having all the records with him. Even if their cases are

taken later on, is no ground to show JCIT was not having access to the record. Proceedings are monitored by the JCIT. The Ld. D.R. has referred to the statements of Shri Sanjay Duggal and Shri Rajnish Talwar to show that income have been rightly assessed in their hands and in the hands of their family Members.

8. We have considered the rival submissions and perused the material on record. It is not in dispute that all the assesseees except in three cases mentioned above have raised the grounds of appeal challenging the assessment order and impugned order passed by the Ld. CIT(A) to be bad in Law and *void abinitio* for want of valid approval of JCIT under section 153D of the Income Tax Act, 1961, in which it is nowhere specified the prescription of Law and is apparently invalid without application of mind. The assesseees later on have also filed separate applications in all the appeals raising an additional ground of appeal challenging the validity of approval under section 153D of the I.T. Act, 1961, by JCIT. It is not in dispute that all the material is available on record with regard to additional

ground of appeal. The additional ground is legal in nature and goes to the root of the matter in determining the validity of the assessments framed under section 153A of the I.T. Act, 1961. All material are available on assessment record and no additional evidences are required for taking decision of the new ground of appeal raised by the assessee. Both the parties during the course of arguments have not disputed any question of fact. The Hon'ble Punjab & Haryana High Court in the case of VMT Spinning Co. Ltd., vs., CIT 389 ITR 326 (P&H) following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., 229 ITR 383 (SC) on identical facts and circumstances directed to admit the additional ground of appeal and remanded the matter to the Tribunal for adjudicating upon the additional ground on its merits. The Order of the Hon'ble High Court is reproduced as under :

*“Held, that the Tribunal could decide the appeal on a ground neither taken in the memorandum of appeal nor by seeking its leave. The only requirement was that the Tribunal could not rest*

*its decision on any other ground unless the party who might be affected had sufficient opportunity of being heard on that ground. Therefore, the Tribunal ought to have exercised its discretion in view of the fact that the assessee intended raising only a legal argument without reference to any disputed questions of fact. Since there were no additional evidence required for the decision on the new ground raised by the assessee and such question arose from the facts which were already on the record of the assessment proceedings and since a decision upon the new ground raised by the assessee would only help in determining the assessee's correct tax liability, the matter could be remanded to the Tribunal for adjudicating upon the additional ground on its merits. [Matter remanded.]”*

8.1. The Hon’ble Delhi High Court in the case of Pr. CIT vs., Nilkanth Concast (P.) Ltd., [2016] 387 ITR 568 (Del.) following the same decision of the Hon’ble Supreme Court in

the case of National Thermal Power Co. Ltd., (supra) held as under :

*“The powers of the Tribunal are wide enough to consider a point which may not have been urged before the Commissioner (Appeals) as long as the question requires to be examined in the interest of justice.*

*Held accordingly, that the Tribunal had not exceeded its jurisdiction in examining the question whether the Assessing Officer was justified in extending the time for the auditor nominated under section 142(2C) of the Income-tax Act, 1961, to submit the audit report.”*

8.2. In the aforesaid matter, we have given sufficient opportunity of being heard to all the parties to argue on additional ground of appeal and its admission. Since all material is available on record which is not disputed by the Revenue Department also and since the decision upon new ground raised by the assessee would only help in

determining the assessee's correct tax liability, the additional ground shall have to be admitted in the matter. In view of the above, we admit the new additional ground raised by the assessee in the Memorandum of Appeals and raised in the applications for admission of additional ground above for deciding the issue on merits. In view of the above, the request of the assessee for admission of additional/new ground is allowed.

9. Learned Counsel for the Assessee submitted that approval under section 153D is based on non-application of mind and without any independent enquiry and overlooking/ ignoring important/significant aspect of earlier assessments being made in the hands of M/s. JIL etc., He has submitted that under section 153D of the I.T. Act, 1961, prior approval of JCIT is required for assessment to be framed in the cases of search and considering the provisions of Section 153D along with the provisions contained under section 153A of the I.T. Act, 1961, following are the striking features of these provisions :-

- I. The assessee is to given separate notice for assessments for each year as specified under section 153A of the I.T. Act.
- II. That assessee is to file separate ITR for each year as specified in Section 153A.
- III. Separate assessment orders are to be passed for each year as specified in Section 153A.
- IV There is an important concept mentioned in Section 153A of abated and non-abated assessments which is peculiar to the Scheme of Assessment under section 153A.

9.1. Keeping in mind 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, which phrase “Each” assessment year referred to in ----”, in which word “Each” has used extensively in Scheme of Assessment under section 153A and Section 153D 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 case. There are many other provisions where statutory approval is required from higher authorities. Few of them are noted like Section 151 and Section 274 etc., respectively dealing with the approvals on reopening cases and penalty cases. Learned Counsel for the Assessee submitted that when Section 153D is juxtaposed with Section 151 and Section 274, most important differences which is peculiar to Section 153D is the 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 express and specific 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,1961 which is year centric Scheme of the assessment which is not there in the earlier Scheme of block assessments. He has relied upon the Judgment of the Allahabad High Court in the case of Shri Mohd. Ayub vs., ITO [2012] [2] 346 ITR 30 (Alld) in which non-issue of

separate notice under section 148 of the I.T. Act, 1961 was held to be invalid because each assessment year is to be taken as an independent unit of assessment. Learned Counsel for the Assessee, therefore, submitted that if the above settled position is tested to provisions of Section 153D as involved in the present appeals, it would be glaring that even in a case where requirement of separate notice under section 148 of the I.T. Act, 1961, was given absolute primacy, in the context of Section 153D of the I.T. Act, 1961, where **each** word is expressly used and which is a year centric special Scheme of Assessment with concept of abated/non-abated assessments. Judgment of Hon'ble Allahabad High Court (supra) would squarely apply and, therefore, JCIT was bound to grant approval under section 153D with due and proper application of mind for each year separately. However, in the present case, the JCIT has given approval under section 153D for all the years together involved in search. The Approving Authority has completely in a mechanical and ritualistic given approval as an idle formality and empty ritual. In one line the Approving

Authority has given blank go-ahead to pass Orders under section 153A etc., without even taking minimum possible pains to take appropriate note of year-wise amount of assessed income as computed. The rationale of word “Each” as specifically referred to in Sections 153D and 153A deserves to be given effective/proper meaning so that underlying legislative intent as per Scheme of Assessment of Sections 153A to 153D is fulfilled. He has submitted that it is well settled Law that taxing statute, must be constructed strictly. 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. Therefore, the Approving Authority should apply their mind on the material on the basis of which the A.O. is making assessment and after due application of mind and on the basis of the seized material, the Approving Authority have to approve the draft assessment order. Learned Counsel for the Assessee referred to the approval granted by the JCIT under section 153D of the I.T. Act which are on record to

show that the JCIT for all the years granted approval even without mentioning the seized material, whether the assessments were abated or non-abated and whether A.O. has adopted the due procedure of Law in making the assessment and whether there is a proper compliance in the matter and whether sufficient time is taken for applying the mind. Therefore, the assessee's cases are seriously prejudicial due to the mechanical approval granted by the Approving Authority under section 153D of the I.T. Act. In this regard, Learned Counsel for the Assessee submitted that Approving Authority has not considered significant material on record because the assessments in the group cases i.e., of JIL etc., were completed under section 153A prior to the assessments in the case of assessee and the same have not been looked into by the authorities below and nowhere same have been objectively co-related with the assessments of the assessees. There is a failure even to consider appraisal report at assessment stage. The principle of real income is also not considered and merely on hypothetical income the assessments have been framed.

Therefore, non-consideration of the material with the Revenue Department in the case of JIL have not been objectively considered while framing the draft assessment order. There is also no co-relation with the available unaccounted/ hidden assets/investments in possession in the hands of the assesseees as detected from the extensive search vis-à-vis special transactions of credits in the bank accounts shows mechanical assessment being mechanically approved by the Approving Authority. There is no meaningful and independent enquiry conducted at the assessment stage. The relevant provisions of Law have not been considered for making the additions and have been made merely based on credit entries in the bank accounts of the assesseees. It is also not considered by the Approving Authority that A.O. has made double/triple additions in the hands of different persons i.e., family members of Shri Sanjay Duggal and Shri Rajnish Talwar family and even no telescoping benefit have been given. The credits appearing in the bank accounts of the assesseees have generated into some assets, loans, share capital, capital gains etc., and

further investments which have been added twice or thrice by the A.O. The assesseees have also moved an application for rectification under section 154 of the I.T. Act pointing-out the same error but the same have not been taken care till date. The assesseees clearly explained that assesseees are conduit of JIL being their employees and whatever was the direction of the JIL have been carried-out in the matter. The assesseees are not beneficial of any of the amount lying in the account of M/s. Alfa India. The assessments have been framed in violation of the Board Circular that proper assessment shall have to be framed as per Law. The A.O. as well as the Approving Authority have thus, not applied their minds to the material on record and being the quasi judicial authority shall have to give reasons in the Orders approving the draft assessment order which is also lacking in the present case. All assessments have been framed at the fag end of the assessment period and even in some cases the request for approval is made on the particular day and approved by the Approving Authority on the same day. Learned Counsel for the Assessee relied upon Judgment of

the Hon'ble Supreme Court in the case of Chintpurni Medical College And Hospital & Anr. vs., State of Punjab & Ors. in Writ Petition (Civil) No.89 of 2018 Dated July 03, 2018 on the proposition that "*where the Law requires that an Authority before arriving at a decision must make an enquiry, such requirement of Law makes the Authority a Quasi-Judicial Authority. Also when the Authority is required to act according to Rules and not dictated by policy or expediency, the Authority performs Quasi-Judicial function and not an administrative function*". He has, therefore, submitted that JCIT shall have to act in accordance with Law and apply his mind to the material on record before granting approval under section 153D of the I.T. Act, 1961 which is not there in the present case. The approval under section 153D is thus invalid, bad in Law and *void abinitio*. Learned Counsel for the Assessee in support of the above contention that approval under section 153D have been granted in a most mechanical manner without going through the seized material and other material on record and without application of mind, therefore, such approval is

invalid and *void abinitio* and as such entire assessment orders are illegal and bad in Law and liable to be quashed, relied upon the following decisions :

1.	Order of ITAT, Delhi Bench, Delhi in the case of M3M India Holdings vs., DCIT [2019] 71 ITR (Trib.) 451 (Del.)
2.	Order of ITAT, Cuttack Bench, Cuttack in the case of Dilip Constructions Pvt. Ltd., Bhubaneswar vs., ACIT, Circle-1, Bhubaneswar in I.T.(SS) Nos.66 to 71/CTK/2018 etc., Dated 29.11.2019.
3.	Order of ITAT, Agra Bench, Agra in the case of Rajesh Ladhani, Faizabad vs., DCIT, Central Circle, Agra in ITA.Nos.106, 107 and 108/Agra/2019, Dated 06.11.2019.
4.	Order of ITAT, Agra Bench, Agra in the case of Shri Saurabh Agarwal, Mathura vs., DCIT, Central Circle, Agra in ITA.Nos.263 to 267/Agr/2017 etc., Dated 18.09.2019.
5.	Order of ITAT, Delhi E-Bench, Delhi [DEHRADUN] in the case of Uttarakhand Uthan Samiti, Dehradun vs., ITO, Ward-45(5), New Delhi in ITA.Nos.48 to 52/DDN/2019, Dated April, 2020.
6.	Order of ITAT, Delhi G-Bench, Delhi in the case of Rishabh Buildwell P. Ltd., New Delhi vs., DCIT, Central Circle, Ghaziabad in ITA.No.2122/Del./2018 etc., Dated 04.07.2019.
7.	Order of ITAT, Lucknow 'B' Bench, Lucknow in the case of AAA Paper Marketing Ltd., New Delhi vs., ACIT, Central Circle-I, Kanpur in ITA.No.167/Lkw/2016 etc., Dated 28.04.2017
8.	Order of ITAT, Ranchi Bench, Ranchi in the case of M/s. Rajat Minerals Pvt. Ltd., vs., DCIT, Central Circle-1, Ranchi in IT (SS) A.Nos.41 to 47/Ran/2019 etc., Dated 20.01.2020
9.	Order of ITAT, Cuttack Bench, Cuttack in the case of Geetarani Panda, Bhubaneswar vs., ACIT, Circle 2(2), Bhubaneswar in IT (SS) A.No.1/CTK/2017 etc., Dated 05.07.2018.

9.2. Learned Counsel for the Assessee, therefore, submitted that approval under section 153D in all the cases have been granted in a most mechanical manner without any application of mind and without any independent examination of seized material and other material on record. There is no discussion/reasons given by JCIT while approving the draft assessment order. In the approval under section 153D there is no mention about incriminating material forwarded to the JCIT and without looking into if there were any incriminating material pertain to abated or non-abated assessments. There is no mention of the statements recorded at the time of search if have been examined by the JCIT. The post determination exercise was totally left with the A.O. which have not been considered by the Approving Authority. The approval is granted in a hurried manner without looking into the serious lapses carried out by the A.O. while framing the draft assessment orders, therefore, the approval under section 153D is invalid and bad in Law and liable to be quashed and as such A.O. is not competent to pass the assessment orders under

section 153A of the I.T. Act, 1961. He prayed all impugned orders may be quashed.

10. On the other hand, Ld. D.R. submitted that the process of completion of search assessment does not happen in one day by way of Order under section 153D. The process start after receipt of the appraisal report and seized documents and statements recorded at the time of search and panchanamas by the Addl/JCIT, Central Range, by the Investigation Wing. Thereafter, there are regular discussions between the A.O. and his Addl./JCIT, Central Range, as to which assessee are covered by Section 153A and which by Section 153C. In these cases, the A.O. has duly taken approval from JCIT for passing the assessment orders under section 153D well within time before limitation. On examination of the Office records it is clear that draft Orders in these cases were sent by the A.O. to the JCIT, Central Range-1, New Delhi who have duly accorded his approval under section 153D. Therefore, it is logically inferred that the assessment orders under section 153A of the Act were passed by the A.O. with prior approval under section 153D

from JCIT, Central Range-1, New Delhi. Thus, the assessee's contention is not at all valid and sustainable as per relevant provisions of the I.T. Act. The A.O. examined the issue of transfer of money from the Account of AOPs [liquor wholesaler] who have purchased liquor from M/s. JIL into the account of M/s. Alfa India from where the money was transferred to the accounts of Shri Sanjay Duggal and Shri Rajnish Talwar and their family Members. The A.O., therefore, correctly made the additions under section 68 of the I.T. Act because onus upon assessee to explain unexplained deposits in their Bank Account have not been discharged. The A.O. as well as JCIT have considered the statements of Shri Sanjay Duggal and Shri Rajnish Talwar and Others recorded at the time of search and thereafter, in which they have clearly explained that they are the conduits of M/s. JIL and ultimately received the amounts in question which remained unexplained, therefore, all the assessee's being beneficiaries are liable to explain the source of the amounts deposited in their Bank Accounts and hence, valid approval have been granted under section 153D of the I.T.

Act, 1961. Therefore, the additional grounds raised by the assessee deserves dismissal.

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 assessee 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 assessee. 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 I.T. 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 abinitio* 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 otherwords, 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 re-assessment 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.

11.7. In the following Orders of various Benches of the Tribunal, it is held that while granting approval under section 153D, the JCIT shall have to peruse all the incriminating material and other seized material on record and proper procedure if have been adopted by the A.O. and appraisal report as well. The JCIT shall apply his mind to such material on record before granting his approval, otherwise, it will be invalid and bad in Law. We may refer to such Orders as under.

11.8. Order of ITAT, Delhi Bench, Delhi in the case of M3M India Holdings vs., DCIT [2019] 71 ITR (Trib.) 451 (Del.) in which in paras 11 to 14 it was held as under :

*“11. On Ground No.1.3, Learned Counsel for the Assessee submitted that no proper sanction as required under section 153D have been received, therefore, assessment order is illegal and bad in Law. Learned Counsel for the Assessee referred to page 46 of the assessment order and submitted that Addl. CIT, Central Range, Chandigarh communicated the sanction under section 153D to the A.O. on 31st January 2014 and the*

*assessing officer on the same day i.e., 31st January 2014 passed the assessment order. He has referred to page-48 of the paper book, which is copy of Fax message dated 5th February 2014 in connection with the communication of sanction/approval of Addl. CIT. PB-31 is the reply filed before A.O. by assessee on 29th January 2014. PB-469 is the reply to the RTI application filed by assessee dated 6th June 2018, in which no specific reply have been given by the Department as to by which mode the assessment record was forwarded by A.O. to Addl. CIT as no such record available and how the sanction/approval was communicated to the assessing officer. PB-46 is letter of the assessing officer to the Addl. CIT, Central Range, Chandigarh dated 30th January 2014 sending the draft assessment order for approval in terms of section 153D of the Income Tax Act. PB-47 is approval of the Addl. CIT, Chandigarh dated 31st January 2014 without mentioning if he has seen the assessment record. Learned Counsel for the Assessee submitted that letter dated 23rd January*

*2019 was given to the assessing officer, in which it was brought to his notice that after inspection of the assessment record conducted on 25th October 2018, it was noted that while inspecting the assessment file, assessee has not found any original copy of statutory approval under section 153D of the Income Tax Act, 1961, except the copy of the approval only. The assessee, therefore, requested that original approval under section 153D may kindly be made available to him. He has submitted that till date no reply have been conveyed to the assessee. He has, therefore, submitted that in this case no approval have been conveyed to the assessing officer before passing the assessment order. He has submitted that in section 153D the word used is 'Shall' which indicates that this provision is mandatory which is to be complied before passing the assessment order. In the present case, no such approval have been found on record. On inspection of the record, it was found the approval was received by the assessing officer for the first time by Fax on 5th February 2014*

*[PB 48]. There is no other documentary evidence available on record. It is, therefore, clear that approval/sanction of the Addl. CIT was received after passing of the assessment order. Therefore, assessment order is illegal and bad in Law. The assessing officer was not in possession of the valid sanction/approval of Competent Authority before passing the assessment order. Learned Counsel for the Assessee submitted that the Tribunal can in fact call for production of the assessment record for itself to determine whether the satisfaction was received, before passing the assessment order by the Assessing Officer ? Reliance was placed upon the Judgment of the Allahabad High Court in the case of S K Gupta and Co. vs ITO 246 ITR 560 (All.). He has submitted that to the same effect there is another Judgment of the Allahabad High Court in the case of M.D. Overseas Ltd., vs., DGIT 333 ITR 407 (All.) He has, therefore, submitted that the approval in this case though not conveyed to the Assessing officer on time, but, is also given in a mechanical manner.*

*Learned Counsel for the Assessee relied upon Judgment of the Honorable Bombay High Court in the case of Pr. CIT vs Smt. Shreelekha Damani in Income Tax Appeal No. 668 of 2016 dated 27th November 2018. He has submitted that the draft assessment order was sent from Faridabad to Chandigarh on 30th January 2014 and it is not clarified as to how it was sent, whether through messenger or courier or any other valid mode. Therefore, no time was left to consider the assessment record. Since last reply is filed on 29th January 2014, therefore, there was no application of mind by the assessing officer or the Addl. CIT to pass the assessment order within the time. Learned Counsel for the Assessee also relied upon order of ITAT, Jodhpur Bench in the case of Smt. Indira Bansal vs., ACIT (2018) 192 TTJ 968 (Jodh.). Learned Counsel for the Assessee, in the circumstances, submitted that since last reply was filed on 29th January 2014, which contains more than 500 pages, therefore, it is highly improbable that assessing officer who is stationed at Faridabad, would*

*have sum-up the entire assessment file, containing voluminous submissions and drafted assessment order containing not less than 46 pages and sent it to the Addl. CIT at Chandigarh on 30th January 2014. The Department has filed vague reply to the RTI application. It is difficult to believe that within a span of a single day, assessment record would have reached to the Addl. CIT, at Chandigarh. It is highly unbelievable that Addl. CIT would have perused the voluminous assessment record and material on record on the same day and granted approval on the same day on 31st January 2014 and transmitted back the record from Chandigarh to Faridabad on the same day on 31st January 2014 for passing of the final assessment order. It was, therefore, submitted that sanction granted by Addl. CIT to draft assessment order was devoid of any application of mind without considering material on record and without adopting prescribed procedure. It was, therefore, submitted that the said statutory function of granting sanction was exercised casually*

*and not in a proper manner by due application of mind. Therefore, assessment order is null and void and liable to be quashed.*

12. *On the other hand, Learned Departmental Representative relied upon the orders of the authorities below and referred to PB-47 approval granted by Addl. CIT on 31st January 2014. She has submitted that the Addl. CIT, Chandigarh after going through the assessment record, correctly granted approval to the draft assessment order. She has submitted that Addl. CIT does not say that he has not gone through the material on record and also did not apply his mind before grant of approval in the matter. Ld. D.R, therefore, submitted that this ground of appeal of assessee may be dismissed.*

13. *We have considered the rival submissions. It is not in dispute that search and seizure action was taken in the case of the assessee on 30th January 2011. Therefore, assessing officer rightly proceeded against the assessee firm under section 153A of the*

*Income Tax Act, 1961. The assessing officer also rightly passed the assessment order under section 153B(1)(b) of the Income Tax Act, 1961. Further, Section 153D of the Income Tax Act provides that “no order of assessment or reassessment shall be passed by the 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 assessment year referred to in clause (b) of sub-section (1) of Section 153B except with the prior approval of Joint Commissioner.” Therefore, for passing the impugned assessment order, the assessing officer who is in the rank of DCIT shall have to obtain prior approval of JCIT. The Learned Counsel for the Assessee referred to PB-31, which is last reply filed before assessing officer on 29th January 2014. The assessing officer written a letter to the Addl. CIT, Chandigarh on 30th January 2014 sending a draft assessment order for his consideration and approval in terms of Section 153D of the Income Tax Act, copy of which is filed at page 46 of the PB. The*

*assessing officer is stationed at Faridabad. However, the Addl. CIT is stationed at Chandigarh. The Addl. CIT, Chandigarh granted approval under section 153D of the Income Tax Act on 31st January 2014, copy of which is, filed at page 47 of the paper book and the same reads as under :*

*“No.Addl.CIT/Central/Chd./2013-14/616.*

*Office of the  
Addl. Commissioner of Income Tax,  
Range Central, Chandigarh.*

*Dated the 31<sup>st</sup> January, 2014.*

*To*

*Shri Tatung Padi*

*Dy. Commissioner of Income Tax,*

*Central Circle-II,*

*Faridabad.*

*Approval u/s.153D of the I.T. Act, 1961, in the  
Sub: case of M/s. M3M India Holdings, Formerly  
M/s.Krishna Flexi Solution, C-13, Sushant Lok-  
I, Gurgaon for the A.Y. 2012-2013 – regarding.*

*Please refer to the Draft Assessment Order U/s. 153B(1)(b) of the I.T. Act, 1961, referred for approval u/s.153D of the I.T. Act, 1961, dated 30.01.2014.*

*The approval u/s. 153D of the I.T. Act, 1961, is accorded for the Assessment Year 2012-13.*

*Sd/-RAJEEV KUMAR,  
Addl. Commissioner of Income Tax,  
Range (Central), Chandigarh.*

*Encl: As Above.”*

*13.1. The Addl. CIT, Chandigarh did not mention in the approval, if he has gone through the assessment record or whether assessment record have been produced before him before granting approval in the matter. The assessee filed RTI application to the Revenue Department, copy of reply is filed at page 469 of the PB, in which it was explained that letter of the Assessing Officer, Faridabad dated 30th January 2014 was forwarded to the Addl. CIT, Chandigarh on 30th January 2014. No reply was given to assessee as to when the letter of the assessing officer was received by*

*Addl. CIT, Chandigarh. It was also intimated that no such record is available in the office of Assessing Officer regarding mode by which assessment record along with the letter of the assessing officer dated 30th January 2014 were forwarded to the Addl. CIT, Chandigarh. No details/explanation were furnished as to on which date the assessment record was received by the Addl. CIT, Chandigarh. The assessee, on inspection of the record, intimated the assessing officer that no original approval under section 153D is available on record. Learned Counsel for the Assessee referred to PB 48, which is Fax message received on 5th February 2014, communicating the approval of Addl. CIT to the assessing officer. This Fax message is not legible. The Hon'ble Bombay High Court in the case of Pr. CIT vs. Smt. Shreelekha Damani (supra), held as under :*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY*

*ORDINARY ORIGINAL CIVIL JURISDICTION*

*INCOME TAX APPEAL NO. 668 OF 2016*

*The Pr. Commissioner of Income Tax ..Appellant*

*v/s.*

*Smt. Shreelekha Damani.*

*..Respondent.*

*Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the appellant*

*Mr. Jehangir Mistri, Senior Counsel a/w Mr. Atul Jasani*

*for the respondent*

*CORAM : AKIL KURESHI &*

*M.S. SANKLECHA, J.J.*

*DATED : 27<sup>th</sup> NOVEMBER, 2018.*

*P.C.*

*1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19<sup>th</sup> August, 2015.*

*2. Following question was argued before us for our consideration*

*"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval ?*

3. *Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007-08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.*

4. *This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of*

*application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.*

5. *The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.*

6. *Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks.*

*To,  
The DCIT(OSD)-1  
Mumbai*

*Subject : Approval u/s 153D of draft order u/s 143(3)  
r.w.s. 153A in the case of Smt. Shreelekha Nandan  
Damani for A.Y. 2007-08 reg.*

*Ref: No. DCIT (OSD)-1/CR-7/Appr/2010-11 dt. 31.12.2010*

*As per this office letter dated 20.12.2010, the  
Assessing Officers were asked to submit the draft  
orders for approval u/s 153D on or before 24.12.2010.  
However, this draft order has been submitted on  
31.12.2010. Hence there is no much time left to  
analyze the issue of draft order on merit. Therefore,  
the draft order is being approved as it is submitted.*

*Approval to the above said draft order is granted  
u/s 153D of the I.T. Act, 1961."*

*7. In plain terms, the Additional CIT recorded that the  
draft order for approval under Section 153D of the Act  
was submitted only on 31<sup>st</sup> 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.*

8. *Accordingly, the Tax Appeal is dismissed.”*

13.2. *The ITAT, Jodhpur Branch in the case of Smt. Indira Bansal vs., ACIT (supra), held as under:*

*“Conclusion : Jt. CIT having granted the approval under s. 153D on the very same day on which the forwarding letter seeking approval was received in his office, and circumstances indicate that this exercise was carried out by the Jt. CIT in a mechanical manner without proper application of mind and even without going through the records as the same were in Jodhpur while the Jt. CIT was at Udaipur, therefore, the approval granted by him cannot be sustained. Impugned assessments are annulled.”*

14. *Considering the facts of the case in the light of above discussion, it is clear that assessee filed last reply before assessing officer at Faridabad on 29th January 2014 and according to Learned Counsel for the Assessee, it contained more than 500 pages. Therefore, it is difficult for the Assessing Officer at Faridabad to go through these voluminous papers and prepare a draft*

*order on 30th January 2014, so that the draft order could be transmitted to the Addl. CIT at Chandigarh on same day. In reply to RTI application, the assessing officer has reported that no record of mode of dispatch of assessment record to the Addl. CIT is available with the Assessing Officer. Similarly, no record is available as to how the draft order and assessment record have been received by Addl. CIT at Chandigarh. The Addl. CIT, Chandigarh did not mention in his approval dated 31<sup>st</sup> January 2014 (supra), if he has gone through the assessment record or that assessment record was produced before him. Since no details are available on record about the mode, through which, assessment record was transmitted by the assessing officer at Faridabad to Addl. CIT in Chandigarh and vice-versa by Addl. CIT, Chandigarh to Assessing Officer at Faridabad on the very next day would lead to suspicion, in explanation of A.O. if any, valid draft order was transmitted to the Addl. CIT within the time or if the Addl. CIT has communicated the approval under section*

*153D to the Assessing Officer at Faridabad on 31st January 2014. These facts would clearly show that the action of the Addl. CIT, Chandigarh granting approval in this case was, thus, a mere mechanical exercise, accepting the draft order as it is, without any independent application of mind on his part. Nothing has been clarified during the course of hearing to the effect that if Addl. CIT has gone through the assessment record, before accepting the draft assessment order. Thus, there was no application of mind on the part of the Addl. CIT before granting approval. The Addl. CIT, Chandigarh has merely gone through the draft assessment order as per PB-47. Therefore, the contention of Learned Counsel for the Assessee is justified that the approval was granted in a most mechanical manner without application of mind and such approval was intimated to assessing officer only on 5th February 2014, after passing of the assessment order on 31st January 2014. The above decisions are clearly applicable to the facts and circumstances of the*

*case. In view of the above discussion, we are of the view that no valid approval/sanction have been granted by the Addl. CIT, Chandigarh before passing the assessment order in the matter. The requirement of Section 153D of I.T. Act, 1961, are not satisfied in this case. We accordingly hold that entire assessment order is vitiated and is null and void. We, accordingly, set aside the orders of the authorities below and quash the assessment order in the matter. Resultantly all additions stand deleted. In the result, Ground No.1.3 of the appeal of Assessee is allowed.”*

11.9. Order of ITAT, Cuttack Bench, Cuttack in the case of Dilip Construction P. Ltd., Bhubaneswar vs., ACIT, Circle-1, Bhubaneswar (supra) in which in paras 20 to 41 held as under :

*20. We have heard the rival submissions and perused the relevant materials placed on the record of the Tribunal, inter alia, various case laws cited both the sides. The CBDT Circular No. 3 of 2008, dated*

*12.3.2008, as referred by the ld AO clarifies 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 apply their mind on the materials and other attending 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 draft Assessment order.*

21. *In the above background of law and in the light of Order dated 23.11.2017 passed under [section 153A](#) r.w. s 143(3) of the Act and order of approval u/s.153D of the Act dt.23.11.2017, which provides validity to the impugned Assessment order, the main question which arises for our consideration is whether the said Approval granted by the ld. Joint CIT u/s.153D of the Act vide his order dated 23.11.2017 can be held to be granted after due application of mind and can be held to be valid in the eye of law as per intention of the*

legislature and mandate of the provision of [section 153D](#) of the Act ?

22. Since we are adjudicating the controversy regarding validity of procedure and approval granted by the JCIT vide letter dated 23.11.2017, therefore, we find it necessary and appropriate to reproduce the relevant provisions of [section 153D](#) of the Act, which reads as under:

"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 [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 maybe, is required to be passed by the Assessing Officer with the prior approval of the Commissioner under sub-section (12) of [section 144BA](#)."*

23. *First of all, we observe that we are in agreement with the contention of ld CIT DR based on the judgment of Karnataka High Court in the case of Gopal S Pandit (supra), wherein, it was held that the provisions of [section 153D](#) of the Act do not require that any opportunity of hearing to be given to the assessee by the authority who has to approve the draft assessment order passed by the Assessing Authority. Therefore, there is no requirement of allowing opportunity of hearing to the assessee before granting approval under [section 153D](#) of the Act. It is also not a contention of the assessee/appellant that they were not provided due opportunities of hearing before granting approval.*

24. *On careful consideration rival submissions, we note that the legal contention of the assesseees*

*regarding procedure for granting approval order dated 23.11.2017 u/s.153D of the Act can be summarized mainly on two points viz; (i) the approving authority i.e. ld JCIT has granted approval in a mechanical and hasty manner without even perusing the relevant assessment records and draft assessment orders placed before him and (ii) the approving authority has not applied his mind to the assessment records and draft assessment orders proposed to be passed by the Assessing officer as per mandate of [section 153D](#) of the Act, which is clearly discernible from the approval order dated 23.11.2017. As per mandate of [section 153D](#) of the Act, 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](#) of the Act without prior approval of the ld JCIT.*

25. *As per the decision of Hon'ble Bombay High Court in the case of Smt. Shreelekha Damani (supra), while granting approval, if the approving authority did*

*not have enough time to analyse the issues arising out of the draft assessment orders, then clearly this was a case in which the higher authority had granted the approval without consideration of relevant issues. Their Lordships held that the question of validity of the approval goes to the root of the matter and could have been raised at any time and the Tribunal was justified in holding that there was no application of mind on the part of the authority granting approval and, therefore, approval was invalid. The relevant paras 4 & 5 of this judgment read as follows:*

*" 4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack*

*of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.*

*5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid."*

*26. In almost similar facts and circumstances, the Delhi Bench in M3M India Holdings (supra), the Tribunal in para 14 held thus:*

" 14. *Considering the facts of the case in the light of above discussion, it is clear that assessee filed last reply before assessing officer at Faridabad on 29th January 2014 and according to Learned Counsel for the Assessee, it contained more than 500 pages. Therefore, it is difficult for the Assessing Officer at Faridabad to go through these voluminous papers and prepare a draft order on 30th January 2014, so that the draft order could be transmitted to the Addl. CIT at Chandigarh on same day. In reply to RTI application, the assessing officer has reported that no record of mode of dispatch of assessment record to the Addl. CIT is available with the Assessing Officer. Similarly, no record is available as to how the draft order and assessment record have been received by Addl. CIT at Chandigarh. The Addl. CIT, Chandigarh did not mention in his approval dated 31st January 2014 (supra), if he has gone through the assessment record or that*

*assessment record was produced before him. Since no details are available on record about the mode, through which, assessment record was transmitted by the assessing officer at Faridabad to Addl. CIT in Chandigarh and vice-versa by Addl. CIT, Chandigarh to Assessing Officer at Faridabad on the very next day would lead to suspicion, in explanation of A.O. if any, valid draft order was transmitted to the Addl. CIT within the time or if the Addl. CIT has communicated the approval under [section 153D](#) to the Assessing Officer at Faridabad on 31st January 2014. These facts would clearly show that the action of the Addl. CIT, Chandigarh granting approval in this case was, thus, a mere mechanical exercise, accepting the draft order as it is, without any independent application of mind on his part. Nothing has been clarified during the course of hearing to the effect that if Addl. CIT has gone through the assessment record, before accepting the draft assessment*

*order. Thus, there was no application of mind on the part of the Addl. CIT before granting approval. The Addl. CIT, Chandigarh has merely gone through the draft assessment order as per PB-47. Therefore, the contention of Learned Counsel for the Assessee is justified that the approval was granted in a most mechanical manner without application of mind and such approval was intimated to assessing officer only on 5th February 2014, after passing of the assessment order on 31st January 2014. The above decisions are clearly applicable to the facts and circumstances of the case. In view of the above discussion, we are of the view that no valid approval/sanction have been granted by the Addl. CIT, Chandigarh before passing the assessment order in the matter. The requirement of [Section 153D](#) of I.T. Act, 1961, are not satisfied in this case. We accordingly hold that entire assessment order is vitiated and is null and void. We, accordingly, set aside the orders of the*

*authorities below and quash the assessment order in the matter. Resultantly all additions stand deleted. In the result, Ground No.1.3 of the appeal of Assessee is allowed. "*

27. *Furthermore, ITAT Cuttack Bench in the case of Geetarai Panda (supra) in paras 24 to 26 held that when the approving authority could not apply his mind and has accorded the approval mechanically to meet the requirements of law, the requirement was merely a formality. The Co- ordinate Bench also held that the said Supervisory authority had a duty towards both the assessee as well as the revenue which was failed to be performed. The relevant paras 25 & 26 read as follows:*

*" 25. In the instant case, we find that the supervisory authority has himself admitted that because of reasons stated by him, could not apply his mind and has accorded the approval mechanically to meet the requirements of law as the requirement was merely a formality. The said*

*supervisory authority had a duty towards both the assessee as well as the Revenue which was failed to be performed in the instant case.*

26. *Further, we find that the approving authority has required the assessing authority to conduct further enquiry in respect of opening cash in hand. The assessing authority thereafter has never communicated his findings of the further enquiry to the supervisory authority and not taken the approval of justification of his findings. Thus, in our considered opinion, alleged approval letter dated 27.3.2015 of the Addl. CIT, Range-1, Bhubaneswar does not constitute the approval which is envisaged by the provisions of [section 153](#) of the Act. Thus, following the decision of the Hon'ble Bombay High Court in the case of Akil Gulamali Somji (supra), we hold that the impugned order of assessment is void and bad in law. Therefore, the impugned order of assessment is hereby cancelled...."*

28. In view of above requirements of provisions of [section 153D](#) of the Act, as vehemently relied upon by ld counsel for the assessee, as noted above, when we logically analyse the procedure adopted by JCIT while granting approval u/s.153D of the Act in the case of both the assessees, then, first of all, we find it necessary and appropriate to reproduce verbatim the approval granted by JCIT for both the assessees. The approval in the case of Dilip Construction Pvt Ltd., available at page 3 of paper book is as under:

" OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (CENTRAL),

AAYAKAR BHAWAN ANNEXE. 4TH FLOOR. RAJASWA VMAR.

BHUBANESWAR-751007

F.No .JCIT(Central) /BBSR/ 153D CC-1 BBSR/2017-18/3138 Date: 23.11.2017

To  
The Assistant Commissioner of Income Tax,  
Central Circle-1, Bhubaneswar

Sub: Approval of the Assessment orders u/s 153D of the LT. Act, 1961  
in respect to the cases of M/s Dillip Construction P Ltd- Reg

Ref: Your letter no. ACIT/CC-1/BBSR/Report/2017-18/7 dated  
17.11.2017 seeking approval of draft assessment orders u/s 153D

Approval is hereby accorded as per the provisions of [section 153D](#) of the I.T. Act for passing the assessment orders in respect to the following cases.

Sl.No.	Name of the assessee	PAN	A.Y.	Total Assessed Income (Rs.)	Section under which order passed
1.	M/s. Dilip	AABCD1417E	2010-11	18,25,68,000/-	u/s.153A/143(3)
2.	Construction P Ltd.,		2011-12	14,96,41,388/-	u/s.153A/143(3)
3.			2012-13	8,21,92,330/-	u/s.153A/143(3)
4.			2013-14	10,07,78,950/-	u/s.153A/143(3)
5.			2014-15	9,53,00,070/-	u/s.153A/143(3)
6.			2015-16	16,51,32,390/-	u/s.153A/143(3)
.			2016-17	14,72,53,800/-	u/s.143(3)

Sd/-

Joint Commissioner of Income Tax (Central),  
Bhubaneswar

End: Record for the AY 2010-11 to 2016-17

(In Seven Folders)

The approval granted in the case of Shilpa Seema Constructions Pvt Ltd., available at page 1 of paper book is as under:

" OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (CENTRAL), AAYAKAR BHAWAN ANNEXE. 4TH FLOOR. RAJASWA VMAR. BHUBANESWAR-751007

F.No .JCIT(Central) /BBSR/153D CC-1 BBSR/2017-18/ 3137 Date: 23.11.2017

To  
The Assistant Commissioner of Income Tax,  
Central Circle-1, Bhubaneswar.

Sub: Approval of the Assessment orders u/s 153D of  
the LT. Act, 1961 in respect to the cases of M/s Shilpa  
Seema Construction P Ltd- Reg

Ref: Your letter no. ACIT/CC-1/BBSR/Report/2017-  
18/8 dated 17.11.2017 seeking approval of draft  
assessment orders u/s 153D Approval is hereby  
accorded as per the provisions of [section 153D](#) of the  
I.T. Act for passing the assessment orders in respect to  
the following cases.

Sl.No.	Name of the Assessee	PAN	A.Y.	Total Assessed Income (Rs.)	Section under which order passed
1.	M/s. Shilpa	AAKCS 2712E	2010-11	41,43,750/-	u/s.153A/143(3)
2.	Seema		2011-12	5,71,290/-	u/s.153A/143(3)
3.	Construction		2012-13	83,61,660/-	u/s.153A/143(3)
4.			2013-14	5,37,450/-	u/s.153A/143(3)
5.	P. Ltd.,		2014-15	NIL	u/s.153A/143(3)
6.			2015-16	4,59,65,350/-	u/s.153A/143(3)
7.			2016-17	7,64,70,720/-	u/s.143(3)

Sd/-

Joint Commissioner of Income Tax (Central),  
Bhubaneswar

*End: Record for the AY 2010-11 to 2016-17 (In Seven Folders)*

29. *From the above, first of all, we note that the Assessing Officer has requested the ld JCIT to grant approval u/s.153D vide letter dated 17.11.2017 in both the cases. The JCIT has granted approval in both the cases by only stating that " Approval is hereby accorded as per the provisions of [section 153D](#) of the I.T.Act for passing the assessments in respect of the following cases".*

30. *In this approval, we are unable to see any mention by the approving authority that he has perused the relevant assessment records and draft assessment orders proposed to be passed by the Assessing Officer. The Assessing Officer issued letter seeking approval on 17.11.2017 and approval has been granted on 23.11.2017 that after a passage of five days time from the approval order as reproduced hereinabove. From the above, it is very much clear that the approving authority i.e. the ld JCIT has not even bothered to mention that he has perused the relevant assessment records and draft*

*assessment orders for which he has granted approval u/s.153D of the Act as per the mandatory requirements of the said provisions of the Act.*

31. *Before we proceed, we find it appropriate to consider the contention of ld CIT DR wherein, he submitted that as per letter dated 19.12.2018, the JCIT, the approving authority had given approval for passing order u/s.153A r.w.s 143(3) in both the cases after satisfying himself with the draft assessment orders. This letter has been written to the JCIT (Central) by approving authority i.e. JCIT (BPU) pertaining to the office communication regarding additional ground of appeal, which are being adjudicated but in view of approval order dated 23.11.2017, thus we are inclined to accept the contention of ld A.R. that this submission of approving authority is mere an attempt to fill the gaps and procedural lacunas occurred in the procedure adopted by JCIT while granting approval under [section 153D](#) of the Act and, therefore, the contention of ld A.R. in this regard hold the field.*

32. Similarly letter dated 4.1.2019 issued by JCIT (Central), Bhubaneswar to the CIT (Audit & ITAT), Bhubaneswar is merely a covering letter supplying copy of the approval dated 23.11.2017, which cannot be treated as an explanation to the approval dated 23.11.2019 curbing the mistake in the procedure adopted by the JCIT while granting approval u/s.153D of the Act. On these subsequent letters/ correspondences, we are of the considered view that for adjudicating legal ground of assessee challenging the validity of approval u/s.153D of the Act dated 23.11.2017, we have to evaluate said approval apparently by considering the totality of facts and circumstances and the manner in which such approval has been granted. This cannot be improvised by way of subsequent exercise or correspondence between the approving authority and the AO or other officers.

33. In view of foregoing discussion, we are inclined to hold that the ld JCIT has granted approval under [section 153D](#) of the Act in a mechanical manner

*without application of mind to the relevant assessment records and draft assessment orders submitted before him by the AO for grant of approval u/s.153D of the Act before passing the relevant assessment orders u/s.153A r.w.s 143(3) of the Act.*

34. *Considering the facts and circumstances of the case in the light of above discussion, it is amply clear that the AO vide letter dated 17.11.2017 requested the Approving Authority i.e. JCIT to grant approval u/s 153D of the Act and furnished relevant assessment records and draft assessment order before him for consideration prior to grant of approval. As we have already noted above that there is no requirement of mandate of [section 153D](#) of the Act that an opportunity of hearing should be allowed to the assessee before grant of approval u/s.153D of the Act but at the same time, it is also a requirement of mandate of [section 153D](#) of the Act that the approving authority must apply his mind to the relevant assessment records and draft assessment order before*

*granting approval u/s.153D of the Act. As the requirement of grant of approval by the Superior authority is not merely a formality but it is a mandate and requirement of provisions of the Act.*

35. *In our considered and humble opinion, no procedure for grant of approval has been provided u/s.153D of the Act and the Income tax Rules, 1962. However, when legislature has enacted some provision to be exercised by a higher revenue authority enabling the AO to pass assessment or reassessment orders in the search cases, then, it is the duty of the approving authority to exercise such power by applying his judicious, vigilant and cautious efforts. We are of the view that the obligation on the approval granting authority is of two folds, one the one hand, he has to apply his mind to secure in-build for the department against any omission or negligence by the AO in taxing right income in the hands of right person in the right assessment year and on the other hand he is also responsible and duty bound to do justice with the*

*taxpayer/assessee by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO crating baseless tax liability on the assessee and thus he has to discharge his duties as superior authority. Thus, granting approval u/s.153D of the Act is not merely an official formality but it is a supervisory act which requires proper application of administrative and judicial skill by the authority on the application of mind and this exercise should be discernible from the order of approval u/s.153D of the Act.*

36. *In our humble understanding the provisions of [section 153D](#) of the Act has been introduced by the legislature in its cautious wisdom to make it mandatory on the supervisory authority/approving authority to discharge the duty towards both the assessee as well as revenue to follow the proper procedure and to apply his mind on the material, relevant evidences and other documents including materials found during search &*

*post search investigations and explanation & supporting documents of the assessee to the issue show caused to him by the AO, on the basis of which the AO wants to pass or frame assessment or reassessment orders and after such exercise by perusing and going through the relevant assessment folders/files along with proposed draft orders and also by applying his mind has granted approval u/s.153D of the Act. This is the minimum required exercise by the approving authority before granting approval u/s.153D of the Act. The approving authority has undertaken any such exercise should be discernible from the order of the approval and the subsequent internal correspondence between the lower authorities have no relevance and the defects or omissions or non-application of mind cannot be cured or rectified by any other exercise or working undertaken by the approving authority after grant of approval and after passing the assessment orders u/s.153A of the Act by the Assessing officer.*

37. The provisions of *section 153D* of the Act was inserted by the *Finance Act, 2007 w.e.f. 1.6.2007*. In our humble understanding of said provision, the legislative intent for insertion of said provision is clear inasmuch as prior to insertion of provision u/s.153D, there was no provision for taking approval in cases of assessment or reassessment where search and seizure operation was conducted u/s.133A of the Act. Therefore, in our considered view, the legislature wanted the assessment/reassessment of search and seizure cases should be made and orders should be passed with the prior approval of superior authority, which also means that the superior authority should apply his mind on the materials on the basis of which the AO is making or passing assessment orders and after due application of mind to material in the hands of department while initiating search proceedings, material found & seized during the course of search and also material or information unearthed or gathered during post search investigation and enquiry along with

*explanation, documentary evidence and other relevant material or information submitted by the assessee during search and assessment proceedings, the superior authority has to grant the approval u/s.153D of the Act for passing assessment/reassessment orders in the search cases.*

38. *Further, in our considered view, the approval u/s.153D of the Act cannot be treated as an official formality but the provision has been inserted by the legislature with some specific and useful purpose. It is apparent that the purpose behind enactment of the said provision in the Statute by the legislature are of two folds viz (i) before approval, the Sr. Authority will ensure that the assessee should be protected against undue or irrelevant addition & disallowances in the assessment and (ii) the approving granting authority will also ensure that proper enquiry or investigations are carried out by the Assessing Officer on all the relevant materials including material in hands of the department at the*

*time of initiating search proceedings, material or documents found and seized during search operation and materials found and unearthed during post search investigations and enquiries. Therefore, said provision provides and requires application of mind by the approving authority of the department which, in turn, provides safeguard to the both the parties i.e. revenue and the assessee. Therefore, the provisions of [section 153D](#) of the Act cannot be treated as a mere formality and mandate therein required to be followed by the approving authority in a judicious manner by due application of mind in a manner of cautious judicious or quasi judicial authority. This view has also been expressed by Pune Bench of the ITAT in the case of Akil Gulamali somji, in ITA Nos.455 to 458(Pune) of 2010 vide 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. We also take respectful cognizance of the fact that the Hon'ble Bombay High Court in the case of Akil*

*Gulamali Somji (supra) has concurred with the said findings and view taken by the Pune Tribunal that not following the provisions of [section 153D](#) of the Act will render the related order of assessment void.*

39. *In view of foregoing discussion, we reach to a logical conclusion that it is the duty of the approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment folders/files and draft assessment orders while granting approval u/s.153D of the Act. This is not a formality but a statutory duty of the approving authority with a corresponding obligation on him to examine relevant record and assessment orders and thereafter grant the approval. We are cautious about that the reasons for granting approval may not be a subject matter of challenge or are not required to be mentioned in the order of approval but the manner and the material*

*on the basis of which approval has been granted can be challenged by the assessee and following proper procedure and application of mind by the approving authority should be discernible from the order of approval. No other evidence or documents is required to be considered or appreciated as the approval should be self-speaking that it has been granted by the ld JCIT by following due procedure and due application of mind to the relevant records and orders. The scope and issue agitated by the assessee by way of legal ground in the present case is not that of grant of hearing or representation to the assessee at the time of granting approval but the main grievance and legal objection of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized materials and investigation report and draft assessment/ reassessment orders and this fact should be clearly discernible from the approval order and no other*

*extraneous material/document can be seen in this regard.*

40. *In view of above, 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 of approval u/s.153D and mandate of enactment by the legislature will be defeated. In the present case, the approving authority, the ld JCIT got five days time but from the order of approval, we are unable to see any exercise by the approving authority and even in the approval orders (supra), he has not mentioned that the relevant appeal folders/files along with assessments/reassessment orders have been perused or any discussion or consultation has been made with the AO prior to granting of approval u/s.153D of the Act. Accordingly, we are compelled to hold that the approval granted by the ld JCIT in the appeals under consideration has been granted in a mechanical manner without application of mind and that the assessments/reassessment orders*

*passed by the AO on such approval are declared to be void and bad in law. We hold so.*

41. *In view of aforesaid discussion, we clearly find that approving authority has not applied his mind to the relevant assessment records and draft assessment orders prior to granting approval to the Assessing officer for passing assessment orders u/s.153A/143(3) of the Act. Therefore, the contention of Ld A.R. of the assessee is justified and sustainable that the approval was granted in most mechanical manner without application of mind and respectfully following the proposition rendered by Hon'ble Bombay High Court in the case of Smt. Shreelakha Damani (supra), the order of ITAT Delhi Bench in the case of M3M India Holdings (supra) and decision of ITAT Cuttack Bench in the case of Geetarani Panda (supra), we hold that no valid approval has been sanctioned or accorded by the ld JCIT before allowing the AO to pass the relevant assessment orders. From the relevant approval orders*

*dated 23.11.2017, it is vivid that ld JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval. These facts clearly show that the approval had been granted in a mechanical manner without application of mind and, thus, no valid approval has been granted by the ld JCIT before authorising the AO to pass assessment orders u/s.153A of the Act. Accordingly, all assessment orders are vitiated and thus same are void being bad in law. The requirement of mandate of section 153D of the Act has not been satisfied in both the cases and accordingly we hold that the all assessment orders are vitiated and thus same are void being bad in law. We, accordingly set aside the impugned orders of lower authorities and quash the assessment orders by allowing additional ground of the assesseees in all appeals filed by both the assesseees having identical and similar facts and circumstances.”*

11.10. Order of ITAT Agra Bench, Agra in the case of Rajesh Ladhani, Faizabad vs., DCIT, Central Circle, Agra (supra) in which in paras 11 to 25 it was held as under :

*11. Having held as above, the issue which now requires to be adjudicated is whether the Approval so granted in this case can be treated as valid in view of the mandate of the provisions of Sec. 153-D of the Act vis-a-vis the legislative intent of inserting the said section in the statute. Section 153-D read 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 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 maybe, is required to be passed by the Assessing Officer with the prior*

*approval of the Commissioner under sub-section (12) of Section 144BA.”*

12. *The legislative intent can be gathered from the CBDT Circular No. 3 of 2008, dated 12.3.2008 which read 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 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."*

13. *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 apply their mind on the materials and other attending 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. Object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should 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. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. 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.*

14. *In the above background of law and in the light of Order dated 27.03.2015 passed under section 153D of the Act, which gives legality to the impugned Assessment order, question which arises for our consideration is whether the said Approval granted by the Additional CIT, Central, Kanpur vide his order dated 27.03.2015 can be held to be granted after due application of mind and can be held to be valid in the eye of law?*

15. *To decide the above issue, order dated 27.03.2015 passed by the Additional CIT was again carefully perused. The contents of the Approval, as reproduced in Para 4, speak for itself loud and clear. The following inferences are inevitable from the bare reading of the said order. Draft Assessment orders were placed before the Additional CIT, Central, Kanpur on 27.03.2015 at 3.50 PM for the first time and soon on the same day it was granted. As clearly mentioned in the*

*Approval under challenge, that prior to this date the case was never discussed with the authority granting the approval. The Additional CIT has further noted that even the questionnaire as was required to be issued with the approval of Additional CIT, in view of CBDT instruction was not issued with his approval. He further observed that since, there was no time left to analyze the issue of draft order on merit, therefore, the said order is approved, as specifically mentioned in the said order, solely relying upon the undertaking obtained from the AO that he has taken due care while framing the assessment that all the observations made in the appraisal report relating to examination/investigation as also the issues identified in the course of examination of seized material have been carefully considered by the authority seeking approval. Thus, the sanctioning authority delegated his statutory duty to grant Approval, after due application of his mind, to the same subordinate AO , whose action the Additional CIT, was supposed to supervise and adopting a short cut in*

*the matter obtained an undertaking from the subordinate AO, accepting it on face value that all the issues have been taken care off while framing the assessment by the AO, and that all the observations made in the appraisal report relating to examination/investigation as also the issues identified in the course of examination of seized material have been carefully considered by the AO, the Additional CIT, granted Approval. Admittedly, the Additional CIT, without any consideration on merit in respect of issues on which addition was made granted the Approval on the undertaking of the AO and in view of stated paucity of time with him for granting Approval. This approach of the Additional CIT, Central has rendered the Approval to be an eyewash and idle formality and such a mechanically granted Approval is no approval in the eyes of law.*

16. *The Lucknow Bench of the ITAT in the case of “AAP Paper Marketing Limited Vs ACIT”, (2017) (4) TMI 1371-ITAT Lucknow, (APB-122-129) coincidentally*

*where the ITAT had the occasion to consider the validity of approval granted by the same Additional CIT, Central Circle, Kanpur while quashing the assessments vide Para-14 held as under :*

*"In the present case ACIT has granted impugned approval halfheartedly without application of mind and without considering and perusing the material on record. Thus, we are inclined to hold that there has been no application of mind by the ACIT before granting the approval. Consequently, we hold that the assessment orders made u/s 143(3) of the Act r.w.s 153A of the Act in the case of M/s Siddhbhumi Alloys Ltd. for Assessment Year 2006-07 is bad in law and deserve to be annulled, thus, we ordered accordingly. Finally additional ground of appeal raised by the assessee by way of Rule 27 of the IT AT Rules in ITA No. 321/Lkw/2016 for the Assessment Year 2006-07 is allowed."*

17. From the approval order dated 27.03.2015 of the Addl. CIT, we find that the Ld. AR has rightly pointed out that in the facts of case of AAP Paper Marketing Limited (supra) there may be some justification for the qualified approval in view of the fact that the limitation in that case was getting expired on the day when the draft assessment orders were put up before the Additional CIT, Central Circle, Kanpur for his approval. However, to the disadvantage of the revenue in the case on hands there can be no little justification for qualified approval as the proposal for approval was put up before the Additional CIT on 27.03.2015 at 3.50 PM and at the same time it was granted, without any application of mind on the pretext that limitation is going to get expired on 31.03.2015. Thus, in the case at hand despite availability of time, the Additional CIT has been taking excuse of limitation and has chosen to grant approval without application of his own mind but

*on the undertaking of the AO that “while completing the assessment as per the draft assessment order, all the observations made in the appraisal report relating to examination/ investigation as also the issues identified in the course of examination of seized material have carefully considered.” In our view such a practice is required to be deprecated and we deprecate the same.*

18. *ITAT Mumbai Bench in the case of “Smt. Shreelekha Damani” (supra) (APB-130-137) annulled the assessment holding as under :*

*“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. 153A of the Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed. ”*

19. *The above order so passed by the ITAT, Mumbai Bench was subjected to judicial scrutiny in appeal before the Hon’ble Bombay High Court and the Hon’ble High Court approved the order passed by the Mumbai Bench of the ITAT which is found reported as “PCIT Vs Smt. Shreelekha Damani”, (2019) 307 CTR (Bom.) 218 (APB-138-139) wherein in Para-7 the Hon’ble High Court held as under :*

7. *In plain terms, the Addl. CIT recorded that the draft order for approval under s. 153D of the Act was submitted only on 31st Dec. 2010. Hence, there was not enough time left to analyze the issue of draft order on*

*merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Addl. 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 Addl. 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 result, no question of law arises. ”*

*20. Similar view has been adopted by the Cuttack Bench in the case of Geetarani Panda (supra) (APB140-154) wherein following order passed under section 153D of the Act by the Additional CIT was subjected to challenge before the ITAT on the ground of non-application of mind. ITAT held as under :*

*23. In the instant case, the alleged approval letter dt. 27th March, 2015 of the Addl. CIT, Range-1, Bhubaneswar reads as under :*

*“Despite a reminder given on 19th March, 2015 to submit the time barring draft assessment orders for approval under s153D on or before 23rd March, 2015, the draft*

*orders in M/s. Neelachal CarboMetalicks (P) Ltd. Group of cases has been received in this office only on 26th March, 2015 in the afternoon. The draft orders having being submitted only 5 days before final orders are getting barred by limitation, I have no other option but to accord the approval to the same as the approval is statutorily required under s. 153D, even though there is no time left for undersigned to ensure that all the points raised in the appraisal report, the appellate proceedings, audit inspection etc. are duly taken into account, and the enquiries and investigations that are required to be made are actually made before finalization of the assessment orders.*

*It would have been much better and in the interest of Revenue if you had submitted the draft orders at least one month earlier so as to allow the undersigned sometime to go*

*through and analyse the same vis-a-vis the appraisal report and seized records. It also goes without saying that you never cared even to discuss these cases with the undersigned for guidance and line of investigation to be taken.*

*However, despite all this, I have gone through the material available on records and some of the observations, in respect of the following cases are given in subsequent paras."*

*24. In our considered view, the provisions contained in s. 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 is 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 investigations 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. 1TO in ITA Nos. 455 to 458 (Pune) of 2010, order dt. 30th March, 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 vs. Akil Gulamali Somji in IT Appeal (L) No. 1416 of 2012, order dt. 15th Jan., 2013 concurred with the view of the Tribunal that not following of the provisions of s. 153D of the Act will render the related order of assessment void.*

*25. In the instant case, we find that the supervisory authority has himself admitted that because of reasons stated by him, could not apply his mind and has accorded the approval mechanically to meet the requirements of law as the requirement was merely a formality. The said supervisory authority had a duty towards both the assessee as well as the Revenue which was failed to be performed in the instant case.*

*21. It is the bounden duty of the Additional Commissioner of Income Tax to in accordance with the*

*law, while discharging statutory functions an obligation is casted upon him by the Act to apply his mind while according the approval. There is a statutory duty on the Additional Commissioner of Income Tax with a corresponding obligation on him to examine the record and thereafter accord the statutorily required Approval. The reason for granting the Approval may not be subject matter of the challenge but the manner and the material on the basis of which the approval was granted can always be examined by the Tribunal to come to the conclusion whether the Approval was granted in a mechanical manner or after applying mind looking into the record. No evidences required to be appreciated as the approval is self-evident, i.e., that it was granted by the Additional Commissioner of Income Tax without application of mind and without looking into the record.*

22. *We may record that the decisions relied upon by the ld. DR are factually distinguishable as none of the order has examined this aspect of the matter which is subject matter of present litigation i.e non-application*

*of mind by the superior authorities at the time of granting the Approval. The sum and substance of the decisions relied upon by the Ld. DR's was that the assessee was not entitled to any hearing or representation at the time of grant of approval. As mentioned hereinabove the scope and ambit in the present litigation is not that of grant of hearing or representation at the time of Approval but whether the Approval can be granted by the superior authority without application of mind without looking into seized material, investigation report, the draft assessment order etc can be held sustainable in the eyes of law. We had already answered that such an approval is bad in law and cannot be sustained.*

23. *The last submission made by the Ld. DR's was that the matter may be sent back to the AO to pass a fresh assessment order after seeking the approval from the competent authority. In this regard we are of the opinion that the Revenue is not entitled to second inning, for correction of its own mistake. Assessee*

*cannot be made to run again for many more years for contesting the litigation. Hon'ble Supreme Court also in the case of Parashuram Pottery Works Co. Ltd. v. ITO 106 ITR 1 observed that "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity, (emphasis supplied) In view of these peculiarity of the facts we are of the opinion that second inning cannot be granted to the revenue.*

24. *In view of the above, we hold that if the approval is granted by the superior authorities in mechanical manner without application of mind then the very purpose of obtaining approval is defeated. Moreover, where 4 clear days' time was available with the administrative authority, it was a half-hearted approval and as' such held as no approval in the eyes of law. Accordingly, we have no -hesitation in declaring that the Approval granted by the Additional CIT, Central, Kanpur on 27.03.2015 is no approval in the eyes of law and therefore, the assessment made by the AO based on such an approval is also declared to be null and void.*

25. *We, therefore, quash the Assessment orders under section 153A of the Act dated 31.03.2015 for Assessment Year 2009-10 & 2011-12 in ITA No.106/Agra/2019, ITA No. 107/Agra/2019 and all collateral proceedings taken up in pursuance of the said Assessment orders also do not survive. As the Assessment orders itself are quashed all other issues*

*challenging the merits of the addition, in respective appeals arising out of impugned assessment proceedings, are rendered to be academic and not adjudicated upon.”*

11.11. Order of ITAT, Agra Bench in the case of Shri Saurabh Agarwal vs., DCIT, Central Circle Agra (supra) in which in paras 4 to 5 it was held as under :

*“4. We have heard the rival contentions of the parties and perused the record. Karnataka High court in the matter of Gopas S. Pandit v. CIT, 95 taxman. Com 246 in paragraph 8 had held as under :*

*“8. Having heard the learned Counsel for the parties, we are satisfied that the internal guidelines issued by the Central Board of Direct Taxes, as urged by the learned Counsel for the Assessee, bereft of the statutory provisions in Section 153D of the Act cannot bind the approving Authority, namely, the Joint Commissioner to*

*comply with the principles of natural justice by the said Authority. The Assessing Authority undoubtedly has of course given adequate and reasonable opportunity of hearing to the Assessee and all objections on merits were considered by him. Merely because, Section 153D of the Act requires a prior approval of the Draft Assessment Order by the higher Authority, namely, the Joint Commissioner in the present case, because the Assessment Order was passed by the Authority below the rank of the Joint Commissioner, the provisions of the Act do not mandate that a fresh round of opportunity of hearing should Date of Judgment 28-06-2018, I.T.A. No.37/2017 Gopal S. Pandit Vs. The Commissioner of Income Tax & Another be given to the Assessee by such Authority, namely, Joint Commissioner also even for approving Draft Assessment Order."*

4.1. Similarly, Gujrat High Court in the matter of *Pr. CIT v. Sunrise Finlease P. Ltd.* [2018] 89 taxmann.com 1 (Gujarat) in paragraph No. 9 -11 had held as under :

9. As regards proposed questions [B] and [C] viz., whether lack of approval under section 153D would invalidate the assessment order and was not a curable defect, it may be noted that section 153D of the Act mandates that 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 subsection (1) of section 153A or the assessment year referred to in clause (b) of subsection (1) of section 153B, except with the prior approval of the Joint Commissioner. In the present case, the assessment order has been passed by an Income Tax Officer, who admittedly is an officer below the rank of Joint Commissioner; therefore, the provisions of section 153D of the Act

would be applicable. Section 153D starts with the words "No order of assessment or reassessment shall be passed. ..". In other words, the language employed in the provision is couched in the negative and therefore, there is a prohibition against passing of an assessment or reassessment order, except with the prior approval of the Joint Commissioner.

10. In *Shin Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [2005] 7 SCC 234, the Supreme Court has observed that if the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases, absolute, and that neglect to attend to them will invalidate the whole proceeding. In *Vijay Narayan Thatte v. State of Maharashtra* [2009] 9 SCC 92, the Supreme Court

*has held that it is well settled that when a statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. The Supreme Court, in some decisions has held that merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. However, the present case deals with the interpretation of a taxing statute. It is well settled that a taxing statute has to strictly construed, therefore, from the language employed in section 153D of the Act, the requirement of obtaining the prior approval of the Joint Commissioner has to be regarded as mandatory in nature.*

11. *In the facts of the present case, as the assessment order has been passed by an Income Tax Officer, the requirement of obtaining the prior approval of the Joint Commissioner under section 153D of the Act was absolute. The Tribunal, however, has recorded a finding of fact that there*

*is nothing on record to indicate that the prior approval of the Joint Commissioner was obtained. As a natural corollary therefore, in the absence of the requirement of prior approval of the Joint Commissioner being satisfied, the whole proceeding would stand invalidated. The Tribunal was, therefore, wholly justified in holding that the impugned order of assessment would stand vitiated in view of non-compliance of the provisions of section 153D of the Act. On this count also, therefore, the appeal, does not merit acceptance.*

4.2. *Similarly in the matter of Akil Gulamali Somji 20 taxmann.com 380 (Pune) Tribunal had held as under:*

*“11. We have considered the above submissions and have gone through the decisions relied upon by the parties in view of orders of the authorities below and material available on record. The relevant facts are that during the course of*

*search and seizure action on 29.7.2003 at the business and residential premises of Mr. Shriram Soni, certain documents belonging to the assessee were found and seized. Notice u/s. 153C was issued to the assessee and assessment u/s. 153C r.w.s. 144 have been framed for all the 4 A.Ys. under consideration. Before the Ld CIT(A), the assessment orders were questioned both on legal issue and on merits. On legal issue, the validity of assessment orders in absence of approval obtained u/s. 153 D of the Act of Joint Commissioner of Income Tax has been questioned. On merits additions made by the A.O were impugned. Since the assessee could not succeed in its appeal, the present appeals have been preferred in questioning the first appellate orders.*

12. On perusal of the provisions laid down u/s. 153C of the Act, it is apparent that after issuance of notice u/s. 153C, the A.O having jurisdiction over such other person (against which

*incriminating material has been found during the course of search conducted on a person) arose or re-assess income of such other person in accordance with the provisions of Sec. 153A. Sec. 153B talks about time limit for completion of assessment u/s. u/s. 153A, whereas S. 153D, talks about necessity of prior approval for framing assessment in case of search or requisition. We thus fully concur with the submission of the Ld. A.R. that provisions laid down u/s. 153D are very much applicable in case of assessment of income of any other person (i.e. the person other than the person searched). Now the issue for our adjudication is as to whether absence of obtaining prior approval u/s. 153D of Joint Commissioner of Income Tax, assessment made u/s. 153 C will make the assessment void or voidable/curable. For a ready reference, provisions laid down u/s. 153D of the Act are being reproduced hereunder :*

"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 [subsection (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]."

The above provisions u/s. 153D have been laid down under the heading "prior approval necessary for assessment in cases of search or requisition". This heading itself suggests that obtaining prior approval the assessment in cases of search or requisition is necessary. We further note that the provisions u/s. 153D start with a negative wording "no order of assessment or re-assessment" supported by the further wording "shall" makes the intention of the Legislature clear that compliance of Sec. 153D requirement is mandatory. No universal rule can be laid down as

*to whether mandatory enactment shall be considered directory or obligatory with an implied nullification for disobedience. As per the decision of Hon'ble Supreme Court in the cases of Banwari Lal Agarwalla v. State of Bihar AIR 1961 SC 849 ; Raza Buland Sugar Co. Ltd., v. Municipal Board AIR 1965 SC 895 if object of the enactment will be benefited by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to nascent persons without very much further object of enactment, the same will be construed as directory. But all these does not mean that language used is to be ignored, only that the prima facie inference of the intention of the legislature arising from the words used may be displaced by considering the nature of the enactment, its designed consequences flowing from alternative constructions. The wordings and language used in Sec. 153D of the Act and the*

*heading "prior approval necessary for assessment in cases of search or requisition" under which, Sec. 153D has been provided do not leave an iota of doubt about the very intention of the legislature to make the compliance u/s. 153D a mandatory. There is no dispute that if a provision is mandatory, an act done in breach thereof will be invalid, but, if it is directory, the act will be valid although non-compliance may give rise to some other penalty if provided by the Statute. The general rule that non-compliance of mandatory requirements results in nullification of the Act is subject at least to one exception. If contain requirements or conditions are provided by a statute in the interest of a particular person, the requirements, or conditions although mandatory may be waived him if no public interest are involved and in such case, the act done still be valid even if the requirement or condition has not been performed. Here, before us, is not a case*

*where consent of assessee will waive the condition of obtaining prior approval u/s. 153D of the Joint Commissioner of Income Tax by the A.O for framing assessment u/s. 153C/ 153A of the Act. Condition of prior approval of JCIT u/s. 153D has been put in public interest and not in the interest of a particular person. Thus it cannot be waived by particular person. The use of word "shall" raises a presumption that a particular provision is imperative but this prima facie inference may be reverted by other consideration such as object and scope of the enactment and consequence flowing from such construction. The revenue has not been able to rebut the above inference by pointing out other consideration like object and scope of the enactment and the consequence flowing from such construction before us. Clause 9 of Manual of Office Procedure, Volume II (Technical) February 2003 issued by Directorate of Income Tax on behalf of Central*

*Board of Direct Taxes, Department of Revenue,  
Government of India, reads as under :*

*"9. Approval for assessment : An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT. (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.) The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant*

*folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself.*

*" Chapter XIVB also deals with assessment of search cases. Sections 153A, 153B & 153 C have been introduced to Chapter XIV "procedure for assessment" w.e.f. 1.6.2003 by the Finance Act 2003 whereas Sec. 153 D has been inserted to the Chapter w.e.f 1.6.2007 by the Finance Act 2007. These provisions thus also deal with the assessment in case of search or requisition and when the assessment orders in the present case were passed the provisions laid down u/s. 153D were very much in operation. In the present case, assessments in question have been framed on 27.12.2007.*

13. *In the case of Mrs. Rataabai N.K. Dubhash (Supra), the difference between cancellation and amendment of assessment in view of the provisions of Sections 143, 144B, 153 and 251 of the I.T. Act 1961 has been dealt with. The Hon'ble High Court has been pleased to hold as under :*

*"In view of the above discussion, we are of the clear opinion that incases falling under section 144B of the Act, the quasi-judicial function of the Income-tax Officer as an assessing authority comes to an end the moment the assessee files objections to the draft order. The power to determine the income of the assessee thereafter gets vested in the Inspecting Assistant Commissioner to whom the Income-tax Officer is required to forward the draft order together with objections. The only thing that remained to be done by the Income-tax Officer is to pass a*

*final order in accordance with the directions given by the Inspecting Assistant Commissioner. The function of the income-tax Officer to make the final assessment under section 144B(5) of the Act is more in the nature of a ministerial function because he can pass the order only in accordance with the directions of the Inspecting Assistant Commissioner. He cannot vary or depart from the directions given by the Inspecting Assistant Commissioner. Moreover, the requirements of section 144B of the Act are mandatory. The Income-tax Officer has no option but to follow the same. He cannot make the final order on the basis of the draft order without forwarding the same to the Inspecting Assistant Commissioner along with the objections and without obtaining the directions of the Inspecting Assistant Commissioner. An assessment made by the*

*Income-tax Officer in violation of the provisions of section 144B of the Act would be an assessment without jurisdiction. In the instant case, the admitted position is that on receipt of the draft order of assessment, the assessee did file objections and the Income-tax Officer completed the assessment himself on the basis of the draft order without forwarding the draft order and the objections to the Inspecting Assistant Commissioner and obtaining directions from him. Such an order, on the face of it, is beyond the powers of the Income-tax Officer under section 143 read with section 144B of the Act and, hence, without jurisdiction. The Tribunal, in our opinion, was, therefore, justified in its conclusion that the assessment was liable to be annulled. It was right in holding that the assessment order passed by the Income-tax Officer the instant case without reference to*

*the Inspecting Assistant Commissioner had rightly been annulled by the Commissioner of Income-tax (Appeals). In view of the above, we answer the question referred to us accordingly in favour of the assessee and against the Revenue. This reference is disposed of accordingly with no order as to costs."*

14. *In the case of SPL's Siddharth Ltd. (Supra), before the Hon'ble Delhi High Court, the facts were that notice issued by the A.O u/s. 147 r.w.s 148 of the Act for re-opening the assessment for the A.Y. 2002-03 was set aside by the Tribunal on the ground that the requisite approval of Addl. Commissioner of Income Tax, which is mandatorily required, was not taken. Since 4 years had elapsed from the end of the relevant A.Y, the A.O u/s. 151(1) of the Act was required to take approval of the competent authority. The Hon'ble Delhi High Court after discussing the issue in*

*detail and the case laws cited before it has been pleased to approve the decision of Tribunal. In view of these decisions and the position of law provided u/s . 153D of the Act, we hold that the assessment orders impugned framed in absence of obtaining prior approval of the Joint Commissioner for the A.Ys. under consideration are invalid as null and void and are quashed accordingly.*

15. *The decisions relied upon by the Ld. D.R are having different facts and issue, hence are not helpful to the revenue. In the case of Guduthur Bros. (Supra) the levy of penalty without affording a hearing to the assessee was questioned before the appellate authority, who set aside that order. The matter ultimately travelled to the Hon'ble Supreme Court and it was held that the ITO was well within his jurisdiction to continue the proceedings from the stage at which the illegality has occurred and to assess the appellants to a penalty, if any. Before the Hon'ble M.P. High Court*

*in the case of Sardarilal Bhasin ( Supra), the issue was regarding applicability of prescribed limitation u/s. 275 in a penalty order passed after the case is remanded by an appellate authority. The Hon'ble Court was pleased to hold that the limitation prescribed u/s. 275 of the Act is not applicable to the penalty order passed after the case is remanded by an appellate Authority. In the case of Gayathri Textiles (Supra) non-obtaining of prior approval of I.A.C u/s. 271(1)(c) (iii) for direction for payment of penalty was held as procedurally defective. The provisions laid down u/s. 153D of the Act under consideration in the present case before us, are different as here the prior approval of Joint Commissioner is not required merely for direction for payment of the due amount of tax but overall approval of the assessment framed by the I.T.O. Thus, the cited decision is not applicable in the present case. In the case of Sara Enterprises (Supra), the issue*

*was as to whether the bar of limitation contained u/s. 275 of the Act would attenuate or curtail the powers of CIT, vested in him u/s. 263 of the said Act. The Hon'ble Madras High Court was pleased to hold that it is not hit by provisions of Sec. 275 of the Act. In Prabhudayal Amichand (Supra), the Hon'ble High Court of Madhya Pradesh with reference to Sec. 271(1)(c) of the Act was pleased to hold that a procedural irregularity not involving the question of jurisdiction can be cured. It is not helpful to the revenue in the present case because in the present case, the A.O was having no jurisdiction to frame assessment order without prior approval of JCIT as necessary requirement to comply with u/s. 153D of the Act. In the case of Damoderdas Murarilal (Supra), the Hon'ble High Court did not approve the view of the Tribunal in holding that in view of Clause (b) of Sec. 251(1) of the Act, the first appellate authority had no power of remand and therefore, the procedural illegality*

*would not be corrected by recourse to remanding the case to the ITO. Here in the present case, as we have already discussed, and also cited the recent decision of Hon'ble jurisdictional Bombay High Court in the case of Mrs. Ratanbai N.K. Dubhah ( Supra) and of Hon'ble Delhi High Court in the case of SPL's Siddhartha Ltd. (Supra) that requirement u/s. 153 D for obtaining approval of JCIT is not procedural only but a mandatory requirement, hence the cited decision by the Ld. D.R is not applicable in the case of present assessee. Under above circumstances, the issue raised regarding the validity of assessment orders in question without obtaining prior approval u/s. 153D of the Act is decided in favour of the assessee. The assessment orders in question are thus quashed as null and void.*

**Personal hearing to the Assessee before  
according the approval under section 153D**

4.3 From perusal of the above decisions, it is categorically clear

*The assessee is not entitled to have personal hearing from JCIT before granting approval u/s. 153D, as the assessee had already been heard during the assessment/reassessment proceedings by the Assessing Officer and*

*Therefore, we are in agreement with the submissions of the ld. DR that the assessee is not required to be given any hearing for the purpose of granting any approval. There is inbuilt purpose for seeking approval from an Officer below the rank of JCIT.*

**Whether approval granted by the officer  
under 153D is administrative order**

4.4. Now, we will be examining whether the order passed by the JCIT/Addl. CIT in the case u/s. 153D was an administrative order or an order having civil, criminal or penal consequences. The similar provision was examined by the various high courts pertaining to section 158 BG, and after examining the scheme of Act had come to the conclusion that the prior approval provided under section 158 BG is administrative in nature. The Hon'ble Jurisdictional high Court in the matter of Dr. K.P. Singh [2014] 41 taxmann.com 406 (Allahabad) it was held as under ;

“9. It may be mentioned that no opportunity is required while giving the approval by the CIT as per the ratio laid down in the case of Rishabchand Bhansali (supra), where it was held that being an administrative action, assessee is not entitled to opportunity of being heard. Further, in the case of Lakshmi Jewellery

*(supra), it was held that :*

*"....the Commissioner of Income-tax before making an order approving the order of assessment made by the Assessing Officer in exercise of his powers under Section 158BG(a) need not give a hearing to the assessee".*

*Similarly, in the case of Shree Rama Medical and Surgical Agencies (supra), it was observed that :*

*"... The provisions of Section 158BG do not contemplate that the Commissioner should come face to face with the assessee while according approval for the proposed assessment under Chapter XIB-B of the Act. Apart from the language of the provision, the nature of the functions confided to the Commissioner is inconsistent with the application of the principles of natural justice."*

4.5. *Similar decision was rendered by the Hon'ble Karnataka High Court in the matter of Rishabhchand Bhansail, 136 Taxman 579, where the Karnataka High Court had held that the approval granted by the Commissioner u/s. 158BG is an administrative approval and there is no necessity of giving hearing to the assessee. For the purpose of that, we reproduce paragraph No. 4 to 4.4 which is to the following effect :*

4. *Section 158BG provides that no order of assessment for the Block period shall be passed by the Assessing Officer without the previous approval of the Joint Commissioner in respect of a search initiated under section 132. The assessee contends that before granting previous approval under section 158BG for an order of assessment made under section 158BC, the Joint Commissioner should have given a hearing to the assessee. It is submitted that the power to grant previous approval under section 158BG is an*

*amalgam of appellate and revisional power and therefore, the right to a hearing should be read into section 158BG. It is also contended that the Tribunal failed to consider this ground though specifically urged before it.*

*4.1 Chapter XIV-B contains a special procedure for assessment of search cases. Section 158BC prescribes the procedure for block assessment. Clause (c) of section 158BC enables the Assessing Officer, on determination of the undisclosed income of the block period, to pass an order of assessment and determine the tax payable by him on the basis of such assessment. Clause (b) requires the Assessing Officer to proceed in the manner laid down in section 158BB and the provisions of section 142 sub-sections (2) and (3) of section 143 and section 144, while determining the undisclosed*

*income of the block period. It is thus evident that the procedure clearly contemplates the Assessing Officer giving a hearing to the assessee before making an assessment order in regard to the block period.*

*4.2 Clause (k) of section 246A provides for an appeal against the order of assessment for the block period made by the Assessing Officer under clause (c) of section 158BC. Sub-section (2) of section 250 provides for a hearing of the appeal. Thus, the assessee is heard by the Assessing Officer before making the assessment order under section 158BC. If the assessee is aggrieved by the assessment order he had a remedy by way of an appeal under section 246A where also he is heard. There is no need therefore for the Joint Commissioner, to give a hearing before giving previous approval under section 158BG. Firstly, the statute does not provide*

*for such a hearing; secondly, principles of natural justice also do not require such a hearing having regard to the fact that the assessee gets a hearing before the assessment and also a hearing if he files an appeal against the order of assessment; and thirdly the order passed by the Joint Commissioner granting previous approval under the proviso to section 158BG is in exercise of administrative power on being satisfied that the order of assessment has been made in accordance with the provisions of Chapter XIV-B. The previous approval is purely an internal matter and it does not decide upon any rights of the assessee. The Joint Commissioner, while examining the matter under the proviso to section 158BG does not examine or adjudicate upon the rights or obligations of the assessee, but only considers whether the Assessing Officer has*

*fulfilled the requirements of Chapter XIV-B.*

4.3. *In V.C. Shukla v. State AIR 1980 SC 962, the Supreme Court gave the following example :*

*“In cases where law requires sanction to be given by the appointing authority before a prosecution can be launched against a Government servant, it has never been suggested that the accused must be heard before sanction is accorded. .”*

4.4. *Where a statute requires the Executive to take an administrative action after being satisfied or after forming an opinion as to the existence of a state of circumstances, the action is based on the subjective satisfaction. It is well-settled that any administrative actions based either on*

*policy or on subjective assessment, if does not prejudicially affect any vested right or interest, need not be preceded by a hearing, unless the statute specifically provides for the same. Therefore, in the absence of any provision for opportunity of hearing in section 158BG, there is no need for the Joint Commissioner to give a hearing to the assessee before granting "previous approval" under section 158BG. The first question is, therefore, answered against the assessee.*

4.6. *The language used in section 153D and section 158BG, are similar in nature and both prohibits passing of the assessment order or reassessment/block assessment without the prior approval of the officers mentioned in the said sections. The language used in these sections are in the mandatory form which prohibits passing of the order by the assessing officer without prior approval. Meaning thereby if an order is passed without any approval from the authorities*

mentioned in the respective sections then the order shall be bad in law and would be liable to be declared void being passed in contradiction to these provisions. Moreover these 2 provisions were provided by the legislature for the same purposes i.e., to supervise the functioning of the lower authorities by the higher authorities. The comparative chart of these 2 provisions it is as under :

<p><i>[Prior approval necessary for section 153 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 51[sub-section (1) of]</i></p>	<p><i>[Authority competent to make the block assessment. 158BG. The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner 7 [or Deputy Commissioner] or an Assistant Director 7 [or Deputy Director], as the case</i></p>
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<p>section 153A or the assessment year referred to in clause (b) of subsection (1) of section 153B, except with the prior approval of the Joint Commissioner:] 52[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 53[Principal Commissioner or] Commissioner under subsection (12) of section 144BA.]</p>	<p>may be : Provided that no such order shall be passed without the previous approval of— (a) the 8 [Principal Commissioner or] Commissioner or 8 [Principal Director or] 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 9 [Joint] Commissioner or the 9 [Joint] Director, as the case may be, in respect of search initiated under section 132 or books of account,</p>
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	<p><i>other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997.]</i></p>
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4.7. *In view of the above and also on account of the fact that the issue had already been examined by the jurisdictional High Court in respect of section 158 BG holding that the approval granted by the higher authorities were administrative in nature we do not find any reasons to take a contrary view and accordingly we are also of the opinion that the approval granted by the Joint Commissioner in the present case was in the nature of administrative approval.*

**Whether an administrative order which entail civil consequences/penal consequences/civil liabilities can be challenged before the tribunal if assessment order is premised on such administrative prior approval**

4.8. In the above noted paragraph it is categorically mentioned that if the approval is lacking under section 153D granted by the superior authorities, then the assessment order is liable to be quashed being passed in violation of section 153D. However, if the approval is granted by the superior authority without looking into the material, without application of mind and merely relying upon the understanding of the assessing officer, then in that eventuality the said approval ceases to be approval in the eyes of law. In our view the approval as envisaged under section 153D of the Act is not empty formality and there is a rational and reason for mandating the approval before passing the assessment order under the Act. If it was merely a formality and the superior authority is not required to apply its mind then there was no reason to incorporate even for approval of the superior authority and it would not have been worded in the mandatory manner. Because the language used in the provision is in the form of mandatory direction therefore it cannot be

*argued that even if the approval is granted without application of mind then also it is valid in the eyes of law. In our opinion, civil and penal consequences would flow from completion of assessment and therefore if the approval is denied then crystallize right will accrue in favour of the assessee and the assessee will have a right to assert that the assessment made is bad in law. Similarly if the approval is granted without application of mind which is discernible from the record then the said approval loses its character to be approval in the eyes of law.*

4.9. We had already mentioned that the assessee is not entitled to any personal hearing before passing of the approval order by the authority under section 153D of the Act. But, while holding this in favour of the revenue, we cannot close our eyes and close the right of the assessee to challenge the approval granted by the superior authority in violation of the basic fundamental principle enshrined in the income tax Act as well as in general law whereby, it has been held

*that the authority while granting the approval should not grant the approval mechanically without even looking into the document and without applying its mind.*

4.10. *The right to challenge the approval, is also based on various principal including the non-application of mind by the superior authority or granting approval by an authority which is not vested with the power to grant the approval or the approval granted was after the passing of the assessment order in all these cases and any other cases the direction of the tribunal and also the other courts are not barred and the tribunal and the other courts can very well examine the approval granted by the superior authority in the context of our aforesaid observation and also the other preparation of law laid down by the high courts and the tribunal.*

4.11. *The jurisdictional High Court in the case of Verma Roadways vs. ACIT, 75 ITD 183 to the following effect :*

*“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.”*

4.12. Similarly, in the matter of Sahara India (Firm) vs. CIT, 169 taxman 329 and in paragraph 6 and 21-24 it was held 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.*

21. *In the light of the aforementioned legal position, we are in respectful agreement with the decision of this Court in Rajesh Kumar's case (supra) that an order under section 142(2A) does entail civil consequences. At this juncture, it would be relevant to take note of the insertion of proviso to section 142(2D) with effect from 1-6-2007. The proviso provides that the expenses of the auditor appointed in terms of the said provision shall, henceforth, be paid by the Central Government. In view of the said amendment, it can be argued that the main plank of the judgment in Rajesh Kumar's case (supra) to the effect that direction under section 142(2A) entails civil consequences because*

*the assessee has to pay substantial fee to the special auditor is knocked off. True it is that the payment of auditor's fee is a major civil consequence, but it cannot be said to be the sole civil or evil consequence flowing from directions under section 142(2A). We are convinced that special audit has an altogether different connotation and implications from the audit under section 44AB. Unlike the compulsory audit under section 44AB, it is not limited to mere production of the books and vouchers before an auditor and verification thereof. It would involve submission of explanation and clarification which may be required by the special auditor on various issues with relevant data, document etc., which, in the normal course, an assessee is required to explain before the Assessing Officer. Therefore, special audit is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic. We are, therefore of the view that*

*even after the obligation to pay auditor's fees and incidental expenses has been taken over by the Central Government, civil consequences would still ensue on the passing of an order for special audit.*

22. *We shall now deal with the submission of learned counsel appearing for the revenue that the order of special audit is only a step towards assessment and being in the nature of an inquiry before assessment, is purely an administrative act giving rise to no civil consequence and, therefore, at that stage a pre-decisional hearing is not required. In Rajesh Kumar's case (supra) it has been held that in view of section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act stipulates that any proceeding before an Income-tax Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of section 196 of I.P.C.*

*and every Income-tax Authority is a court for the purpose of section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case (supra), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi-judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: Mrs. Maneka Gandhi v. Union of India [1978] (1) SCC 248 and S.L. Kapoor*

*v. Jagmohan AIR 1981 SC 136. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its "wide umbrella. Accordingly, we reject the argument and hold that since an order under section 142(2A) does entail civil consequences, the rule audi alteram partem is required to be observed.*

23. We are also unable to persuade ourselves to agree with the proposition canvassed by learned counsel for the revenue that since a post-decisional hearing in terms of sub-section (3) of section 142 is contemplated, the requirement of natural justice is fully met. Apart from the fact that ordinarily a post-decisional hearing is no substitute for pre-decisional hearing, even from the language of the said provision it is plain that the

*opportunity of being heard is only in respect of the material gathered on the basis of the audit report submitted under sub-section (2A) and not on the validity of the original order directing the special audit. It is well-settled that the principle audi alteram partem can be "excluded only when a statute contemplates a post decisional hearing amounting to a full review of the original order on merit, which, as explained above, is not the case here.*

24. *The upshot of the entire discussion is that the exercise of power under section 142(2A) of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in section 142(2A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of principles of natural justice is to be read into the said provision.*

*Accordingly, we reiterate the view expressed in Rajesh Kumar's case (supra)."*

4.13. *Further, the coordinate bench in the matter of Shreelekha Damani 88 Taxmann.com 383 had held as under :*

*"11.9. This decision of the Tribunal was considered by Allahabad Bench of the Tribunal in the case of Verma Roadways v. Asstt. CIT [2000] 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 presupposes 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."*

*11.10. 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  
Amarlal Bajaj v. Asstt. CIT[2013] 37  
taxmann.com 7/60 SOT 83 (URO)  
wherein at para-8, the Tribunal has  
considered the decision of the Honble  
High Court of Delhi Bench in the case of  
United Electrical Co. (P.) Ltd. v.  
CIT[2002] 125 Taxman 775/258 ITR  
317 (Delhi) which read as under:*

*'Hon'ble Delhi High Court in  
the case of United Electrical Co.  
Pvt. Ltd. v. CIT258 ITR 317 has  
held that "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'.*

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 approved 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. 153A 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 v. Dy. CIT [2000] 113 Taxman 37 (Mag.)*, Hon'ble High Court of Karnataka in the case of *Rishabchand Bhansali v. Dy. CIT[2004] 136 Taxman 579/267 ITR 577* and Hon'ble High Court of Madras in the case of *Sakthivel Bankers v. Asstt. CIT [2002] 124 Taxman 227/255 ITR 144*.

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.”*

4.14. *In view of the above we are of the considered opinion if the approval is granted by the superior authorities for extraneous reasons, without application of mind or without looking into the record, then the approval loses its character of an approval in the eyes of law. Accordingly we have no hesitation in declaring that the approval granted by the higher authorities on 27 March 2014 is no approval in the eyes of law and accordingly the assessment made by the assessing officer based on such an approval is also declared to be null and void. In fact, the issue of judicial review of the administrative decision were examined by Hon’ble*

*Supreme Court in Tata Celular vs. Union of India (1994) 6SCC 651 (Paragraph 77) and also in the matter of West Bengal Central School Service Commission vs. Abdul Halim, (2019) SCC online (SC) 902. We are bound by the law laid down by the Hon'ble Supreme Court in the aforesaid judgment.*

4.15. *We may mention that in the approval granted by additional Commissioner of income tax on 27 March 2014 it is clearly mentioned that he has not applied its mind and he has not even look into the draft assessment order and he solely relied upon the undertaking of the assessing officer who had completed the assessment proceedings. He has also not gone into the record of investigation and seized material and has granted the approval without any meaningful discussion and going through the record. In our view such a practice is required to be deprecated and we deprecate the same. It is the duty of the additional Commissioner of income tax to apply his mind while according the approval and should not grant approval*

*in a callous and clandestine manner. There is a statutory duty on the additional Commissioner of income tax with a corresponding obligation on him to examine the record and thereafter accord the approval. The reason for granting the approval may not be subject matter of the proceedings but the manner and the material on the basis of which the approval was granted can always be examined by the tribunal and also by the other courts to come to the conclusion whether the approval was granted in a mechanical manner or after applying mind looking into the record. No evidences required to be appreciated as the approval is self-evident, i.e., that it was granted by the additional Commissioner of income tax without application of mind and without looking into the record. In view of the above the assessment order passed by the assessing officer is void and accordingly all the appeals of the assessee are allowed.*

4.16. *We may record that the decisions relied upon by the ld. DR are factually distinguishable as*

*none of the decisions have examined this aspect of application of mind by the superior authorities at the time of granting the approval. The sum and substance of the decisions relied upon by the learned departmental representative was that the assessee was not entitled to any hearing or representation at the time of grant of approval. As mentioned hereinabove the scope and ambit in the present litigation is not that of grant of hearing or representation at the time of approval but whether the approval can be granted by the superior authority without application of mind without looking into seized material, investigation report, the draft assessment order etc can be sustainable in the eyes of law. We had already answered that such an approval is bad in law and cannot be sustained.*

4.17 *The last submission made by the learned departmental representative was that the matter may be sent back to the assessing officer to pass a fresh assessment order after seeking the approval from the*

*competent authority. In this regard we are of the opinion that the revenue is not entitled to 2nd inning, in the matter as the non grant of approval/grant of approval in a mechanical manner takes out the direction of the assessing officer to pass the assessment order and the same cannot be rectified or improved by the revenue in the 2nd round of litigation. Undoubtedly the assessee is contesting the matter from the date of search before various forums including before the Hon'ble High court and the assessee cannot be made to run again for many more years for contesting the litigation. In view of these peculiarity of the facts we are of the opinion that 2nd inning for rectifying or removing the defects cannot be granted to the revenue.*

4.18. *As we had held that the assessment made by the Assessing Officer was bad in law and the same has been annulled, therefore, the appeals of the Revenue challenging the orders of the ld. CIT(A) are also liable to be dismissed.*

5. *In the result, the appeals of the assessee are allowed and those of Revenue are dismissed.”*

11.12. The Order of ITAT, Delhi Bench in the case of Uttarakhand Uthan Samiti, Dehradun vs., ITO, Ward 45(5), New Delhi (supra) in which in paras 13 to 19.1 it was held as under :

*13. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by the parties. The only issue to be decided in the impugned appeals are regarding the validity of the assessment order in absence of proper approval necessary for assessment as per the provisions of section 153D. The provisions of section 153D read as under :-*

**“153D.** *No order of assessment or reassessment shall be passed by an*

*Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.*

**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.”

13.1. A perusal of the order sheet entries copy of which is placed at page 37 of the paper book, Volume-I shows that on 30<sup>th</sup> March, 2015, the AO has mentioned as under:-

*“Draft order submitted for approval u/s  
153D. Approval received vide letter No.1158.  
Order passed u/s 153A. Issue notice of  
demand.”*

*14. Similarly, the letter addressed by the DCIT,  
Central Circle, Dehradun to the Addl.CIT, Central  
Range, shows that such draft assessment orders  
were submitted for approval on 30<sup>th</sup> March, 2015.  
The relevant scanned copy of the same reads as  
under:-*

*“ F.No.: DCIT/CC/DDN/DFA/2014-15/*

*Office of the Dy. Commissioner of Income Tax,  
Central Circle, Dehradun*

*Dated : 30.03.2015*

*To  
The Addl. Commissioner of Income Tax,  
Central Range,  
Meerut*

*Sir,*

*Subject: Submission of Draft Assessment Orders in DBIT Group of cases, Dehradun - Approval thereof - regarding Kindly refer to the subject cited above.*

2. *In this context, it is submitted that in compliance to your directions the Draft Assessment Orders in the following cases u/s 153A of the I T Act 1961 are being submitted for your kind perusal and necessary approval.*

<i>Sl.No.</i>	<i>Name of the assessee</i>	<i>PAN</i>	<i>Asstt. Years</i>
1.	<i>Sh. Sanjay Bansal</i>	<i>ACZPB9725A</i>	<i>2007-08 To 2013-2014</i>
2.	<i>Uttarakhand Uthan samiti</i>	<i>AAAAU1376N</i>	<i>2007-08 To 2013-2014</i>
3.	<i>Wali Gram Udhog sansthan</i>	<i>AAAAW1501B</i>	<i>2007-08 To 2013-2014 ;</i>
4.	<i>Shri Krishna Educational Trust</i>	<i>AAATS 3624 C</i>	<i>2007-08 To 2013-2014</i>

*It is requested that approval may kindly be accorded to the draft assessment orders.*

*Encl: Case records:*

*Yours faithfully,*

*Sd/-  
(Poonam Sharma)  
Dy. Commissioner of income Tax,  
Central Circle, Dehradun.”*

15. *We find, Addl.CIT, Central Range, Meerut, granted approval vide letter dated 30<sup>th</sup> March, 2015, the relevant scanned copy of which reads as under:-*

*“OFFICE OF THE ADDL. COMMISSIONER OF INCOME  
TAX, CENTRAL RANGE, MEERUT*

*F. No. Addl. CIT/CR/MRT/153D/2014-15/1158*

*Dated: 30.03.2015*

*To’*

*The Dy. Commissioner of Income Tax  
Central Circle, Dehradun*

*Sub.: Draft Assessment Orders u/s 153A/153C in DBIT*

*Group of cases, Dehradun - Approval u/s 153D of  
Income Tax Act, 1961 - regarding –*

*Please refer to your letters F.No. DCIT/CC/DDN/2014-  
15/2338 dated 27.3.2015 and F.No. DCIT/CC/DDN/  
2014-15/2339 dated 30.03.2015 on the above the  
above mentioned subject.*

*2. In the following case of DBIT Group' of ca.ses,  
prior approval u/s 153D of the Income Tax Act, 1961 is  
accorded for passing assessment orders u/s  
153A/143(3) or 144 and 153C/143(3) of the I.T. Act,  
1961 in respect of the assesses for the assessment  
years as mentioned below:-*

*U/s. 153 A*

<i>Sl.No.</i>	<i>Name of the assessee</i>	<i>PAN</i>	<i>Asstt. Years</i>
01	<i>Smt. Seema Bansal</i>	<i>AHBPB3579P</i>	<i>2007-08 To 2013-2014</i>
02	<i>Smt Bimal Bansal</i>	<i>ADCPB1768R</i>	<i>2007-08 To 2013-2014</i>
03	<i>Drishti Builders</i>	<i>AAIFA4643E</i>	<i>2012-13 to 2013-14</i>
04	<i>Sh. Sushil Kumar</i>	<i>AQLPK2365D</i>	<i>2007-08 To 2013-2014</i>
05	<i>Sh Sunil Dandriyal</i>	<i>ALTPD8489N</i>	<i>2007-08 To 2013-2014</i>
06	<i>Strategic Marketing</i>	<i>AADFS8010M</i>	<i>2007-08 To 2013-2014</i>
07	<i>Sh. Ashok Mehta</i>	<i>ABNPM2590F</i>	<i>2007-08 To 2013-2014</i>
08	<i>CKSR Animation pvt ltd</i>	<i>AAECC0802F</i>	<i>2011-12 to 2013-14</i>
09	<i>Bharti Water Pvt Ltd</i>	<i>AACCB5459M</i>	<i>2007-08 To 2013-2014</i>
10	<i>Chand sons education city pvt ltd</i>	<i>AAECC0801G</i>	<i>2011-12 to 2013-14</i>
11	<i>Water wealth infra tech india pvt ltd./</i>	<i>AABCW0319C</i>	<i>2011-12 to 2013-14</i>
12	<i>Sumer chand and sons</i>	<i>AACFS6622C</i>	<i>2007-08 To 2013-2014,</i>
13	<i>Sh. Sanjay Bansal</i>	<i>ACZPB9725A</i>	<i>2007-08 To 2013-2014</i>
14	<i>Uttarakhand Uthan samiti</i>	<i>AAAAU1376N</i>	<i>2007-08 To 2013-2014</i>
15	<i>Wali Gram Udhog sansthan</i>	<i>AAAAW1501B</i>	<i>2007-08 To 2013-2014</i>
16	<i>Shri Krishna Educational Trust</i>	<i>AAATS 3624 C</i>	<i>2007-08 To 2013-2014</i>

*u/s 153C*

<i>Sl.No.</i>	<i>Name of the assessee</i>	<i>PAN</i>	<i>Asstt. Years</i>
01	<i>Rama Gautam</i>	<i>ADQPA8706L</i>	<i>2007-08 To 2013-2014</i>
02	<i>Mamta Dandriyal</i>	<i>AYDPD5055F</i>	<i>2007-08 To 2013-2014</i>
03	<i>Gulzar Ahmed</i>	<i>AFGPA7405Q</i>	<i>2007-08 To 2013-2014</i>
04	<i>Sohan lal kala</i>	<i>AKMPK8071H</i>	<i>2007-08 To 2013-2014</i>
05	<i>Rishi Raj</i>	<i>ANOPS3775M</i>	<i>2007-08 To 2013-2014</i>

3. *You are directed to pass necessary orders, as discussed/as amended in the drafts, in the above cases for all the relevant years. This office letter approving the draft orders shall invariably be quoted in the final order. A copy of final order passed in these cases shall be sent to this office for record. Further, proceedings are to be filed in the case of assessee when it was incorporated/was not in existence.*
4. *Record submitted in the cases of the above assesses are being returned.*

*Sd/-*

*(Anupam Kant Garg)*

*Ends: as above. Addl. Commissioner of Income Tax  
Central Range, Meerut.”*

16. *From the above, it is seen that the AO passed the draft assessment order on 30.03.2015 and submitted the same for approval before the Addl.CIT who is stationed at a place 250 Kms away from Dehradun on 30.03.2015, the Addl. CIT gave the approval subject to certain modifications/amendments on 30.03.2015 and the AO passed the order on the same date*

*i.e., 30<sup>th</sup> March, 2015. On a pointed query raised by the Bench as to whether any movement register is available to verify as to whether the files were sent to the Addl.CIT at Meerut, the Ld.CIT-DR submitted that there is no separate movement register for the purpose of sending for approval of the draft assessment orders by the AO to the JCIT/Addl.CIT, Central Range, Meerut. She submitted that it is customary practice that staff go with file and after discussion/approval get it back. The relevant portion of the reply given by the ld. CIT-DR at para 10 of her written synopsis reads as under:-*

*“10. It has been submitted by the Assessing Officer that there is no separate movement register for the purpose of seeking approval of draft order by the Assessing Officer from the JCIT/Addl. CIT, Central Range Meerut. It is customary practice that staff go with file and after discussion/approval get it back.”*

*17. A perusal of the above clearly shows that the approval was given in a mechanical manner by the Addl.CIT to the draft assessment orders passed by the AO. As mentioned*

*earlier, the AO has submitted the draft assessment orders on 30<sup>th</sup> March, 2015 as per the order sheet entry which indicated that the AO was very much available in her office at Dehradun on 30<sup>th</sup> March, 2015. The Office of the Addl.CIT is situated at Meerut which is about 250 Kms from Dehradun. There is no other record to suggest that the files containing the draft orders were, in fact, moved from the office of the AO at Dehradun to the office of the Addl.CIT at Meerut who went through the same and has given approval with certain amendments. It is not possible on the part of the Addl.CIT to go through the orders in about more than 100 cases on the very same day and give approval. Even if such approval has been given, it can be said that the same is nothing but a technical formality without application of mind. Further, as mentioned earlier, there is nothing on record to suggest that the files have in fact moved from Dehradun to Meerut for obtaining approval. Therefore, in our opinion, the mandatory provisions as required u/s 153D has not been complied with.*

17.1 We find identical issue had come up before the Delhi Bench of the Tribunal in the case of Rishabh Buildwell Pvt Ltd. (supra). The Tribunal, after considering the various decisions, quashed the assessment orders by observing as under :-

“ 11. We have heard the arguments of both the parties and gone through the record and documents filed before us. For ready reference the entire part of the letter of approval dated 30.12.2016 is reproduced as under:

“Subject: Prior approval u/s 153 D in the cases of Cloud-9 & Sethi Group- regarding.

Please refer to your office letter F. No. DCIT/ CC/ GZB/ S&S/153D 2016- 17/2904, 2908 & 2911 dated 28-12-2016 & 30-12-2016 on the above mentioned subject.

2. In the following cases of Cloud-9 & Sethi Group, prior approval u/s 153D of the IT Act, 1961 accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:

S. No.	Name of the assessee	PAN	A.Yrs.
1	M/s Risabh Buildcon Pvt. Ltd.	AACCR7502F	2009-10 to 2015-16
2	M/s R.G.V. Fininvest Pvt. Ltd.	AAACR4383G	2009-10 to 2015-16
3	M/s Aggarwal Capfin Fin. Services P.Ltd.	AABCA0925E	2009-10 to 2015-16
4	M/s Arihant Info Solutions P. Ltd.	AADCA5015H	2009-10 to 2015-16
5	M/s Sethi Estate P. Ltd.	AABCS7643B	2009-10 to 2015-16
6	Sh. Chander Mohan Sethi	AASPS1246A	2009-10 to 2015-16
7	Sh. Gulshan Sethi	AASPS1248Q	2009-10 to 2015-16
8	M/s East View Developers P. Ltd.	AABCE5324R	2009-10 to 2015-16
9	Sh. Desh Bhushan Jain	AAFPJ6467R	2009 10 to 2015-16
10	M/s Max City Developers Pvt. Ltd.	AAECM5401A	2009-10 to 2015-16
11	Sh. Sanjeev Jain	ACFPJ3817P	2009-10 to 2015-16
12	M/s Sethi Buildwell Pvt. Ltd.	AAICS9/42C	2009-10 to 2015-16
13	Sh. Satpal Nagar	AAFPN6467M	2009 10 to 2015-16
14	M/s Risabh Buildwell Pvt. Ltd.	AACCR9776R	2009-10 to 2015-16
15	Smt. Magan Jain	AIMPJ8085G	2009-10 to 2015-16
16	M/s Angel Buildcon Pvt. Ltd.	AAFCAI968H	2009-10 to 2015-16

2. A technical approval is accorded to pass assessment orders in the above cases on the basis of the drafts assessment orders submitted for the assessment years in reference years. You are directed to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to AYs. The fact of initiation of

*penalty proceedings, wherever, applicable, must also be incorporated in last para of the order. The initiation of correct penalty provisions of I.T. Act u/s 271 (1)(c)/ 271AAB, as per facts of the ease, must be ensured.*

3. *This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should be sent to this office for record immediately on passing the assessment orders.*

4. *It must also be ensured that if any document in this case, pertains to any third party assessed with a different AO, the necessary information for taking necessary action must be sent to concerned AO immediately.*

12. *The salient points of the approval letter is as under:*

1. *It is a technical approval*
2. *The AO was directed to ensure that the comments in the appraisal report are duly ensured.*
3. *The penalty proceedings should be mentioned wherever applicable for the initiation of correct penalty provisions must be ensured.*
4. *After taking into consideration, the above points, a copy of the final orders passed be sent to the JCIT.*

*13. The Income Tax Act envisages prior approval of the JCIT before passing the assessment order. The provisions read as under:*

*“no order of assessment or reassessment shall be passed by the 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 assessment year referred to in clause (b) of sub-section (1)*

*of Section 153B except with the prior approval of Joint Commissioner.”*

*14. When the approval given by the JCIT, Meerut is juxtaposed against the directions and provisions of the Income Tax Act pertaining to completion to assessment u/s 153B(1) of the Act, it can be said that the approval given by the JCIT is invalid. The Act envisages that the JCIT's approval before passing of the final order. There is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been accorded. The approval to be given is statutory in nature and legally binding. In the instant case, the approving authority has clearly mentioned that the approval given is a technical approval. Moreover, he has directed the DCIT to ensure the seized materials and the findings of the appraisal report to be incorporated in the final assessment order. This clearly goes to proves that the approval given by the JCIT is not a final approval as required u/s 153D of*

*the Act but a conditional approval subjected to modifications by the DCIT after receiving of the approval which makes it an invalid, qualified, uncertain approval. This is not the mandate of the Act. 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. The approval has to be statutory nature after due application of mind, it should be neither technical nor proforma approval which is envisaged u/s 153D of the Act. Reliance is placed the judgment of Coordinate Bench in the case of M3M India Holdings (ITA 2691/2018). And the judgment of Hon'ble High Court of Bombay in the case of Pr CIT vs. Smt. Shreelekha Damani [ ITA no 668 of 2016 Dated: 27th November, 2018 ] is as under:*

*“1. This appeal is filed by the Revenue challenging the judgment of Income Tax*

*Appellate Tribunal ("the Tribunal" for short)  
dated 19th August, 2015.*

*2. Following question was argued before us  
for our consideration:- "Whether on the facts  
and circumstances of the case and in law,  
the Tribunal was justified in holding that  
there was no 'application of mind' on the  
part of the Authority granting approval?"*

*3. Brief facts are that the Tribunal by the  
impugned judgment set aside the order of  
the Assessing Officer passed under Section  
153A of the Income Tax Act, 1961 ("the Act"  
for short) for Assessment Year 1 of 4 Uday  
S. Jagtap 668-16-ITXA15=.doc 2007-08.  
This was on the ground that the mandatory  
statutory requirement of obtaining an  
approval of the concerned authority as  
flowing from Section 153D of the Act, before*

*passing the order of assessment, was not complied with.*

*4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an*

*empty ritual and must be based on consideration of relevant material on record.*

*5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.*

*6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :-*

*"To,*

*The DCIT(OSD)-1*

*Mumbai*

*Subject : Approval u/s 153D of draft order  
u/s 143(3) r.w.s. 153A in the case of Smt.  
Shreelekha Nandan Damani for A.Y. 2007-  
08 reg.*

*Ref : No. DCIT (OSD)-1/CR-7/Appr/2010-11  
dt. 31.12.2010*

*As per this office letter dated 20.12.2010,  
the Assessing Officers were asked to submit  
the draft orders for approval u/s 153D on or  
before 24.12.2010. However, this draft  
order has been submitted on 31.12.2010.  
Hence there is no much time left to analyse  
the issue of draft order on merit. Therefore,  
the draft order is being approved as it is  
submitted. Approval to the above said draft*

*order is granted u/s 153D of the I.T. Act, 1961."*

*7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31<sup>st</sup> 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.*

*8. Accordingly, the Tax Appeal is dismissed.”*

*15. Hence, keeping in view the facts and circumstances of the case and peculiarities of the instant case, owing to the judgment of the Hon'ble High Court, we hereby hold that the assessments completed by the DCIT do not stand in the eyes of*

*law. Since the orders have been treated as null and void, any adjudication on other issues would be academic in nature only, hence refrained to do so.*

16. *In the result, the appeals of the assesseees are allowed. (Order Pronounced in the Open Court on 04/07/2019)."*

18. *We find, the Jodhpur Bench of the Tribunal in the case of Indra Bansal & Ors (supra) has observed as under :-*

*"6.4. 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 22 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.” (emphasis supplied by us)*

19. *Since the facts of the instant case are identical to the facts of the case cited (supra), therefore, respectfully following the decisions cited above, we hold that there is no proper approval given u/s 153D in the instant case for which the assessment orders passed by the AO are not in accordance with law. We, therefore, have no hesitation in holding that the assessments completed by the DCIT do not stand in the eyes of law and, therefore, these orders are treated as null and void. Accordingly, the orders passed by the AO are annulled and the ground raised by the assessee on this preliminary issue as per grounds of appeal No.4 and 5 are allowed. Since the assessee succeeds on this preliminary ground of validity of assessment order in absence of proper approval u/s 153D, the other grounds raised by the assessee do not require any adjudication being academic in nature. The appeal filed by the assessee is accordingly allowed.*

19.1 *Since facts of the other appeals are identical to the facts of the appeal for A.Y. 2008-09, therefore, following similar reasonings the assessment orders for other years are also held to be null and void being not in accordance with law. Accordingly, these appeals filed by the assessee are also allowed.”*

11.13. The Order of ITAT, Delhi G-Bench, Delhi in the case of Rishabh Buildwell P. Ltd., New Delhi vs., DCIT, Central Circle, Ghaziabad (supra) in paras 8 to 16 has held as under :

*“8. We have heard the arguments and find that the issue is a purely legal issue pertaining to approval of assessment u/s 153D of the Act and hence being admitted. We rely on the judgment of the Hon'ble Supreme Court in the case of [NTPC v. CIT](#) (1998) 229 ITR 383 SC wherein it has explained that the power of the Tribunal in dealing with the appeals under [Section 254](#) of the Act is ”*

*expressed in the widest possible terms". It was further observed as under:*

*"5. ....The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the*

*Commissioner of Income-tax (Appeals).*

*Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."*

9. *The ld. AR argued that the approval given by the Joint Commissioner of Income Tax, Central Range, Meerut is invalid and the short and narrow legal issue of assessment being framed on basis of invalid approval u/s 153D no longer res integra. The ld. AR relied on the decision of Delhi ITAT in case of M3M India Holdings order dated 15.03.2019 in ITA 2691/Del./2018 , ITAT, Jodhpur Bench in the case of [Smt. Indira Bansal vs., ACIT](#) (2018) 192 TTJ 968 (Jodh.) and [Cuttack](#)*

*bench ITAT Sri Trinadh Chowdary, IT(S)A No.44 to 46/CTK/2016 27/09/2018.*

*On basis of the ration of the above judgements, it was argued that the additional grounds be admitted on legal and jurisdictional grounds , allow the appeal, and quash the orders passed by Ld AO and Ld CIT(A).*

*10. The ld. DR argued that as per the [Section 153D](#) of the Act, the JCIT has duly approved the assessment orders after going through the draft assessment order given by the Deputy Commissioner of Income Tax, Central Range, Ghaziabad. It was also argued that there was no fix it format for according the approval and from the letter dated 30.12.2016, it can be gauged that approval has been duly given by the JCIT in accordance with the provisions of the Act.*

*11. We have heard the arguments of both the parties and gone through the record and documents filed before us. For ready reference the entire part of the letter of approval dated 30.12.2016 is reproduced as under:*

*Subject: Prior approval u/s 153D in the cases of Cloud-9 & Sethi Group- regarding.*

*Please refer to your office letter F. No. DCIT/CC/ GZB/ S&S/153D 2016- 17/2904, 2908 & 2911 dated 28-12-2016 & 30-12-2016 on the above mentioned subject.*

*2. In the following cases of Cloud-9 & Sethi Group, prior approval u/s 153D of the IT Act, 1961 accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:*

S.No.	Name of the assessee	PAN	A.Yrs.
1	M/s Risabh Buildcon Pvt. Ltd.	AACCR7502F	2009-10 to 2015-16
2	M/s R.G.V. Fininvest Pvt. Ltd.	AAACR4383G	2009-10 to 2015-16
3	M/s Aggarwal Capfin Financial Services P.Ltd.	AABCA0925E	2009-10 to 2015-16
4	M/s Arihant Info Solutions P. Ltd.	AADCA5015H	2009-10 to 2015-16
5	M/s Sethi Estate P. Ltd.	AABCS7643B	2009-10 to 2015-16
6	Sh. Chander Mohan Sethi	AASPS1246A	2009-10 to 2015-16
7	Sh. Gulshan Sethi	AASPS1248Q	2009-10 to 2015-16
8	M/s East View Developers P. Ltd.	AABCE5324R	2009-10 to 2015-16
9	Sh. Desh Bhushan Jain	AAFPJ6467R	2009 10 to 2015-16
10	M/s Max City Developers Pvt. Ltd.	AAECM5401A	2009-10 to 2015-16
11	Sh. Sanjeev Jain	ACFPJ3817P	2009-10 to 2015-16
12	M/s Sethi Buildwell Pvt. Ltd.	AAICS9/42C	2009-10 to 2015-16
13	Sh. Satpal Nagar	AAFPN6467M	2009 10 to 2015-16
14	M/s Risabh Buildwell Pvt. Ltd.	AACCR9776R	2009-10 to 2015-16
15	Srmt. Magan Jain	AAIMPJ8085G	2009-10 to 2015-16
16	M/s Angel Buildcon Pvt. Ltd.	AAFCAI968H	2009-10 to 2015-16

2. A technical approval is accorded to pass assessment orders in the above cases on the basis of the drafts assessment orders submitted for the assessment years in reference years. You are directed to ensure taking into account the seized documents / papers and comments in the appraisal report pertaining to AYs. The fact of initiation of penalty proceedings, wherever, applicable, must also be incorporated in last para

*of the order. The initiation of correct penalty provisions of I.T. Act u/s 271 (1)(c)/ 271AAB, as per facts of the case, must be ensured.*

3. *This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should be sent to this office for record immediately on passing the assessment orders.*

4. *It must also be ensured that if any document in this case, pertains to any third party assessed with a different AO, the necessary information for taking necessary action must be sent to concerned AO immediately.*

12. *The salient points of the approval letter is as under:*

1. *It is a technical approval*

2. The AO was directed to ensure that the comments in the appraisal report are duly ensured.

3. The penalty proceedings should be mentioned wherever applicable for the initiation of correct penalty provisions must be ensured.

4. After taking into consideration, the above points, a copy of the final orders passed be sent to the JCIT.

13. *The Income Tax Act* envisages prior approval of the JCIT before passing the assessment order. The provisions read as under:

"No order of assessment or reassessment shall be passed by the 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 assessment year referred to in clause (b) of sub-section (1) of *Section*

*153B except with the prior approval of Joint Commissioner."*

14. *When the approval given by the JCIT, Meerut is juxtaposed against the directions and provisions of the Income Tax Act pertaining to completion to assessment u/s 153B(1) of the Act, it can be said that the approval given by the JCIT is invalid. The Act envisages that the JCIT's approval before passing of the final order. There is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been accorded. The approval to be given is statutory in nature and legally binding. In the instant case, the approving authority has clearly mentioned that the approval given is a technical approval. Moreover, he has directed the DCIT to ensure the seized materials and the findings of the appraisal report to be incorporated in the final assessment order. This clearly goes to prove that the approval given by the JCIT is not a final approval as required u/s 153D of the Act but a conditional approval subjected to modifications by the*

*DCIT after receiving of the approval which makes it an invalid, qualified, uncertain approval. This is not the mandate of the Act. 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. The approval has to be statutory nature after due application of mind, it should be neither technical nor proforma approval which is envisaged u/s 153D of the Act. Reliance is placed the judgment of Coordinate Bench in the case of M3M India Holdings (ITA 2691/2018). And the judgment of Hon'ble High Court of Bombay in the case of *Pr CIT vs. Smt. Shreelekha Damani [ ITA no 668 of 2016 Dated: 27th November, 2018 ]* is as under:*

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

2. *Following question was argued before us for our consideration:-*

*"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval ?*

3. *Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under [Section 153A](#) of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007-08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from [Section 153D](#) of the Act, before passing the order of assessment, was not complied with.*

4. *This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.*

5. *The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.*

6. *Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :-*

*"To, The DCIT(OSD)-1 Mumbai Subject :  
Approval u/s 153D of draft order u/s  
143(3) r.w.s. 153A in the case of Smt.  
Shreelekha Nandan Damani for A.Y.  
2007-08 reg.*

*Ref : No. DCIT (OSD)-1/CR-7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyze the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted.*

*Approval to the above said draft order is granted u/s 153D of the I.T. Act, 1961."*

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 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.*

*8. Accordingly, the Tax Appeal is dismissed."*

*15. Hence, keeping in view the facts and circumstances of the case and peculiarities of the instant case, owing to the judgment of the Hon'ble High Court, we hereby hold that the assessments completed by the DCIT do not stand in the eyes of law. Since the orders have been treated as null and void, any adjudication on other issues would be academic in nature only, hence refrained to do so.*

*16. In the result, the appeals of the assesseees are allowed."*

12. It may be noted that provisions of Section 153D provides for approval in case of ["Each"] the assessment year. Therefore, each of the assessment year is required to be verified and approved by the JCIT being Approving Authority that it complies with Law as well as the procedure laid down. The assessee has filed details on record regarding returns filed under section 139 (1) for A.Ys. 2010-2011 to 2015-2016. It is also explained that there are unabated assessments except A.Y. 2015-2016 in which the assessments have been abated. Therefore, for each unabated and abated assessments, the authorities below and the Approving Authority [JCIT] shall have to verify the incriminating material found during the course of search or the seized material if pertain to the same assessment year and its basis. The assessee has explained above that these cases are coming up because of the assessments framed in the case of M/s. JIL and others prior to the search in the case of assessee. Therefore, all material was within the knowledge of the Income Tax Authorities prior to the search in the cases of the assessee. Therefore, for granting

approval under section 153D of the I.T. Act, the Approving Authority shall have to verify and consider each assessment year and shall have to apply independent mind to the material on record to see whether in each assessment year there are un-abated or abated assessments and their effect, if any. But, in the present case, the Approving Authority i.e., JCIT has granted common approval for all the assessment years in respect of the single assessee. Thus, there is no application of mind on the part of JCIT while granting approval for all the common years instead of granting approval under section 153D for each assessment years separately.

13. In the present cases various approvals were granted by the JCIT, Central Range-1, New Delhi, and forwarding letter of the A.O. are placed on record in all the cases. In all the cases as per the forwarding letter of the A.O. only assessment records were forwarded to the JCIT, Range-1, New Delhi at the time of granting approval. Therefore, it is evident that the JCIT being the Approving Authority was neither having seized material nor the

appraisal report or other material at the time of granting approval. In the approval under section 153D there is a reference to the A.O. letter only. There is no reference to the seized material or record or notice under section 142 and reply of the assessee and if procedure for its inspection or perusal is there. There is no material considered by the JCIT. Learned Counsel for the Assessee has pointed out that assessee has suffered serious prejudice because of non-application of mind on the part of the JCIT while granting approval under section 153D of the I.T. Act because the A.O. has made several double or triple additions on account of share capital, investments, FDRs purchased, loans, capital gains because these were created out of bank deposits made in the bank accounts of the assessees after the money transferred from the account of M/s. Alfa India. No telescopic benefit have been given as it was out of the source deposited in the bank accounts of the assessees. Netting of the money left have also not been considered and even the Ld. CIT(A) without considering the same has enhanced the assessments in some of the cases of

the assessee. No steps have been taken by the A.O. for rectifying their mistakes when assessee filed petition for rectification under section 154 of the I.T. Act. Thus, there was inconsistencies and double additions made by the A.O. in various assessment years. It may also be noted that in the present case the facts stated in the impugned orders are that the sales of liquor are made by M/s. JIL to M/s. MAPSCO and Singla Group of cases and that part of the sale proceeds have been transferred to the account of M/s. Alfa India instead of paying the entire sale consideration to M/s. JIL. Thus, the nature of total receipt/addition is the sale proceeds originally to be received by M/s. JIL. If the part of the sale proceeds which were to be received by M/s. JIL and when transferred to the account of M/s. Alfa India Ltd., the entire part sale receipts cannot be the income either in the hands of M/s. JIL or M/s. Alfa India or the Assesseees who may be the conduit as argued before us. The A.O. has failed to consider the concept of real income for the purpose of determining the correct tax liability and correct determination of income of the assesseees. We rely

upon the Judgment of the Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd., 225 ITR 746 (SC). This fact is also not verified and considered by the JCIT while granting approval under section 153D of the I.T. Act. It may be noted here that entire sale proceeds when cannot be added in the hands of M/s JIL as income which is also not done in the case of M/s. JIL, rightly so, how the same sale proceeds could be added as income in the hands of assesseees under section 68 of the I.T. Act is not understandable. Thus, the Approving Authority without application of mind and in a most mechanical and technical manner granted approval under section 153D even without reference to any reason in the Order under section 153D of the I.T. Act. We, even, otherwise failed to understand that in search cases how an approval can be granted to an assessment year which is required to be based only on incriminating material without verification of those material and its reference in the appraisal report. The JCIT even in approval did not mention if assessment record is seen by him.

14. Another interesting aspect that has come to the notice on the basis of various documents submitted for approval as well as request for approval by the A.O. to the JCIT. We make a specific reference to letter dated 29.12.2017 written by ACIT, Central Circle-4, New Delhi, which is placed at page-144 of the PB. This letter Dated 29.12.2017 is a request for obtaining approval under section 153D of the I.T. Act in the case of Shri Rajnish Talwar and family wherein the approval in the case of Shri Rajnish Talwar for A.Ys. 2010-2011 to 2016-2017 is sought for. The A.O. send the draft assessment order along with assessment records of the above named assessee. In paragraph-4 of the letter, A.O. stated as under :

*“It is certified that all issues raised in the appraisal reports have been duly examined with reference to the seized impounded material.”*

15. Thus, the JCIT acted on certificate given by the A.O. without satisfying himself to the record/seized material etc., The A.O. sent only assessment records to the JCIT for

his approval. The identical is fact in the case of all the request for approval made by the A.O. but factual position noted above established that even assessment records have not been seen by the JCIT. The A.O. sent draft assessment orders for 07 assessment years on 29.12.2017 which were got approved on 30.12.2017 merely on the basis of draft assessment order. The JCIT in the approval Order Dated 30.12.2017 also mentioned that A.O. to ensure all the assessment proceedings are conducted as per procedure and Law. It would show that even JCIT was not satisfied with the assessment proceedings conducted by the A.O. as per Law and records.

16. In some of the cases the approval was granted on the date the request was made for approval by the A.O. In all those cases merely draft assessment order and the assessment folders were available with the A.O. For example in the case of Shri Sanjay Duggal family, in the case of Ms. Kritika Talwar on the same date the approval was granted and that too merely on the basis of the assessment records and draft assessment order and in

most of the cases approval has been granted either on the same day or on the next day. Further, there is no reference that seized material as well as appraisal report have been verified by the JCIT. It is not clarified whether assessment record is also seen by the JCIT. It may also be noted that even in some of the Talwar group of cases approval is granted prior to 30.12.2017 but in main cases of Shri Sanjay Duggal and Rajnish Talwar the approval is granted on 30.12.2017. Therefore, without granting approval in the main cases how the JCIT satisfied himself with the assessment orders in group cases which is also not explained. Therefore, the approval granted by the JCIT in all the cases are merely technical approval just to complete the formality and without application of mind as neither there was an examination of the seized documents and the relevance of various observations made by the Investigation Wing in appraisal report. Thus, we hold the approval under section 153D have been granted without application of mind and is invalid, bad in Law and is liable to be quashed. Since we have held that approval under section 153D is

invalid and bad in law, therefore, A.O. cannot pass the assessment orders under section 153A of the I.T Act against all the assessees. Therefore, all assessment orders are vitiated for want of valid approval under section 153D of the I.T. Act and as such no addition could be made against all the assessees. In view of the above, we set aside the Orders of the authorities below and quash the assessment orders passed under section 153A of the I.T. Act as well as the impugned appellate Order. Resultantly, all additions are deleted. The additional grounds are allowed. In view of the above findings, the other issues on merits are left with academic discussion only. Accordingly, all the appeals of the Assessees are allowed.

17. In the result, all the appeals of the Assessees are allowed.

NOTICE U/S. 150 TO M/s. JAGATJIT INDUSTRIES LTD.,

18. Vide Order Dated 21.02.2020 when all the appeals were being heard, notice was issued to M/s. JIL

connected with these appeals as to why the direction be not issued while deciding these appeals for reopening entire case under section 147/148 of the I.T. Act for 07 years. Notice was served upon M/s. JIL. Shri R.S. Singhvi, C.A. appearing for M/s. JIL and he has objected to the issue of notice and direction against them. He has also filed written submissions. Shri R.S. Singhvi has submitted that search and seizure operation under section 132 of the I.T. Act was conducted on Jaiswal Group was included assessee company M/s. JIL on 06.05.2014. Further a search action was also undertaken on Shri Sanjay Duggal and Rajnish Talwar Group on 29.12.2015. Pursuant to search, a survey operation under section 133A was also carried out on these assessee. The case of this assessee was centralized vide Order passed under section 127 Dated 20.11.2015. As a result of search and survey assessment proceedings for A.Ys. 2009-2010 to 2013-2014 were completed under section 153A. Undisputedly no incriminating material/ adverse material was found during the course of search. Further on the basis of some statements made by Shri

Sanjay Duggal and Rajnish Talwars, the issue of rebate and discount allowed to the distributors was examined and the A.O. in the case of M/s. JIL made protective disallowances of claim of rebate for A.Ys. 2009-2010 to 2013-2014 in a sum of Rs.56,57,67,894/-. The A.O. passed the assessment orders under section 15A3 of the I.T. Act and the assessee filed appeal before the Ld. CIT(A) for all these years against this addition which have been deleted by the Ld. CIT(A) in A.Ys. 2009-2010 and 2010-2011 vide Order Dated 02.06.2017. He has submitted that the appeals of the Revenue are pending before the Tribunal for all these years. Learned Counsel for the Assessee, therefore, submitted that since assessee M/s. JIL is already in Departmental Appeal before the Tribunal, therefore, no direction be issued against the assessee as it may be prejudicial to the interests of the assessee. He has submitted that when the issue of rebate is already pending before the Tribunal and no seized material was found during the course of search, therefore, even such addition could not be made against the assessee. Thus, in these circumstances when assessee M/s. JIL is

already in Departmental Appeal before the Tribunal, therefore, no direction under section 150 of the I.T. Act be issued against the assessee because the A.O. shall have to satisfy the requirements of Section 147 of the I.T. Act on assumption of jurisdiction in their case. He has relied upon several decisions in support of the contention that even if direction is issued under section 150 of the I.T. Act, the A.O. shall have to satisfy the requirement of Section 147 of the I.T. Act which cannot be done in the present case because the case of M/s. JIL is also connected with the search and as such no direction could be issued for reopening of the assessment in the matter.

19. Considering the objections raised by Shri R.S. Singhvi, Learned Counsel for the Assessee M/s. JIL, we are of the view that since the Ld. CIT(A) has already allowed the appeals of Assessee and Departmental Appeals are pending before the Tribunal for consideration, therefore, we do not find it appropriate to issue any direction on merit as the same would prejudice the case of the assessee pending before the Tribunal. Further, Learned Counsel for the

Assessee has explained that even if directions are issued for reopening of the case, the A.O. shall have to satisfy the requirements of Section 147 of the I.T. Act. Since the Ld. CIT(A) in the case of M/s. JIL already deleted the addition and the matter is subjudice before the Tribunal and we have quashed the substantive assessment orders and appellate Orders in the group cases of Shri Sanjay Duggal and Shri Rajnish Talwar Group of cases on account of invalid approval granted under section 153D of the I.T. Act and findings in this Order, therefore, no purpose would serve in issuing any direction under section 150 of the I.T. Act, 1961 against M/s. JIL. In view of the above, we discharge the notice issued against M/s. JIL. There is no need of further direction in the matter.

20. In the result, all the appeals of the Assessees are allowed.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER  
Delhi, Dated 19<sup>th</sup> January, 2021  
VBP/-

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.