

**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. 5 to 9/Asr/2020

Assessment Years: 2012-13 & 2013-14, 2015-16 to 2017-18

Sh. Ravinder Singh,
14-15, Guru Nanak Nagar,
Jalandhar

[PAN: ABRPS 5016J]
(Appellant)

Vs. Deputy Commissioner of
Income Tax, Central Circle-1,
Jalandhar

(Respondent)

Appellant by : Sh. Surinder Mahajan, CA

Respondent by: Sh. Hitendra Bhauraoji Ninawe, CIT DR

Date of Hearing: 18.07.2023

Date of Pronouncement: 26.07.2023

ORDER

Per Bench:

This bunch of appeal has been filed by the appellant - assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated 17.10.2019 in respect of Assessment Years 2012-13 & 2013-14, 2015-16 to 2017-18 wherein the appellant has

challenged validity of the Assessment Order by way of common additional legal ground regarding approval granted by the additional commissioner of income tax, under section 153D of the income tax act.

2. The common additional legal ground of appeal raised by the appellant in this bunch of five appeals vide its separate letter even dated 12.04.2023, reads as under:

“That on law, facts and circumstances of the case, the impugned assessment order passed u/s 153A is not sustainable in view of the fact that the proper procedure of law has not been followed by the Id authorities below while granting the approval u/s.153D of the Act. Assessment order passed u/s 153A of the Act is liable to be quashed since the statutory and mandatory approval as required u/s 153D of the Act sought and granted was totally mechanical and ritualistic only.”

3. The Id. counsel for the appellant assessee 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, and therefore, the additional ground may be admitted in the light of the judgement of Honorable Supreme Court in the case of NTPC limited Vs. CIT 229, ITR 383. that the additional grounds of appeal raised is legal in nature and which goes to the root of the matter to decide the appeals which was inadvertently not included in the grounds of

appeal and it is being purely legal ground based on the facts on the record. The Ld. DR failed to rebut the contention of the appellant.

4. Since, the additional is purely legal in nature and it goes to the root of the matter; and hence, it can be admitted at this stage of the appeal, in view of the judgment of the Hon'ble Apex Court in the case of NTPC Ltd. v. CIT (Supra). Accordingly, the additional ground has been admitted for adjudication on merits of the case in the light of the judgment of the Hon'ble Apex Court (supra).

5. At the time of hearing, the Ld. AR, was permitted to first presented its arguments in respect of the appeal I.T.A. No. 05/Asr/2020 as a lead case. 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 31.12.2018, in group of cases, in mechanical manner, vide letter number F.No. JCIT/CR/JAL/2018-19/1022 dated 31.12.2018 on receipt of the proposal for approval of draft assessment order in case assessee Sh. Ravinder Singh for assessment years 2012-13, 2013-14, 2015-16, 2016-17 and 2017-18 vide AO's office proposal letter no. CC-I/JAL./153B/CUCB/2018-19/1952 dated 30.12.2018 as per Synopsis Pgs. 9 &10) which are reproduced here under:

9

कार्यालय उप आयकर आयुक्त, केन्द्रीय वृत्त-१, आयतन टावर, सिविल लाइन, जालंधर°

दूरभाष: 0181-2235285/Fax:2233263;

ईमेल: jalandhar.dcit.cen1@incometax.gov.in

प.सं/No.: CC-1/JAL./153B/CUCB/2018-19/1953

दिनांक: 30.12.2018

सेवा मे

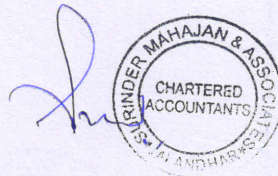
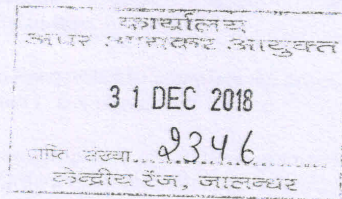
संयुक्त आयकर आयुक्त,
केन्द्रीय रेंज, जालंधर

विषय: Proposal for approval u/s 153D of the Income Tax Act, 1961- Shri Ravinder Singh
PAN (ABRPS5016J) - Regarding -
महोदय,

Kindly find enclosed herewith draft assessment orders in the case of Shri Ravinder Singh resident of 14-15, Guru Nanak Nagar, Model Town, Jalandhar (ABRPS5016) for the assessment years 2011-12 to 2017-18 along with assessment records, as prepared in view of detailed discussions held with your goodself from time to time on the facts of the case, for your kind approval as per provisions of section 153D of the Income Tax Act, 1961.

स्लगण: उपर्युक्त

भवदीय,
(दिनेश कुमार गुप्ता)
उप आयकर आयुक्त
केन्द्रीय वृत्त १ जालंधर°





GOVERNMENT OF INDIA

वित्त मंत्रालय --- Ministry of Finance

कार्यालय
संयुक्त आयकर आयुक्त
केन्द्रीय मंडल जालंधर
दूरभाष/Telephone: 0181-2233263

Office of the
Joint. Commissioner of Income Tax,
Central Range, Jalandhar 144001.
फैक्स/Fax: 0181 - 2233263

Email ID- Jalandhar.addlcit.cen@incometax.gov.in
25-27, Aytan's Tower, Civil Lines, Near Dilkhusha Market, Jalandhar.

F. No. JCIT/CR/Jal./2018-19/1022

Dated: 31.12.2018.

सेवा में,

उप-आयकर आयुक्त,
केन्द्रीय वृत्त-I, जालंधर ।

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

Please refer to your letter No.1952 dated 30.12.2018 thereby submitting draft assessment order in the following cases for approval.

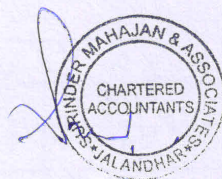
S.No.	Name of the assessee	PAN	Asstt. Year
1.	Sh. Ravinder Singh, R/o 14-15,Guru Nanak Nagar, Model Town, Jalandhar.	ABRPS5016J	2011-12 to 2017-18

- You are requested to complete the order-sheet before issuing notice. Order should be uploaded in the ITBA portal well in time.
- Necessary approval u/s 153D is granted to pass the above assessment orders as such. Assessment Orders in all the years are returned herewith.

(Signature) 31.12.18
(जीम प्रकाश)

संलग्न :उपरोक्तानुसार

संयुक्त आयकर आयुक्त
केन्द्रीय रेंज,जालंधर



(Signature)

6. The Ld. AR has filed a brief synopsis and a case law paper book in support of its contentions. The relevant part of the synopsis reads as under:

- "1. That returns of income for all the years were filed on 05.09.2018 in response to notice u/s 153A of the Act dated 28.05.2018. Assessment proceedings for all the years were initiated by issue of notice u/s 143(2) of the Act dated 12.09.2018 and assessment in all the cases were completed on 31.12.2018.*
- 2. That Assessing Officer vide his letter no. CC-I/JAL./153B/CUCB/2018-19/1952 dated 30.12.2018 sent proposal to Joint Commissioner of Income Tax, Central Range, Jalandhar for approval of draft assessment orders of assessee Sh. Ravinder Singh for A.Y. 2011-12 to 2017-18 u/s 153D of the Income Tax Act. This letter was received in the office of Joint Commissioner of Income Tax, Central Range, Jalandhar on 31.12.2018 with dak no. 2346. Acknowledged copy of letter of the Assessing Officer enclosed at page no. 9.*
- 3. That Joint Commissioner of Income Tax, Central Range, Jalandhar vide his letter no. JCIT/CR/Jal./2018 19/1022 dated 31.12.2018 granted approval u/s 153D of the Act for all the assessment years i.e. 2011-12 to 2017-18. Copy of letter enclosed at page no.10. In this letter Joint Commissioner of Income Tax, Central Range, Jalandhar has directed that order sheet before issuing notice should be completed and orders should be uploaded in the ITBA portal well in time. We are enclosing herewith list of books, documents etc found and seized during search at page no. 11-13. Perusal of these pages will reveal that 2357 pages have been seized from 810, GTB Nagar, Jalandhar and 374 pages have been seized from H. No. 14-15, Guru Nanak Nagar, Model Town, Jalandhar. Total papers seized comes to 2731 papers. Assessee filed replies for all the assessment years and papers filed in replies comes to approximately 1000 papers.*
- 4. That from the letter of the Assessing Officer and letter of Joint Commissioner of Income Tax, Central Range, Jalandhar your honor will observe that whole exercise of approval by Joint Commissioner of Income Tax, Central Range, Jalandhar and release of final assessment orders for all the years was completed within few hours which is*

practically not possible. Letter for approval of assessment orders was received in the office of Joint Commissioner of Income Tax on 31.12.2018, approval was granted on 31.12.2018 and assessment orders were also released on 31.12.2018.

5. *That it is worthwhile to mention here that Joint CIT, Central Range, Jalandhar at that time was having charge of 5 Central Circle offices i.e. Central Circle-1, Jalandhar, Central Circle-2, Jalandhar, Central Circle, Amritsar, Central Circle, Jammu and Central Circle, Srinagar. Joint CIT Central Range, Jalandhar, on 31st December 2018 accorded approval in seven cases of the assessee on the same day of receipt of draft assessment orders from Assessing Officer and also must have accorded approval in other cases of circles within his jurisdiction. Similarly each Assessing Officer had passed assessment orders of various assessee on 31st of December 2018. Assessing Officer Central Circle-1 who has passed seven assessment orders of the assessee on 31.12.2018 has also passed assessment orders in case of six other assessee for seven years each. It means on 31st December of 2018, Assessing Officer had passed forty nine assessment orders which included seven assessment orders of the assessee.*
6. **To sum up submissions made in para 1 to 5 above, your honor will observe**
 - a) **Seven assessment orders were received in office of Joint Commissioner of Income Tax, Central Range, Jalandhar on 31.12.2018.**
 - b) **Total papers seized during search on the basis of which assessments were framed were 2731.**
 - c) **Total papers of submissions made during assessment proceedings comes to 1000 papers.**
 - d) **Approval to pass assessment orders was granted on 31.12.2018 itself.**
 - e) **Joint Commissioner of Income Tax, Central Range, Jalandhar has charge of five Central Circle Offices and on verification one can find that approval in some other cases must have also been granted on 31.12.2018.**
 - f) **Assessing Officer has passed assessment orders in case of seven assessee (including assessee) for seven years each on**

31.12.2018 i.e total assessment orders passed and released alongwith notice of demand and other documents on 31.12.2018 amounted to 49 assessment orders.

7. *That needless to say provisions of section 153B of the Act cast onerous responsibility on superior authority to look into draft assessment framed by the subordinate officer with some degree of objectivity. Section 153D of the Act provides for mental application of a senior officer of the department, which in turn, provides safeguard to both revenue as well as the assessee. Purpose of approval by senior authority is to ensure that the assessee is not prejudiced by irrelevant additions and at the same time assessment is framed by the Assessing Officer after proper enquiries/investigations. There is a statutory duty u/s 153D of the Act on the Joint/Addl. Commissioner of Income Tax to examine the assessment record and accord approval after through examination of seized material and proceedings conducted by the Assessing Officer which needs lot of time. The meaning of "approval" u/s 153D of the Act is that the Joint CIT is required to verify issues raised by the Assessing Officer in the draft assessment orders and apply his mind and to ascertain as to whether the entire facts have been properly appreciated by the Assessing Officer. He is also required to verify whether the required procedure has been followed by the Assessing Officer or not. Approval cannot be a mere discretion or formality but quasi-judicial function based on reasoning.*
8. *That assessment orders for all the years sent for approval, approval granted and final orders released on the same day clearly establish that approval granted u/s 153D of the Act is no approval in the eyes of law since approval has been granted without application of mind. Approval u/s 153D of the Act has been granted mechanically which makes the assessment framed illegal, bad in law and void ab-initio."*

7. 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 22/12/2006.

8. 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 receipt of proposal of draft Assessment Order send by AO, on 31.12.2018, the same date on which the assessment order has been passed that is on 31.12.2018, in the group of 5 Assessments, in mechanical manner, vide letter number F.No. JCIT/CR/JAL/2018-19/1022 dated 31.12.2018, in case of the assessee Sh. Ravinder Singh in respect of the Assessment years 2012-13, 2013-14, 2015-16, 2016-17 and 2017-18. The Ld. AR clarified that it is admitted fact on record that though the proposal for approval of draft Assessment Order vide AO's Office Letter CC-I/JAL./153B/CUCB/2018-19/1952 was dated 30.12.2018 but it was send by the AO and received in the office of the Joint CIT on 31.12.2018 as per office stamp receipt endorsement of the Office of the Joint CIT.

9. It is seen from the approval Letter Number F.No. JCIT/CR/JAL/2018-19/1022 dated 31.12.2018 of the Joint CIT that there were seven assessment orders, received in office of Joint Commissioner of Income Tax, Central Range, Jalandhar on 31.12.2018. The AR argued that the

assessments were framed on the basis of 2731 papers seized during the course of search and written papers of submissions of 1000 papers made by the assessee during assessment proceedings. He argued that it is humanly not possible to pass assessment orders in the present case where the draft proposal was sent on 31.12.2018 and approval u/s 153D was granted on 31.12.2018 itself. It is further argued that the AO has written in office letter No. section 153B whereas in subject he had written section 153D of the Act per se reveals the application of mind by the AO in framing the Assessment and approving authority in granting approval u/s 153 D of the Act on the same date.

10. From the above, it is evident that in the present case, the draft assessment orders in respect of 5 assessment years were sent by the AO vide letter No. CC-I/JAL/153B/CUCB/2018-19/1952 dated 30.12.2018 which was received in the office of the Joint CIT, Central, Range, Jalandhar the Competent Authority on 31.12.2018, which included the assessment of the Five cases of appellant assessee in respect of Five Different Assessment Years. All these Assessments were approved on same date i.e. 31.12.2018. 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. 31.12.2018 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 7 Assessment Years in one day. Meaning thereby, the approval granted was a mechanical exercise of power, in the instant Assessments.

11. The Hon'ble High Court in the case of Pr. CIT and Anr. v. Subodh Agarwal dated 12.12.2022 [2022] 115 CCH 0528 All HC, while adjudicating on the issue of Approval u/s 153D has observed as under:

"It was submitted by the assessee that in search cases, the Assessing Officer before passing the assessment order, framed under Section 153A, 153C and 143(3), is required to take approval from the Joint C.I.T. under Section 153D of the Act, if the Assessing Officer is below the rank of Joint C.I.T. For the purpose of approval, the Approving Authority is required to see all search material including incriminating material, seized documents, appraisal reports, enquiries made by the investigation wing and various enquiries made by the Assessing Officer during the assessment proceedings and the reply submitted by the assessee, and after due application of mind and ascertaining that the Assessing Officer has appreciated the search material and other evidences in proper perspective, has to give approval to the draft assessment order and only on such approval, the Assessing Officer can pass an assessment order.

In the instant case, the Assessing Officer prepared the draft assessment order on 31.12.2017 for assessment year 2015-16. The approval of the draft assessment order under Section 153D was, however, given on 31.12.2017 itself and the final assessment order was passed on the same day i.e. on 31.12.2017 by the Assessing Officer. The attention of the Court is invited to the copy of the approval letter dated 31.12.2017 extracted in the order of the Tribunal wherein the name of the assessee for the assessment year 2015-16 appears at Sr. No. 6. It is

demonstrated by the learned counsel for the assessee that as per this approval letter, the Additional C.I.T. granted approval of draft assessment orders under Section 153D in 38 cases which also included the case of the present assessee. The Tribunal having taken note of the said undisputed facts, came to the conclusion that it was humanly impossible for the Approving Authority to peruse the material based on which, the draft assessment order was passed. It was, thus, concluded that the Approving Authority granted approval under Section 153D of the Act in a mechanical manner which vitiated the entire proceedings. Reliance is placed on an earlier decision of the Tribunal in **Navin Jain & Others Vs. Deputy C.I.T., Central Circle-II, Kanpur in I.T.A. No. 639 to 641/Lkw/2019** passed on 03.08.2021.

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).

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 order under Section 153A.

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.

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 appeal being in the nature of second appeal. No substantial question of law arises for consideration before us.”

12. In the case of “Rajesh Ladhani v. Deputy Commissioner of Income Tax” dated 6th November, 2019 [2019] 57 CCH 0261 Agra Tribunal has adjudicated the merits of approval u/s 153D of the Act and held as under:

“Search and seizure —Prior approval necessary for assessment in cases of search or requisition— Assessee contended that approval as granted by ACIT u/s 153D which is foundation for passing impugned Assessment order u/s 153A is no Approval in the eye of law as purported Approval was granted without due application of mind— Held, in State Bank of India Vs ACIT, Bombay High court held that sanction u/s 151 is a condition precedent to issue reopening notice— Therefore, Assessee is entitled to ask Revenue whether or not, condition precedent for reopening assessment—This attitude of not supplying copy of necessary sanction to Petitioner when asked for is not justified—Besides, also whether it has obtained from specific authority provided in Section 151 can also be subject of jurisdictional challenge to reopening notice—It is an elementary law that whenever any statutory obligation is casted upon any statutory authority such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind — Thus, obligation of granting Approval acts as an inbuilt protection to taxpayer against arbitrary or unjust exercise of discretion by AO — Approval granted u/s 153D should necessary reflect due application of mind and if same is subjected to judicial scrutiny, it should stand for itself and should be self-defending — Draft Assessment orders were placed before ACIT, Central, Kanpur on 27.03.2015 for first time and soon on same day it was granted — Prior to this date case was never discussed with authority granting approval — Even questionnaire as was required to be issued with the approval of ACIT, in view of CBDT instruction was not issued with his approval — Since no time was left to analyze issue of draft order on merit, order was approved solely relying upon undertaking obtained from AO that he has taken due care while framing assessment — Thus, sanctioning authority delegated his statutory duty to grant Approval, after due application of his mind, to the same subordinate AO, whose action ACIT, was supposed to supervise — ACIT without any consideration on merit in respect of issues on which addition was made granted Approval on undertaking of AO — This approach rendered Approval to

be an eyewash and idle formality and such a mechanically granted Approval is no approval in eyes of law — Assessment orders u/s 153A quashed — Assessee's appeal allowed."

13. On similar facts, Recently, the Coordinate Bench in the case of "Shri Balwinder Singh Kohli vs. DCIT", in ITA No. 87/Asr/2017 vide its decision dated 21/06/2023 on the matter of Approve u/s 153D of the Act has granted relief to the assessee by observing as under:

"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 assesseees 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 judgment 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 Orrisa 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.

14. In the present cases, the draft proposal of Assessment Orders was sent on 31.12.2018 and approval u/s 153D was granted on 31.12.2018 itself. From the Letter of proposal for approval, it is revealed that the AO has written in office letter No. section 153B whereas in the subject he had written section 153D of the Act per se reveals the application of mind by the AO in framing the Assessment and the approving authority in granting approval u/s 153 D of the Act on the same date. In our considered view, a mere endorsement to a list of cases of Assessment Orders by putting signature with "rubber stamping" on the letter without application of mind 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 required before passing of the Assessment Orders in pursuant to a search operation being a mandatory requirement of section 153D of the Act, was not granted as per law because such approval is not meant to be given in mechanical manner without application of mind by the Additional CIT which resulted in vitiating the assessment orders *per se*.

15. 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. Accordingly, the impugned order is held to be infirm, illegal and bad in law and same is as such quashed.

16. 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 adjudicate the issue raised on merits in quantum addition.

17. The facts on the legal issue in I.T.A. Nos. 6 to 9/Asr/2020 are exactly similar to the facts in I.T.A. No. 5/Asr/2020. The proposal was send on 31/12/2018 and the Addl. CIT granted Approval u/s 153D of the Act on the same date i.e. 31/12/2018 in respect of 7 Assessment Years. Therefore, our observation and findings given in I.T.A. No. I.T.A. No. 5/Asr/2020 shall be applicable to the I.T.A. Nos. 6 to 9/Asr/2020 in *mutatis mutandis*, Ordered Accordingly.

18. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 26.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order