

**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. No. 87/Asr/2017
Assessment Year: 2013-14

Shri Balwinder Singh Kohli 10- Jyoti Nagar, Near Income Tax Colony, Jalandhar	Vs.	The DCIT Central Circle-II, Jalandhar
PAN: ADTPS2409R		
APPELLANT		RESPONDENT

I.T.A. No. 266/Asr/2017
Assessment Year: 2013-14

Shri Darshan Pal Singh Garewal C/o Shri Dinesh Sarna (Advocate) Model Town Road, Jalandhar	Vs.	Dy. CIT Central Circle-II Jalandhar
PAN: AISPG9530B		
APPELLANT		RESPONDENT

Assessee by:
Revenue by:

Sh. Ashray Sarna, CA
Sh . Hitendra Bhauraoji Ninawe
CIT DR

Date of Hearing:
Date of Pronouncement:

15/06/2023
21/06/2023

ORDER

Per Dr. M. L. Meena, AM:

Both the captioned appeals are filed by the different assessees against the separate orders of the Ld. CIT (A)-1, Jalandhar and Ld. CIT (A)-

5 Ludhiana at different stations dtd. 29/11/2016 and 24/02/2017 respectively, challenging there in the common issue of validity of approval granted by the additional commissioner of income tax, under section 153D of the income tax act by way of raising the following common additional legal ground of appeal-

“that having regard to the facts and circumstances of the case, the Honorable CIT Kapil, search earth in law and on facts, and confirming the action of the AO then pass into impugned assessment order under section 143 three of the act and they're too tall without complying with the mandate requirements and conditions under section 153D, as in with his under the income, tax act, 1961”

2. The learned counsel for the Appellant requested for admission of the additional legal ground under pretext that the legal ground does not require new facts to be investigated, and since it goes to the root of the matter, to decide the appeal, it was prayed that the additional ground may be admitted in the light of the judgement of Honorable Supreme Court in the case of NTPC limited 229, ITR 383.

3. Admittedly, the appellants have raised a common legal issue for the 1st time in both the appeals regarding mandatory approval under section

153D of the income tax act. Since, it goes to the root of the matter and therefore, we admit the additional legal ground for adjudication on merits in view of the ratio laid down by the Honorable Supreme Court in the case of NTPC limited (supra) and accordingly, both the appeals were heard together and adjudicated simultaneously for the sake of brevity.

4. At the time of hearing, the Ld. AR, first presented its arguments in respect of the appeal I.T.A. No. 87/Asr/2017 as a lead case. He submitted that during the assessment proceedings, an addition of Rs. 27, 72,800/- was made by the AO on account of cash found and seized during the search ignoring the cash flow statement file during the course of assessment, as well as appellate proceedings as being not satisfied with the explanation of the assessee that he was having sufficient funds available with him. The Ld. Counsel submitted that the approval under section 153D of the act was granted on the same date on which the assessment order has been passed that is 20.03.2015, in group of cases, in mechanical manner, vide letter number F.No. Addl. CIT/CR/JAL/153D/14–15/1944 dated 20.03.2015, which is the produced here under:

I.T.A. No. 87 & 266/Asr/2017
Assessment Year: 2013-14



भारत सरकार / GOVERNMENT OF INDIA

वित्त मंत्रालय / Ministry of Finance

Office of the

Addl. Commissioner of Income Tax.

Central Range, Jalandhar.

फैक्स/Fax: 0181 - 2221092

आयकर अपर आयुक्त,
केन्द्रीय मंडल, जालन्धर
दूरभाष/Telephone: 0181-2221092.

16-SCF, New Jawahar Nagar Market, Jalandhar-144001

F. No. Addl.CIT/CR/JAL/153D/14-15/1944 Dated: 20.03.2015

The Dy. Commissioner of Income Tax,
Central Circle-II,
Jalandhar.

Sub: Approval under section 153D of the Income Tax Act, 1961 - reg.-

Please refer to your letter No. DCIT/CC-II/JAL/2014-15/2190 dated 20.03.2015 respectively on subject cited above.

In this connection, proposed assessment orders in the following cases are hereby approved. The assessment records are returned herewith.

Sr. No.	Name & address of the Assessee	Assessment Year
1.	M/s. Big Arrow Motion Pictures, 5-Seiyu Complex, Model Town, Jalandhar.	2012-13 to 2013-14
2.	M/s. Speed Surya Films, Near Luxmi Cinema, Jalandhar.	2012-13 to 2013-14
3.	Sh. Balwinder Singh Kohli, H.No. 10, Jyoti Nagar, Income Tax Colony, Jalandhar.	2013-14

Assessment records in the above mentioned cases are enclosed herewith.

Encl:- As above.

आयकर अपर आयुक्त, उपस्थित आयुक्त
केन्द्रीय मंडल-II, जालन्धर

20 MAR 2015

प्रति संख्या 830

कॉ.मुद्रांक:

गुलशन राज 20/3/15
(डा. गुलशन राज) 20/3/15

अपर आयुक्त आयुक्त,
केन्द्रीय रेंज, जालन्धर

Sam
20/3/15

3.1 The Ld. council submitted that from the above approval, being granted in group of cases on the same date on which the assessment orders are passed, itself reveals non-application of mind by the competent authority on the part of the additional CIT in granting the mandatory approval under section 153D of the income tax act. Accordingly, he requested that the assessment order passed by the assessing officer, without valid approval of the competent authority is bad in law and deserves to be quashed.

4. Per Contra, they learned DR vehemently supported the impugned orders. He contended that there was no lapse in the approval of the assessment granted under section 153D of the act by relying on the CBDT instruction number 286 dated 22/12/06.

5. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is admitted fact on record that the approval under section 153D of the act was granted by the Addl. CIT, Central, Range, Jalandhar on 20.03.2015, the same date on which the assessment order has been passed that is 20.03.2015, in the group of cases, in mechanical manner, vide letter number F.No. Addl. CIT/CR/JAL/153D/14–15/1944 dated 20.03.2015 as above.

6. In the present case, the draft assessment orders in 3 cases, i.e. for 5 assessment years were sent by the AO vide letter No. DCIT/CC-II/JAL/2014-15/2190, dated 20.03.2015 which was placed before the Addl. CIT, Central, Range, Jalandhar the Competent Authority on 20.03.2015, which not only included the case of appellant assessee but the cases of other assessees as well. All these cases were approved on same date i.e. 20.03.2015. In our view, it is humanly impossible to apply independent mind to satisfy the competent authority *per se* to grant the approval u/s 153D of the Act on same date i.e. 20.03.2015 to complete the entire exercise of sending and receipt, of draft proposal, dispatch and deliver in the office of Competent authority and vice versa who had to go through the records and assessment orders of 5 cases in one day. Meaning thereby, that in the instant case, the approval granted was a mechanical exercise of power.

7. In the case of “Principal Commissioner of Income-tax v. Siddarth Gupta”, [2023] 147 taxmann.com 305 Hon’ble Allahabad High Court observed as under:

“18. The careful and conjoint reading of section 153A(1) and section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by

the Assessing Officer on the draft assessment order before passing the assessment orders under section 153A.

19. In the instant case, the draft assessment orders in 123 cases, i.e. for 123 assessment years placed before the Approving Authority on 30-12-2017 and 31-12-2017 were approved on 31-12-2017, which not only included the cases of respondent-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. The 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.

20. As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeals being in the nature of second appeal. No substantial question of law arises for consideration before us.

21. The Appeals are dismissed being devoid of merit.”

8. In another case of “Principal Commissioner of Income-tax v. Subodh Agarwal”, [2023] 149 taxmann.com 373 Hon’ble Allahabad High Court vide para 18 and 20 of the judgement has held as under:

18. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer,

cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the 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 Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

20. *In the instant case, the draft assessment order in 38 cases, i.e. for 38 assessment years placed before the Approving Authority on 31-12-2017 was approved on same day i.e. 31-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent mind to appraise the material before the Approving Authority.*

The 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.

9. Again, the Hon'ble High Court of Orissa in the case of 'ACIT vs. Serajuddin & Co.', [2023] 150 taxmann.com 146 (Orissa) vide paras 17, 22, 23 and 25 held as under:

17. It is therefore not correct on the part of the Revenue to contend that the approval itself is not justiciable. Where the approval is granted mechanically, it would vitiate the assessment order itself. In Sahara India (Firm) (supra), the Supreme Court explained as under:

"8. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."

22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders

and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

23. *In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Additional CIT seeking his approval or of the Additional CIT having granted such approval. Interestingly, the assessment orders were passed on 30th December 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.*

25. *For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves.*

10. In the instant cases, the AO has submitted the draft assessment

order on 20/03/2015 before the Approving Authority who had approved on same day i.e. 20/03/2015. In our view, it was humanly impossible to peruse records of all 5 cases in one day to apply independent mind to appraise material records. Further, the approving authority has not mentioned any indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. Even the approving authority has not written or repeated the words of the statute, in granting the approval u/s 153D of the Act. We are therefore of the considered view that mere endorsing a list of cases by signature with "rubber stamping" of the letter without mentioning even the words like 'seen' or 'approved' will not satisfy the requirement of the law for approval or sanction u/s 153D of the Act. Therefore, we hold that in the present case, the prior approval of the Additional CIT before passing the order of assessment in pursuant to a search operation being a mandatory requirement of section 153D of the Act was not as per law because such approval is not meant to be given mechanically. Without application of mind by the Additional CIT which resulted in vitiating the assessment orders themselves.

11. In the above view, we hold that mandatory approval was being granted mechanically without application of mind by Additional

Commissioner of Income Tax, Central- Range, Jalandhar, and therefore, this mechanical exercise of power has vitiated entire assessment proceedings and consequently, the said assessment orders are rendered void *ab initio*. Consequently, the impugned order is held to be infirm, illegal and bad in law and same is as such quashed.

12. The another additional legal issue in both the subject appeals regarding issue of 143(2), on the date of filing the return of income is withdrawn by the counsel for the appellant and therefore, same are dismissed as withdrawn.

13. The facts on the legal issue I.T.A. No. 266/Asr/2017 are exactly similar to the facts in I.T.A. No. 87/Asr/2017 except the variation of the date. The proposal was send on 27/03/2015 and the Addl. CIT granted Approval u/s 153D of the Act on the same date i.e. 27/03/2015 in respect of 7 Assessment Years. Therefore, our observation and findings given in I.T.A. No. 87/Asr/2017 shall be applicable to the I.T.A. No. 266/Asr/2017 in *mutatis mutandis*.

14. Since, the assessee has succeeded in the legal issue and the assessment has been held to be invalid, and therefore, we do not proceed to decide the issue on merits.

*I.T.A. No. 87 & 266/Asr/2017
Assessment Year: 2013-14*

15. In the backdrop of the aforesaid discussion, both the appeals are disposed off in the manner discussed as above.

Order pronounced in the open court on 21/06/2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

*A.G/DOC**

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