

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

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 294/Del/2022, (A.Y. 2016-17)

&

ITA No. 295/Del/2022, (A.Y. 2017-18)

Veena Singh Flat 5, 2 nd floor, J-21, South Extension Part-1, Delhi PAN: AXJPS9588H	Vs.	ACIT Central circle-25 Room No. 322, 3 rd Floor, ARA Centre, Jhandewalan, Delhi
Appellant		Respondent

Assessee by	Shri Kapil Goel, Adv & Sh. Sandeep Goel, Adv
Revenue by	Shri P. N. Barnwal, CIT(DR)

Date of Hearing	12/03/2024
Date of Pronouncement	24/04/2024

ORDER

PER YOGESH KUMAR, U.S. JM:

Both the captioned appeals are filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)", for short], dated 16/11/2021 and 01/12/2021 for the Assessment Years 2016-17 and 2017-18 respectively.

2. The Grounds of appeal of the Assessee are as under:-

2.1 **ITA No. 294/Del/2022, (A.Y. 2016-17)**

“1. The Id CIT(A) erred in facts and circumstances of the case and in law in holding that assessment U/s 153A has been rightly carried out when admittedly there was no search in assessee's office or residential premises - Without Prejudice.

2. The Id CIT(A) erred in facts and circumstances of the case and in law in upholding additions that the AO made u/s 69C of expenses made on foreign travel on an ad-hoc and arbitrary basis, without having any material to precisely pinpoint expenses purported to have been incurred.

3. The Id CIT(A) erred in facts and circumstances of the case and in law in only granting partial relief against additions that the AO made under section 68, and in violation pre-requisites for making addition u/s 68.

4. The Id CIT(A) had erred in facts and circumstances of the case and in law in upholding additions that the AO made as bogus business expenses under section 69C without appreciating that appellant had opted for presumptive taxation u/s 44AD.”

2.2 **ITA No. 295/Del/2022, (A.Y. 2017-18)**

“1. The Id CIT(A) erred in facts and circumstances of the Apple case and in law in upholding additions that the AO made u/s 69C of expenses made on foreign travel on an ad-hoc and arbitrary basis, without having any material to precisely pinpoint expenses purported to have been incurred

2. The id CIT(A) erred in facts and circumstances of the case and in law in upholding additions that the AO made under section 68 on protective basis, prior to his making

assessment on a substantial basis in case of any assessee and in violation pre-requisites for making addition u/s 68

3. The Id CIT(A) erred in facts and circumstances of the AF case and in law in upholding additions that the AO made under section 69A of cash found-during search

4. The Id CIT(A) erred in facts and circumstances of the case and in law in upholding additions that the AO made under section 69A of demonetized currency found during search.

5. The Id CIT(A) erred in facts and circumstances of the case and in law in only granting partial relief against addition that the AO made under section 69A of Jewellery found during search.”

2.3 The assessee has also filed common additional ground of Appeal.

“That impugned assessment order passed u/s 143(3) of 1961 Act by Ld AO (ACIT CC 25 Delhi) dated 21.12.2018 as sustained by Ld CIT-A are void ab initio and is jurisdictionally flawed as said assessment order is based on combined/consolidated - invalid illegal "purported" approval u/s 153D by Add CIT- Central Range 7 Delhi (dated 21.12.2018) without any reference on asst./case order sheet and therefore impugned asst order and first appeal order may please quashed for want of valid approval u/s 153D of 1961 Act.”

3. Brief facts of the case are that, the assessee filed return of income u/s 139 of the Income Tax 1961, ('Act' for short) declaring income of Rs. 13,18,830/-. A search and seizure operation u/s 132 of the Act was carried out in the case of Mohnish Mohan Mukkar and his group companies on 11/01/2017. A separate search warrant u/s 132 of the Act was issued in the name of the assessee in respect of RLB Bank Account which was executed on 10/03/2017. The assessee filed return of income u/s 153A of the Act on 14/09/2018 declaring income of Rs. 13,18,830/-. Thereafter A.O. issued notice u/s 143(2) u/s 142(1) of the Act along with questionnaire. The assessment order came to be passed u/s 153A/143(3) of the Act on 21/12/2018 by making addition on account of unexplained foreign travel expenses of Rs. 16,40,000/-, unexplained credit entry in the bank account of Rs. 95,00,000/- and disallowance of business expenses of Rs. 57,72,624/- accordingly, computed the income of the assessee at Rs. 1,82,31,454/- as against the income shown in the return u/s 153A of the Act at Rs. 13,18,830/-.

4. Aggrieved by the assessment order dated 21/12/2018, the assessee preferred an appeal before the CIT (A). The Ld. CIT (A) vide order dated 16/11/2021, partly allowed the Appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A) dated 16/11/2021, the assessee preferred the present Appeal on the grounds mentioned above.

5. The assessee has raised an additional grounds of Appeal contending that the assessment orders passed by the A.O. and the order of the CIT(A) are void-ab-initio as the assessment orders have been passed consequential to the invalid /illegal approval made u/s 153D of the Act by additional CIT. Since the additional ground being legal and jurisdictional issue, we have heard on the said ground.

6. The Ld. Counsel for the assessee submitted that the assessment order passed u/s 153A/143(3) of the Act is void-ab - initio as the said assessment order has been passed based on combined/consolidated approval issued u/s 153D of the Act by the Additional CIT/Central Range-7 Delhi dated 21/12/2018 without

any reference on the order sheet and the same is mechanical one, therefore submitted that the impugned assessment orders and the orders of the Commissioner are liable to be quashed. To support the said submission the Ld. Assessee's Representative relied on the order of the Co-ordinate Bench in the case of Shiv Kumar Nayyar Vs. ACIT in ITA No. 1282 to 1285/Del/2020 dated 26/07/2023 and also the Judgment of the Jurisdictional High Court in the case of Maruti Suzuki reported at 244 ITR 303.

7. The Ld. Departmental Representative submitted that there is no infirmity the approval granted u/s 153D of the Act and the Ld. Additional CIT has applied his mind and further submitted that the facts in the Judgments referred by the Assessee's Representative are distinguishable. The Ld. Departmental Representative further submitted that there is no format for recording the approval, therefore, the assessee's Additional Ground is liable to be dismissed.

8. We have heard both the parties and perused the material available on record and gave out thoughtful consideration. For the

purpose of adjudicating the issue in hand and for the ready reference the approval accorded by the Additional Commissioner of Income Tax, Central Circle, Range-7, New Delhi dated 21/12/2018 is reproduced as under:

E-Z, Jhandewalan Extension
New Delhi

F. No. Addl. CIT/CR-7/2018-19/10440

Dated: 21.12.2018

To

*The Assistant Commissioner of
Income Tax Central Circle-25,
New Delhi*

Sub: Approval u/s 153D of the IT Act, 1961 in case of Ms. Veena Singh (PAN: AXJPS9588H) Mohnish Kumar Mohan Mukkar Group-A.Y. 2011-12 to 2017-18 req

Please refer to your letter F. No, ACIT/CC-25/2018-19/ dated 27.12.2018 on the above subject

2. *Approval is hereby accorded- u/s 153D of the Income Tax Act, 1961 to the draft assessment orders as amended In the following, .cases, on the basis of the detailed discussion with you time-to time, information available on-record, facts mentioned in the Appraisal Report and relevant seized documents perused by you & brought to the notice of undersigned.*

8. No	Name of the assesses	PAN	KY.	Returned Income	Assessed Income
1	Ms. Veena Singh	AXJPS9588H	2011-12	7,31,890/-	14,11,393/-
2	Ms. Veena Sindh	AXJPS8588H	2012-13	17,77,440/-	37,27,440/-
3	Ms. Veena Singh	AXJPS9588H	2013-14	25,57,350/-	57,87,350/-
4	Ms. Veena Singh	AXJPS9588H	2014-15	10,99,220/-	52,29,220/-
5	Ms. Veena Singh	AXJPS9588H	2015-16	7,47,730/-	33,69,650/-
6	Ms, Veena Singh	AXJPS9588H	2016-17	13,18,830/-	182,31,454/-
7	Ms; Veena Singh	AXJPS9588H	2017-18	1165,510/-	2,52,33,8201-

3. *Copies of the final assessment orders should be forwarded to this office immediately after passing the orders. Proposal -tor retention of seized- material, should also be forwarded to this, office within time as per IT Act, 1961. Before passing the final order, in case, there is requirement of protecting the- interest of revenue, permission u/s 281B from Pr. CIT.(C)3, New Delhi should be taken: Office notice indicating additions in relevant assessment years should be*

indicated In all Assessment Yean,. A.0 to certify about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data, You have also certified to the undersigned that all Information available In AIR/CIB/from other Law Enforcement Agencies have been properly scrutinized by you before finalizing the draft assessment.

*(Vivek Gupta)
Additional Commissioner of
Income Tax Central
Range -7. New Delhi*

9. On plain reading of the above appeal, it is found following:-

(i) A common and consolidated approval has been granted for AY 2011-12 to 2017-18 and there is no year wise reasoning in the said approval granted u/s 153D of the Act.

(ii) There is only a reference of a letter F No. ACIT/CC-25/2018-19 dated 21.12.2018 of Assistant Commissioner of Income Tax, Central Circle-25, but there is no reference regarding the draft assessment order being sent for approval of the Additional Commissioner of Income Tax.

(iii) The letter requesting accord of approval u/s 153D of the Act has been returned by the Assistant Commissioner of Income Tax on 21.12.2018, the Additional Commissioner of Income Tax granted the approval u/s 153D of the Act on the very same date i.e.

on 21.1.2018 and the impugned assessment order has also been passed on 21.12.2018.

(iv) The approval dated 21.12.2018 was not absolute, while granting the approval u/s 153D of the Act, the Additional Commissioner of Income Tax in Para 3 mentioned as under:-

“Office notice indicating additions in relevant assessment years should be indicated In all Assessment Year,. A.O to certify about perusal and verification of data seized in electronic format through working copies having certified hash values as that of original hard drives/CDs/ pen drives/mobile data & any other electronic data.”

(v) The impugned approval passed u/s 153D of the Act was apparently issued in mechanical and hurried manner without mentioning the reasons and the same has been issued without application of mind.

10. The above mentioned approval accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of 5 assessment years. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval

has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record as no such draft Assessment order has been referred while according the approval u/s 153D of the Act.

11. The provision of Section 153D of the Act envisages prior approval of JCIT before passing the assessment order, for the purpose of ready reference the provisions of Section 153D of the Act is reproduced as under:-

Prior approval necessary for assessment in cases of search or requisition.

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:]

48[Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the "[Principal Commissioner or]

Commissioner under sub-section (12) of section 144BA.]

Rectification of mistake."

12. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.

13. At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that the above approval letter issued by the Addl. Commissioner says that the approval has been granted subject to certain conditions.

14. Plain reading of the letter of approval granted by the Addl. Commissioner, clearly depicts that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of letter of the Ld. A.O. without any application of mind. From the said approval, it can be easily inferred that the approved has been accorded with certain conditions. Thus, the sanctioning authority had in effect abdicated its statutory functions and delightfully relegated its statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The said approach of the Additional CIT, Central has rendered the Approval to be a mere formality and cannot be sustained in the eyes of law.

15. There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D of the Act. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the co-ordinate bench in *Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.)* which has been approved by jurisdictional High Court subsequently, reported in

307 CTR 218 affirms the plea of the Assessee, wherein the Hon'ble Bombay High Court held as under:-

"1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19th August, 2015.

2. Following question was argued before us for our consideration:

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that there was no 'application of mind' on the part of the Authority granting approval?"

3. Brief facts are that the Tribunal by the impugned judgment set aside the order of the Assessing Officer passed under Section 153A of the Income Tax Act, 1961 ("the Act" for short) for Assessment Year 2007- 08. This was on the ground that the mandatory statutory requirement of obtaining an approval of the concerned authority as flowing from Section 153D of the Act, before passing the order of assessment, was not complied with.

4. This was not a case where no approval was granted at all. However, the Tribunal was of the opinion that the approval granted by the Additional Commissioner of Income Tax was without application of mind and, therefore, not a valid approval in the eye of law. The Tribunal reproduced the observations made by the Additional CIT while granting approval and came to the conclusion that the same suffered from lack of application of mind. The Tribunal referred to various judgments of the Supreme Court and the High Courts in support of its conclusion that the approval whenever required under the law, must be preceded by application of mind and consideration of relevant factors before the same can be granted. The approval should not be an empty ritual and must be based on consideration of relevant material on record.

5. The learned Counsel for the Revenue submitted that the question of legality of the approval was raised by the assessee for the first time before the Tribunal. He further submitted that the Additional CIT had granted the approval. The Tribunal committed an error in holding that the same is invalid.

6. Having heard the learned Counsel for the both sides and having perused the documents on record, we have no hesitation in upholding the

decision of the Tribunal. The Additional CIT while granting an approval for passing the order of assessment, had made following remarks :

"To, The DCIT(OSD)1, Mumbai Subject: Approval u/s 153D of draft order u/s 143(3) r.w.s. 153A in the case of Smt. Shreelekha Nandan Damani for A.Y. 2007-08 reg.

Ref: No. DCIT (OSD)1/ CR7/Appr/2010-11 dt. 31.12.2010 As per this office letter dated 20.12.2010, the Assessing Officers were asked to submit the draft orders for approval u/s 153D on or before 24.12.2010. However, this draft order has been submitted on 31.12.2010. Hence there is no much time left to analyse the issue of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted u/s 153D of the I. T. Act, 1961."

7. In plain terms, the Additional CIT recorded that the draft order for approval under Section 153D of the Act was submitted only on 31st December, 2010. Hence, there was not enough time left to analyze the issues of draft order on merit. Therefore, the order was approved as it was submitted. Clearly, therefore, the Additional CIT for want of time could not examine the issues arising out of the draft order. His action of granting the approval was thus, a mere mechanical exercise accepting the draft order as it is without any independent application of mind on his part. The Tribunal is, therefore, perfectly justified in coming to the conclusion that the approval was invalid in eye of law.

We are conscious that the statute does not provide for any format in which the approval must be granted or the approval granted must be recorded. Nevertheless, when the Additional CIT while granting the approval recorded that he did not have enough time to analyze the issues arising out of the draft order, clearly this was a case in which the higher Authority had granted the approval without consideration of relevant issues. Question of validity of the approval goes to the root of the matter and could have been raised at any time. In the result, no question of law arises.

8. Accordingly, the Tax Appeal is dismissed."

16. In the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the Appeal filed by the

Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack, wherein the Hon'ble High Court had quashed the Assessment Order on the ground of inadequacy in procedure adopted for issuing approval u/s 153D of the Act by expressing discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act.

17. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the arguments advanced by the Ld. the Assessee's Representative on the Additional Ground of Appeal. In our considered opinion the approvals so granted under the shelter of section 153D of the Act does not pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments orders in the captioned appeals are non-est and a nullity and hence the same are quashed.

18. In view of prima facie merits found in the legal objections raised in the Addl. Grounds of the Assessee, we do not consider it

expedient to look into the aspects on merits of additions/disallowance as the legal objections on sanction granted under Section 153D of the Act has been answered in favour of the Assessee. Thus the other Grounds raised in the Appeals of the Assessee in both the Appeals have rendered in-fructuous, which do not need any separate adjudication.

19. In the result, the Appeals filed by the Assessee in ITA Nos. 294/Del/2022 and ITA No. 295/Del/2022 are allowed.

Order pronounced in the open court on 24th April, 2024.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 24 .04.2024

*R.N, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI

