

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 477/Asr/2019
Assessment Year: 2008-09**

Shri Sunny Arora, S/o Sh. Madan Lal, Model Town, Shahkot. [PAN:AGSPA0374K] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, -1, Jalandhar. (Respondent)
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**I.T.A. Nos. 478 to 483/Asr/2019
Assessment Years: 2008-09 to 2013-14**

Shri Rohit Arora, S/o Sh. Madan Lal, Model Town, Shahkot. [PAN:AGSPA0373Q] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, -1, Jalandhar. (Respondent)
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**I.T.A. Nos. 630 to 636/Asr/2019
Assessment Years: 2007-08 to 2013-14**

Kanta Rani W/o Madan Lal, Model Town, Shahkot. [PAN:AHHPR0125M] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle, -1, Jalandhar. (Respondent)
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Appellant by	Sh.Salil Kapoor, Adv Sh. Nirmal Mahajan, CA & Sh. SumitLalchandani, Adv.
Respondent by	Sh.Chandrajit Singh, CIT. DR.

Date of Hearing	30.06.2022
Date of Pronouncement	02.09.2022

ORDER

Per Bench:

The batch of appeals were filed before the ITAT against the order of the Commissioner of Income Tax (Appeals)-2, Jalandhar, [in brevity the CIT(A)] for Assessment Years 2007-08 to 2013-14, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act]. The impugned order was originated from the order of the Id. Dy. Commissioner of Income Tax, Central Circle-1, Jalandhar [in brevity the AO], order passed u/s 153A r.w.s. 143(3) of the Act.

2. All the parties stated at the outset that, the relevant factual backdrop as well as the issues involved in all the cases are identical. The Id. Counsel for the assessee, Mr. Salil Kapoor has only challenged the sanctity of the approval u/s

153D of the Act related to completion of the assessment u/s 153A.No other ground was pressed except the ground of sanctity of approval. The Id. Counsel for the assessee has taken ITA No. 478/Asr/2019 a lead case for A.Y. 2008-09. We are therefore adjudicating the issue accordingly.

3. Brief facts of the case are that a search was conducted at the residence of the assessee and survey u/s 133A was carried out at the business premises on dated 03.04.2012. The appellant was asked filed a return in response to notice u/s 153A of the Act. The assessment was completed & order was passed u/s 153A/143(3) of the Act. The assessee had only challenged the sanctity of prior approval u/s 153D for passing the assessment order u/s 153A. The order of the Id. AO was challenged before the Id. CIT(A), Id. CIT(A) upheld the order of the AO. Being aggrieved assessee filed appeal before us.

4. The Id. Counsel for the assessee filed paper book with the compilation of the judgment which kept in the record. The Id. Counsel for the assessee Mr. Salil Kapoor precisely narrated the fact and challenged the prior approval u/s 153D for passing the order u/s 153A. Id. Counsel, Mr.Kapoor filed the order of the Coordinate Bench in the case of **Sh. Madan Lal Vs. DCIT bearing ITA No. 112 to 118/Asr/2018**, order passed by ITAT Amritsar Bench date of **pronouncement**

on dated 16.08.2021. Mr. Madan Lal (referred in order) is father of Mr. Rohit Arora, assessee and the issue was already adjudicated by the Coordinate Bench in favour of Mr. Madan Lal. We are further relying on the part of order which is extracted as follows:

“18. We have heard the contention of the parties and perusal the material available on record. As is clear from the record that the application for seeking the approval u/s 153-D was sent by the Assessing Officer to the Additional CIT on 26.07.2016 vide Diary Dispatch No.658. However, the said letter was not sent by the Assessing Officer to the Additional CIT. Later on, another letter dated 27.07.2016 was sent by the Assessing Officer for seeking the approval u/s 153D of Income Tax Act in respect to 42 cases. At the serial no.1 of the application the name of Assessee was mentioned for which the approval was sought for 7 assessment year i.e. 2007-08 to 2013-14. In the said letter, it was also mentioned by the Assessing Officer, “Draft Assessment Orders along with assessment folders for assessment years 2007-2008 to 2013-2014 in 6 cases are enclosed.

19. The letter was received in the office of Additional CIT on 27.07.2016 and the Additional CIT on the same date i.e. 27.07.2016, as alleged, has granted the approval. In the letter granting the approval, it is mentioned, “In this regard, the proposed assessment order in the following cases submitted by you, are hereby approved.” and in the bottom of letter, it is mentioned that “assessment records in the above-mentioned cases are enclosed herewith”. The said letter of 27.07.2016 was received in Dak on the Assessing Officer on 28.07.2016 at Serial No.609.

20. The Assessing Officer in the Demand Report submitted before the CIT appeal had admitted that “Approval conveyed by the Addl. CIT on the same day when he signed the letter of approval, was sufficient compliance of their relevant provisions of law even though the letter was received in ‘DAK’ by the AO on the next working day. As per records of the Addl. CIT, Central Range, Jalandhar, approval letter was dispatched vide no. 435 on 27.07.2016 itself.” From the above said, it is crystal clear that the letter granting the approval was received in the office of the Assessing Officer on 28.07.2016, as the Assessing Officer has not denied the fact of receiving the letter on 28.07.2016, however, merely stated that the letter was dispatched from the office of Addl. CIT on 27.07.2016 vide Diary No.435.”

4.1 Ld. Counsel Mr.Kapoor further argued and draw our attention in the order of ld. CIT(A). The relevant part of the order is extracted as follows:

“Ground No. 10: That the alleged approval u/s 153D of the Act is illegal, bad in law and without any application of mind and the assessment order is passed without obtaining requisite approval:

In case of assessment under section 153A, the Assessing Officer is supposed to get prior approval u/s 153D. The authority giving the approval is supposed to apply its mind before giving approval and it should not be stereo typed. Section 153D states as under:

“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 (I) of section 153B, except with the prior approval of Joint Commissioner.”

In the case of the assessee, the Assessing Officer sent the record to the Additional Commissioner of Income Tax, Central Range, Jalandhar camp at Ludhiana as he was having additional charge of Jalandhar on 27.07.2016. The first communication contained assessment record and draft order of Mr. Madan Lal only but second letter with same despatch number contained assessment record and draft order of all the group assessee and others totalling 6 in number and having 42 assessment files and draft assessment orders. Copy of the letter is enclosed as Annexure A & B.

The worthy Addl. CIT approved all the 42 files and draft assessment order within few hours and gave the approval vide letter No. Addl. CIT/CR/JAL/153D/16-17/435 dated 27.07.2016. Copy enclosed as Annexure C. The said communication was received by the AO on 28.07.2016.

From this it can be well imagined that how much mind the Addl. CIT has applied, and approval is nothing but stereotype and without application of mind. The Act by introducing section 153D has withdrawn the free hand of AO and cast responsibility on the Addl. CIT/JCIT to apply his' mind and to see that no hardship is being caused to the assessee by the order of the AO. Here, the controlling authority has just completed a formality and approved the illegal acts

of the AO. Assessee sought an inspection of the record from the AO but till date no time has been given by the AO.

It appears there is neither any entry regarding movement of record nor any draft assessment order available with the AO.”

4.2 The Id. Counsel for the assessee Mr. Kapoor further argued that in connection with the appeal order the ground related to alleged approval u/s 153D was challenged and the issue was disposed of by the Id. CIT(A). The approval was made on 27.07.2016. On the same day the approval was sanctioned by the Additional Commissioner of Income Tax, Central Range, Jalandhar (Camp at Ludhiana). But the said order was received by Id. AO on 28.07.2016. But the assessment order was passed on 27.07.2016 without considering the consent of the order of higher authority which is extremely violation of section 153D & illegally the order U/s 153A was passed. Accordingly, the entire assessment order is illegal and liable to be quashed.

5. Ld. CIT DR vehemently argued and relied on the order of Hon'ble Punjab & Haryana High Court in the case of **Mr. Rakesh Gupta Vs. CIT, CWP No. 27068/2016 dated 27.04.2018** and **Osho Forge Ltd. Vs. CIT, ITA No. 430/2017 dated 27.04.2018**. The Id. CIT DR further argued that the approval was not

granted in mechanical in nature because the process of assessment was in dialog with the higher authority in each and every day with the AO. The mere defect in approval can be rectified u/s 292B of the Act.

6. The ld. Counsel further argued that the Osho Forge, (supra) is not at all related in assessee's case the approval is not required in case of remanded order. But the assessee's case is not at all related to remanded order. In case of Rakesh Gupta (supra) is related to mechanical matter u/s 148. He further mentioned the judgment of Hon'ble Supreme Court in case of **CIT vs. M/s Sun Engineering Works (P.) Ltd. 198 ITR 297** and explained that when the judgment was taken the principle should also be considered. Mr Kapoor mentioned that the approval U/s 153D is enclosed in APB page no. 433 bearing F.No. Addl. CIT/CR/Jal/153D/2016-17/435 dated 27.07.2016. In the group of assessee in approval order, the first name is mentioned Sh. Madan Lal for A.Y. 2007-08 to 2013-14 and the rest of the assesseees are also in a same approval. Considering the order of coordinate bench, *supra* the approval of assessee is illegal approval u/s 153D.

7. We heard the rival submission and carefully considered the submission made by both the parties. The counsel Mr.Kapoor relied on the judgment of the

Coordinate Bench in case of Sh. Madan Lal, *supra* which in favour of the assessee. The assessment order u/s 153A/143(3) was passed before receiving the approval of the higher authority. Have a quick look on the section 153D which is extracted as follows:

‘153D.

Prior approval necessary for assessment in cases of search or requisition. —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 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."

7.1. In the instant case, the issue involved is identical to the issue involved in ITA No. **ITA No. 112 to 118/Asr/2018**, *supra*. The assessing authority had passed without receiving the prior approval of the Addl.CIT. Ld. CIT DR was unable to show that the approval was received before or during passing of order on dated 27.07.2016. The appellate authority had also accepted the fact that the approval was duly received by the assessing authority on 28.07.2016. The direction of the statute for ‘prior approval’ was ignored by the revenue authority before passing of

the order U/s 153A/143(3) of the Act. The order is erroneous and liable to be quashed.

8. In the result, the appeal of the assessee bearing ITA no. 478/Asr/2019 is allowed & all the appeals of the assessee are allowed.

Order pronounced in the open court on 02.09.2022

Sd/-

**(Dr. M. L. Meena)
Accountant Member**

Sd/-

**(ANIKESH BANERJEE)
Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order