

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2503/Del/2017
(Assessment Year: 2013-14)**

SEH Realtors Pvt. Ltd, F-88, Okhla Indl. Area, Phase-1, New Delhi (Appellant) PAN:AAGCS7537M	Vs.	ACIT, Central Circle-8, New Delhi (Respondent)
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**ITA No.2693/Del/2017
(Assessment Year: 2013-14)**

ACIT, Central Circle-8, New Delhi (Appellant) PAN:AAGCS7537M	Vs.	SEH Realtors Pvt. Ltd, F-88, Okhla Indl. Area, Phase-1, New Delhi (Respondent)
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**CO No. 9/Del/2022
(In ITA No.2693/Del/2017)
(Assessment Year: 2013-14)**

ACIT, Central Circle-8, New Delhi (Appellant) PAN:AAGCS7537M	Vs.	SEH Realtors Pvt. Ltd, F-88, Okhla Indl. Area, Phase-1, New Delhi (Respondent)
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Assessee by :	Shri M. P. Rastogi, Adv Shri Deepak Malik, Adv Shri Shivam Malik, Adv
Revenue by:	Shri Dharm Veer Singh, CIT DR
Date of Hearing	18/07/2024
Date of pronouncement	23/07/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in CO No. 9/Del/2022 and ITA No.2503/Del/2017 filed by the assessee and ITA No. 2693/Del/2017 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 39/2015-16 dated 27.02.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2015 by the Assessing Officer, ACIT, Central Circle-08, New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee had raised a preliminary ground in its cross objections stating that the entire assessment is to be declared as void ab initio as the approval u/s 153D of the Act has been granted by the learned Joint Commissioner of Income Tax (Ld. JCIT in short) in a mechanical manner in the instant case. The ground raised by the assessee is reproduced herein below for the sake of convenience:-

"1. That approval, as granted by Addl./Joint Commr. of Income Tax u/s 153D of the Income Tax Act, 1961, approving the order of the Assessing officer, in a mechanical manner and without application of mind and consequently the order as passed by the Assessing order in furtherance a such alleged mechanical approval is invalid and bad in law."

3. We have heard the rival submissions and perused the material available on record. A search and seizure operation u/s 132 of the act was carried out on Shahi Exports group, Span Group, U K Paints and Orris Group simultaneously on 16.01.2013. A separate search warrant of authorization u/s 132 of the Act was issued in the name of the assessee also on 16.01.2013. The case of the assessee stood centralized vide order dated 15.07.2013. A notice u/s 153A of the Act stood issued to the assessee and return of income was filed by the assessee on 24.12.2013 for the Asst Year

2013-14 declaring total income of Rs 2,13,08,950/-. The assessment was completed u/s 143(3) of the Act on 27.03.2015. The assessment was framed after obtaining the prior approval from the Ld. JCIT, Central Range-2, New Delhi on 27.03.2015 in terms of section 153D of the Act. The draft assessment order was placed by the Id. AO before the Id. JCIT for seeking approval u/s 153D of the Act on 27.03.2015. The said draft assessment order was approved by the Id. JCIT u/s 153D of the Act on 27.03.2015. It was submitted by the Id. AR before us that the approval has been granted by the Id. JCIT u/s 153D of the Act in a mechanical manner without due application of mind. In support of this submission, the Id. AR drew attention of the Bench to an order passed u/s 7 of the Right to Information Act, 2005 by the Deputy Commissioner of Income Tax & Central Public Information Officer (CPIO) dated 22.03.2022 wherein it was categorically confirmed that totally 232 files containing the draft assessment orders which includes assessee herein also were sent by the Id. AO to Id. JCIT for seeking approval u/s 153D of the Act on 27.03.2015 and all the 232 files were sent back by the Id. JCIT to the Id. AO after granting approval u/s 153D of the Act on 27.03.2015. The Id. AR even placed on record the concerned approval granted u/s 153D of the Act by the Id. JCIT dated 27.03.2015 containing the list of 232 cases including the assessee herein.

4. The Id AR also submitted that the meaning of "approval" as contemplated u/s 153D of the Act is that the Id JCIT is required to verify the issues raised by the Id AO in the draft assessment order, apply his mind and ascertain whether the entire facts have been appreciated properly by the Id AO together with the supporting evidences. The said approval proceeding is a quasi judicial function to be performed by the Id JCIT based on sound reasoning on due examination of the seized documents, replies filed by the

assessee and the draft assessment order of the Id AO. It is highly impossible for the Ld JCIT to grant approval to all the assessment orders on the very same day on receipt of draft assessment orders for various assessment years comprising various issues. Accordingly, the Id AR submitted that the Id JCIT had granted approval by devoting very few minutes for each case in a mechanical manner u/s 153D of the Act without due application of mind. Accordingly, he pleaded that this type of approval cannot be treated as a valid approval contemplated u/s 153D of the Act and consequentially, the entire assessment framed in the hands of the assessee for Asst Year 2013-14 requires to be quashed as void ab initio. In support of this argument, the Id AR placed heavy reliance on the decision of the coordinate bench decision of this tribunal in the case of Shiv Kumar Nayyar Vs. ACIT in ITA Nos. 1282 to 1285/Del/2020; ITA No. 1078/Del/2021 and ACIT Vs. Shiv Kumar Nayyar in ITA No. 1867/Del/2021 dated 26.07.2023 wherein, this Tribunal had placed reliance on the decision of the Hon'ble Orissa High Court in case of ACIT Vs. M/s. Serajuddin and Co. in ITA Nos. 39 to 45 of 2022 dated 15.03.2023; decision of Hon'ble Allahabad High Court in the case of PCIT Vs. Subodh Aggarwal in Income Tax Appeal No. 86/2022 dated 12.12.2022 and the decision of the Hon'ble Jurisdictional High Court in the case of ACIT Vs. Anju Bansal in ITA 368/2023 dated 13.07.2023 had quashed the search assessment proceedings as there was no valid approval u/s 153D by the Id JCIT. He also placed on record that this tribunal decision in the case of Shiv Kumar Nayyar has been approved by the Hon'ble Jurisdictional High Court in the case of PCIT vs Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Del) dated 15.5.2024.

5. Per contra, the Ld. DR vehemently argued that the role of Id. JCIT, Central Range is totally different from the role of a JCIT in the normal range.

He argued that in a Central Range, the Id. JCIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires to the assessee. The Id. JCIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Id. JCIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection raised by the Ld. AR has no force. Further, the Ld. DR vehemently argued that bare reading of provisions of section 153D of the Act talks only about existence of approval from the Id. JCIT. There is no mention of application of mind on the part of the Id. JCIT or the approving authority in the said section. The expression 'application of mind' is only provided by the judicial decisions and not provided in the statute. Hence the Ld. DR argued that literal interpretation is to be given to the provisions of section 153D of the Act which does not provide for application of mind of the approving authority and hence any other interpretation contrary to the same would only result in re-writing the law. The Ld DR also argued that the assessee files details at the last moment and that is why the approval is obtained from Id JCIT in the last moment. The Ld DR also argued that the Id. JCIT or Id. Additional CIT does not look into the figures and even if there are mistakes in the figures, the same would not vitiate the assessment proceedings. The Id DR further submitted that the RTI information was obtained by the assessee on 22.3.2022 only and hence the same constitutes additional evidences which should not be admitted by this tribunal. He also

argued that this issue of approval being granted u/s 153D of the Act in a mechanical manner was never raised by the assessee before the Id. CIT(A). The Id. DR also relied on the decision of Hon'ble Karnataka High Court in the case of Rishabchand Bhansali vs DCIT reported in 267 ITR 577 (Kar) and also on the guidelines issued by the Central Board of Direct Taxes (CBDT) dated 22.12.2006 on the subject of Search and Seizure Assessments.

6. At the outset, we find that the decision relied by the Id. DR of Hon'ble Karnataka High Court referred supra is factually distinguishable as it was dealing with the issue of whether it is mandatory on the part of the Id JCIT or Id Additional CIT to give opportunity of hearing to the assessee before granting approval of draft assessment orders under the erstwhile block assessment proceedings in terms of section 158BG of the Act . This is not the issue involved herein in the instant case. The issue here is whether the approval has been granted by the Id. JCIT or Id. Additional CIT u/s 153D of the Act after due application of mind and not the question of granting opportunity to the assessee before granting approval. Hence the reliance placed by the revenue on the decision of Hon'ble Karnataka High Court referred supra would not advance the case of the revenue.

7. Further reliance was placed by the Id. DR on the CBDT guidelines dated 22.12.2006. We have gone through the said guidelines placed on record by the Id. CIT DR. On perusal of the said guidelines, we find there is not even a whisper regarding the approval proceedings to be granted u/s 153D of the Act by the competent authority. It only says that JCIT/ Addl CIT is also part of the assessment proceedings right from the time of receipt of appraisal report. The said guidelines only reiterate the statutory provisions and the manner in which search assessments are to be framed by the Assessing Officer in the manner known to law. It no where even whispers

that approval u/s 153D of the Act could be granted by the Id. JCIT / Id. Addl CIT without any application of mind. In any event, in our considered opinion, the CBDT guidelines relied upon by the Id. DR does not have any statutory force. Hence the reliance placed thereon would not advance the case of the revenue.

8. We find as per the scheme of the Act, for framing search assessments, the Ld. AO can pass the search assessment order u/s 153A or u/s 153C of the Act only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Id. JCIT, in terms of section 153D of the Act. This is a mandatory requirement of law. The said approval granting proceedings by the Id. JCIT is a quasi judicial proceeding requiring application of mind by the Id. JCIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme of the Act, it is the bounden duty of the Ld. AO to seek to place the draft assessment order together with copies of the seized documents before the Id. JCIT well in time much before the due date of completion of search assessment. The Id. JCIT is supposed to examine the seized documents, questionnaires raised by the Ld. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Ld. AO and the conclusions drawn by the Ld. AO vis- à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Id. JCIT in a judicious way after due application of mind. Even though as vehemently argued by the Ld. CIT-DR, the Id. JCIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Id. JCIT, while granting the approval u/s 153D of the Act has to independently apply

his mind dehors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Ld. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Ld. AO and Id. JCIT are merely guidance to the Ld. AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Ld. AO to frame the assessment after getting prior approval from Id. JCIT u/s 153D of the Act. The Id. JCIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions of the Act as no where the Act mandates so. The scheme of the Act mandates due application of mind by the Ld. AO to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Ld. AO as well as the Id. JCIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Id. JCIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Ld. CIT DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Ld. AO and the Id. JCIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. As far as the argument of the Ld. CIT DR that the details were normally filed by the assessee at the last moment is concerned, the Id. AO has got every right to reject the said replies if not filed within the stipulated time. It is not the case of the revenue that the details were filed by the assessee in the instant case at the last moment. Even if it is so, as stated above, it is the prerogative of the Id. AO to accept the said

letter containing details or reject the same as it was not filed within the stipulated time. On the contrary, if the Id. AO himself grants time to the assessee to furnish the details till the last moment, then no fault could be attributed to the assessee. In such circumstances, the only irresistible conclusion that could be drawn is that the Id. AO is not serious about the statutory deadlines provided in the Act. In our considered opinion, if the arguments of the Id. CIT DR are to be appreciated that the Id. JCIT need not apply his mind while granting approval of the draft assessment orders u/s 153D of the Act as it is not provided in section 153D of the Act, then it would make the entire approval proceedings contemplated u/s 153D of the Act otiose. The law provides only the Id. AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Id. JCIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Id. AO.

9. Let us now examine whether in the aforesaid background of the scheme of the Act, whether the approval in terms of section 153D of the Act has been granted by the Id. JCIT in a judicious way after due application of mind or not, in the instant case. We have gone through the approval granted by the Id. JCIT on 27.03.2015 u/s 153D of the Act. The said approval letter clearly states that a letter dated 27.03.2015 was filed by the Id. AO before the Id. JCIT seeking approval of draft assessment order u/s 153D of the Act. The Id. JCIT has accorded approval for the said draft assessment order on the very same day i.e. on 27.03.2015 for various assessment years for 232 files on a single day. In any event, whether is it humanly possible for an approving authority like the Id. JCIT to grant judicious approval u/s 153D of the Act for all the assessment years on a single day is the subject matter of dispute before us. Further, we find that similar issue has been addressed by

the Hon'ble Jurisdictional High Court in the case of PCIT vs. Anju Bansal in ITA 368/2023 order dated 13.07.2023 wherein, under similar circumstances, the Hon'ble Delhi High Court categorically held that statutory approval given by a quasi judicial authority without due application of mind as contemplated in section 153D of the Act would be fatal to the entire search assessment proceedings. The relevant operative part of the said order is reproduced below:-

"12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case, we have no hesitation in stating that **there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/-, Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.**

*17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas **in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed and the Addl. CIT while giving his approval has not applied***

his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 143(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

[Emphasis is ours]

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal."

10. The Id. AR also placed on record the recent decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Shiv Kumar Nayyar reported in 163taxmann.com9 (Del) wherein it was held that where order of approval u/s 153D of the Act for relevant assessment year was granted by Additional Commissioner who had granted approval for 43 cases on a single day without perusing the draft assessment orders at all and without an independent application of mind, impugned assessment order was rightly declared to be illegal by Tribunal.

11. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Id. JCIT in the instant case before us in a mechanical manner without due application of

mind, thereby making the approval proceedings by a high ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Jurisdictional High Court (Delhi High Court) referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the ground raised in the Cross Objections of the assessee. Hence the assessment framed for the Asst Year 2013-14 by the Id. AO is hereby declared as void abinitio and is hereby quashed. Accordingly, the ground raised by the assessee in the Cross Objection is hereby allowed.

12. Since, pursuant to the allowing of the Cross Objections of the assessee, the entire assessment framed in the hands of the assessee is to be declared illegal and bad in law, the other legal grounds and grounds on merits raised by the assessee as well as by the revenue need not be gone into, as adjudication of the same would be merely academic in nature and, hence, they are left open.

13. In the result, the appeal of the assessee is allowed, cross objections of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 23/07/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/07/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi