

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

**(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1016/DEL/2021  
[Assessment Year: 2017-18]**

AnujBansal,  
Prop. M/s MAA & Son,  
C/o-KapilGoel,  
Adv. F-26/124 Sector-7, Rohini,  
Delhi-110085

ACIT,  
Central Circle-14,  
Room No.266, 02<sup>nd</sup> Floor,  
E2 ARA Centre  
Jhandewalan Extension,  
New Delhi-110055

**PAN-AGLPB0846N**

Assessee

Revenue

Assessee by  
Revenue by

Sh. KapilGoel, Ld.Adv.  
Sh. SatpalGulatiLd. CIT-DR

**Date of Hearing**

**03.02.2022**

**Date of Pronouncement**

**29.04.2022**

**ORDER**

**PER BENCH,**

This appeal filed by the Assessee is directed against the order dated 16.08.2021 of the Ld. CIT(A)-27, New Delhi, relating to AY 2017-18.

**2.** Facts of the case, in brief, are that the Assessee is an individual and the proprietor of M/s Maa& Son which is involved in the retail sale of bullion. A search operation u/s 132 of the Income Tax Act, 1961 was carried out on 20.12.2016 in the case of Assessee during which various incriminating papers/documents were found and seized during the course of such search & seizure operation. In response to the notice u/s 153A of the Act the Assessee submitted that the original return of income for AY 2017-18 filed on 31.10.22017 declaring total income at Rs.87,20,580/-

may be treated as return filed in response to notice u/s 153A of the Act. The AO thereafter issued statutory notice u/s 143(2) and 142(1) of the Act in response to which, the Assessee appeared from time to time and filed the requisite details as called for.

**3.** During the course of assessment proceedings, the AO noted that a survey u/s 133A of the Act was carried out by the Department on Axis Bank Mundka and ChandniChowk Branch, Delhi on 25.11.2016 and 08.12.2016 respectively. During the course of such survey, it was found that there was large amount of cash deposited in the bank accounts of 11 entities after 8<sup>th</sup> of Nov. 2016 and transferred to the bank account of M/s. ShriNiwas Ram Kishore (SNRK), then part of these funds were transferred to bank account of M/s. Maa& Son through banking channels.

**3.1.** The AO further noted that a search & seizure action u/s 132 was undertaken by the Income Tax Department at the residence of Sh. AnujBansal at A-108, SwasthayaVihar, Delhi and survey u/s 133A was conducted at the business premises of M/s Maa& Son at KuchaMahajani, Delhi on 22.12.2016. During the course of search, Sh. AnujBansal was asked to provide the KYC of SNRK and contact details of the owners of SNRK. In his statement u/s 132(4) of the Act, Sh. AnujBansal stated that he did not know the owners of SNRK and that all the dealings for the sales transactions of M/s Maa& Son to SNRK were done through one Sh. VipinSoni of M/s Kanishka Jewellers. Sh. VipinSoni was also asked to provide the contact details of the owners of SNRK. In his statement u/s 131(1A) dated 14.03.2017, Sh, VipinSoni stated that one Sh. Ashok Kumar Sharma was the owner of SNRK. However, he was not able to produce the said Sh. Ashok Kumar Sharma despite sufficient opportunities given to him. Further enquiries conducted revealed that the address of Sh. Ashok Kumar Sharma, as provided by Sh.

Vipin Soni was non-existent. Further, as per the bank KYC documents of SNRK, SNRK was a firm in which two completely different individuals viz. Sh. VikasKhanna and Sh. Shyam Lai Bajaj were partners. Physical enquiries on these addresses revealed that no such individuals or firm in operation from are the said addresses. The details of the 11 entities and the chain of transactions are as under:

S. No.	Name	Dates between which cash deposited	Total Amount of cash deposited	Name of the entities to whom transferred (1st layer)	Name of the entities to whom transferred (2nd layer)	Status of ITR filed by the entity at col. 1
	11)	(2)	(3)	(4)	(5)	(6)
1	Refined Infoservices Pvt. Ltd.	10.11.2016 to 13.11.2016	10432000	M/s Sh. Niwas Ram Kishore	M/s Maa& Son	No ITR filed
2	Aiken Infrastructure Pvt, Ltd.	10.11.2016 to 24.11.2016	38793000	..Do..	..Do..	No ITR filed
3	Brenton Infrastructure Pvt. Ltd.	10.11.2016 to 24.11.2016	12371000	..Do..	..Do..	No ITR filed
4	Swastik Sales Corporation	13.11.2016 to 24.11.2016	24770000	..Do..	..Do..	
5	Arjun Trading Co.	15.11.2016 to 24.11.2016	9812000	..Do..	..Do..	No ITR filed
6	Arihant Traders	15.11.2016 to 24.11.2016	6772000	..Do..	..Do..	
7	Waheguru Builders & Development Pvt, Ltd.	11.11.2016 to 24.11.2016	58876000	..Do.,	..Do..	
8	Prince Trading Co.	13.11.2016 to 23.11.2016	21906000	..Do..	..Do..	
9	Paradise Sales Company	13.11.2016 to 22.11.2016	17108000	..Do..	..Do..	No ITR filed
10	Progressive Commodity	21.11.2016 to 24.11.2016	15077000	..Do..	..Do..	No ITR filed
11	Kaira Advertising Pvt. Ltd.	11.11.2016 to 12.11.2016	1891000	..Do..	..Do..	No ITR filed

**3.2.** Further, information was also received from Investigation Wing, Chandigarh, with respect to one entry operator Sh. VipinGarg who had admitted to be managing and controlling a number of non-descript and shell entities. Three of the said shell entities, managed and controlled by Sh. VipinGarg, viz. M/s Garg Trading Company, M/s Summax Enterprises and M/s S N Brother, had transferred Rs. 1,54,07,100/- in the bank accounts of M/s Maa& son in the post demonetization period. Sh. AnujBansal was not able to provide any proof of delivery or KYC details of the said buyers despite sufficient opportunities given to him. Accordingly, the AO made additions u/s 68 r.w.s 115BBE being: (i) The amount of Rs. 15,04,35,000/- treating the Assessee as final beneficiary of demonetised currency deposited in various shell companies and routed through M/s SNRK and (ii) The amount of Rs. 1,54,07,100/- transferred in the bank accounts of M/s Maa& Son from the shell entities of entry operator Sh. VipinGarg.

**4.** Before the Ld. CIT(A), the Assessee made elaborate arguments based on which the Id. CIT(A) deleted the addition of Rs.15,04,35,000/- made by the AO by observing as under :-

*“7. Conclusion:*

*7.1 In view of the facts of the case and the above discussion, following conclusions can be drawn*

- (i) There is no connection established in the search/survey on the appellant, surveys on axis bank and in the assessment order of the appellant, between the appellant and the alleged 11 entities, who deposited cash in their respective bank accounts. The allegation that this cash deposited by these 11 entities in SBNs in their respective accounts after the demonetization belonged to the undisclosed money of the appellant is just on presumption of the AO and had not been established through any evidence on record. There is no evidence on record that this cash belonged to the*

*appellant, had been handed over by the appellant to these entities or was deposited directly or indirectly by the appellant in these accounts. It is pertinent to mention over here that some of these alleged entities had transferred amounts to M/s SNRK even before the demonetization was announced on 8.11.2016. The appellant had no transactions with M/s SNRK before 8.11.2016. Further all the amounts received by M/s SNRK from these entities during the demonetization period had not been transferred to the appellant. In these facts, it emerges that M/s SNRK and these entities were involved in transactions much before the appellant came in picture for transactions with M/s SNRK. Therefore, it can be safely concluded that there is no involvement of the appellant in the transactions between these entities and M/s SNRK.*

- (ii) There is no evidence on record to ascertain about the identity of the persons, who had actually deposited cash of SBN's in the bank accounts of alleged 11 entities. Some of these alleged entities are filing their returns of income. Further each entity had transferred the amounts as per the table above, to the bank account of M/s SNRK through I FT, which can be done through login id & password of authorized person to handle these accounts. Neither in the search on the appellant, any evidence of control of the appellant on any of these accounts had been found nor established in the assessment proceedings, by which the funds can be transferred out from these accounts electronically.*
- (iii) The amounts transferred by these 11 alleged entities to M/s SNRK are at Rs 21,70,33,818/- (including pre-demonetization period transfers) out of which, the funds to the tune of Rs.11,42,12,057/-(52.6%) had only been received by appellant from M/s SNRK, only after demonetization. Thus, it cannot be said that the appellant was in any way party to these alleged entities or M/s SNRK. If there is any possibility of any connivance, it is between these 11 entities and M/s SNRK, as they had been doing transactions even before 8.11.2016 and even after 8.11.2016, ail the transaction amounts between them had not ultimately flowed to the account of the appellant.*

(iv) *There is nothing on record to prove the connivance of the appellant with M/s SRNK. M/s SRNK was registered as partnership firm in 2013 and it got registered with VAT on 28.12,2015. It had opened bank account on 14.03,2016 and had entered into substantial transactions with many entities before entering into transactions with the appellant. Further the transactions of M/s SRNK with the appellant were at Rs 15 Cr as against total transactions of Rs 39 Cr done by it during the year under consideration. Thus, the appellant had only part of total transactions done by M/s SNRK,*

(v) *The AO had alleged that:  
"the appellant could not give any plausible explanation w.r.t identity & creditworthiness of M/s SNRK ,as well as, for the cash deposited in number of bank accounts, which was later transferred to the account of the appellant. The AO concluded that the amounts received by the appellant were accommodation entries in the form of..."*

(a) *It is observed that the appellant had insisted on the prior transfer of money through banking channel, before the delivery of Gold is made. It had obtained valid TIN of M/s SNRK and had also obtained the KYC of the person, Sh. Ashok Kumar Sharma, who was claimed involved in these transactions, In the absence of availability/production of Mr. Ashok Kumar Sharma, it can be alleged that the appellant could have arranged his KYC documents from some other source. However, the KYC documents match with the ITR particulars filed by Mr. Ashok Kumar Sharma. The money had been transferred from the account of M/s SNRK to the account of the appellant, and this transfer of money was not in the control of the appellant. The appellant is not supposed and even cannot have access to look into the creditworthiness of a person or source of funds of any person.' The appellant, as a normal business practice, is only interested to protect his financial interest, by ensuring payment of his money before delivery of goods through regular channels and mandatory documents like valid TIN of purchaser, which had been obtained and even checked by the appellant. The appellant had taken KYC of the receiver of Gold to keep track of the delivery given. Any businessman will not investigate the affairs of the purchaser, before selling the goods, but will insists only the mandatory requirements. Reliance is placed on following case laws :*

- *It had been held in S.A. Builders Ltd, v, €17 (Appeals [2007] 288 1TR1 (SC), the revenue cannot justifiably claim to put itself in the armchair of the businessman and assume the role to decide as to how much expenditure is reasonable having regard to the circumstances of the case; no businessman can be compelled to maximize his profit; the IT authorities must put themselves in the shoes of he assesses and see how a prudent businessman would act; and that the authorities must not look at the matter from their view point, but that of a prudent businessman impelled by commercial expediency.*
- *In CIT Vs. Edward Keventer (P.) Ltd. [1972] 86 ITR 370, the Calcutta High Court considering identical provision in 1922 Act, it was held that the section places two limitations in the matter of exercise of the power. The section enjoins the Assessing Officer in forming any opinion as to the reasonableness or otherwise of the expenditure incurred must take into consideration*

- (i) the legitimate business needs of the company and*
- (ii) the benefit derived by or accruing to the company.*

*The legitimate business needs of the company must be judged from the view point of the company itself and must be viewed from the point of view of a prudent businessman. It is not for the Assessing Officer to dictate what the business needs of the company should be and he is only to judge the legitimacy of the business needs of the company from the point of view of a prudent businessman. The benefit derived or accruing to the company must also be considered from the angle of a prudent businessman. The term "benefit"<sup>1</sup> to a company in relation to its business, it must be remembered, has a very wide connotation and may not necessarily be capable of being accurately measured in terms of pound, shillings and pence in all cases. Both these aspects have to be considered judiciously, dispassionately without any bias of any kind from the viewpoint of a reasonable and honest person in business."*

- (b) The payment had been received through the banking channel, before delivery of goods. The TIN had been quoted on all the bills, with the name & address of M/s SNRK. The*

*signatures of the receiver (although not mandatory in transactions through bank) had also been obtained. The transactions have been done through broker, who had confirmed it and the due payment of brokerage from the appellant had also been confirmed by him. M/s SNRK had also made substantial transactions with other parties before & after 8.11.2016 through its bank account. Most of the credit entries of M/s SNRK had been through banking transfers only. Even the AO of M/s SNRK had assessed its income, after obtaining directions u/s 144A from the range head, by adding all the credit entries u/s 69A of the IT act 1961. There is no allegation in its assessment order that M/s SNRK is an accommodation entry provider, wherein generally the rate of 2-5% of the amount of entry provided is added as undisclosed income. The AO of the appellant cannot treat M/s SNRK as accommodation entry provider, once AO of M/s SNRK had not treated it so in its assessment order and there is no other evidence on record to treat it as entry operator. Once the credit entries had been taxed as income in the case of M/s SNRK, the debit entries represent the application of this income. Hence after the assessment of M/s SNRK, wherein substantive addition had been made on account of unexplained credit entries in its bank account, the debit entries flowing to the appellant & other entities as purchase payments, cannot be again taxed u/s 68 after treating them as beneficiaries, as it will tantamount to double addition of same amount in two different entities on same account, on substantive basis, which is not permissible under law in the given circumstances. There is no evidence on record, which shows any unaccounted SBNs belonging to the appellant and if these sales transactions were bogus transactions of converting the black money of the appellant to Gold, then the stock inventory of Gold found during the search/survey on the appellant should have been excess by this amount of 50Kgs, which is not the case here, as no stock discrepancy had been brought on record by the AO. The appellant does not appear to be the only beneficiary of the SBN's deposited in alleged accounts as it had not received all the amounts, but only part of it. The real beneficiary, if any, will be M/s SNRK, as it is having continued relations with these entities, without explanation on nature of transactions with them and the AO of it had treated it so in its scrutiny assessment. The amounts received by the appellant from M/s SNRK had been utilized in*

*purchase of gold and as no discrepancy had been found in stock of gold of the appellant during search/survey, the natural presumption is that the appellant had parted with the physical gold. Thus, the allegations of the AO are not supported by the facts and are based entirely on presumptions, conjectures and surmises.*

7.2. *In view of the above discussion, it is observed that :*

- *There is no evidence on record, which establishes any connection with the money deposited by 11 alleged entities.*
- *There is nothing on record which suggests that the appellant had any control over the online bank transactions of 11 alleged entities and M/s SNRK.*
- *There had been transactions of some of the alleged entities with M/s SNRK even before 8.11.2016 to which appellant was not a party and even in the transactions after 8.11.2016, the appellant had received only 11.42 cr out of total amount of Rs 21.70 cr. transferred by these entities to M/s SNRK.*
- *M/s. SNRK had total credits Rs.39 Cr in its bank account, out of which only 15 Cr had been received by the appellant.*
- *The appellant had obtained valid TIN of M/s SNRK and valid PAN of the person, who collected Gold. The money was received by the appellant in advance through online RTGS done by M/s SNRK. The appellant had collected all the mandatory documents required in the ordinary course of business and to protect his financial interest, money had been received before handing over the Gold.*
- *The Axis bank had carried out the field verification of M/s SNRK and the KYC documents of partners have been verified from the online sites.*
- *The A.O. of M/s SNRK had treated all the credit entries in its bank account as unexplained cash credit in the scrutiny assessment of it. These debit entries representing application of taxed income in the hands of M/s SNRK, cannot be taxed again on substantive basis in the hands of the appellant, as it will tantamount to double addition of same amount in the same series of transactions, in two different hands on substantive basis. There is no conclusion that M/s SNRK is an entry operator in its assessment order. The broker, Sh. Vipin Soni had confirmed to have introduced the representative of M/s SNRK to the appellant and he had*

*charged commission @ Rs 2000/- per Kg of Gold sold by the appellant.*

- *No discrepancy in stock or purchases or sales recorded in the books of the appellant had been found during the search/survey on the appellant.*
- *The appellant had sold Gold worth Rs 171 Cr during demonetization period for which payments had been received through banking channels, out of which only sales of Rs 15 cr are to M/s SNRK for which even payments had been received through the banking channel.*

*In these facts & circumstances of the case, it is held that the appellant had made the sales transactions to M/s SNRK during the normal course of business through the regular banking channel. Therefore, the amounts credited to the bank account of the appellant on account of sales transactions with M/s SNRK are in the ordinary course of business and represent the trading receipts as per the books of account. Therefore the source of these receipts stands explained. Accordingly, the addition of Rs.15,04,35,000/- made by the AO u/s 68 r.w.s 115BBE is not sustainable and is hereby deleted.”*

**5.** The Ld. CIT(A) however sustained the addition of Rs.1,54,07,100/- made by the AO u/s 68 of the Act r.w.s 115BB of the Act, by observing as under :-

*“8. Ground Nos.12, 13 & 16; These grounds relate to the issue of addition of Rs.1,54,07,100/- made by the AO u/s 68 r.w.s. 115BBE of the IT act 1961.*

*8.1. As per para 4.3 above, there was information with the AO that appellant had received accommodation entries of Rs 1,54cr. from the bank accounts of three entities controlled by Sh. VipinGarg. Sh. VipinGarg had stated in his statement u/sl32 that it had received cash in SBNs from the parties to whom these entries have been given through a web of entities. He had received cash of SBNs from various beneficiaries or their agents since 09.11.2016 against which he had only given RTGS entries without conducting any actual business transactions. He has charged commission from the beneficiaries @ 0.5% to 2%. The appellant had not submitted any proof of delivery of gold, KYC documents or any other contract of these sales parties and had*

*stated that Sh. VipinGarg is not known to him. During the appellate proceedings, the appellant had submitted that some of these entities do not belong to ShVipinGarg and in some entities no cash had been deposited before making transfer payments to the appellant. It is observed that the character of these transactions is different from the transactions of m/s SNRK, as there is statement of entry operator controlling these entities that cash had been received in SBN from the entities to whom payments had been made and in the transactions with M/s SRNK even the broker had confirmed the transactions. It is observed that these entry operators transfer the money to beneficiary through various layers of money, so there is possibility that the cash may not be visible in some entities, but the ultimate source, if traced will be cash deposit in some other group entity. This exercise will be futile in present case, as ShVipinGarg himself had admitted that it is providing these transfers against the cash received in SBN from these beneficiaries or their agents through the entities controlled by him. In these facts & circumstances of the case, these pleas of the appellant are rejected and in the absence of any tangible material brought on record by the appellant, I do not find any reasons to interfere with the findings of the AO. In these facts and circumstances, it is held that these credits in the bank account of the appellant are not on account of actual sales to these entities, but are on account of accommodation entries received from the entities controlled by Sh. VipinGarg. Therefore, the source of this money is unexplained. Accordingly, the addition of Rs.1,54,07,100/- made by the AO u/s 68 r.w.s. 115BBE of the IT act 1961 is hereby confirmed and these grounds of appeal are dismissed.”*

**6.** So far as the ground challenging the validity of reopening, in absence of proper approval u/s 153D is concerned, the Ld. CIT(A) dismissed the same by observing as under:-

*“12. Ground No, 17 relates to the approval u/s 153D of the I T Act, 1961. The appellant had claimed that the approval has been given mechanically without application of mind on the same date as the passing of order u/s 153A. It is pertinent to mention over here that the Range head is involved in search assessment right*

*from the date of issuing first questionnaire. There are generally multiple discussions between the AO & Range head on various issues arising in the assessment before finalisation of search assessments. The final approval of draft order is given after making thorough discussions made earlier to this approval. It may be observed that in all approvals of Range heads, there are not any further directions and this approval forming part of assessment order is only visible to the appellant. All other processes done internally between AO & Range Head are not visible to the appellant. Accordingly it cannot be said that approval u/s. 153D had been given mechanically and at last moment without application of mind. It is observed from the assessment order that the AO had taken due approval of competent authority u/s 153D before passing this assessment order. In these facts & circumstances, I do not find any violation of provisions of section 153D. Accordingly, this ground of appeal is dismissed.”*

**7.** Aggrieved with such order of the Id. CIT(A), the Assessee is in appeal before the Tribunal by raising the following grounds :-


1. *That in the given facts assessment order passed u/s 153A/143(3) dated 31.12.2019, being passed without authority of law and is patently ultra vires to the provisions of the Act , and ergo impugned order of Ld CIT-A dated 16.08.2021 in not accepting the appellants jurisdictional plea(s) to quash the said assessment is also not valid on the pleaded jurisdictional counts.*
- 1.1 *That since foundational search action u/s 132 of the Act on asses see admittedly was conducted to verify and scrutinize the stated transactions in disclosed bank accounts (which was statedly noted from some prior survey action u/s 133A on axis bank branches) so mechanical use of provisions of sec. 153A where everything was pre-existing as given*

*Assessee's bank account itself was disclosed in regular audited books/ITR etc and admittedly nothing undisclosed/hidden was detected from stated search operation, so use of sec. 153A is itself without authority of law and so consequential assessment framed u/s 153A deserves to be annulled.*

- 1.2 That since there is no valid and requisite -mandatory statutory approval u/s 153D in extant case as pleaded before Ld. CIT(A) which jurisdictional plea has been overruled on extraneous and irrelevant grounds, so orders of Ld AO and Ld CITA are void ab initio and jurisdictionally flawed and deserves to be quashed.*
- 1.3 That since assessment order passed u/s 153A/143(3) purportedly dated 31.12.2019 is ostensibly time barred u/s 153B as pleaded before Ld. CIT(A) which jurisdictional plea has been rejected on arbitrary reasons and so orders of Ld AO and Ld. CITA are void ab initio and jurisdictionally flawed and deserves to be quashed.*
- 1.4 That since impugned assessment was framed with biased and premeditated mindset without fair and objective approach being adopted towards Assessee as evident from glaring debility in the assessment that regular books of accounts have nowhere been doubted much less rejected u/s 145(3), so entire exercise at end of Ld Assessing officer (AO) to intervene in selected regular trading transactions of Assessee already recorded in regular audited books by invalid recourse to sec. 68/115BBE of the Act, is without authority of law and is ultra vires to provisions of the Act, so Ld. CIT(A) ought to have quashed the assessment order itself on this jurisdictional count itself which is ergo pleaded here.*

2. *That Ld CIT-A in his impugned order dated 16.08.2021 erred in not accepting the appellants ground for deletion of addition made u/s 68 of the Act (amounting to Rs.154,07,100) by sustaining the assessment order to that extent on untenable grounds which is evident from shining flaw that despite Assessee denial on Vipingarg named by Ld AO qua said transaction , no meaningful effort is made at any stage to make independent inquiry on said aspect as per sec. 142(3) of the Act and further principles of natural justice (requested cross examination etc) are not complied with at any stage qua bald allegations levelled against Assessee. Ergo we request for deletion of said addition of Rs.154,07,100 as arbitrarily sustained by Id CITA.*
3. *That Ld CIT-A in his impugned order dated 16.08.2021 erred in not reversing the unlawful and incorrect and arbitrary invocation itself of provisions of section sec. 68 and sec. 115BBE of the Act to bonafide recorded/accounted sale transactions which recorded/accounted sales on cardinal legal principles cannot be subject matter of such farcical and preposterous taxation which manifestly runs counter to legislative scheme and intent behind sec. 68 and sec. 115BBE of the Act.*
4. *That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

**8.** The Id. Counsel for the Assessee, at the time of hearing confined his arguments to the ground challenging the validity of approval u/s 153D of the Act. He submitted that the Assessee filed an e-mail dated 23.08.2021 requesting for the certified copy of the order-sheet and approval taken u/s 153D from the appropriate authority before the order u/s 153A is passed. He submitted that in response to the same, the AO had supplied the approval received from Addl. CIT, which is as under:-



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

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F. No. Addl.CIT/CR-4/ Approval 153D/2019-20/1245 Dated: 30.12.2019

To  
The Asstt. Commissioner of Income Tax  
CC-14,  
New Delhi.

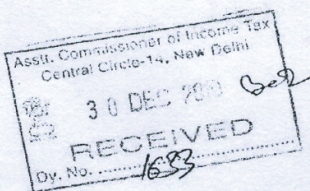
**Sub: - Approval u/s 153D of the Income Tax Act, 1961 - Regarding-**

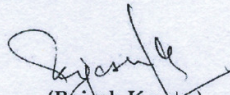
Please refer to the subject cited above.


In this regard, draft assessment order(s) in the below mentioned case(s) submitted to this office, vide F. No. ACIT/CC-14/Nagpal group of cases/2019-20/1027 dated 30.12.2019 seeking approval u/s 153D of the I T Act, 1961:

S.No	Name of the assessee	PAN	Asstt. Year	Draft order u/s
1	Anuj Bansal, Prop. of Maa & Sons cases	AGLPB0896N	2013-14 to 2019-20	153A/143(3)

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



CERTIFIED TRUE COPY  
 30.12.2019  
 Asstt. Commissioner of Income Tax  
 Central Circle-14, New Delhi

**9.** Referring to the approval given by the Addl. CIT, he submitted that the same has been granted on the very same day and the assessment records were never sent to the Addl. CIT, which is discernable from the said letter. The Id. counsel for the Assessee referring to the errors in the assessment order regarding the returned income, total assessed income and nature of addition submitted that the Addl. CIT in the instant case has given his

approval in a mechanical manner and without verification of the assessment records. He submitted that when the approval of the case was given on the same day and within a few hours of receipt and when there is very little time left with the AO to complete the assessment and the mistakes are glaring, it clearly shows that there is complete non-application of mind by the AO as well as the Addl. CIT. The Ld. Counsel for the Assessee submitted that if the Addl. CIT would have gone through the records, he would have noticed the blunders committed by the AO. He submitted that since, the assessment records were never sent to the Addl. CIT, therefore it was not possible on the part of the Addl. CIT to take a decision as to whether the order was as per facts and law. The Id. counsel for the Assessee referring to the following decisions submitted that when the approval has been given in a mechanical manner without verifying the records, such approval u/s 153D is not in accordance with law and accordingly the assessment has to be quashed.

- i. Pr. CIT vs Smt. Shreelekha Damani in Income Tax Appeal No.668 of 2016, order dated 27.11.2018
- ii. M/s Inder International in ITA No.1573/CHD/2018, order dated 07.06.2021
- iii. Arch Pharmalabs Ltd. in ITA No.6656/Mum/2017, order dated 07.04.2021,
- iv. Sanjay Duggal in ITA No.1813/Del/2019, order dated 19.01.2021
- v. Rajesh Ladhani in ITA No.106, 107 and 108/Agra/2019, order dated 06.11.2019
- vi. Saurabh Agarwal in ITA No.263 to 267/Agr/2017, order dated 18.09.2029
- vii. Dilip Constructions Pvt. Ltd. in IT(SS) Nos.66 to 71/CTK/2018, order dated 29.11.2019
- viii. Uttarakhand Uthan Samiti in ITA No.48 to 52/DDN/2019,

- ix. RishabhBuildwell P. Ltd. in ITA No.2122/Del/2018, order dated 04.07.2019
- x. M3M India Holding vs DCIT, reported in [2019] 71 ITR (Trib.) 451 (Del.)
- xi. C R Mittal & Sons (HUF), in ITA No.100/JAB/2014, order dated 15.03.2021
- xii. Rajat Minerals Pvt. Ltd. in IT(SS)A. No.41 to 47/Ran/2019, order dated 20.01.2020.

**10.** Referring to the decision of the Hon'ble Delhi High Court in the case of SynfoniaTradelinksPvt. Ltd. v. ITO (2021)435 ITR 642 (Del) and ESS Advertising (Mauritius) SNC Et Compagnie v. ACIT, reported in (2021) 437 ITR 1(Del.), he submitted that the above decisions of the Hon'ble High Court on validity of approval under section 151 of the Act, which is pari-materia with the provisions of section 153D of the Act, fully cover the issue of validity of impugned approval u/s 153D of the Act. Referring to the above decision, he submitted that since the approval given by the Addl. CIT u/s 153D of the I.T. Act,1961 in the instant case being not in accordance with law, therefore, the assessment order passed u/s 153A r.w.s. 143(3) of the Act stand vitiated since, the said order suffers from various infirmities. He accordingly submitted that the assessment order passed u/s 153A r.w.s. 143(3) of the Act should be quashed.

**11.** The Ld. DR on the other hand, heavily relied on the order of the Ld. CIT(A) on this issue. He submitted that the Id. CIT(A) while deciding the issue has held that the range head is involved in such assessment right from the date of issuing first questionnaire and there are generally multiple discussions between the AO and the range head on various issues arriving in the assessment before finalization of the said assessment. He had elaborately discussed while dismissing the grounds raised by the Assessee on this issue.

Referring to various decisions, he submitted that it has been held in these decisions that "Yes" I am satisfied" is held to be valid approval. He accordingly submitted that the grounds raised by the Assessee should be dismissed.

**12.** The Id. counsel for the Assessee in his rejoinder, drew the attention of the Bench to the approval given by the Id. Addl. CIT and submitted that no assessment records were forwarded to the Addl. CIT and only draft order was sent, which contains various infirmities and which was returned on the very same day speaks volumes. Therefore, since the approval given u/s 153D is not in accordance with law, the assessment order framed u/s 153A r.w.s.143(3) of the Act should be quashed.

**13.** We have heard the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the Assessee. We have also considered the various decisions cited before us. We find the AO in the instant case completed the assessment u/s 153A r.w.r.143(3) of the Act on 31st December, 2019 determining the total income of the Assessee at Rs.1,65,07,560/- as against the returned income of Rs.87,20,580/- at para 6 of the order by making the following two additions, the details of which are as under:-

Sl. No.	Particulars	Amount (in Rs.)
1	Returned income	Rs.11,00,460/-
2	Addition u/s 68 Cash deposit in bank	Rs.15,04,35,000/-
3.	Addition u/s 68 Cash introduced through Mr.VipinGarg entry operator	Rs.1,54,07,100/-
	Assessed income	Rs.1,65,07,560/-

**14.** A perusal of the same shows that the AO has stated the returned income at Rs.11,00,460/-, whereas, para 3 of the assessment order reads as under:-

*“3. A notice u/s 153A of the Income Tax Act, 1961 was issued to the Assessee. In response to the notice u/s 153A of the Act, the Assessee submitted that the original return of Income for the A.Y. 2017-18 filed on 31/10/2017 declaring total income at Rs.87,20,580/- may be treated as return filed u/s 153A. Statutory notice u/s 143(2) of the I.T. Act, 1961 was issued on 31/08/2018.”*

**15.** A perusal of para-3 of the assessment order shows that the Assessee has filed original return as well as return in response to notice u/s 153A declaring total income of Rs.87,20,580/-. Further, when the addition has been made by the AO of Rs.15,04,35,000/- u/s 68 and another addition of Rs.1,54,07,100/- how the total assessed income can be at Rs.1,65,07,560/-. This clearly shows that there is complete non-application of mind either by the AO who passed the order u/s 153A r.w.s. 143(3) of the Act and the Addl. CIT who has given his approval u/s 153D of the Act.

**16.** Therefore the question that arises, as what to do in case of approval given without application of mind by the Higher Authority.

**16.1** The Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. v. CIT 258 ITR 317 while considering the identical issue u/s 153D of the Act, has held as under;

*“The proviso to sub-section (1) of section 151 of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing*

*Officer concerned, that it is a fit case for the issue of such notice. These are some in built safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment. What disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval”.*

**16.2** The Hon'ble Allahabad High Court in the case of Verma Roadways vs. ACIT, 75 ITD 183 while dealing with the identical situation held to the following effect:

*“Coming to the aspect of the application of mind, while granting approval, we are of the view that requirement of approval presupposes a proper and thorough scrutiny and application of mind. In the case of KirtilalKalidas & Co. (supra), the I.T.A.T Madras Bench ‘A’ has observed that the function to be performed by the Commissioner in granting previous approval requires an enquiry and judicial approach on the entire facts, materials and evidence. It has been further observed that in law where any act or function requires application of mind and judicial discretion or approach by any authority, it partakes and assumes the character and status of a judicial or at least quasi-judicial act, particularly because their Act, function, is likely to affect the rights of affected persons.”*

**16.3** The 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 ] also dealt with the issue related to approval granted u/sSection 153A of the Act and held as under:

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. ShreelekhaNandanDamani for A.Y. 2007-08 reg.

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 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."*

**16.4** Even the co-ordinate Bench of the Tribunal in the case of Sanjay Duggalvs ACIT (ITA No.1813/Del/2019decided on dated 19.01.2021) and batch of 52 appeals, while adjudicating an identical issue, has extensively dealt with various judgments of Hon'ble Apex Court, High Courts and Tribunal as well and quashed the assessment orders itself by observing as under :-

"11. We have considered the rival submissions and perused the written submissions filed by the parties and  
 .....  
 .....

Further safeguard have been provided for framing the assessments under section 153A that prior approval shall be necessary for assessments in the cases of the search or requisitioned, under section 153D of the I.T. Act. Section 153D of the I.T. Act is reproduced as under :

"153D – No Order of assessment or re-assessment 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 (ii) 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 Commissioner under sub-section (12) of section 144BA."

11.1. It is an admitted fact that in all the above appeals assessments under section 153A have been framed by ACIT, Central Circle, New Delhi,  
 .....

**Learned Counsel for the Assessee has argued that the approval under section 153D have been granted by the JCIT without going through the seized material, appraisal report and other material on record.** Thus, the approval is granted in a most mechanical manner and without application of mind. Therefore, same is invalid, bad in Law and void abinitio and as such all assessments under section 153A got vitiated and as such A.O. was not having jurisdiction to pass the assessment orders under section 153A of the I.T. Act, 1961.

**(highlighted by us )**

13. We have considered the rival submissions.  
 .....

The assessing officer written a letter to the Addl. CIT, Chandigarh on 30th January 2014 sending a draft assessment order for his consideration and approval in

terms of Section 153D of the Income Tax Act, copy of which is filed at page 46 of the PB. The assessing officer is stationed at Faridabad. However, the Addl. CIT is stationed at Chandigarh. The Addl. CIT, Chandigarh granted approval under section 153D of the Income Tax Act on 31st January 2014, copy of which is, filed at page 47 of the paper book and the same reads as under :

"No.Addl.CIT/Central/Chd./2013-14/616.

Office of the  
Addl. Commissioner of Income Tax,  
Range Central, Chandigarh.

Dated the 31<sup>st</sup> January, 2014.

To

Shri Tatung Padi  
Dy. Commissioner of Income Tax,  
Central Circle-II,  
Faridabad.

Sub: Approval u/s.153D of the I.T. Act, 1961, in the case of M/s. M3M India Holdings, Formerly M/s.Krishna Flexi Solution, C-13, SushantLok-I, Gurgaon for the A.Y. 2012-2013 - regarding.

Please refer to the Draft Assessment Order U/s. 153B(1)(b) of the I.T. Act, 1961, referred for approval u/s.153D of the I.T. Act, 1961, dated 30.01.2014.

**The approval u/s. 153D of the I.T. Act, 1961, is accorded for the Assessment Year 2012-13.**

Sd/-RAJEEV KUMAR,  
Addl.Commissioner of Income Tax,  
Range (Central), Chandigarh.

Encl: As Above."

16.....  
..... 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. KritikaTalwar 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. In view of the above findings, the other issues on merits are left with academic discussion only. Accordingly, all the appeals of the Assesseees are allowed.*

*17. In the result, all the appeals of the Assesseees are allowed.*

**17.** From the analyzations made above, it emerges that the function to be performed by the Addl. CIT or CIT in granting previous approval/s 153-D of the Act, requires to adopt judicial approach and to apply his mind independently and to conduct the enquiry himself on the entire facts, material, evidence and proposal put up to him for approval in the light of the material placed and relied upon by the Assessing Officer because where any act or function requires application of mind and judicial discretion or approach by any authority it partakes and assumes the character and status of judicial or at least quasi-judicial act, particularly because their Act or function is likely to affect the rights of affected persons. As the question of validity of the approval goes to the root of the case and can vitiate the assessment proceedings itself and

therefore the said power vested in the Commissioner to grant or not to grant approval is coupled with a duty and cannot be exercised casually and in a routine manner.

**17.1** However, in the present case, we have no hesitation in stating that there is complete non-application of mind by the Ld. Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income has been taken at Rs.11,00,460/- as against the returned income of Rs.87,20,580/-. Similarly, when the total assessed income as per the AO comes to Rs.16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs.1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

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

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 143(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed.

**18.** In the result, the appeal filed by the Assessee is allowed.

Order was pronounced in the open Court on 29/04/2022

**Sd/-**

**[N. K. CHOUDHRY]  
JUDICIAL MEMBER**

**Sd/-**

**[R.K.PANDA]  
ACCOUNTANT MEMBER**

**Delhi;** Dated: 29<sup>th</sup> April, 2022.

**VBPShekhar, Sr. P.S**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	04.03.2022 & 27.04.2022
Date on which the type draft is placed before the dictating Member	04.03.2022 & 27.04.2022
Date on which the typed draft is placed before	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	.04.2022
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	