

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 3306/Del/2018  
(Assessment Year: 2015-16)

|  |     |                                   |
|--|-----|-----------------------------------|
| MG Metalloy Pvt. Ltd,<br>B-16, Sector-2, Noida,<br>PAN: AAGCM5789D | Vs. | DCIT,<br>Central Circle,<br>Noida |
| (Appellant)  |     | (Respondent)                      |

|                       |                               |
|-----------------------|-------------------------------|
| Assessee by :         | Shri Amit Goel, CA            |
| Revenue by:           | Ms. Pramita M. Biswas, CIT DR |
| Date of Hearing       | 29/07/2021                    |
| Date of pronouncement | 23/08/2021                    |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-IV, Kanpur [ The Id CIT (A)] dated 19.03.2018 for Assessment Year 2015-16, wherein, the appeal filed by the assessee against the assessment order passed u/s 143(3) of the Income Tax Act [ The Act] dated 31.12.2016 by Dy. CIT, Noida [ the Ld AO] determining the total income of the assessee at Rs. 138,22,77,156/- against the returned income of Rs. 3,14,330/- was dismissed. Therefore, assessee is aggrieved and has preferred this appeal raising following grounds of appeal:-

- "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) erred in confirming addition of Share Capital / Share Premium of Rs.1,89,35,760/-*

*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 CIT(A) has erred in confirming addition of unsecured loans of Rs. 1,36,30,27,066/- made by the assessing officer as alleged unexplained cash credits u/s 68 of Income Tax Act, 1961.*
4. *On the facts and circumstances of the case and in law, the various alleged adverse inferences drawn / reasons given by the CIT(A) for making / confirming additions are erroneous and not sustainable in law.*
5. *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."*

2. Brief facts of the case shows that assessee is a company engaged in the business of textile and others. It filed its return of income of Rs. 3,14,330/- dated 06.11.2016. Search and seizure operation u/s 132 of the Act was conducted on 11.11.2014 in Apple Group of cases. The assessee is one of the companies. Therefore, the case of the assessee was picked up for scrutiny.
3. Facts also shows that Nine different companies amalgamated in the assessee company as per Order of the Hon'ble Delhi High court u/s 394 of the companies act with effect from 1/4/2013. All the assets and liabilities of nine Transferor companies were incorporated in the balance sheet of the assessee company and shareholders of those nine companies were issued shares of the assessee company as per exchange ratio as per scheme of amalgamation u/s 394 of the Companies Act 1956.
4. Ld AO noted that the assessee has unsecured loan of Rs. 1,36,30,27,066/- and the share capital of Rs. 1,89,35,760/- during the year. Therefore, the assessee was asked to justify the amount of unsecured loan as well as share capital. The assessee submitted in the form of confirmation, audited financial results of lenders, income tax returns, copies of the accounts of the parties etc showing that share capital is in exchange of shares of the transferor companies to the shareholders of the transferor company and no money is received. Same explanation was also with respect to unsecured loans. The Id AO found that the person from whom the assessee has taken unsecured loan have shown Nil or meager income in the profit and loss account. Therefore, he made an addition of Rs. 1,36,30,27,066/- u/s 68 of the Act. The assessee was also asked to prove the genuineness of the share capital issued of Rs. 1,89,35,760/-. The assessee submitted the confirmation, share application forms, income tax

returns of the share depositors. The Id AO held that the assessee has failed to provide even bank statement, profit and loss account of the investor companies and therefore, he held that the assessee has failed to discharge its onus, creditworthiness of the investors, genuineness of the transactions and existence of the investors. Therefore, the addition of Rs. 1,89,35,760/- was made. Assessment order passed u/s 143(3) of the Act after taking approval of the Joint Commissioner of Income Tax on 31.12.2016 u/s 153D of the Act.

5. The assessee is aggrieved with the order of the Id AO preferred an appeal before the Id CIT(A). The assessee submitted that the addition of Rs. 1,89,35,760/- is unwarranted as assessee has not received any amount during the year but the same is on account of merger vide order of the Hon'ble High Court dated 09.09.2014 u/s 394 of the Companies Act, wherein, 9 different companies were amalgamated with the assessee company and on amalgamation of the aforesaid company where the effective date is 01.04.2013 the above said share capital represent shares allowed to the share holders of 9 amalgamated companies. Therefore, there is no sum received during the year and the share capital has arisen on account of amalgamation.
6. With respect to the addition of Rs. 1363027068/- it was stated that the above credit and loans are also on account of above amalgamation order of the Hon'ble High Court wherein, 9 other companies amalgamated with the assessee. It was submitted that the assessee has not received any sum during the year except small amount. The assessee therefore, submitted that the addition made by the Id AO deserves to be deleted.
7. The Id CIT (A) asked for the remand report, which was submitted on 06.03.2018 wherein the Id AO held that the addition has been made after proper verification. With respect to the share holders the Id AO submitted that the 19 entities to whom shares were allotted were not in the list of companies amalgamated w.e.f 01.04.2013. With respect to unsecured loan of Rs. 136,30,27,066/- the Id AO stated that none of the entries is shown as the sundry creditors or loans are in the list of companies amalgamated. It was therefore, stated that the addition has been rightly made.
8. The Id CIT(A) confronted remand report to the assessee who submitted a rejoinder on 14.03.2018 giving the details of share capital of Rs. 1,89,35,760/- wherein, it was shown that the share holders of those 9 different companies on existence of their shares in those companies the assessee has allotted these shares to 19 parties. No sum is received by the assessee from any of these

parties. It was further stated that naturally, shareholders of Transferor companies cannot appear in the amalgamation scheme order, but only the names of transferor companies will be mentioned. Therefore, those shareholder companies of Transferor Company could not have been named in the order of amalgamation. With respect to the loan of Rs. 136,30,27,066/- he submitted that most of the above sums are on account of amalgamation and with respect to other sums; there are repayment of loan given by the assessee in the earlier years and amount received on the sale of the shares. He submitted that the assessee has submitted the confirmation and income tax returns of the all the above parties along with balance sheet. It was therefore, submitted that as no amount is received during the year. He further submitted that out of above sum Rs. 135,04,23,341/- are pertaining to earlier period prior to 31.03.2013 and none of the sum has been received even otherwise during the year. The Id CIT (A) held that the most of creditors advancing money to the assessee has Nil or very meager income and therefore, the Id AO has rightly made the addition u/s 68 of the Act. With respect to the claim of the assessee, that most of the credit does not related to this assessment year as this plea is not raised before the Id AO. Accordingly, he upheld both the additions. The assessee also raised a ground before him that no approval u/s 153D has been granted. The Id CIT (A) held that the detail of approval is mentioned in the last line of the assessment order and dismissed this ground. Therefore, the assessee is aggrieved with that order has preferred this appeal before us. Parties were heard on this appeal.

9. Ground No. 1 is general in nature and no arguments were advanced by the assessee therefore, it is dismissed.
10. Ground No. 2 of appeal is with respect to the addition of Rs. 1363027066/- on account of unsecured loan. The Id AR argued that share capital of Rs. 189,35,760/- is allotment of shares to the share holders of amalgamated companies and no sum is received during the year therefore, no addition has been made u/s 68 could not have been made. He referred to the order of the Hon'ble Delhi High Court u/s 394 of the Companies Act dated 09.09.2014 and stated that the scheme of amalgamation of 9 amalgamated companies was approved by the Hon'ble Delhi High Court. He further stated that even the return of allotment in the form No 2 of Companies Act filed before the Id AO also clearly shows that above shares capital represent the share allotted under the amalgamation scheme. He further referred to detail of 19 parties showing that how the share capital was issued to them.

11. Ground no 3 with respect to the addition of Rs. 1,36,30,27,066/- with respect to the unsecured loan he also submitted the details that same is also on account of liabilities of the amalgamated companies recorded in the books of the assessee company on account of amalgamation. He further submitted that some of the entries added by the Id AO are not at all alone but the refund received against the loans and advanced already given by the assessee in the earlier years. He also submitted in fact during the year no sum has been actually received. He further stated that out of above sum Rs. 135 crores with respect to 11 parties are merely entry companies has been transferred and no sum of money is received. He referred to several judicial precedents stating that if there is no sums credited in the books of account the provision of section 68 do not apply. He otherwise submitted that the assessee submitted in the case of all these parties the complete names and address, confirmation of the creditors, copy of the bank statement wherever available added account of the lenders and the copy of the return of income. He submitted that despite submitting the above evidence the Id AO has not made any enquiries and merely on the basis of books of account without verification where any of the sums of money is received or not has made the addition. He further submitted that the assessee has submitted the copies of the action of all these parties in the books of account of the assessee to show that against all these entries have arisen on account of amalgamation. He further referred to the order of the Hon'ble Delhi High Court passed u/s 394 of the Act wherein, 9 parties amalgamated with the assessee company. He referred to para 1 and 2 of that order to show that all the properties and liabilities etc have been transferred to the assessee company and the payment date is 01.04.2013. He further referred to clause 9 of the order of the Hon'ble High Court wherein, the assessee was to issue shares to the shareholder of the respective companies. He also referred to schedule of the period of various amalgamated companies. He therefore, submitted that no addition can be made in the hands of the assessee as no sum is found credited in the books of account of the assessee.
12. With respect to ground No. 5 he challenged the approval granted by the Joint Commissioner of Income Tax u/s 153D of the Act and submitted that approval given by the Id JCIT is without application of mind and is an empty ritual. He relied on the order of the Hon'ble Bombay High Court in case of Srilekha Damani 11 TMI 1563. He also referred to the decision of the coordinate bench in case of Rishabh Buildwell Pvt. Ltd 7 TMI 365. He also referred to several other case

laws and submitted that approval u/s 153D is invalid. The facts and circumstances are identical to the issues decided in the above judicial precedents stated. He submitted in his synopsis as under :-

*“3. Ground no 5*

*The assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Act. The provisions of section 153D are 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. ”*

*3.1 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.*

*3.2 The letter addressed by the AO to JCIT seeking his approval is reproduced as under:-*

*F.No. DCIT/cc/Noida/S&S/ 153D/2016-17/2623 Dated: 30/12/2016*

*To,*

*The Joint Commissioner of Income Tax,  
Central Range, Aayakar Bhawan, Bhainsali Ground, Meerut.*

*Sir,*

*Sub: Draft assessment orders u/s 153A/153C/143(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.*

| <i>SI. No.</i> | <i>Name of the assessee</i>                   | <i>PAN</i>        | <i>A. Yrs.</i>            |
|----------------|---|-------------------|---------------------------|
| <i>1</i>       | <i>Sh. Narender Kumar Garg,</i>               | <i>AEKPG6296A</i> | <i>2009-10 to 2015-16</i> |
| <i>2</i>       | <i>Smt. Shaloo Narender Kumar Garg,</i>       | <i>AADPG1563F</i> | <i>2009-10 to 2015-16</i> |
| <i>3</i>       | <i>Sh. Yogender Kumar Garg,</i>               | <i>ABIPG9791P</i> | <i>2009-10 to 2015-16</i> |
| <i>4</i>       | <i>Smt. Madhu Garg,</i>                       | <i>ABIPG9792Q</i> | <i>2009-10 to 2015-16</i> |
| <i>5</i>       | <i>Sh. Pulkit Garg,</i>                       | <i>AJEPG5760A</i> | <i>2009-10 to 2015-16</i> |
| <i>6</i>       | <i>Smt. Ruchi Garg</i>                        | <i>AAIPG1671M</i> | <i>2009-10 to 2015-16</i> |
| <i>7</i>       | <i>Sh. Pawan Kumar Garg,</i>                  | <i>AAHPG8132G</i> | <i>2009-10 to 2015-16</i> |
| <i>8</i>       | <i>M/s Apple Industries Ltd.,</i>             | <i>AAGCA9960N</i> | <i>2009-10 to 2015-16</i> |
| <i>9</i>       | <i>M/s Nirman Stelco Pvt. Ltd.,</i>           | <i>AACCN4842Q</i> | <i>2009-10 to 2015-16</i> |
| <i>10</i>      | <i>M/s M.G. Metallloy Pvt. Ltd.,</i>          | <i>AAGCM5789D</i> | <i>2011-12 to 2015-16</i> |
| <i>11</i>      | <i>M/s Promart Retail India Pvt. Ltd.</i>     | <i>AAFCA8743B</i> | <i>2009-10 to 2015-16</i> |
| <i>12</i>      | <i>M/s Apple Sponge &amp; Power Limit.</i>    | <i>AAFCA1965L</i> | <i>2009-10 to 2015-16</i> |
| <i>13</i>      | <i>M/s Apple Metal Industries Ltd.,</i>       | <i>AAACD7670E</i> | <i>2009-10 to 2015-16</i> |
| <i>14</i>      | <i>M/s Apple Buildtech Ltd.,</i>              | <i>AAFCA8106K</i> | <i>2009-10 to 2015-16</i> |
| <i>15</i>      | <i>M/s Apple Insurance Brokers Pvt. Ltd.,</i> | <i>AAECA5320N</i> | <i>2009-10 to 2015-16</i> |
| <i>16</i>      | <i>M/s Zync Global Pvt. Ltd.,</i>             | <i>AAACZ5235H</i> | <i>2012-13 to 2015-16</i> |
| <i>17</i>      | <i>M/s Apple Iron Enterprises Pvt. Ltd.,</i>  | <i>AAHCA8642G</i> | <i>2010-11 to 2013-14</i> |
| <i>18</i>      | <i>M/S Mastermind Trade-in-Private Ltd</i>    | <i>AAECM9435E</i> | <i>2009-10 to 2015-16</i> |

Draft assessment order received Late i.e. on 31/12/2016  
Beyond the time as per internal Action Plan.  
And thus having a very little time/ almost no time for proper  
Examination of facts of the case/ further enquiries etc.

Yours sincerely

—sd  
Deputy Commissioner of Income Tax  
Central Circle Noida

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

3.3 The letter addressed by the JCIT to A.O. granting his approval is reproduced as under:-

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.

1. 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 assesses 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. Shaloo Narender Kumar Garg      | AADPG1563F | 2009-10 to 2015-16 |
| 3      | Sh. Yogender Kumar Garg              | ABIPG9791P | 2009-10 to 2015-16 |
| 4      | Smt. Madhu Garg                      | ABIPG9792Q | 2009-10 to 2015-16 |
| 5      | Sh. Pulkit Garg                      | AJEPG5760A | 2009-10 to 2015-16 |
| 6      | Smt. Ruchi Garg                      | AAIPG1671M | 2009-10 to 2015-16 |
| 7      | Sh. Pawan Kumar Garg                 | AAHPG8132G | 2009-10 to 2015-16 |
| 8      | M/S Apple Industries Ltd.            | AAGCA9960N | 2009-10 to 2015-16 |
| 9      | M/S Nirman Stelco Pvt. Ltd.          | AACCN4842Q | 2009-10 to 2015-16 |
| 10     | M/s M. G. Metalloy Pvt. Ltd.         | AAGCM5789D | 2011-12 to 2015-16 |
| 11     | M/S Promart Retail India Pvt. Ltd.   | AAFPC8743B | 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.             | AAFCA8106K | 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 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 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 the last para of the order. The initiation of correct penalty provisions of I.T. act u/s 271(1)(c)/ 271AAB 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

sd  
Joint Commissioner of Income  
Tax, Central Range, Meerut

3.4 From the above, it is apparent that the JCIT received the draft assessment order from the AO on 31/12/2016 and he granted the approval on the same day. In the letter of the AO for seeking approval from JCIT, the JCIT has himself made the following remarks:-

*Draft assessment order received late i.e on 31/12/2016 Beyond the time as per internal Action Plan And thus having a very little time /almost no time for proper Examination of the facts of the case/further enquiries etc.*

*From the above remarks of the JCIT himself, it is evident that he has granted the approval without examination of the facts of the case. The approval by the JCIT is as in empty ritual. The approval given by the JCIT is not a statutory approval as is required under the Act. The approval is not a final approval as required u/s 153D of the Act but a technical/conditional approval subjected to modifications by the DCIT after receiving of the approval which makes it an invalid, qualified and uncertain approval. This is not the mandate of the Act. The action of the JCIT of granting the approval was a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. Therefore, the approval is invalid in eye of law.*

3.5 The decision of Hon'ble Bombay High Court in the case of THE PR. COMMISSIONER OF INCOME TAX VERSUS SMT. SHREELEKHA DAMANI 2018 (11) TMI 1563 - BOMBAY HIGH COURT is reproduced 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/ CR7/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 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.

3.6 In the case of RISHABH BUILDWELL P. LTD. and othrs. VERSUS DCIT, 2019 (7) TMI 365 - ITAT DELHI the approval granted by JCIT was identical (in fact, verbatim). The Hon'ble ITAT held the assessment order to be null and void. The relevant part of the appeal order is reproduced 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 Groupregarding.

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 |
| 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                          | A AFPJ6467R | 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                               | AAFPM6467M  | 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 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 on 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-ITXA- 15=.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 2 of 4 Uday S. Jagtap 668-16- ITXA-15=.doc 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. 2007-08reg.

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 3 of 4 Uday S. Jagtap 668-16- ITXA-15=.doc December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law. We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time.*

*In the result, no question of law arises.*

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.*

3.7 *The relevant portion of decision in the case of SH. INDER PAL SINGH ARORA, SH. SURINDER PAL SINGH KOHLI VERSUS DCIT 2021 (6) TMI933 - ITAT DEHRADUN is as under -*

7.0 *Now coming to the merits of the additional grounds, the Ld. Counsel has vehemently argued that the approval granted by the Addl. CIT was invalid and same was not in conformity with the provisions of section 153A of the Act. On careful perusal of the sequence of events, the following facts emerge:*

- *Date of forwarding draft assessment order to Addl. CIT for approval u/s 153D 28/03/2013*
- *Date of approval letter u/s 153D 28/03/2013 • Date of assessment order 28/03/2013*

7.1 *It is interesting to note that the entire exercise of grant of approval u/s 153D of the Act and passing of the final assessment order was completed within a single day, that too when the assessing officer was located in Dehradun and the sanctioning authority was sitting at Noida. Further, vide common letter, the approval has been granted to multiple draft assessment orders passed in 20 odd cases on the very same day of receiving the draft assessment orders. Another glaring fact noted is that the Addl. CIT granted the so-called approvals merely on the basis of draft assessment orders without even examining the assessment record of each case. It is self-evident that the approval has been accorded without going through the facts of the individual cases. This position is further corroborated from the contents of the approval letter itself wherein the approving authority is admitting that due to limitation of time, only broad issues were discussed. The relevant paragraph i.e. paragraph 3 in the approval letter is reproduced hereunder:*

*"3. ...As most of the draft orders have been received at the end of the limitation period, it is not possible to discuss minute details and only broad issues have been discussed with you.*

*Due to limitation involved, approval is being accorded. "*

7.2 We find it difficult to comprehend as to how the approving authority satisfied itself about the correctness of the search based draft assessment orders without even looking at the search material. In these circumstances, we have no doubts in our mind that the approving authority has acted casually and granted the approval u/s 153D of the Income tax Act, 1961 in a mechanical manner without judicious exercise of power.

7.3 At this juncture, it is relevant to make a reference to the provisions of section 153D of the Income tax Act, 1961:

*“Prior approval necessary for assessment in cases of search or requisition 153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:*

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

7.4 From a bare reading of the section, it is clear that the Statute has placed inbuilt checks and balances so as to ensure that the assessment orders passed u/s 153A pursuant to search or requisition are passed under the supervision of superior authority. As the assessments u/s 153A are extraordinary proceeding the purpose behind such approval is to avoid framing of arbitrary assessments and to make sure that the scheme and spirit of special provisions are adhered to by the assessing officer.

Further, the Statute mandates approval of assessment order for ‘each’ assessment year referred to in section 153A(1)(b) which necessarily means that independent approval is required for draft assessment order of each assessment year and it is not open to the approving authority to accord blanket approval as has been done in the present case. It deserves mention that the shortcoming in approval u/s 153D of the Act will have fatal consequence on the validity of the assessment order and the assessment order would be rendered as null and void in absence of proper approval.

7.5 An identical issue came up for consideration before the Coordinate bench of this Tribunal in the case of Sanjay Duggal and ors v. ACIT (ITA No. 1813/Del/2019 dated 19/01/2021) (Delhi Bench). The relevant findings are reproduced hereunder:

*“11.6. Therefore, in the cases of search, assessment orders whether framed under section 153A or 153C, the Joint Commissioner [Approving Authority] is required to see that whether the additions have been made in the hands of assessee are based properly on incriminating material found during the course of search, observations/comments in the appraisal report, the seized documents and further enquiries made by the A.O. during the course of assessment proceedings.*

*Therefore, necessarily at the time of grant of approval of the assessment made by the A. O, the Joint Commissioner is required to verify the above issues, apply his mind that whether they have been properly appreciated by the A.O. while framing the assessment orders or not. The JCIT is also required to verify whether the required procedure have been followed by the A. O. or not at the time of framing of the assessments. Thus, the approval cannot be a mere discretion or formality, but, is mandatory being Quasi Judicial function and it should be based on reasoning. In our view, when the legislature has enacted some provision to be exercised by the higher Revenue Authority enabling the A.O. to pass assessment order or reassessment*

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

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 assesseees.

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.

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 assesseees. 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 assesseees. 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. ”

7.6 In light of the finding recorded in the aforesaid Para and respectfully following the order of the Coordinate bench, we are of the considered view that the approval granted u/s 153D of the Act suffers from various infirmities and same is not in accordance with the letter and spirit of the law and is liable to be quashed. As we have negated the approval u/s 153D, the assessment order passed u/s 153A r.w.s 143(3) of the act stands vitiated for want of approval u/s 153D of the Income Tax Act, 1961 and is hereby quashed. Accordingly, the additional grounds are allowed.

7.7 As we have quashed the impugned assessment order for want of proper approval, other grounds raised by the assessee become academic in nature and do not require any adjudication.

3.8 Reliance is also placed on the following case laws wherein, on similar facts as in the case of the assessee, the approval under section 153D was held to be invalid and consequently the assessment order was held to be null and void:-

|  |
|--|
| <i>M/S Inder International Versus the A.C.I.T., Central Circle-II 2021 (6) TMI 416 - ITAT CHANDIGARH</i>   |
| <i>Rajesh Ladhani v. Dy. CIT - Central Circle, Agra - 2019 (11) TMI 920 - ITAT Agra</i>  |
| <i>Uttarakhand Uthan Samiti v. ITO, Ward - 45(5), New Delhi 2020 (4) TMI 878 - ITAT Delhi</i>  |
| <i>Dilip Constructions Pvt Ltd. Versus ACIT, Circle-1, Bhubaneswar. And (Vice-Versa) And Shilpa Seema Constructions Pvt Ltd. Versus ACIT, Circle-1, Bhubaneswar. And (Vice-Versa) 2019 (12) TMI 311 - ITAT Cuttack</i>   |
| <i>Shri Tarachand Khatri, Ramnath Building, Opp. Bhawartal, Jabalpur. Versus The Acit, Central Circle, Jabalpur. 2020 (1) TMI 1027 - ITAT Jabalpur</i>   |
| <i>Arch Pharmalabs Ltd. Versus ACIT Cc-32, Mumbai And (Vice-Versa) And M/S Arch Impex P. Ltd. Versus ACIT CC- 32, Mumbai 2021 (4) TMI 533 - ITAT Mumbai</i>  |
| <i>Sanjay Duggal, Kritika Talwar, Arun Duggal, Ratna Talwar, C/O Kapil Goel, Adv, Neha Duggal, Nany Duggal, Poonam Duggal, Neeru Duggal, Rajnish Talwar, Ratnashri Buildtech Pvt. Ltd, Duggal Estate Pvt. Ltd, Duggal &amp; Sons Buildwell P. Ltd., Versus ACIT, Central Circle-4, New Delhi 2021 (1) TMI 909 - ITAT Delhi</i> |

In view of the above, it is submitted that the approval by JCIT under section 153D of the Act in this case is invalid and, accordingly, the assessment order passed by the AO is liable to be quashed. The issue involved in the ground of appeal is covered in favour of the assessee company by various decisions/ case laws of High court and tribunals.”

13. The Id DR categorically supported the orders of the lower authorities with respect to the addition u/s 68 of the Act. He submitted that the Id AO has correctly made the addition u/s 68 of the Act. With respect to the approval granted by the Id JCIT, he submitted that there is a proper application of mind by the Id JCIT. He further submitted that it is not merely a technical approval. He submitted that the approval is always granted by perusing the seized documents as well as appraisal report prepared by the Investigating Authority. He submitted that there is no evidence placed by the Id AR to show that there is no application of mind by the approving authority. He submitted the case assigned to the Id AO could always be discussed in detail by the Id JCIT and the order is always passed under his close monitoring and then it culminates into approval. He also submitted that the approval granted by Id JCIT on the same date does not prove anything that the approving authority has not applied his mind.
14. We have carefully considered the rival contentions and perused the orders of the lower authorities. The brief facts shows that the assessee company get amalgamated by the order of the Hon'ble Delhi High Court vide order dated 09.09.2014 passed u/s 394 of the Companies Act 1956 wherein, from 01.04.2013 of the 9 transferor companies namely:-
- i. Shubh Sponge Iron Pvt. Ltd.
  - ii. Apple Iron Enterprises Pvt. Ltd.
  - iii. Manan Power Pvt. Ltd.
  - iv. Yuven Steels Pvt. Ltd.
  - v. Shreem Ispat Pvt. Ltd.
  - vi. Sanidhya Steels Pvt. Ltd.
  - vii. Madan Gopal Alloys Pvt. Ltd.
  - viii. Manohar Metalloys Pvt. Ltd.
  - ix. Apple Buildtech Ltd.
- Were amalgamated with the assessee company. According to terms of the amalgamation, property of the transferor companies specified in the schedule 2 vested in the assessee company and further according to clause 2 of liabilities and duties of the transferor became the liabilities and duties of the assessee company. The shareholders of the transfer companies were to be issued the shares of the assessee company as per exchange ratio laid down in para 9 of the order. Accordingly, in the annual accounts of the assessee company for the year ended on 31.03.2014 note No. 18 details were mentioned as under:-



## "NOTE-18 OTHER EXPLANATORY NOTES

### a) Revision of Accounts and Amalgamation

Hon'ble High Court of Judicature at Delhi by their orders dated September 09, 2014 approved the Scheme of amalgamation of Shreem Ispat Private Limited, Apple (ran Enterprises Private limited, Madan Gopal Alloys Private Limited, Yuven Steels Private limited, Manohar Mattalloys Private limited, Apple Buildtech Limited, Manan Power Private Limited, Sanidhya Steels. Private Limited, Shubh Sponge Iron Private Limited with die company which has become effective on 29th September, 2014 from the appointed date 1st April, 2013 In accordance with the provisions of section 391 & 394 of the Companies Act, 1956.

The scheme of amalgamation became effective on filing of orders with the respective Registrar of Companies and to give effect the amalgamation in the books of accounts for the year ended 31st March, 2014, accounts of the Company have been revised. The present financial statements are revised for the limited purpose of amalgamation of Shreem Ispat Private Limited, Apple Iron Enterprises Private Limited, Madan Gopal Alloys Private Limited, Yuven Steels Private limited, Manohar Matalloys Private limited, Apple Buildtech limited, Manan Power Private Limited, Sanidhya Steels Private Limited, Shubh Sponge Iron Private Limited with die company in accordance with the accounting policies followed by the Company.

### b) salient features of the Scheme of Amalgamation

The appointed date for the purpose of this amalgamation is 1st April,2014.

In accordance with the scheme approved, the accounting for this amalgamation has been done in accordance with the 'Pooling of interest Method" referred to in Accounting Standard 14 - 'Accounting for, Amalgamation\* of the Companies (Accounting Standard) Rules 2006.

Accordingly, M G Metalloy Private Limited has accounted for the Scheme in its books of accounts with effect from the Appointed Date Le.1st April,2013 as under

- i) With effect from the appointed date, all assets and liabilities appearing in the books of Shreem Ispat Private Limited, Apple iron Enterprises Private Limited, Madan Gopal Alloys Private Limited, Yuvea Steels Private Limited, Manohar Matalloys Private Limited, Apple Buildtech Limited, Manan Power Private Limited, Sanidhya Steels Private limited Shubh Sponge iron Private Limited have been transferred to and vested In MG Metalloy Private Limited and have been recorded by M G Metalloy Private Limited at their respective book values.
- ii) In consideration of the transfer of the business as a going concern, the Company shall issue the shares as under:-
  - a) 5 fully paid-up of .equity shares of Rs. 10/- each of the Company for every 6 equity shares of Rs.10/- each

*fully paid up held in Shubh Sponge Iron Private Limited.*

- b) 4 fully paid-up of equity shares of Rs. 10/- each of the Company for every 5 equity shares of Rs.10/- each fully paid up held in Apple Iron Enterprises Private Limited.*
- c) 3 fully paid-up of equity shares of Rs. 10/- each of the Company for every 4 equity shares of Rs.10/- each fully paid up held in Manan Power Private Limited.*
- d) 7 fully paid-up of equity shares, of Rs. 10/- each of the Company for every 10 equity shares of Rs.10/- each fully paid up held in Yuven Steels Private Limited.*
- e) 2 fully paid-up of equity shares of Rs. 10/- each of the Company for every 10 equity shares of Rs. 10/- each fully paid up held in Shreem Ispat Private Limited.*
- f) 1 fully paid-up of equity shares of Rs.-10/- each of the Company for every 2 equity shares of Rs. 10/- each fully paid up held in Sanidhya Steels Private Limited.*
- g) 4 fully paid-up of equity shares of Rs. 10/- each of the Company for every 5 equity- shares of Rs.10/- each fully paid up held in Madan Copal Alloys Private Limited.*
- h) 1 fully paid-up of equity shares of Rs. 10/-each of the Company for every 49 equity shares of. Rs.10/- each fully paid up held In Manohar Metallys Private Limited.'*
- i) 1 fully paid-up of equity shares of Rs. 10/- each of the Company to each shareholder irrespective of their shareholding; in Apple Buildtech Limited.*
- J) Any fraction of share arising out of the aforesaid share exchange process, if any, will be rounded off to nearest whole number.*

*III) Cross holding of shares between the transferor companies and/or between the transferor and the transferee companies on the record date, if any has been cancelled*

*iv} The difference between the book value of net Identifiable assets and liabilities of transferor Companies (Shreem Ispat Private Limited, Apple Iron Enterprises Private Limited, Madan Gopal Alloys Private Limited," Yuven Steels Private Limited, Manohar Mata Hoys Private Limited, Apple Buildtech Limited, Manan Power Private limited, Sanidhya Steels Private Limited, Shubh Sponge iron Private Limited) pursuant to scheme .and consideration being the value of new equity-shares to be issued and allotted by M G Metalloy Private Limited, amounting to Rs. 1.63 crores has been credited to general reserve in line with the order of honorable high court*

- v) Accordingly, 37,87,152 equity shares of Rs. 10/- each fully paid up of MG Metal Alloys Private Limited are required to issued to the shareholders of Shreem Ispat Private Limited, Apple iron Enterprises Private Limited, Madan Gopal Alloys Private Limited, Yuven Steels Private Limited, Manohar Matalloys Private Limited, Apple Buildtech Limited, Manan Power Private Limited, Sanidhya Steels Private Limited, Shubh Sponge Iron Private limited under this amalgamation.
- vi) All inter company transactions have been eliminated on incorporation of the accounting of transferee companies in the company.
- vii) The company shall proceed to issue equity shares in due course of time.
- viii) The expenses towards the execution of amalgamation Scheme shall be adjusted from the reserves.

*In view of the aforesaid amalgamation, the figures of the current year are not comparable to those of the previous year.*

C. Re-arrangement/Reduction of Capital of the transferee company

- i) The company has, in accordance with the scheme, re-arranged/reduced the post merger - issued and paid up equity share capital to 50% by transferring the 50% of the post merger issued and paid up equity share capital to Securities Premium Account. Accordingly, issued and paid up value of Equity Shares of the company has been reduced from Rs. 10/- each to Rs. 3/- each.
- ii) Subsequent to reduction in issued and paid up share capital, every 2 equity share of Rs. 5/- each has been consolidated into one equity share of Rs. 10/- each.

*To give a full impact of scheme of Amalgamation, we have considered the fresh issue of shares' under the amalgamation, subsequent capital reduction and thereafter the consolidation of shares in the Balance sheet as on 31.03.2014. Accordingly, company shall Issue fresh shares of 18,93,576 shares to the shareholders of transferee companies. Further an amount of Rs. 2,15,83,940/- shall be transferred to securities premium on account of capital reduction (5096).*

*d) Brief note on the business activity/ operations of the Company and transferor companies*

*The company is engaged in trading business, investment in group companies, providing loans and advances and other related activities. Whereas prior to the scheme of amalgamation transferor companies were engaged in same activities as of the company."*

15. Accordingly, the assessee issued share capital to the following shareholders of the transferor companies, which was added by the Id AO u/s 68 of the Act. :-

**Details of addition of share capital by AO.**

| <i>Name of the share holder</i>     | <i>Amount</i> | <i>Remarks</i>   |
|-------------------------------------|---------------|--|
| 1. Amay Garg                        | 1020          | Share capital transfer from Manohar Metallloy due to amalgamation  |
| 2. Amul Mittal                      | 717500        | Share capital transfer from Yuven Steel due to amalgamation  |
| 3. Ankit Garg                       | 20830         | Share capital transfer from Shubh Sponge due to amalgamation   |
| 4. Anuj Garg                        | 20000         | Share capital transfer from Apple Iron due to amalgamation   |
| 5. Apple Minerals Trade Limited     | 11231050      | For Shareholding in Shreem A/c 245300<br>For Shareholding in AIEPL A/c 2355525<br>For Shareholding in MGAPL A/c 865660<br>For Shareholding in MPPL A/c 3539165<br>For Shareholding in SSPL A/c 987400<br>For Shareholding in Shubh A/c 195030<br>For Shareholding in Yuveen Steels A/c 3042970 |
| 6. Apple Natural Resources Pvt. Ltd | 1020          | Share capital transfer from Manohar Metallloy due to amalgamation  |
| 7. Apple Resources Limited          | 263020        | Share Capital transfer from Madan Gopal Alloys due to amalgamation   |
| 8. Ashish Garg                      | 662510        | For Shareholding in ABL A/c 10.00 For Shareholding in MGAPL A/c 150000 For Shareholding in SSPL A/c 512500   |
| 9. Ashutosh Sharma                  | 153330        | Share Capital transfer from Shreem Ispat 133330 and apple iron 20000 due to amalgamation   |
| 10. Babita Garg                     | 300000        | Share Capital transfer from Apple Iron due to amalgamation   |
| 11. Gunjan Garg                     | 1223330       | Share Capital transfer from Shreem Ispat due to amalgamation   |
| 12. Narendra Kumar Garg             | 750010        | For Shareholding in ABL A/c 10 For Shareholding in MGAPL A/c 150000 For Shareholding in MPPL A/c 600000  |
| 13. Nirman Stelco Pvt. Ltd.         | 406500        | Share Capital transfer from Shubh Sponge due to amalgamation   |
| 14. Nishanat Garg                   | 300000        | Share Capital transfer from Apple Iron due to amalgamation   |
| 15. Nishu Agrico Limited            | 1016270       | Share Capital transfer from Shubh Sponge due to amalgamation   |
| 16. Reshma Mittal                   | 735000        | Share Capital transfer from Yuven Steels due to amalgamation   |
| 17. Ruchi Garg                      | 512510        | Share Capital transfer from Apple Buildtech Rs. 10 and Sanidhya Steel 512500/- due to amalgamation   |
| 18. Shaloo Garg                     | 600010        | Share Capital transfer from Apple Buildtech Rs. 10 and Manan Power 600000/- due to amalgamation  |
| 19. Yogendra Kumar Garg             | 21850         | Share Capital transfer from Manohar Metallloy Rs. 1020 and Subh Sponge 20830/- due to amalgamation   |
| Total                               | 18935760      |  |

16. Similarly where the loans of the transferor companies are transferred to the assessee company which were also added u/s 68 of The Act by the lower authorities in case of following parties:-

| <i>Name</i>                                | <i>Amount</i>    | <i>Remarks</i>   |
|--|------------------|--|
| <i>1. Krishnaswami</i>                     | <i>4000000</i>   | <i>No loan amount has been received. Krishnaswami has sold Equity Shares of Apple Commodities Limited to the Company.</i>  |
| <i>2. Jetspeed Tradecom Pvt. Ltd.</i>      | <i>50268603</i>  | <i>No loan amount has been received during the year. Previous year balance transferred from Shreem Ispat Pvt Ltd. Originally purchase made by Shreem Ispat Pvt Ltd. in F.Y. 2012-13. Shreem Ispat Pvt Ltd amalgamated with the assessee company pursuant to high court order.</i>  |
| <i>3. Apple Industries Ltd.</i>            | <i>152275000</i> | <i>During the year the assessee company paid Rs 15,50,00,000/- to Apple Industries Ltd. Amount received during the year from Apple Industries during the year was Rs. 35,00,000/- and 29,75,000/- only and that too against the advances made by Manohar Metalloy Pvt. Ltd in the FY 2013-14. The company Manohar Metalloy Pvt. Ltd amalgamated with the assessee company pursuant to High court order.</i><br><br><i>These amounts paid by (Not received) M.G Metalloy Pvt. Ltd. During the period against the demand of Call Money on partly paid shares and thereafter transferred to Investment Account through Journal Voucher entry as per the normal accounting practice.</i> |
| <i>4. Matheysh Multi Trading Pvt. Ltd.</i> | <i>15775880</i>  | <i>No loan amount received during the year. Intra group company balances transferred through journal entry. Balance transferred from Nirajit Trading Pvt Ltd.</i>  |
| <i>5. Milap Trading Pvt. Ltd.</i>          | <i>177187342</i> | <i>Amount transferred from account of Nishu Agrico Ltd. Intra group company balances transferred through journal entry. No loan amount received during the year.</i>   |
| <i>6. Nishu Agrico Ltd.</i>                | <i>29000000</i>  | <i>Refund received against amount earlier paid</i>   |
| <i>7. Pradeep Saraf</i>                    | <i>750000</i>    | <i>No loan amount received during the year. Pradeep Saraf has sold Equity Shares of Apple Commodities Limited to the Company.</i>  |
| <i>8. Reliance Infotek Ltd.</i>            | <i>3850000</i>   | <i>No loan amount received during the year. Amount was transferred from Apple Iron Enterprises Pvt Ltd originally received in F.Y. 2012-13. Apple Iron Enterprises Pvt Ltd amalgamated with the company pursuant to high court order.</i>  |
| <i>9. Reliance Polycrete</i>               | <i>200000</i>    | <i>The amount received during the year against the Advance made by Apple</i>   |

|  |              |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
|--|--------------|---|--------------------------|--------------|-----------------------------|--------------|-------------------------|--------------|--------------------------|-------------|-------------------------------------|-------------|--------------------------------|--------------|--|--------------|
| Limited  |              | Buildtech Limited to Reliance Polycrrete Limited in FY 2011-12.   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| 10. Saccharine Infrastructure Pvt. Ltd.                    | 904616516    | No loan amount received during the year. The intercompany balance transfers through journal entries relating to transaction for purchase of shares of group company Apple Commodities Ltd. from following companies :-  |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
|  |              | <table border="1"> <tr> <td>Archit Infratech Pvt Ltd</td> <td>112299950.00</td> </tr> <tr> <td>Jainson Derivatives Pvt Ltd</td> <td>142500000.00</td> </tr> <tr> <td>Jainson Futurex Pvt Ltd</td> <td>142500000.00</td> </tr> <tr> <td>Jainson Holdings Pvt Ltd</td> <td>96453630.00</td> </tr> <tr> <td>Jainson Mineral Development Pvt Ltd</td> <td>48976070.00</td> </tr> <tr> <td>Jainson Thermal Energy Pvt Ltd</td> <td>101500000.00</td> </tr> <tr> <td>Apple Natural Resources Pvt Ltd Reliance Policrete Limited</td> <td>149237016.00</td> </tr> </table> | Archit Infratech Pvt Ltd | 112299950.00 | Jainson Derivatives Pvt Ltd | 142500000.00 | Jainson Futurex Pvt Ltd | 142500000.00 | Jainson Holdings Pvt Ltd | 96453630.00 | Jainson Mineral Development Pvt Ltd | 48976070.00 | Jainson Thermal Energy Pvt Ltd | 101500000.00 | Apple Natural Resources Pvt Ltd Reliance Policrete Limited | 149237016.00 |
| Archit Infratech Pvt Ltd                                   | 112299950.00 |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Jainson Derivatives Pvt Ltd                                | 142500000.00 |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Jainson Futurex Pvt Ltd                                    | 142500000.00 |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Jainson Holdings Pvt Ltd                                   | 96453630.00  |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Jainson Mineral Development Pvt Ltd                        | 48976070.00  |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Jainson Thermal Energy Pvt Ltd                             | 101500000.00 |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Apple Natural Resources Pvt Ltd Reliance Policrete Limited | 149237016.00 |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
|  |              | Transfer through Journal Voucher as per the normal accounting practice.   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| 11. Apple Metal Industries Pvt. Ltd.                       | 12603725     | Total Credits During the period Rs. 12603725/Total Debits During the period Rs. 19103725/However, AO has added entire Credit amount.  |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| 12. Apple Natural Resources Pvt. Ltd.                      | 12500000     | Amount received against the advances made by Shreem Ispat Pvt Ltd (Rs. 2500000/-) and M.G Metalloy Pvt. Ltd (Rs. 10000000/-) In the FY 2012-13.   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |
| Total  | 1363027066   |   |                          |              |                             |              |                         |              |                          |             |                                     |             |                                |              |  |              |

17. With respect to issue of share capital it is apparent that no share capital has been received during the year but only in exchange of the shares of the transferor companies the shares have been allotted to the share holders of the transferor companies. As there is no sum of money received during the year no addition u/s 68 on account of the share capital can be made. The assessee has also shown form No. 2 of the return of allotment filed with the Registrar of Companies which also clearly shows that the share capital is only on account of amalgamation approved by the Hon'ble High Court.
18. Similar is the fact with respect to the addition on account of unsecured loan except in case of
- i) Krishna Swamy where a sum of Rs. 40 lakhs was received by the assessee has shown that the above sum is on account of sale of shares.
  - ii) And amount of Rs. 290 lakhs from Nishu Agrico is stated to be refund of the earlier sums to be paid by the assessee
  - iii) It is also a fact that in case of Apple Metal industries Pvt. Ltd there are total credits of Rs. 1,26,00,325/- and total debits of Rs. 1,91,03,725/-

whereas the ignoring the debits the Id AO has made the addition of only the credit entries. The share capital of the reserve and surplus of Apple Metal Industries shown that it has own funds of more than Rs. 8 crores and has turnover of almost Rs. 30 crores.

In case of all other creditors the amount has been transferred on account of amalgamation. The assessee has also submitted the annual audited accounts as well as confirmation of the parties to show the above fact. Even the copies of the income tax returns of the parties shown as unsecured loans were also submitted. Thus, assessee has submitted all these evidence before the Id AO and before the Id CIT(A). The assessee has submitted the details of the transaction with the companies also submitting copies of the return of income as well as the balance sheet of the lenders. However, the fact remains that most of amount has resulted on account of amalgamation of 9 different companies with the assessee and no fresh sum was received during the year by the assessee with respect to all the loans and advances except as stated above in case of three incidents. Thus addition made by the Id AO and confirmed by the Id CIT (A) u/s 68 of the Act is despite the facts that no sum are received by the assessee during the year. Further, the assessee has submitted the copies of the confirmation, annual audited accounts of those parties, their income tax return with respect to shareholders to whom shares are allotted in exchange of shares of transferor companies as well as of the unsecured lenders who are incorporated in the accounts of the company on account of amalgamation. Thus, even for outstanding balances assessee has discharged its onus u/s 68 of the Act. Thus, the addition made by the Id AO on account of share capital as well as unsecured loan deserves to be deleted. We reverse the orders of lower authorities. In view of this, we allow ground No. 2, 3 and 4 of the appeal.

19. Coming to the ground No. 5 of the appeal the assessee has challenged the approval u/s 153D of the Act. We have perused the arguments of the parties. The assessee has also relied upon the several judicial precedents stating that the approval granted u/s 153D is not correct. We find that the issue is squarely covered in favour of the assessee as the Id JCIT has mentioned at the bottom of the approval that draft assessment order has been received late by him on 31.12.2016 beyond the time limit as per internal action plan and thus having a very little period for proper examination of the facts of the case and further inquiries. The Id JCIT, Central Range, Meerut has mentioned such a fact on the

letter of approval sent by the Id AO. Further, he directed the Id AO to ensure that seized documents and papers have been taken in account. We find that this issue with respect to approval is covered in favour of the assessee by several judicial precedents relied upon by the Id about inappropriate approval granted by the approving authority. We agree with that. However, as we have already decided the issue in favour of the assessee deleting the addition made by the lower authorities, though, issue of approval is covered in favour of the assessee, does not need any further adjudication.

20. Thus, appeal of the assessee is allowed.

Order pronounced in the open court on 23/08/2021.

-Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 23/08/2021

A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi