

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.3693/DEL/2018
Assessment Year 2014-15

M.G. Metalloy Private Limited B-16,Sector-2 Noida.	vs.	DCIT Central Circle Noida.	
TAN/PAN: AABCP2692R (Appellant)		(Respondent)	
Appellant by:	Shri Amit Goel, CA		
Respondent by:	Ms. Sarita Kumari, CIT (DR)		
Date of hearing:	13	04	2023
Date of pronouncement:	08	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-IV, Kanpur ['CIT(A)'] dated 19.03.2018 arising from the assessment order dated 31/12/2016 passed by the Assessing Officer ['AO'] under Section 153A r.w.s 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2014-15.

2. The grounds of appeal raised by the assessee are read as under:

- “1a. *On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue / services of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed and CIT(A) erred in not holding so.*
- b. *On the facts and circumstances of the case and in law, no notice u/s 143(2) was issued within the stipulated statutory time and accordingly the assessment order passed by the assessing officer is liable to be quashed and CIT(A) erred in not holding so.*
- c. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is without jurisdiction and CIT(A) erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming addition of unsecured loans of Rs.2,31,41,75,814/- made by the assessing officer as alleged unexplained cash credits u/s 68 of Income Tax Act, 1961.*
3. *On the facts and circumstances of the case and in law, the various alleged adverse inferences drawn / reasons given by the assessing officer / CIT(A) for making / confirming additions are erroneous and not sustainable in law.*
4. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.*

The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.

The aforesaid grounds of appeal are without prejudice of each other.”

3. Briefly stated, a search & seizure action under Section 132 of the Act was carried out on ‘Apple Group of Companies’ including the captioned assessee on 11/11/2014. Consequently, a notice under Section 153A of the Act was issued and served on the assessee. In response to the notice, the assessee e-filed return of income declaring total income of Rs. 11,15,450/-. The return filed by the assessee was however assessed at Rs. 2,31,52,91,264/-. The assessment order was passed

under Section 153A of the Act with the prior approval of the Joint Commissioner of Income Tax, Central Range, Meerut dated 31/12/2016 accorded under Section 153D of the Act and communicated to AO vide F. No. JCIT/ CR/ MRT/ S&S/ 153D/1422 dated 31/12/2016.

4. Aggrieved by the staggering assessment made by the AO, the assessee moved an appeal before the CIT(A). Before the CIT(A), the assessee challenged the additions / disallowances made by the AO both on legal grounds as well as merits. The assessee *inter alia* challenged the assessment order passed by the AO on the ground that the approval granted for framing assessment order is contrary to provision of Section 153D of the Act. The CIT(A) however did not find any merit in the plea of the assessee in any of the grounds and consequently declined any relief.

5. Aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the Tribunal.

6. Before the Tribunal, the Ld. Counsel for the assessee Mr. Amit Goel vociferously assailed the order of the CIT(A) on multiple grounds.

6.1 To begin with, the Ld. Counsel raised a preliminary ground and submitted that the assessment order framed under Section 153A of the Act is bad in law on account of absence of any valid and effective approval under Section 153D by the competent authority. The Ld. Counsel pointed out that on a bare reading of the so called approval accorded by the JCIT under Section 153D, as placed in the Paper Book, it is *ex-facie* ostensible that the approval so granted is illusory & a moonshine and thus cannot be countenanced in law. The Ld. Counsel exhorted that the caveats and disclaimers made by the JCIT, both, in the

communication of the AO and consequent approval are self explanatory and does not require any elaboration to establish the fact of perfunctory approval. The Id. Counsel thus contended that the assessment order so passed on the basis of a perfunctory approval can not be granted sanction of law.

6.2 The Ld. Counsel thereafter adverted to other challenges raised as per grounds of appeal which we shall deal with in succeeding paragraphs, if so required.

7. The Ld. DR for the Revenue, on the other hand relied upon the order of CIT(A).

8. We have carefully considered the rival submissions and material placed on record and case laws cited. The legal objection of transgression of requirements of approval under Section 153D is in question which has the effect on the very substratum of the assessment and appellate proceedings. We thus require to address ourselves into such mainstay issue at the outset.

9. We shall straight away advert to the communication between the Assessing Officer and the JCIT being the competent authority for the purposes of approval contemplated under Section 153D of the Act.

9.1 For the sake of convenience, the communication exchanged between the AO and the JCIT are extracted below.

9.1.1 The communication made by the AO (stationed at Noida) to the JCIT (stationed at Meerut) seeking approval under Section 153D of the Act is reproduced here under:



Office of the
Deputy Commissioner of Income Tax, Central Circle,
2nd Floor, ARTD Complex, Sector-33, Noida
Phone and Fax-(0120) 2804337

आय/संग्रह विभाग
Income Tax Collection Division
496
31 DEC 2016
11:00 AM
केन्द्रीय वसिष्ठ, नोएडा
Central Circle, Noida

F No. DCIT/CO/Noida/S&S/153D/2016-17 8623

Dated: 30/12/2016

To,
The Joint Commissioner of Income Tax,
Central Range, Aaykar Bhawan,
Bhaisaifi Ground, Meerut.

Sub: Draft assessment orders u/s 153A/153D(3) of the I.T. Act, 1961 in Apple Group (D.O.S. 11/11/2014) - Approval u/s 153D of the I.T. Act, 1961 - regarding.

Please find herewith revised list of cases for your kind approval u/s 153D of the IT Act.

Sl. No.	Name of the assessee	PAN	A. Yrs.
1	Sh. Nazender Kumar Garz.	AEKFG6796A	2009-10 to 2015-16
2	Srs. Shalco Nazender Kumar Garz. ?	AADPG1563F	2009-10 to 2015-16
3	Sh. Yagender Kumar Garz.	ABIPG9791P	2009-10 to 2015-16
4	Snr. Madhu Garz.	ABIPG9792Q	2009-10 to 2015-16
5	Sh. Pankaj Garz.	AJEPG5760A	2009-10 to 2015-16
6	Snr. Ruchi Garz.	AAIPG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garz.	AAHPC8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd.	AAACA9960N	2009-10 to 2015-16
9	M/s Nimran Steelco Pvt. Ltd.	AAACN1842Q	2009-10 to 2015-16
10	M/s M. G. Metallco Pvt. Ltd.	AAAGM5785D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.	AAFCP8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit.	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd.	AAFCR1105K	2009-10 to 2013-14
15	M/s Apple Insurance Brokers Pvt. Ltd.	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd.	AAACZ5235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd.	AAHCA8642G	2010-11 to 2013-14
18	M/s Mastemind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

Draft assessment orders issued on 31/12/2016
Beyond the time period of 30 days,
and has taken every step to ensure for proper
examination of each of the cases.

For J.C.I. Central Range (Meerut)


Yours sincerely,

(Aldar H. Ansari)

Deputy Commissioner of Income
Central Circle Noida

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9.1.2 Likewise, the approval memo in response to the communication made by AO seeking approval under S. 153D is also reproduced here under:



**OFFICE OF THE
JOINT COMMISSIONER OF INCOME TAX
CENTRAL RANGE, BHANSHALI GROUND, MEERUT.
Phone-0121-2403191, Fax-0121-2510081**

②

F. No. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477 Dated: 31-12-2016

To,
The Dy. Commissioner of Income Tax,
Central Circle, Noida.

Subject: Prior approval u/s 153D in the cases of Apple Group cases- regarding.

Please refer to your office letter F. No. DCIT/CC/Noida/S&S/153D/2016-17/2623 dated 30-12-2016 received in this office on 31-12-2016 on the above mentioned subject.

2. In the following cases of Apple Group, prior approval u/s 153D of the IT Act, 1961 is accorded for passing assessment orders in respect of the assessee for the assessment years as mentioned below:

Sl. No.	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg,	AEKPG6296A	2009-10 to 2015-16
2	Smt. Situloo Narender Kumar Garg,	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg,	ABIFG9791P	2009-10 to 2015-16
4	Smt. Medha Garg,	ABIFG9792Q	2009-10 to 2015-16
5	Sh. Pulkita Garg,	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg,	AAIFG1671M	2009-10 to 2015-16
7	Sh. Parwan Kumar Garg,	AAHPG8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd.,	AAGCA9960N	2009-10 to 2015-16
9	M/s Nirwan Steelco Pvt. Ltd.,	AACCN4842Q	2009-10 to 2015-16
10	M/s M. G. Metalloy Pvt. Ltd.,	AAOCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.,	AAFCR8143B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limk.,	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.,	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd.,	AAFCB8106K	2009-10 to 2015-14
15	M/s Apple Insurance Brokers Pvt. Ltd.	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd.,	AAAC25235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd.,	AAHCA8642G	2010-11 to 2013-14
18	M/s Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

3. A technical approval is accorded to pass assessment orders in the above cases on the basis of the draft 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 the 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.

4. 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.

5. 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.

Encl.: As above.

(Shri Slugh)
Joint Commissioner of Income Tax
Central Range, Meerut

9.2 On perusal of communication dated 30/12/2016 (para 9.1.1) addressed by the AO to the JCIT, the salient features that emerge are:

a) The approval is merely a technical approval. The JCIT in the communication letter himself has made a discordant remark that the draft orders have been received on the last date and thus he is having very little time / no time at his disposal for proper examination of facts of the case or for conducting enquiries etc. The JCIT in its last minute approval letter, in dated 31/12/2016 (para no. 9.1.2) while granting approval under Section 153D, in turn, has again noted that the 'technical approval' has been accorded to pass assessment orders in 18 cases including assessee, for which draft assessment orders were submitted by the Assessing Officer Noida.

b) The JCIT in his approval memo for all 18 cases also directed the AO to ensure taking into account the seized documents / papers and comments in the appraisal report pertaining to AYs under reference. The JCIT thereafter also observed that the fact of initiation of penalty proceedings, wherever applicable, must also be incorporated in the last para of the order. The initiation of correct penalty provisions of the Act under Section 271(1)(c)/ 271AAB as per facts of the case were also directed to be ensured at the end of the AO.

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

d) As many as 18 draft assessment orders including the assessment order of the assessee herein were combinedly placed before the JCIT in one go seeking statutory approval under Section 153D of the Act in relation to multiple assessment years of each assessee.

e) No reference to the assessment records being sent along with the draft assessment order to the JCIT stationed long away is found in the communication addressed to JCIT by the Assessing Officer.

f) The communication letter dated 30/12/2016 have been delivered to the Office of JCIT on 31/12/2016 i.e. the very last date of limitation for completion of the assessment. Subject to these broad observations, the approval was granted vide approval memo F. NO. JCIT/Central Range/Meerut/S&S/153D/2016-17/1477 dated 31/12/2016. By implication, the JCIT, while granting the approval, was not privy to seized material, appraisal report etc. and left the onus of varied compliances to the wisdom of the AO.

9.3 From the perusal of the communication made by the AO seeking approval under Section 153D and the approval given under Section 153D thereon by the JCIT, it is seen that the AO has forwarded the draft assessment orders for as many as 5 assessment orders in the case of the assessee along with multiple assessment orders in the case of remaining 17 assessee in one go on the last day of the expiry of limitation for carrying out assessment under Section 153A for endorsement and approval of designated authority i.e. JCIT to meet the legal requirement imposed under Section 153D of the Act. The JCIT i.e. the competent authority, in turn, was forced to grant a combined and consolidated approval for all assessee named therein for all assessment years *in promptu* on the same day of receipt of the order i.e. on 31/12/2016. It is a classic case of approval by giving a complete go bye to the inbuilt safeguards intended by insertion of S. 153D of the Act.

9.4 It may be pertinent to observe at this stage that the impugned assessment order was passed under Section 143(3) r.w.s. 153A of the Act

pursuant to search carried out under Section 132 of the Act. For passing such assessment orders, the Assessing Officer is governed by Section 153D of the Act whereby the AO should complete the assessment proceedings and prepare a draft assessment order which needs to be placed before the approving authority i.e. Joint / Addl. Commissioner (designated authority giving approval to search assessment under Section 153D of the Act) for his perusal and prior approval. The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/ her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law and with underlying factual matrix. The AO is obligated to pass the assessment order exactly, as per approval / directions of the designated authority. It is not open to the AO to modify the assessment order without the knowledge and concurrence of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

9.5 In the instant case, it is a matter of record by the own admission of JCIT that the approval granted is merely technical and without appraisal of evidences or enquiries. Thus fact thus need not be traversed any further. In the backdrop of the unequivocal observations made by the JCIT, approval granted under Section 153D apparently does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment order thus passed is vitiated in law which illegality cannot be cured.

10. In nutshell, the approval under S. 153D is repugnant for more than one reasons;

(i) the approval accorded under Section 153D is admittedly without any occasion to refer to the assessment records and seized materials, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders and consequently suffered from total non-application of mind.

(ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 5 assessment years admittedly a symbolic exercise to meet the requirement of law. The JCIT himself has made such fact abundantly clear without any *demur*.

(iii) The red flag raised by JCIT and unambiguous assertions of the JCIT himself that *the approval granted is in the nature of "technical approval" and he is having very little time at his disposal for proper examination of facts of the case or for related enquiries* says it all and has brought quietus to any different possibility or interpretation. The approving authority himself has thus discredited its own approval.

(iv) abject failure in drawing satisfaction on objective material while giving a combined approval for 5 assessments and also without evaluating the nuances of each assessment year involved. The combined approval of several assessee combinedly for multiple assessment years runs contrary to the judgment of the Hon'ble Allahabad High Court in the case of *PCIT vs. Sapna Gupta judgment dated 12-12-2022 Income Tax appeal no. 88 of 2022*. The Hon'ble High Court inter alia observed that the compliance of S. 153D qua each assessee and for each assessment year is expected.

(v) The mundane approval under Section 153D in a cosmetic manner gives infallible impression of approval on dotted line and without discharging the onus placed on competent authority thus defeats the intrinsic purpose of supervision of search assessments. Such hawkish approval has thus tarred the assessment and rendered it bad in law.

11. It may be pertinent to observe, Section 153D bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirements in letter and spirit. As noted in the preceding paragraphs, it is a classic case of collective abdication of statutory responsibility assigned under Act and yet putting civil consequences of onerous nature on a tax payer. It is axiomatic from the plain reading of approval memo that the JCIT is in complete dark on facts while being called upon to grant his clearance to the draft assessment orders. It is evident from the CBDT Circular No.3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory 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 Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. The solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional/ Joint CIT concerned, with his experience and maturity of understanding, should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast 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 enjoins due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. At the cost of repetition, it may be reiterated that in the instant case, the approving authority has granted a mere 'technical approval' by his own express admission in departure to a substantive approval expected in law. The JCIT rather himself fairly recorded his objections to the fag end supply of draft assessment orders by the AO in bulk for several assessees involving multiple assessment years and effectively claimed that he had no opportunity to peruse the relevant underlying material for effective discharge of duty of supervisory nature owing to last minute supply of draft assessment orders. As discernible from the conjoint approval memo, the sanctioning authority(JCIT) has, in fact, under the force of circumstances, relegated his statutory duty to the subordinate AO, whose action the JCIT, was supposed to supervise as per the scheme of the Act. Manifestly, the JCIT, without any consideration of factual and legal position in proposed additions/disallowances and without contents of appraisal report before him or incriminating material collected in search etc. has buckled under statutory compulsion and proceeded to grant a simplicitor approval with caveats and disclaimers. This approach of the JCIT has *ipso facto* rendered the impugned approval to be a mere ritual or an empty formality to meet the statutory requirement and can not thus be countenanced in law.

12. The identical issue has been favourably adjudicated in assessess's own case in ITA 3306/Del./2018 order dated 23-08-2021 concerning other AY 2015-16 where co-ordinate bench found total lack of propriety in such statutory approval. There are plethora of decisions of various co-ordinate benches including Sanjay Duggal & ors (ITA 1813/Del/2019 & ors; order dated 19.01.2021 which have also echoed the same view on similar fact situation.

13. The CIT(A) in para 7 of first appellate order has brushed aside the legal objection summarily merely on an inept & indifferent premise that the assessment order makes mention of the approval from JCIT under 153D of the Act. The cryptic conclusion drawn by the CIT(A) is bereft of any reasons whatsoever and thus cannot be reckoned to be a judicial finding on the point. The observations so made are not tenable in law.

14. In the light of foregoing discussions, We are unhesitatingly disposed to hold that the assessment order for AY 2014-15 in question, in pursuance of a hollow & cosmetic approval accorded under S. 153D and undeniably without application of mind, is rendered unenforceable in law and hence quashed.

15. In view of legal objection answered in favour of the Assessee, the aspects of other objections on jurisdiction or merits of additions/ disallowance does not call for separate adjudication.

16. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open Court on 08/05/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: /05/2023

POOJA