

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.244 & 245/RPR/2019**

(निर्धारण वर्ष / Assessment Year :2016-2017 & 2017-2018)

M/s Goyal Energy & Steel Pvt. Ltd. Behind Happy Restaurant, Ring Road-2, Tatiband Chowk, Raipur-492009	Vs	ACIT, Central-2, Raipur
PAN No. : <b>AACCG 2758 E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Akshay Ringasia & Rajesh Kumar Chawda, CAs
राजस्व की ओर से /Revenue by	:	Shri Debashis Lahiri, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	05/01/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	27/03/2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

These two appeals are filed by the assessee against the common order passed by the CIT(A)-3, Raipur, dated 22.11.2019 for the assessment years 2016-2017 & 2017-2018.

2. The assessee has raised following grounds for A.Y.2016-2017 as under :-

1. *That the Ld. lower authorities have grossly erred in law and facts by invoking provisions of section 68 and making an addition of Rs.22,33,09,760/- on account of receipt of share capital and premium thereon.*
2. *That the Ld. lower authorities have erred in law and fact by making an addition of Rs.1,11,655/- by deeming it to be the commission against above share capital received by the " appellant.*
3. *That the Ld. lower authorities have erred in invoking section 153A in absence of any incriminating evidence, thus making the impugned addition void-ab-initio.*

4. *That the Ld. lower authorities have failed to appreciate or appraise the evidences and arguments submitted by the assessee to discharge its burden under section 68.*
  5. *That the Ld. lower authorities have erred in law and in fact by relying on irrelevant and factually incorrect 'evidences without providing the appellant an opportunity to cross-examine or rebut the same in complete violation of Principle of natural justice.*
  - 6: *That the Ld. lower authorities have passed the orders sans of any jurisdiction when the source of credit has already been assessed by the jurisdiction assessing officer.*
  7. *That the orders passed by both the Ld. assessing officer and Commissioner of Income Tax (Appeal) is highly mechanical in nature and without application of mind relying on statements/evidences not related to the impugned case.*
  8. *That the assessee craves leave to add, alter or amend any ground before or at the time of hearing.*
3. Similarly, the assessee has raised following grounds for A.Y.2017-2018 as under :-

1. *That the Ld. lower authorities have grossly erred in law and facts by invoking provisions of section 68 and making an addition of Rs.9,70,00,000/- on account of receipt of share capital and premium thereon.*
3. *That the Ld. lower authorities have erred in invoking section 153A in absence of any incriminating evidence, thus making the impugned addition void-ab-initio.*
4. *That the Ld. lower authorities have failed to appreciate or appraise the evidences and arguments submitted by the assessee to discharge its burden under section 68.*
5. *That the Ld. lower authorities have erred in law and in fact by relying on irrelevant and factually incorrect evidences without providing the appellant an opportunity to cross-examine or rebut the same in complete violation of Principle of natural justice.*
6. *That the Ld. lower authorities have passed the orders sans of any jurisdiction when the source of credit has already been assessed by the jurisdiction assessing officer.*
7. *That the lower authorities have erred in fact and law by making an addition of Rs. 14,59,626/- on account of gross profit with respect to unexplained sales.*

8. *That the lower authorities have erred in fact and law by making an addition of Rs. 15,50,000/- on account of gross profit with respect to unexplained sales.*
9. *That the Ld. assessing officer has erred in law and fact by making the additions without issuing show cause notice against the same.*
10. *That the orders passed by both the Ld. assessing officer and " Commissioner of Income Tax (Appeal) is highly mechanical in nature and without application of mind relying on statements/ evidences not related to the impugned case.*
11. *That the assessee craves leave to add, alter or amend any ground before or at the time of hearing.*

4. Subsequently, the assessee has filed additional ground on 05.08.2021, which reads as under:-

1. *That the entire assessment made in the case of the assessee is null and void as approval granted under 153D is mechanical in nature and without application of mind. The Ld. JCIT has failed to peruse the assessment records and replies submitted by the assessee. The Ld. assessing officer has sought approval for about 95 orders on a single day without considering the replies and objection raised by the assessee. Such illegal approach of the ACIT has been approved by the Ld. JCIT in a mechanical manner on presumptive basis.*
2. *The Ld. assessing officer has clearly erred in complying with requirements of section 153A by passing a consolidated order for all the six assessment years in place of passing separate orders for "each assessment year.*

5. Ld. AR relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs National Thermal Power Corporation (NTPC), reported in 229 ITR 383 and submitted that the additional ground may be taken on record and the both the appeals of the assessee may be decided on the additional ground raised.

6. Brief facts of the case are that the assessee derives income from business/profession. A search and seizure action u/s.132 of the Act was

conducted on the Factory and office premises of the assessee on 17.01.2017. Consequently, notices u/s.153A of the Act were issued for A.Y.2016-2017 & 2017-2018. In response to the notice, the assessee filed returns for the above assessment years. In response to the notices issued u/s.143(2) & 142(1) of the Act, the assessee furnished its written submissions and supporting documents. During the search proceedings, copy of seized material and accounts, as listed in the inventory of Panchanama dated 17.01.2017, were provided to the assessee. After verification the AO found that the assessee could not prove the identity of the alleged lenders, creditworthiness of the lenders and genuineness of the transactions. Thus, the AO made addition u/s.68 of the Act.

7. In appeal, the CIT(A) observed that the addition made by the AO u/s.68 of the Act is justified as the assessee was unable to substantiate, by passing the test of fulfilling the three essential ingredients required to keep the transaction out of ambit of provisions of Section 68 of the Act. Accordingly, the Id. CIT(A) dismissed the appeal of the assessee.

8. Against the order of the Id. CIT(A), the assessee is in further appeal before the Tribunal.

9. Ld.AR before us argued on the additional ground raised by the assessee and submitted that the assessment framed by the AO is not maintainable. In this regard, he drew our attention to page 27 of the paper book, which contains the approval given by the JCIT on 26.12.2018 on presumption basis. It was also submitted that the issue involved in both the appeals of the assessee are covered by the decision of the coordinate

bench of the Tribunal in assessee's own case passed in ITA Nos.240 to 243/RPR/2019 for the assessment years 2011-2012, 2012-2013, 2014-2015 & 2015-2016, respectively, wherein in para 23 to 28 the Tribunal has held as under :-

*22. On careful perusal of the approval order of JCIT, we find that the JCIT while granting approval on 22.12.2018 recorded that " it is presumed that the AO has – given proper opportunity of hearing to the assessee, thoroughly verified the seized material and that there is no adverse finding, satisfy himself that all issues emanating from the record have been verified and additions wherever required have been proposed."*

*23. Before us, the Id AR for the assessee vehemently argued that JCIT has granted approval under section 153D in a casual and mechanical manner and without any application of mind and that from the communication made to the JCIT by AO vide letter dated 14.12.2018, the AO had not made any iota of reference as to what are the seized materials nor furnishes any assurance with respect to approval and appraisal of all evidences and corresponding reply by the assessee. And that Id. JCIT approved the assessment order by presuming that the necessary opportunity has been given to the assessee and all the records, evidences and materials have been thoroughly verified. The JCIT granted bulk approval of 95 assessment orders which clearly defeats the intent and purpose behind insertion of section 153D brought in the statute by the Finance Act, 2007.*

*24. We find that the Id. JCIT while granting approval, presumed that Assessing Officer has given proper hearing to the assessee and thoroughly verified seized material and there are no adverse findings, satisfied himself that all the issues emanating from the records have been verified and additions wherever required have been proposed. We further find that there is no independent application of mind on the part of Id. JCIT while granting the approval.*

*25. We find that coordinate bench of Mumbai Tribunal while considering the similar ground of appeal in granting bulk approval of the assessment under section 153A, in case of Arch Pharmed Labs Ltd Vs ACIT (supra) held that the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind. The relevant part of the order is extracted below;*

*"11.5 At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the*

approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and ca not be countenanced in law.

26. Similar view was taken by Coordinate bench of Delhi Tribunal in *Sanjay Duggal & others (supra)*.

27. So far as the contention of Id CIT-DR that the assessment under section 153A is passed under the supervision of JCIT and that JCIT granted approval of the draft assessment after considering the material placed before him. We do not find any such satisfaction in the approval order that draft assessment after considering the material placed before him, rather the Id JCIT recorded that it is presumed that the AO granted proper opportunity to the assessee etc...

28. In view, of aforesaid discussion and respectfully following the decisions of coordinate benches in *Sanjay Duggal & others (supra)* and *Archpharma Labs & Acrh Impex P Ltd (supra)*, we find convincing force in the submissions of the assessee that the approval granted by JCIT suffer from non-application of mind and depends on presumption of proper performance of duty by A.O. such per functionary approval under section 153D cannot termed as legitimate. The consequential assessment orders based on non-est

*approval under section 153D, thus are void-abinitio on this ground alone. Considering the facts that we have allowed the appeal on the legal issues therefore, consideration of appeal on merit have become academic.*

10. Accordingly, the Id. AR submitted that both the appeals of the assessee, which have arisen from a common order of the Ld CIT(A) for AY 2011-12 to 2017-18 dated 22.11.2019, having similar facts, circumstances and grounds (except variation in quantum) may be decided as per the decision for AY's 2011-12 to 2015-16 in ITA 240-243/RPR/2019 dated 17/09/2021 by the coordinate bench of the Tribunal, referred to supra.

11. On the other hand, Id. CIT-DR relied on the orders of the Id. AO and CIT(A). Ld CIT-DR, to strengthen the contention of the revenue has relied upon the judgment of Hon'ble Jurisdictional High Court of Chhattishgarh in the case of Bharat Krishi Kendra Vs Union of India reported in (2022) 136 Taxmann.com 245 dated March 13, 2022. Hon'ble High Court of Chhattishgarh in the said order has categorically held that:

*"Provisions under section 151(2) mandate satisfaction of Joint Commissioner before issue of notice under section 148, hence, where Joint Commissioner recorded satisfaction on proposal of Assessing Officer by mentioning that it is a fit case for issuance of notice, approval under section 151 giving details of approving authority as Principal Commissioner in itself will not make approval invalid"*

12. Ld CITDR further placed his reliance on the order of Hon'ble Calcutta High Court in the case of Prem Chand Shaw (Jaiswal) v. Assistant Commissioner, Circle-38, Kolkata reported in 67 Taxmann.com 339, where in Hon'ble High Court has observed that:

*“Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - Assessment years 1990-91 to 1992-93 - Whether a higher authority is not required to give reasons when it agrees with finding unless statute or rules so requires - Held, yes - Assessing Officer recorded reasons for initiating reassessment proceedings under section 147 and thereafter obtained approval of Additional Commissioner under section 151(2) and after that issued notice under section 148 to assessee - Assessee contended that Additional Commissioner mechanically granted approval by affixing his signature without recording any satisfaction and, therefore, in view of section 151(2), it was not a valid sanction and, thus, notice issued under section 148 was bad in law and subsequent assessments under sections 143(3) and 147 were without jurisdiction - Whether mere fact that Additional Commissioner did not record his satisfaction would not render invalid, sanction granted under section 151(2), when reasons on basis of which sanction was sought for could not be assailed - Held, yes [Para 22] [In favour of revenue]”*

13. We have considered the rival submissions and perused the material available on record.

14. The contention of the revenue by placing the judgments of the Jurisdictional High Court of Chattishgarh and Calcutta High Court were examined and our observations are as under:

15. The judgment in the case of Bharat Krishi Kendra Vs Union of India (supra) was decided in favour of the revenue only on the reason that *where “Joint Commissioner recorded satisfaction on proposal of Assessing Officer by mentioning that it is a fit case for issuance of notice, approval under section 151 giving details of approving authority as Principal Commissioner in itself will not make approval invalid”*, this is altogether on different footing than the facts of the present case, where approval was granted by the Ld JCIT himself but on the basis of certain presumptions without verifying the seized material by himself, even the responsibility of satisfaction was placed on shoulders of the AO. We

therefor of the view that guidance of the Hon'ble Jurisdictional High Court of Chhatisgarh in the case of Bharat Krishi Kendra Vs Union of India (supra) cannot be adopted for deciding the issue in the present appeal. Regarding the judgment in the case of Sahara Credit Cooperative Society Ltd. Vs. DCIT/ACIT (supra), Hon'ble Allahabad High Court has emphasised on the issue of communication of the approval, whether same is done physically or through uploading the same on portal of the department makes no difference, however in the present case no such issue has been agitated, thus the same has no bearing on the issue to be decided herein.

16. Regarding order of Hon'ble Calcutta High Court in the case of Prem Chand Shaw (Jaiswal) v. Assistant Commissioner(supra), it has been observed by the Hon'ble High Court that:

*“Mere fact that Additional Commissioner did not record his satisfaction would not render invalid, sanction granted under section 151(2), when reasons on basis of which sanction was sought for could not be assailed”*

17. Revenue's contention that even if there is no satisfaction recorded by the Revenue Authority u/s 151(2) the assessment made cannot be render as invalid. This observation is equally applicable on approval u/s 153D also. Thus, additional legal ground raised by the assessee should not be allowed. Since the approval in the present was accorded based on presumptions the ratio laid down by the Hon'ble High Court will not apply.

18. Now, we are elaborating the contentions of the assessee, wherein it has been submitted that the assessee's case is already covered by the

decision of ITAT Raipur in assessee's own case referred to supra. The decision of the ITAT Raipur has further strengthened by the order of Hon'ble Allahabad High Court in the case of Pr.CIT v. Sapna Gupta in I.T.Appeal No.88 of 2022 (Date of Judgment: 12.12.2022) 2022 (12) TMI 887 (Allahabad HC), where in it has been held that :-

***Search and seizure—Assessment under s. 153A—Approval under s. 153D—Prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the approving authority before preparing the draft assessment order—In the instant case, the draft assessment orders in 123 cases placed before the approving authority on 30th Dec., 2017 and 31st Dec., 2017 were approved on 31st Dec., 2017, which not only included the cases of assessee but the cases of other groups as well—It is humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the approving authority—Conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record—No substantial question of law arises for consideration***

19. In backdrop of the aforesaid discussion, respectfully following the judgment of coordinate bench of ITAT Raipur in assessee's own case (supra) and latest judgment of Hon'ble Allahabad High Court (supra), we are of the considered view that, the additional ground raised by the assessee has substantial merit, so far as the approval granted by the Ld JCIT u/s 153D was suffering with non-application of mind, based on presumptions, mechanical and illegitimate. Therefore, consequential assessments based on such non-est approval u/s 153D are void-ab-inito and cannot be sustained. Resultantly, the legal ground raised by the assessee stands allowed in both the ITA No.244&245/RPR/2019, in terms of our observations herein above.

20. Owing to the fact that the appeals of the assessee in ITA Nos.244&245/RPR/2019 are allowed on the legal ground, other grounds on merit became infructuous and academic only, thus, not adjudicated.

21. In the result both the appeals of the assessee are allowed.

Order pronounced in pursuance to the Rule 34(4) of ITAT Rules,1963 on 27/03/2023.

**Sd/-  
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-  
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 27/03/2023

*Prakash Kumar Mishra, Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur