

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1484/Del./2021  
(ASSESSMENT YEAR : 2015-16)**

ACIT, Central Circle 14,  
New Delhi. vs. Anuj Bansal,  
1170, 2<sup>nd</sup> Floor, Kucha Mahajani,  
Chandni Chowk,  
Delhi.  
**(PAN : AGLPB0846N)**

**CO No.71/Del/2022  
(in ITA No.1484/Del./2021)  
(ASSESSMENT YEAR : 2015-16)**

Anuj Bansal,  
1170, 2<sup>nd</sup> Floor, Kucha Mahajani,  
Chandni Chowk,  
Delhi. vs. ACIT, Central Circle 14,  
New Delhi.  
**(PAN : AGLPB0846N)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Sandeep Goel, Advocate  
Shri R.P. Basia, CA

REVENUE BY : Shri P. Praveen Sidharth, CIT DR

Date of Hearing : 22.03.2023

Date of Order : 12.04.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the Revenue and cross objection by the assessee arise out of the order of Id. CIT (A) dated 25.06.2021 and pertains to AY 2015-16.

2. The grounds of appeal taken by the Revenue read as under :-

“1. That the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs.5,40,25,000/- treated as unexplained money u/s 69A of the IT Act overlooking the facts and circumstances of the case which clearly suggest that the assessee was not having any cash out of sales consideration and whatever documents submitted were just self serving documents to which any third party verification was not possible.

2. That the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs.5,40,25,000/- overlooking the facts that in the just preceding years the assessee was not showing any substantial cash sales and to cover up the cash seized by the ED, he made a story that the said cash was out of cash sales of just 3 days.”

3. The assessee has taken the following grounds in the cross objections :-

“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 Id. CIT-A dated 25.06.2021 in not accepting the appellants jurisdictional plea(s) to quash the said assessment is also not valid on the pleaded jurisdictional counts.


2. That since there is no valid and requisite mandatory statutory approval u/s 153D in extant case as pleaded before Id.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

3. That since assessment order passed u/s 153A/143(3) is per records purportedly dated 31.12.2019 is ostensibly time barred u/s 153B as pleaded before Id 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

4. That since impugned assessment was framed with biased and premeditated mind set without fair and objective approach being adopted towards assessee as evident from glaring debility in the assessment that regular books of accounts have no where 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. 69A of the Act, is without authority of law and is ultra vires to provisions of the Act, so Id cit-a ought to have quashed the assessment order itself on this jurisdictional count itself which is ergo pleased here.”

4. Since the cross objection is with regard to the validity of the notice, we take that first.

5. Ld. Counsel of the assessee pressed the issue that there is no valid and requisite mandatory statutory approval under section 153D of the Income-tax Act, 1961 (for short 'the Act') and hence the orders of authorities below are *void ab initio* & jurisdictionally flawed and the assessment is to be quashed. In this regard, Id. Counsel of the assessee referred to Paper Book Page No.5 which contained the approval of the same assessee for AYs 2013-14 to 2019-20 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

(7)

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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.

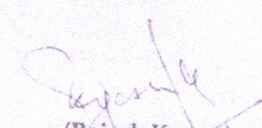
**Sub: - Approval u/s 153D of the Income Tax Act, 1961 - Regarding-**

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 IT 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

31 DEC 2019  
1092

6. Referring to the above which is a consolidated approval for AYs 2013-14 to 2019-20, ld. Counsel of the assessee pointed out that ITAT in assessee's own case in ITA No.1016/Del/2021 for AY 2017-18 arising out of the same approval, as referred earlier, vide order dated 29.04.2022 has noted as under :-

“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:-

.....

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. SaurabhAgarwal 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 v
- viii. UttarakhandUthanSamiti in ITA No.48 to 52/DDN/2019, 17 ITA No.1016/Del/2021
- 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.”

7. After due analysis, the ITAT concluded as under :-

“17. From the analyzations made above, it emerges that the function to be performed by the Addl. CIT or CIT in granting previous approval u/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.”

8. Referring to the above decision, Id. Counsel of the assessee submitted that in assessee’s own case on the basis of same approval, coordinate Bench of the Tribunal noted the foundational legal infirmities with reference to section 153D while framing the assessment order u/s 153A of the Act and also quashed the assessment. He further submitted that ITAT in the case of M/s. Tirupati Constwell Pvt. Ltd. in ITA No.4171/del/2014 for AY 2011-12 vide order dated 03.03.2023 has held that the 153D approval was not legal and quashed the assessment. The ITAT has held as under after reproducing the copy of approval :-

“7. Going through the above approval which included the name of the assessee as well, the ITAT has concluded as under:-

“16. Per contra, as we have noted above, it clearly discernable that the approval u/s. 153D of the Act was sought by the DCIT/Assessing Officer on 28.03.2013 from ACIT which was granted on the same date

i.e.28.03.2013 by the ACIT to the Assessing Officer and said approval has been held by the Tribunal in the case of Subhash Dabas order dated 08.09.2021 (supra) and subsequent order dated 09.09.2021 (supra) for A.Y. 2009-10 and 2010-11 & 2011-12 (supra), as has been given without application of mind and thus the same is invalid bad in law and liable to be quashed and Tribunal has quashed the same. Therefore, the application of assesses under Rule 27 of the ITAT Rules is allowed by following the order of ITAT Delhi Bench in the case of Subhash Dabas dated 08.09.2021 for A.Y. 2009-10(supra) and 09.09.2021 for A.Y. 2010-11 and 2011-12 (supra). We, therefore quash the assessment order passed u/s. 153A of the Act for A.Y. 2010-11 in the case of present assessee i.e. M/s. Tirupati Buildings & Offices Pvt. Ltd. Resultantly, all additions are deleted. The ground raised by the assessee under Rule 27 of the ITAT Rules is accordingly allowed.”

8. Thus, this issue is squarely stand covered in favour of the assessee by the decision of the ITAT above. The ITAT after examining the approval which included inter alia the name of the assessee as well has concluded that the same has been given without application of mind, thus, the same is invalid bad in law and liable to be quashed. It is not the case that the above decision has been set-aside by the Hon’ble jurisdictional High Court. Hence, respectfully following the precedent as above, we allow the additional ground and therefore, we quash the assessment order passed u/s 153A of the Act for Assessment Year 2011-12 in the case of the assessee.

9. Since, we have quashed the assessment order on the additional ground raised by the assessee, adjudication of other grounds on merit is only of academic interest, hence we are not engaging in the same.”

9. Per contra, ld. DR for the Revenue submitted that no specific format has been provided in the Act for the approval, hence the approval cannot be quashed on technical grounds. However, she could not rebut

the proposition that in assessee's own case on the basis of same approval, ITAT has found that approval is not in accordance with section 153D and has quashed the assessment. Moreover, it is not the case that the above said orders of ITAT have been reversed by the Hon'ble jurisdictional High Court.

10. In such circumstances, adhering to the principle of *stair decisis*, we follow the aforesaid Tribunal orders and hold that the above 153D approval is not in accordance with law and same is liable to be dismissed. Accordingly, the assessment framed in this case is quashed for legal infirmities in 153D approval.

11. Since we have quashed the assessment, Revenue's appeal on merits is only of academic interest, hence we are not getting into the same.

12. In the result, the cross objection filed by the assessee is allowed and the appeal of the Revenue is dismissed as infructuous.

**Order pronounced in the open court on this 12<sup>th</sup> day of April, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 12<sup>th</sup> day of April, 2023/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**