

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 3823/DEL/2023 (A.Y 2018-19)

Mysore Bhaskara Pankaja B-334 Asian Village Complex, Siri fort, New Delhi-110049 PAN No. AHTPP6502G (APPELLANT)	Vs.	ACIT Room No. 235, Second Floor, ARA Centre, Jhandewalan Extension, New Delhi (RESPONDENT)
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Assessee by :	Sh. Amit Goel, CA
Department by:	Sh. Subhra Jyoti Chakraborty, CIT DR

Date of Hearing	27.06.2024
Date of Pronouncement	10.07.2024

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee for Assessment Year 2018-19 against the order of the Ld. Commissioner of Income Tax (Appeals)-26, New Delhi, dated 20/10/2023.

2. The grounds of Appeal are as under:-

“1. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

On the facts and circumstances of the case and in law, the approval granted u/s 153D is non-est as it does not have DIN.

3 On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is non-est as it does not have DIN on the body of the assessment order and CIT(A) erred in not so.

4 On the facts and circumstances of the case and in law, CIT (A) erred in confirming the addition of Rs. 15,19,998/- made by the assessing officer on account unexplained investment in jewellery u/s 69A r.w.s 115BBE of the Act.”

3. Brief facts of the case are that, the assessee filed return of income declaring income at Rs. 26,61,930/- which was processed u/s 143(1) of the Income Tax Act ('Act' for short). Search and seizure operation u/s 132 of the Act was carried out in Goenka Group of cases on 26/07/2017. The case of the assessee was also covered u/s 132 of the Act. During the course of search carried out at the different premises located in Delhi, the documents and digital data belongs to assessee were found and seized.

Consequent to search action, the case of the assessee was centralized with Circle 15, New Delhi u/s 127 of the Act. The assessment was completed by computing the income of the assessee at Rs. 50,27,095/-.

4. Aggrieved by the Assessment Order dated 31/12/2019, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 20/10/2023, confirmed the addition of Rs. 15,19,998/- made on account of seized jewellery treating the same as unexplained investment and deleted the addition of Rs. 2,39,757/- made by the A.O. on account of cash seized during the search operation. Aggrieved by the order of the Ld. CIT(A) in sustaining the above addition, the assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted at the BAR that, the assessee is not pressing the Ground No. 2 & 3 of the Appeal. Recording the submission made by the Assessee's Representative, the Ground No. 2 & 3 of the Appeal are dismissed.

6. In Ground No.1, the assessee contended that the Assessment Order passed by the A.O. is liable to be quashed as the same is contrary to the provisions of Section 153D of the Act for following reasons:-

(i) The additional CIT has given combined approval u/s 153D of the Act for seven years which is not conformity with law.

(ii) The Assessing Officer sent the letter for approval the Additional CIT(A) on 28/12/2019 and the additional CIT granted approval on the very next day i.e. on 29/12/2019 and on the said date, the Additional CIT has given approval for 178 cases of 29 Assesseees which makes it clear that the Additional CIT had no time to properly examine the facts of each case along with the seized material and the issue involved in the each assessment years.

(iii) There is no mentioning of the fact that the Additional CIT has gone through the appraisal report, assessment record, seized material and other materials in the approval granted u/s 153D of the Act.


(iv) The Additional CIT has not referred any draft assessment order in the combined approval given dated 29/12/2019.

Thus, the Ld. Counsel for the assessee relying on the various judicial precedents sought for setting aside the assessment order passed pursuant to the approval granted u/s 153D of the Act which is contrary to the provisions of the Act.

7. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities submitted that the approval has been granted by the Additional CIT as per law which is internal communication of the Department, the assessee cannot find fault with the same and challenge the Assessment Order before this Tribunal, thus, sought for dismissal of the Ground No. 1.

8. We have heard both the parties and perused the material available on record. As could be seen from the assessment order and the material produced before us, the Assessing Officer sent the letter of approval to Additional CIT on 28/12/2019 and the Additional CIT granted the approval u/s 153D of the Act for 178

cases of 29 Assesseees in a single approval letter. The Approval Letter dated 29/12/2019 is produced as under:-


Office of the
Addl. Commissioner of Income-tax
Central Range-4, New Delhi
Room No-249, 2nd Floor, ARA Centre, E-2, Jhandewalan Extension, New Delhi-55
Telephone No. 23593272

No. Addl.CIT/CR-4/ Approval 153D/2019-20/ 1234 Dated: 29.12.2019


To
The Asstt. Commissioner of Income Tax
CC-15,
New Delhi.

Sub: - Approval u/s 153D of the Income Tax Act, 1961 - Regarding-

Please refer to the subject cited above.

In this regard, draft assessment order(s) in the below mentioned case(s) submitted to this office, vide letter dated 28.12.2019 seeking approval u/s 153D of the I T Act, 1961:

Sl. No.	Name of the assessee	PAN	Asst. Year involving	Section
1.	Sh. A. K. Goenka	AAGPG6344M	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
2.	Sh. A. K. Goenka	AAGPG6344M	2018-19	143(3) of the I. T. Act, 1961
3.	Smt. Renu Goenka	AAJPG5952E	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
4.	Smt. Renu Goenka	AAJPG5952E	2018-19	143(3) of the I. T. Act, 1961
5.	Sh. Vipul Garg	AFFPG2587L	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
6.	Sh. Vipul Garg	AFFPG2587L	2018-19	143(3) of the I. T. Act, 1961
7.	Smt. Sumati Garg	AQYPG6765E	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
8.	Smt. Sumati Garg	AQYPG6765E	2018-19	143(3) of the I. T. Act, 1961
9.	Sh. Sudesh Sachdev	ABLPS5027M	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
10.	Sh. Sudesh Sachdev	ABLPS5027M	2018-19	143(3) of the I. T. Act, 1961
11.	M/s. G.D. Goenka P. Ltd.	AAACG0865A	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
12.	M/s. G.D. Goenka P. Ltd.	AAACG0865A	2018-19	143(3) of the I. T. Act, 1961

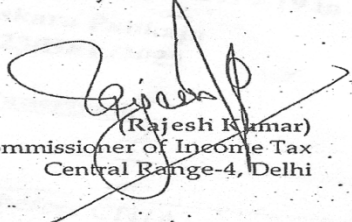

Asstt. Commissioner of Income Tax
Central Circle-15, New Delhi
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13.	Sh. Deepak Chopra	ABTPC1098A	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
14.	Sh. Deepak Chopra	ABTPC1098A	2018-19	143(3) of the I. T. Act, 1961
15.	Smt. Mysore Bhaskra Pankaja	AHTPP6502G	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
16.	Smt. Mysore Bhaskra Pankaja	AHTPP6502G	2018-19	143(3) of the I. T. Act, 1961
17.	Sh. Telu Ram Garg	ACLPG9922C	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
18.	Sh. Telu Ram Garg	ACLPG9922C	2018-19	143(3) of the I. T. Act, 1961
19.	Sh. OM Garg	AFFPG2596F	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
20.	Sh. OM Garg	AFFPG2596F	2018-19	143(3) of the I. T. Act, 1961
21.	Sh. Hemant Sachdev	ABLPS5025K	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
22.	Sh. Hemant Sachdev	ABLPS5025K	2018-19	143(3) of the I. T. Act, 1961
23.	Anjani Kumar HUF	AAAHA3634A	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
24.	Anjani Kumar HUF	AAAHA3634A	2018-19	143(3) of the I. T. Act, 1961
25.	M/s. Chogori Retail P Ltd.	AADCC2003K	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
26.	M/s. Chogori Retail P Ltd.	AADCC2003K	2018-19	143(3) of the I. T. Act, 1961
27.	M/s. G.D. Goenka Tourism Corporation Ltd.	AAACG3083E	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
28.	M/s. G.D. Goenka Tourism Corporation Ltd.	AAACG3083E	2018-19	143(3) of the I. T. Act, 1961
29.	M/s. Chogori India Retail Ltd.	AADCC2405P	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
30.	M/s. Chogori India Retail Ltd.	AADCC2405P	2018-19	143(3) of the I. T. Act, 1961
31.	Sh. Raghav Gupta	AEOPG8387C	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
32.	Sh. Raghav Gupta	AEOPG8387C	2018-19	143(3) of the I. T. Act, 1961
33.	Sh. Rakesh Bajaj	AAIPB8114A	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
34.	Sh. Rakesh Bajaj	AAIPB8114A	2018-19	143(3) of the I. T. Act, 1961

35.	M/s. Chogori Distribution P. Ltd.	AAACB0162F	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
36.	M/s. Chogori Distribution P. Ltd.	AAACB0162F	2018-19	143(3) of the I. T. Act, 1961
37.	M/s. Chogori Majestic Projects	AADCC8700B	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
38.	M/s. Chogori Majestic Projects	AADCC8700B	2018-19	143(3) of the I. T. Act, 1961
39.	M/s. G.R. Goenka Educational Society	AAATG0617M	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
40.	M/s. G.R. Goenka Educational Society	AAATG0617M	2018-19	143(3) of the I. T. Act, 1961
41.	M/s. Genuine Promoters	AABCG6248G	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
42.	M/s. Genuine Promoters	AABCG6248G	2018-19	143(3) of the I. T. Act, 1961
43.	M/s. Unnati Vinimoy P. Ltd	AAACU7745B	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
44.	M/s. Unnati Vinimoy P. Ltd	AAACU7745B	2018-19	143(3) of the I. T. Act, 1961
45.	Nipun Goenka	AHSPG9206B	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
46.	Nipun Goenka	AHSPG9206B	2018-19	143(3) of the I. T. Act, 1961
47.	(GDG EDUCATIONAL TRUST) Earstwhile G.D. Goenka World School	AABTG2708A	2012-13 to 2017-18	153A/143(3) of the I. T. Act, 1961
48.	(GDG EDUCATIONAL TRUST) Earstwhile G.D. Goenka World School	AABTG2708A	2018-19	143(3) of the I. T. Act, 1961
49.	M/s. Centum Proinvestment P. Ltd.	AABCC9849D	2012-13	153A/143(3) of the I. T. Act, 1961
50.	M/s. Centum Proinvestment P. Ltd.	AABCC9849D	2018-19	143(3) of the I. T. Act, 1961
51.	M/s. Systems Plantation & Investment P. Ltd.	AAGCS4038R	2012-13	153A/143(3) of the I. T. Act, 1961
52.	M/s. Systems Plantation & Investment P. Ltd.	AAGCS4038R	2018-19	143(3) of the I. T. Act, 1961

53.	M/s. Best Value Buildcon P. Ltd.	AAACB3984B	2012-13	153A/143(3) of the I. T. Act, 1961
54.	M/s. Best Value Buildcon P. Ltd.	AAACB3984B	2018-19	143(3) of the I. T. Act, 1961
55.	M/s. V. M. Trading P. Ltd.	AAACV0034E	2012-13	153A/143(3) of the I. T. Act, 1961
56.	M/s. V. M. Trading P. Ltd.	AAACV0034E	2018-19	143(3) of the I. T. Act, 1961
57.	M/s. Real Value Promoters Pvt. Ltd.	AAACR5562K	2012-13	153A/143(3) of the I. T. Act, 1961
58.	M/s. Real Value Promoters Pvt. Ltd.	AAACR5562K	2018-19	143(3) of the I. T. Act, 1961

The approval as per provisions of section 153D of the Act, in respect of draft assessment order(s) submitted in the above mentioned case(s), is hereby accorded.


(Rajesh Kumar)
Addl. Commissioner of Income Tax
Central Range-4, Delhi

① 178 Addl. Commissioner
& 58 Assessors

9. The bare glance at the approval accorded by the Additional CIT makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the 178 cases of 29 Assesseees including the Assessee herein (at Serial No. 15) for seven years. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for several assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. There is no reference of draft assessment in the said approval.

10. Based on the request of the A.O. dated 28.12.2019, the Additional CIT granted approval on the very next day i.e. on 29/12/2019. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to 29.12.2019. As per the

CBDT Circular No. 3 of 2008 dated 12.03.2008, 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 of the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search case is that the Additional CIT, 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 should necessarily reflect 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.

11. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) which has been approved by jurisdictional High Court subsequently, reported in 307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held 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.”

12. In the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023 dismissed the Appeal filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act.

13. Hence, considering the above facts and circumstances, we find considerable force in the plea raised by the Assessee in the Ground No. 1 of the Appeal which is against erroneous approval granted under Section 153D of the Act. In our opinion the approvals so granted under the shelter of section 153D of the Act does not pass the test of legitimacy. Thus, the impugned Assessment order in consequence to such inexplicable approval lacks legitimacy. Consequently, the impugned assessment in captioned appeal is non-est and a nullity and hence liable to be quashed accordingly, the impugned assessment order and the order of the Ld. CIT(A) is hereby set aside by allowing Ground No. 1 of the Assessee.

14. Since we have allowed the Ground No. 1 and set aside the assessment order itself, the other grounds on merits have become in-fructuous, which requires no adjudication.

15. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the open court on 10th JULY, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 10/07/2024

*R.N, Sr. PS**

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI