

**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. 555 & 556/Asr/2019
Assessment Years: 2015-16 & 2016-17

Sh. Murli Manohar,
D-602, Jalandhar Heights,
66 Road, Jalandhar

[PAN: AASPM 1133E]
(Appellant)

Vs. Asstt. Commissioner of Income
Tax, Circle-2, Jalandhar

(Respondent)

Appellant by : None

Respondent by: Sh. Hitendra Bhauraoji Ninawe, CIT DR

Date of Hearing: 18.07.2023

Date of Pronouncement: 26.07.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the captioned appeals have been filed by the assesseees against the common order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 25.06.2019 in respect of Assessment Years 2015-16

&2016-17 where in the appellant-assessee has raised the following common grounds of appeal:

- “1. *That the order passed by the Hon'ble CIT(A) dated 25.06.2019 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A/143(3) of the Act is bad in law and against the facts - and circumstances of the case and is not sustainable on various legal and factual grounds.*
3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.20,00,000/- on account of investment in property by treating the same as unexplained investment u/s 69 of the Act, by ignoring the facts of the case and submissions of assessee and without observing the principles of natural justice.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. The appellant assessee has raised the additional common grounds of appeal in respect of both the assessment year vide letter even dated 28.02.2022 which reads as under:

“The appellant begs to move the following ground as additional ground:-

1. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 143(3) r.w.s. 153A of the Act and that too without complying with the mandatory requirements and conditions u/s 153D as envisaged under the Income Tax Act, 1961.*

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*Since the above ground does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that it may please be admitted in view of the Hon'ble Supreme Court decision in the case of **NTPC Limited 229 ITR 383.**"*

3. The appellant assessee begs to submit for admission of the additional legal ground under pretext that the legal issue pertaining to the mandatory approval u/s153D of the Act that goes to the root of the matter, hence it is prayed that the additional ground may please be admitted in view of the Hon'ble Supreme Court decision in the case of "NTPC Ltd. Vs. CIT", 229 ITR 383. The Id. DR failed to rebut the contention on the legal issue raised in the additional ground. Since, the legal issue goes to the root of the matter and hence, it has been admitted, in view of the principle laid down by the Hon'ble Apex Court in the case of NTPC Ltd. (supra).

4. None attended for the assessee, however an undated adjournment application was received on the date of hearing by a person not authorized by the assessee as per law to represent the appeal on his behalf and hence same being found invalid in eyes of law, and hence, it has been rejected. However, considering the legal issue raised by the appellant in the additional ground of appeal being covered issue by the Coordinate Bench decision given in the case of "Shri Balwinder Singh Kohli vs. DCIT",

in ITA No. 87/Asr/2017, Dated 21/06/2023; it has been decided to hear the appeal on the additional ground.

5. The Id. DR submitted that a search was undertaken at the residential land business premises of the assessee as on 08.09.2016. In compliance to notice issued u/s 153A of the I.T. Act, the assessee has replied that the original return filed on 29.09.2015 may be treated to have been filed the return in response to the said notice issued u/s 153A of the I.T. Act. subsequently, the Assessing Officer (in short "the AO") issued notice u/s 143(2) and 142(1) of the Act, 1961 on 30.08.2018 along with questionnaire and assessed with an addition of Rs.20,00,000/- & Rs.7,50,000/- for the Assessment Year 2015-16 & 2016-17 respectively on account of the purchase of a plot though it was being claimed by the appellant to be purchased for the purpose of a construction of a temple by raising public funds by way of contribution with the support of a letter of the Local Member of Legislative Assembly (MLA) and other persons. The AO has passed the assessment order with an endorsement at the end of the order that order passed with prior approval of a Joint Commissioner of Income Tax, Range-II, Jalandhar u/s 153D vide letter dated 30.12.2018. The Id. DR pleaded that the issue being raised for the first time may be rejected.

6. We have heard the Id. DR, perusal of the material on record, an additional ground raised by the appellant and the judicial matrix of the case on the statutory approval u/s 153D which goes to the root of the matter in deciding the appeal. It is admitted fact on record that the assessment order has been passed on 30.12.2018 and that on the same date a proposal was sent in 28 assessments of 4 assesses where the mandatory approval was granted by the Id. Joint Commissioner of Income Tax, Range-II, Jalandhar u/s 153D of the Act vide letter no. 1018 dated 30.12.2018 as per the details mentioned by the AO in the assessment order *per se*.

7. From the Assessment Order, it is evident that the AO has not mentioned the factum of date of submission of proposal of draft Assessment Order for the statutory approval of the Addl./JCIT u/s 153D of the Act before passing the Assessment order except an endorsement at the end of the assessment order. However, as per the approval given by the Joint Commissioner of income tax, Central Range Jalandhar under Section 153D of the act, vide letter number 1018, dated 30.12.2018 whereby approval was granted u/s 153D of the Act, that reads as under:

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GOVERNMENT OF INDIA
वित्त मंत्रालय --- Ministry of Finance
Office of the
Joint. Commissioner of Income Tax,
Central Range, Jalandhar 144001.
फैक्स/Fax: 0181 - 2233263

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

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

Dated: 30.12.2018.

F. No. JCIT/CR/Jal./2018-19/— 1018

सेवा में,


सहायक आयकर आयुक्त,
केन्द्रीय वृत्त-II, जालंधर ।

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

Please refer to your office letter No.1920 dated 30.12.2018 thereby submitting draft assessment orders in the following cases for approval.

S.No.	Name of the assessee	PAN	Asstt. Year
1	M/s Sakshi Enterprises, 337-338, New Jawahar Nagar, Jalandhar	ABJFS0646J	2011-12 to 2017-18
2	M/s SNS Steel (P) Ltd., 337-338, New Jawahar Nagar, Jalandhar	AANCS2046Q	2011-12 to 2017-18
3	Smt. Kavita Wadhwa, D-602, Jalandhar Heights, 66 ft Road, Jalandhar	AALPR8653B	2011-12 to 2017-18
4	Sh. Murli Manohar, D-602, Jalandhar Heights, 66 ft.Road, Jalandhar	AASPM1133E	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.


(ओम प्रकाश)
संयुक्त आयकर आयुक्त
केन्द्रीय रेंज, जालंधर

संलग्न : उपरोक्तानुसार

From the above, it is evident that the AO has send proposal of draft assessment orders in pursuant to search cases under section 153A r.w.s.143(3) of the Act vide letter number 1920 dated 30.12.2018 in 28 assessments of 4 assessee which is also the date on which the assessment order has been passed i.e. 30.12.2018. Meaning thereby that the date of Assessment Order and date of granting approval by the Id. Joint Commissioner of Income Tax, Range-II, Jalandhar u/s 153D of the Act has been granted vide letter no. 1018 dated 30.12.2018 as mentioned by the AO in the assessment order per se. In view of that matter, we are of the considered opinion that the required approval, being granted 28 cases, including the present case on the same date on which the draft assessment orders *per se* reveals non-application of mind by the competent authority, the Joint CIT in granting the mandatory approval under section 153D of the Income Tax Act. Accordingly, the assessment order passed by the Assessing Officer, without valid approval of the competent authority in the present case would be law and deserves to be quashed.

8. In the case of “Principal Commissioner of Income-tax v. SiddarthGupt”, [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.”

9. 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 prerequisite 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.

10. 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.*

11. The Coordinate Bench while deciding a similar issue in the case of “Shri Balwinder Singh Kohli vs. DCIT”, in ITA No. 87/Asr/2017, vide order dated 21/06/2023, has observed as under:

“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. In the present cases, the AO has submitted draft assessment orders in pursuant to search cases under section 153A r.w.s.143(3) of the Act, vide letter number 1920 dated 30.12.2018, in 28 assessments of 4 assessee which is also the date on which the assessment order has been passed i.e. 30.12.2018 before the Approving Authority who had approved on same day i.e. 30/12/2018. It is pertinent to mention that the 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 which is lacking in the instant cases. In view of that matter, we hold that in the present case, the prior approval of the Additional/Joint CIT mandatory required before passing the order of assessment in pursuant to a search operation under section 153D of the Income Tax Act was not as per law because such approval is not meant to be given mechanically, without application of mind by the competent authority Joint CIT which resulted in vitiating the assessment orders.

13. We are therefore of the considered view that mere endorsing a list of 28 Assessment Orders in 4 cases of Search assessment by signature with

"rubber stamping" of the letter without mentioning even the words like "Yes, satisfied" after going through the Draft Assessment Order and seized inventory of documents or discussion on order sheet, 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.

14. In the above view, we hold that the assessment order in pursuant to a search operation passed by the approval of Joint CIT in group cases on same date without application of mind u/s 153D of the Act, rendered the assessment orders void *ab initio*. Consequently, the impugned orders are held to be infirm, illegal and bad in law and same are as such quashed.

15. The facts on the legal issue I.T.A. No. 556/Asr/2019 are exactly similar to the facts in I.T.A. No. 555/Asr/2019. Therefore, our observation and findings given in I.T.A. No. 555/Asr/2019 shall be applicable to the I.T.A. No. 556/Asr/2019 in *mutatis mutandis*. Ordered Accordingly.

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

17. In the result, both 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