

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No. 766/Chd/2016**  
(Assessment Year : 2008-09)

The DCIT  
CC-I,  
Ludhiana

Vs. M/s Emson Gears Ltd.  
D-42, Phase-V, Focal Point  
Ludhiana

PAN No. AAACE3697E

(Appellant)

(Respondent)

Assessee by : Shri. Sarabjeet Garg  
Department by : Smt. Chandrakanta

Date of hearing : 19/02/2018  
Date of Pronouncement : 26/04/2018

**ORDER**

**PER DR.B.R.R.KUMAR, A.M. :**

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-5, Ludhiana dt. 21/03/2016.

2. The Revenue has raised the following grounds of appeal:

1. *In the facts and circumstances of the case the Ld. CIT(A) has erred in holding the order under section 143(3)/263 dt. 25/03/2014 of the Income Tax Act, 1961 as null and void.*

2. *That the CIT(A) has erred in holding that the order under section 143(3)/263 dt. 25/03/2014 required approval under section 153D without appreciating that the Ld. CIT(C), Ludhiana in his order under section 263 dt. 22/03/2013 required the Assessing Officer to make fresh assessment after making proper enquiry and giving opportunity to the assessee on limited issues only. As such the provision of section 153D were not applicable.*

3. *That the CIT(A) has failed to appreciate that the order under section 143(3)/263 dt. 25/03/2014 were a speaking order after giving due opportunity to the assessee and no prejudice is caused to the assessee.*

3. Brief facts of the case are that the assessment in the case of the assessee was completed under section 153A of Income Tax Act, 1961 on 24/12/2010. The

order was passed after obtaining approval from the Addl. CIT on 24/12/2010 as per the provisions under section 153D. The said assessment order was set aside by the Ld. CIT(Central), Ludhiana with direction to make fresh assessment *de-novo*, vide order under section 263 of Income Tax Act, 1961 dt. 23/03/2012. In compliance to the orders of the CIT(C) under section 263 the Assessing Officer has completed the assessment on 25/03/2014. Determining the total income at Rs. 2,74,47,180/- against the return income of Rs. 2,54,27,640/-.

4. Aggrieved the assessee filed appeal before the Ld. CIT(A) who held that the assessment order becomes invalid as the approval under section 153D have not been obtained in the case before passing order dt. 25/03/2014 under section 143(3)/263.

5. Before us the Revenue argued that once an approval under section 153D has been taken before passing the order during the original assessment, there is no requirement to seek another approval while passing the order as per the directions of the CIT(C) in the order under section 263.

6. The Ld. DR vehemently argued that approval under section 153D is not procedural but mandatory requirement as per the decision of Hon'ble Delhi High Court in the case of CIT Vs. SPL Sidhartha Ltd. and the order of the ITAT Pune Bench in case of Akil Ghulam Ali Somji Vs. ITO.

7. We have heard the arguments and gone through the record before us. The similar has been dealt by the Co-ordinate Bench of ITAT, Chandigarh in the case of DCIT Vs. Osho Forge Ltd. in ITA No. 763/CHD/2016 dt. 02/01/2017 wherein it has been held as under:

*" We have heard the rival contentions and have also gone through the order of the Coordinate Bench of the Tribunal in the case of 'Akil Gulamali Somji vs ITO' (supra). The facts in that case was that no permission was taken by the Assessing officer from the JCIT u/s 153D before passing the assessment order u/s 153C of the Act. That was not a case of setting aside of the assessment order u/s 263 by the*

*CIT for de novo assessment. However, in the case in hand the permission before passing the original assessment u/s 153A was duly taken by the Assessing officer from the competent authority. In our view, the permission u/s 153 D was required to assume jurisdiction to pass an order of assessment u/s 153A of the Act. Once the permission was taken, the jurisdiction was assumed by the Assessing officer and the assessment order was passed, which, however, has been subsequently set aside by the CIT for framing the same afresh. In these circumstances, it cannot be said that the Assessing officer had lost jurisdiction to frame the assessment afresh in compliance of the orders of the Ld. CIT(A) passed u/s 263 of the Act. Rather the Assessing officer was bound to frame the assessment afresh until and unless the said order of the Commissioner has been stayed or set aside by any higher Forum. Hence, we are of the view that the Assessing officer was not required to take fresh approval of the JCIT before passing the fresh order in compliance of the orders of the Commissioner of Income Tax."*

In view of the above, the impugned order of Ld. CIT(A) is hereby held to be not sustainable and the appeal is restored to the file of the Ld. CIT(A) with the direction to decide the case on merits.

8. In the result the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open Court.

**Sd/-**

**(SANJAY GARG)**  
**JUDICIAL MEMBER**  
Dated : 26/04/2018

AG

**Sd/-**

**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR