

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
(Through virtual hearing)**

**ITA Nos. 86 & 87/AGR/2024
(Assessment Years: 2017-18 and 2018-19)**

Hydrise Foods Pvt. Ltd, Plot No. 5, Tower-A, Logix Techno Park, Sector-127, Noida (Appellant)	Vs.	DCIT, Central Circle, Agra (Respondent)
PAN: AAXCS4059H		

Assessee by :	Shri Gaurav Jain, Adv Shri Tarun Chanana, Adv
Revenue by:	Shri Sukesh Kumar Jain, CIT DR
Date of Hearing	15/09/2025
Date of pronouncement	04/12/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA Nos. 86 and 87/AGR/2025 for AYs 2017-18 and 2018-19, arise out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] dated 10.01.2024 against the order of assessment passed u/s 153A/ 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2021 by the Assessing Officer, DCIT, Central Circle, Agra (hereinafter referred to

as 'Id. AO'). Identical issues are involved in these appeals. Hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The assessee has filed additional grounds before us. Vide additional ground No. 3 for AY 2017–18 and additional ground No. 4 for AY 2018-19, the assessee has challenged the validity of the search assessment framed on the ground that the mandatory statutory approval obtained u/s 153D of the Act was mechanical in nature from the approving authority. First of all, we find that these grounds were already raised in regular grounds by the assessee along with Form 36. Since, this issue goes to the root of the matter, we deem it fit and appropriate to address this preliminary ground first.

3. We have heard the rival submissions and perused the materials available from record. The name of the assessee company was changed from Shree Basant Exim Pvt Ltd to Hydrise Foods Pvt. Ltd. A search and seizure operation u/s 132(1) of the Act was carried out on 26.09.2017 on Basant Group of Agra, which includes the premises of the assessee company. The assessment u/s 143(3) of the Act r.w.s. 153A of the Act dated 30.09.2021 stood completed AYs 2017-18 and 2018-19. In the last paragraph of the assessment order, it has been categorically mentioned that the assessment order has been passed after obtaining prior approval of the Id Addl. CIT, Central Range, Kanpur as per provisions of Section 153D of the Act vide office letter bearing F.No.ADDL/CIT(CR)/KNP/approval u/s 153D/897 dated 29.09.2021. For the sake of convenience, the said approval is reproduced herein: –

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Government of India
Office of the
Addl. Commissioner of Income Tax
(Central Range), Kanpur.



7/81-B, Ground Floor
Tilak Nagar, Kanpur-208002
Phone & Fax: 0512-2548611
0512-2548611

F.No. Addl.CIT (CR)/KNP/Approval u/s 153D/2021-22/905,

Dated: 29.09.2021

To

The Dy. Commissioner of Income Tax,
Central Circle, Agra.

SUB: Approval u/s 153D of the I.T. Act for orders in the cases where proceedings initiated u/s 153A -Regarding -

Please refer to your letter bearing F.No. DCIT/CC/Approval u/s 153D/Agra/2021-22/1733 Dated: 29.09.2021 on the above subject requesting for approval of draft assessment orders in which proceedings initiated u/s 153A of the I.T. Act, 1961.

2. In the context of captioned matter, the AO has submitted the draft order before me seeking approval u/s 153D in cases vide his letter dated 29.09.2021. I have gone through the draft orders. I earlier had occasions during the year to go through the seized material, appraisal reports during the discussions/communications with AO (from time to time throughout the year which were held personally/telephonically/electronically) for the purpose of monitoring in relation to the above cases. I have earlier gone through the showcauses which were issued by the AO / replies filed by the assessee and the grant of approval u/s 153D is a culmination of all the discussions and monitoring carried out cumulatively throughout the year. I, therefore, grant the approval u/s 153D to pass the final assessment order in following cases:

Sl.No	Name of the Assessee & Address	PAN	A.Y.
1	M/s Basant exim pvt. Ltd.	AAXCS4059H	2018-19
2	M/s Global Health Food Pvt. Ltd	AAGCG5540E	2018-19
3	Shri Gagan Agarwal	ATJPA6375N	2013-14
4	Shri Gagan Agarwal	ATJPA6375N	2014-15
5	Shri Gagan Agarwal	ATJPA6375N	2015-16
6	Shri Gagan Agarwal	ATJPA6375N	2016-17
7	Shri Gagan Agarwal	ATJPA6375N	2017-18
8	Shri Gagan Agarwal	ATJPA6375N	2018-19
9	Shri Pramod Kumar Agarwal	AEFPA4111H	2013-14
10	Shri Pramod Kumar Agarwal	AEFPA4111H	2014-15
11	Shri Pramod Kumar Agarwal	AEFPA4111H	2016-17
12	Shri Pramod Kumar Agarwal	AEFPA4111H	2017-18

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13	Shri Ayush Agarwal	AKIPA9090L	2017-18
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3. You are directed to take necessary action accordingly send a copy of final order passed in these cases.

(Vrunda Desai)

Addl. Commissioner of Income Tax,
(Central Range), Kanpur

4. It is pertinent to note that the draft assessment order of various years were forwarded to the Id Addl. CIT by the Id AO vide letter dated 29.09.2021 and the same were approved u/s 153D of the Act by the Id Addl. CIT on 29.09.2021 itself. It is pertinent to note that the Id AO is situated in Agra and the Id Addl. CIT is situated in Kanpur. Hence, it is humanly impossible for even the files to reach Kanpur office from Agra and back to Agra from Kanpur within working hours of the office. It is a fact that consolidated approval has been given for 13 assessee's for different assessment years by Id Addl. CIT and on the same date on 29.09.2021. Hence, this approval granted u/s 153D could have to be construed only as a approval granted in a mechanical manner without due application of mind by the Id Addl. CIT.

5. The learned DR before us filed a written submission stating that the Addl. CIT is fully involved in the search assessment proceedings and even guiding the Id AO from time to time from issuance of questionnaire on perusal of the seized documents. Hence, it would be easy for Id Addl. CIT to grant approval on a single day u/s 153D of the Act. Further, it was argued that the approval proceedings u/s 153D of the Act are merely administrative in nature. We find that much water had flown with regard to the issue in dispute in view of the Third member decision of the Delhi Tribunal in the case of Shri Dheeraj Chaudhary Vs. ACIT reported in 178 taxmann.com 360 dated 12.09.2025. For the sake of convenience, the relevant operative portion of the said order is reproduced herein:-

"10. Coming to the fact that the Assessing Officer while sending draft assessment orders has not enclosed any assessment folder, assessment material, search material seized from the assessee's premises and other related material including the replies filed by the assessee qua the additions made by the Assessing Officer. It is noted that the Assessing Officer has made additions for the respective assessment years which is given in the proposal for approval sent by the Assessing Officer. The approval granted has already been reproduced by me in this order at Paragraph 5, but, the

proposal for approval under Section 153D of the Act sent by the Assessing Officer is being reproduced for the sake of brevity and clarity as under:-

*"F.No.ACIT/Central Cir.-08/2016-17/1311 Dated:
27.12.2016*

*To,
The Addl. Commissioner of Income Tax,
Central Range-02,
New Delhi.*

Madam,

Subject :- Proposal for approval u/s 153D of the I.T. Act, 1961 in the case of Sh. Dheeraj Chaudhary [PAN : AASPK9267B], Flat No.-1A, Empire Estate, Sultanpur, New Delhi – 110030 – Reg.

Kindly refer to the above.

Please find enclosed herewith draft assessment orders in the case of above mentioned assessee for the assessment years 2009-10 to 2015-16 (being search case) for your kind approval as required u/s 153D of the Income Tax Act-1961.

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

*Yours Faithfully,
Sd/-
(Pratibha Singh)
Asst. Commissioner of Income Tax
Central Circle-08, New Delhi"*

11. From the above proposal, it is clear that the same is not accompanied by any assessment folder, seized material or any other related documents for completion of assessment. It means that before the Additional CIT, only a proposal vide letter F.No.ACIT/Central Cir.-08/2016-17/1311 dated 27th December, 2016 was sent by the Assessing Officer. In the given facts,

whether this approval granted by the Additional CIT is mechanical or there is due application of mind or not.

12. I have gone through the case law of Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), wherein Hon'ble High Court has considered the meaning of approval and what must contain while granting of approval as discussed by Hon'ble Supreme Court in the case of Rajesh Kumar Vs. DCIT – [2006] 157 Taxman 168 (SC), wherein Hon'ble Supreme Court, in the context of Section 142(2A) of the Act which empowers the Assessing Officer to direct a special audit and obtaining a prior approval, has explained the approval as under:-

"58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage, viz., after the approval is given."

13. Further, Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra) has also considered the CBDT Manual of Office Procedure issued in February, 2003 in exercise of powers under Section 119 of the Act and reproduced Para 9 of Chapter 3 of Volume-II(Technical) of the Manual, which reads as under:-

"9. Approval for assessment – An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/Addl.CIT (for the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous

records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself."

14. *Further, in the case of Serajuddin & Co. (supra), Hon'ble Orissa High Court has also considered the issue of approval, according to the Revenue, it is itself not justiciable. Hon'ble Supreme Court has considered where approval granted is mechanical and it would vitiate the assessment order itself. Hon'ble Supreme Court, in the case of Sahara India (Firm) Vs. CIT – [2008] 169 Taxman 328 (SC), has considered this issue as under:-*

"8. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasize that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."

15. *Further, Hon'ble Supreme Court has reiterated the view expressed in Rajesh Kumar (supra) as under:-*

"29. In Rajesh Kumar (2007) 2 SCC 181 it has been held that in view of section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income-tax Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of section

196 of I.P.C. and every Income-tax Authority is a court for the purpose of section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case (supra), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see : Maneka Gandhi v. Union of India [1978] 1 SCC 248 and S.L. Kapoor v. Jagmohan [1980] 4 SCC 379).

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

16. Further, Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), has considered the case of Hon'ble Delhi High Court in the case of Yum! Restaurants Asia Pte. Ltd. Vs. DCIT – [2017] 397 ITR 665 (Delhi), which has dealt with the requirement of approval/sanction under Section 151(2) of the Act for initiating proceedings under Section 147 read with Section 148 of the Act. Hon'ble Delhi High Court observed as under:-

"11. The purpose of section 151 of the Act is to introduce a supervisory check over the work of the AO, particularly, in the context of reopening of assessment. The law expects the AO to exercise the power under section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the AO, then the law expects the superior officer to be able to correct that error. This explains why section 151(1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the AO where the return originally filed was assessed under Section 143(3) of the Act. Further, where the reopening of an assessment is sought to be made after the

expiry of four years from the end of the relevant AY, a further check by the further superior officer is contemplated.”

17. Further, Hon'ble Delhi High Court in the case of *PCIT Vs. Shiv Kumar Nayyar – [2024] 163 taxmann.com 9 (Delhi)* and *PCIT(Central-2) Vs. Anuj Bansal – [2024] 165 taxmann.com 2(Delhi)*, has considered the identical issue wherein it was emphasized that approval was granted without examining the assessment records or the searched material and, Hon'ble High Court in Paragraph 13, extracted the findings of the Tribunal as under:-

"13. In another words, it was emphasized that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs.16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs.1,65,07,560/- had he applied his mind. The addition of Rs.15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl.CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed.”

18. *On the other hand, learned CIT-DR relied upon the decision of Hon'ble Supreme Court in the case of Spacewood Furnishers (P) Ltd. – [2015] 374 ITR 595 (SC) and Mumbai ITAT decision in the case of Pratibha Pipes and Structural Ltd. in ITA No.3874/Mum/2015. She also relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kelvinator of India Ltd. – [2002] 256 ITR 1(Delhi). She also relied on the decision of Hon'ble Supreme Court in the case of Kunhayammed Vs. State of Kerala – [2000] 245 ITR 360(SC) and Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited– [2019] 104 taxmann.com 25(SC).*

19. *I noted that the case law cited by the learned CIT-DR of Spacewood Furnishers (P) Ltd. (supra) relates to warrant of authorization issued under Section 132 of the Act for carrying of search by the Income-tax Department and whether the assessee has right to inspection of documents or communication of reasons for belief at the stage of issuing of authorization. Hon'ble Supreme Court has categorically said No but also said that the requisite material may have to be disclosed at the stage of commencement of assessment proceedings. Hence, this case cannot be equated with the present controversy regarding approval under Section 153D of the Act. Regarding the case law of this Tribunal in the case of Pratibha Pipes & Structurals Ltd. (supra), the only issue before the Tribunal was whether the approval under Section 153D is granted or not. In the given facts and circumstances of that case, the Tribunal reached to a conclusion that there is approval granted under Section 153D of the Act and nothing else. Hence, on facts, this is clearly distinguishable. As regards the decision of Kelvinator of India Ltd. (supra), that was the case of reopening and whether the reason to belief of Assessing Officer is founded on an information which has been received by the Assessing Officer after completion of assessment and that can be a sound foundation for exercising power under Section 147 read with Section 148 of the Act. Hence, this decision also cannot be equated with the approval as amended under Section 153D of the Act. As regards the other decisions cited by the learned CIT-DR of Kunhayammed (supra) and Khoday Distilleries Ltd. (supra), these relate to the concept of merger of High Court order in question with Supreme Court's order while dismissing the SLP. Here, that is not the question, rather, the question is whether approval is mechanical or not. Whether approval granted under Section 153D of the Act is on application of mind or not in the given facts and circumstances of the case. Hence, these decisions are clearly distinguishable on facts and principle of law.*

20. I have gone through the order of learned Accountant Member and noted that in Paragraph 7, it is noted that the approval accorded by the Additional CIT under Section 153D of the Act is nothing but the culmination of day to day involvement of the Assessing Officer and the Additional CIT in search assessments. The relevant procedure noted by the learned Accountant Member reads as "The fact is that the AO and the Addl.CIT works as team members and the AO works under the supervision of the Addl. CIT. The team work gets culmination by the approval under section 153D of the Act. Such involvement of the Addl.CIT in the search assessment is in routine in the Central Charges of the Income Tax Department where the search assessments are completed. It is not a case where the assessment records, other files, investigation folders, etc. of a search case change hands for the first time between the AO and the Addl.CIT at the time of approval of the search assessment. The detail mentioned above is based on my personal experience while working in each hierarchy (AO onwards) of the Central Charges of the Income Tax Department." The second aspect considered by the learned Accountant Member is that approval under Section 153D of the Act by the Additional CIT is merely administrative in nature to safeguard internal checks and balances without affecting the quasi-judicial powers of the Assessing Officer and creating any prejudice to the assessee. It was further noted by the learned AM that while granting approval under Section 153D of the Act, the Additional CIT does not act as a reviewing/appellate authority to allow or disallow the additions proposed by the Assessing Officer.

21. I note the above observations of learned Accountant Member and is of the view that assessment proceedings or any proceedings under the Act before the Assessing Officer which affect the levy of tax on the subject are judicial in nature. It is well-settled that the Assessing Officer upon whom jurisdiction has been conferred to make all orders judicially, has to act independently. The Assessing Officer, while framing assessment, cannot act on the advice given by an outsider even though he may be an authority higher in rank to him in official hierarchy. Higher authorities that include Additional CIT/JCIT under whom the Assessing Officer is administratively under control, are not entitled to give opinion or advice in regard to assessment proceedings being quasi-judicial in nature. This is, however, subject to the provisions of Section 144A of the Act, where the assessee or the Assessing Officer suo-moto can refer the matter but, for that, he has to invoke this provision. This view is supported by Hon'ble Bombay High Court in the case of *Dinshaw Darabshaw Shroff Vs. CIT* – [1943] 11 ITR 172 (Bom), wherein it is held that although the Assessing Officer making an assessment is not acting as a court of law, it is clear that while framing assessment is acting in quasi-judicial capacity, and he ought to conform to the more elementary rules of judicial procedure, and in particular to conduct the case himself, and not allow somebody else, even his superior officer, to interfere in the conduct of the case. What to talk of superior authority,

Hon'ble Supreme Court in the case of Union of India Vs. Tata Engineering & Locomotive Co. Ltd. AIR 1998 SC 287, 288, held that the Assessing Officer is entitled to complete the assessment as per the provisions of Section 143(3) of the Act and, for this purpose, he can call for and examine whatever document he considers relevant. Hon'ble Supreme Court held that, if the Assessing Officer fails to follow any judgment of the High Court or of the Supreme Court, the assessee has adequate statutory remedies by way of an appeal and revision against the assessment order but, the Court should not try to control the mode and manner in which an assessment should be made. Hence, the higher authority including the Additional CIT/JCIT or CIT or CCIT, being administrative controlling authorities of the Assessing Officer, are not entitled to interfere in the judicial process of the Assessing Officer while framing assessment. In view of the above, I am of the view that, while making an assessment, the Assessing Officer is solely to be guided by the provisions of law and he cannot avail of any instructions or directions given by his higher authority including CBDT in making a particular assessment in a particular way. While passing assessment orders, he is only bound by what, if any, has been directed under Section 144A of the Act by his Additional CIT/JCIT or the instructions issued by the CBDT under Section 119 of the Act or what has been decided by the appellate authorities as mentioned in the Act. He has also to follow the precedence established by Hon'ble High Courts or the Supreme Court. The proceeding under Section 153D for granting approval is entirely different from the process of making assessment. Once draft assessment is prepared, the process of approval starts under Section 153D of the Act. Then the authority prescribed under Section 153D i.e., the Additional CIT/JCIT has to apply his mind for grant of approval after verifying the assessment records, seized records, etc.

22. *I noted that the common thread discussed by Hon'ble Orissa High Court in the case of Serajuddin & Co. (supra), by Hon'ble Delhi High Court in the case of Anuj Bansal (supra) and by Hon'ble Allahabad High Court in the case of Sapna Gupta (supra) is that the requirement of previous approval of assessment by the Additional CIT/Joint CIT in terms of provisions of Section 153D of the Act being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty formality. Needless to say that before granting approval, the Additional CIT/Joint CIT, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer and the approval must reflect the application of mind to the facts of the case. The CBDT itself recognized the importance of this provision and the above laid down principle and hence issued Manual of Office Procedure in February, 2023 in exercise of powers under Section 119 of the Act. Vide Para 9 of Chapter 3 of Volume-II (Technical), a clear procedure is devised i.e., how an*

approval is to be granted for draft assessment for passing of assessment order in search cases. According to the Manual, the Assessing Officer should submit the draft assessment order for such approval well in time along with docketed in the order sheet, a copy of the draft assessment order, covering letter filed in the relevant miscellaneous records folder. Even, it is noted that due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. It is further noted that once such approval is granted, it must be in writing and filed in the relevant folder indicating above after making due entry in the order sheet. This is the mandate provided in the office manual of the Department. In view of above, I am of the view that the 'approval', as mandated u/s 153D of the Act, signifies a product of human thoughts based on the given set of facts and interpretation of the applicable law. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness. It also prevents and avoids inconsistent and divergent views. The power of approval to the specified authority i.e., Superior authority has been envisaged with the objectives that no illegality or biasness, to either of the sides i.e., the assessee or the Revenue, remains.

23. In the present case before me, the above procedure is not at all followed as is evident from the proposal sent by the Assessing Officer as reproduced in Paragraph 10. It means that the approval granted is mechanical in manner and without application of mind by the approving authority i.e., by the Additional CIT.

Now, in view of the above discussion and legal position, I answer the question as under:-

Question framed by the Bench	Answer to the Question
<i>As to whether under the present facts and circumstances of the matters, the approval granted by the ACIT, dated 27.12.2016 under Section 153D of the Income Tax Act, 1961 are sustainable in the eyes of law or not.</i>	<i>In the given facts and circumstances of the case and discussion carried above, the approval granted by Additional CIT dated 27.12.2016 u/s 153D of the Act is not sustainable in the eyes of law.</i>

In terms of the above, I concur with the decision of learned Judicial Member quashing the above assessments."

6. The aforesaid Third Member decision has duly considered the various decisions of the Hon'ble High Courts in favour of the assessee on the impugned issue and also the decisions relied upon by the Id DR in the

written submissions. Further, we find that the observations made by the Hon'ble Punjab and Haryana High Court in the case of FinDoc Finvest Private Ltd Vs. DCIT reported in 172 taxmann.com 773 (P&H HC) are also relevant to the issue in dispute which are reproduced below:-

"20. As regards Section 119 of the Act as noticed above, we find that while Section 119(1) of the Act, restrains the Board from issuing any instructions to subordinate authorities, which may lay down instructions of such a nature requiring the Income Tax Authorities to make particular assessment in a particular manner or to interfere with the discretion of the Joint Commissioner and Commissioner (Appeals) while exercising their appellate function. However, the Board would be within its powers to instruct and lay down guidelines for efficient management of assessment work and collection of revenue or issue guidelines/principles/procedure which are to be followed by Income Tax Authorities for work relating to assessment. The Circular dated 15.07.2022, issued by the CBDT relied upon by the respondents directs the Assessing Officer to seek approval of the assessment made by him under Section 143 or 144 of the Act from the Joint Commissioner. The Circular dated 15.07.2022, cannot be objected to and comes within the ambit of powers available to the CBDT as above.

21. Although, the approval can be taken from the Joint Commissioner of the assessment order, the question arises that while examining the return and conducting assessment, can the Assessing Officer seek guidance or discuss the case with the Joint Commissioner and whether his consultation with the Joint Commissioner would amount to abdication of his powers. In Anirudhsinhji Karansinhji Jadeja case (supra), the Hon'ble Supreme Court was examining the issue relating to the powers vested with DSP by Section 20-A of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and has observed as under:-

"11. The case against the appellants originally was registered on 19th March, 1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A (1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise

discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A (1) was not exercised by the DSP at all.

12. Reference may be made in this connection to Commissioner of Police v. Gordhandas Bhanji, 1952 SCR 135, in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the concerned rules had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub- heading "Power in the wrong hands" as below:-

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.....".

"Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise....".

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion."

22. In SPL Siddhartha Ltd. case (supra), it was held that the procedure laid down under the Income Tax Act, has to be strictly followed. Thus, principally the law is settled as held in Nazir Ahmed v. King Emperor 1936 (BC) 253 (2), applying the principle of 'Taylor v. Taylor' Ch.D (431), that 'where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and

that other methods of performance are necessarily forbidden, applied to Judicial Officers making a record under Section 164.'. Thus, as held in CIT v. Anjum M.H.Ghaswala 119 Taxman 352/252 ITR 1 (SC), by the Constitutional Bench that 'it is a normal rule of construction that when a statute vests certain powers in a authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2) (a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.'

23. Section 116 of the Act, defines the Income Tax Authorities as different and distinct authorities. Such different and distinct authorities have to exercise its powers in accordance with law in specified circumstances. Thus, the Assessing Officer would have to exercise its own discretion to reach a conclusion and would not be influenced by any other officer. In view thereto, we find force in the contention raised by the learned senior counsel for the petitioner that the concerned Assessing Officer was influenced by the consultation and discussion with his superior officers. In fact the order passed by the Assessing Officer appears to have been already prepared even before the reply was received as the consultations have been conducted on 26.10.2023, 11.01.2024 and 14.03.2024 by the Assessing Officer as mentioned by him in the order itself. Again after the reply was received and the order was passed by the Assessing Officer, the same has been approved by the Joint Commissioner. As such, we find that the Joint Commissioner has in fact comprehensively and actively participated in the making of the assessment order while his role was only limited to the approval of the assessment order in terms of the CBDT Circular. Thus, we find the order to be vitiated in law.

24. In view of the above, the assessment order cannot be result of an independent application of mind and exercise of discretionary power by the Assessing Officer in terms of Section 143(3) of the Act and but is an order passed under the influence and directions of the superior officers. It is to be noticed that the consultation with a superior officer would be akin to directions of the superior. There is no room available for discretion where consultation is sought from a superior officer while if a superior officer consults his subordinates, the discretion continues to stay with him. He may choose not to follow the advice of his subordinate but the opposite would be untrue. We are, thus, of firm view that the order has been passed whereby the Assessing Officer has abdicated his authority and, therefore, the order has become vitiated in law.

7. We find that the Hon'ble Punjab and Haryana High Court had held that where AO was influenced by consultation and discussion with his superior officer, the said order was to be set aside as it was passed under influence and direction from superior officers. Similar view was taken by the coordinate bench of Delhi Tribunal in the case of Shiv Kumar Nayyar Vs. ACIT 26.07.2023, wherein the observations with regard to independence of the AO for framing of search assessment and the Id Addl. CIT, Central Range thereon were discussed which are reproduced below: –

"7. Per contra, the Id. DR vehemently argued that the role of Addl. CIT, Central Range is totally different from the role of an Addl. CIT in the normal range. She argued that in a Central Range, the Id. Addl. CIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Id. AO from time to time while issuing various questionnaires to the assessee. The Id. Addl. CIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Id. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Id. Addl. CIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, she argued that the objection raised by the Id. AR has no force.

8. We find, as per the scheme of the Act, for framing search assessments, the Id. AO can pass the search assessment order u/s 153A or u/s 153C of the Act only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Id. Addl.CIT in terms of section 153D of the Act. This is a mandatory requirement of law. The said approval granting proceedings by the Id. Addl.CIT is a quasi judicial proceeding requiring application of mind by the Id. Addl.CIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme of the Act, it is the bounden duty of the Id. AO to seek to place the draft assessment order together with copies of the seized documents before the Id. Addl.CIT well in time much before the due date of completion of search assessment. The Id. Addl.CIT is supposed to examine the seized documents, questionnaires raised by the Id. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Id. AO and the conclusions drawn by the Id. AO visà-vis the said seized documents

after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Id. Addl. CIT in a judicious way after due application of mind. Even though as vehemently argued by the Id. CIT-DR, the Addl. CIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Id. Addl.CIT, while granting the approval u/s 153D has to independently apply his mind de hors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Id. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Id. AO and Id. Addl.CIT are merely guidance to the Id. AO and are purely internal correspondences on which the assessee does not have any access. The scheme of the Act mandates due application of mind by the Id. AO to examine the seized documents independently de hors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Id. AO as well as the Id. Addl. CIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Id. Addl.CIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Id. DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Id. AO and the Id. Addl.CIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. The law provides only the Id. AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Id. Addl.CIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Id. AO."

8. It is pertinent to note that the aforesaid decision of the Delhi Tribunal has been approved by the Hon'ble Delhi High Court in the case of PCIT Vs. Shiv Kumar Nayyar reported in 467 ITR 186 dated 15.05.2024. When there is common approval given u/s 153D of the Act for different assessee's for different assessment years, the said approval u/s 153D of the Act has been held to have been given in a mechanical manner without due application of mind and against the later and spirit of provisions of Section 153D of the Act. Reliance in this regard has been rightly placed on the decision of the Hon'ble Allahabad High Court in the case of PCIT Vs. Siddarth Gupta reported in 450 ITR 534. The Special Leave Petition preferred by the revenue against this

decision has been dismissed by the Supreme Court in SLP(C) Diary No. 43280/2023 dated 09.08.2024.

9. In view of the aforesaid observations, the search assessment framed based on this invalid approval u/s 153D of the Act deserves to be quashed and is accordingly quashed.

10. Since the search assessments are quashed for all the years under consideration, the various grounds raised both on law as well as on merits, need not be gone into and they are left open.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 04/12/2025.

-Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/12/2025
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi