

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

**ITA Nos. 1365 & 1366/Del/2023
(Assessment Years:2012-13 & 2013-14)**

Suvidha Buildtech Pvt Ltd, Plot No. 29, Khasara No. 45/14, mandir Mohalla, Block-c, Village Samaypur (Appellant)	Vs.	ACIT, Central Circle-13, Delhi (Respondent)
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PAN:AAJCS0768H

Assessee by :	None
Revenue by:	Shri N. K. Bansal, Sr. DR
Date of Hearing	23/07/2024
Date of pronouncement	02/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These appeals in ITA Nos.1365 & 1366/Del/2023 for AY 2012-13 and 2013-14, arise out of the order of the Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 26/10339/2018-19 and 26/10353/2018-19 dated 27.09.2022 against the order of assessment passed u/s 153C r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.12.2018 by the Assessing Officer, ACIT, Central Circle-13, New Delhi (hereinafter referred to as 'Id. AO').

2. None appeared on behalf of the assessee. These appeals were listed for hearing on 19.09.2023, 30.11.2023, 14.02.2024 and 06.05.2024 earlier. Even the notice sent by the Registry at the address mentioned in Form 36 could not be served and the same was returned unserved with remarks

“could not be traced”. The registry had also taken efforts to serve the notice through electronic mode in the email mentioned in Form 36, for which also, there is no response from the side of the assessee. Hence, we proceed to dispose of these appeals on hearing the Id DR and based on materials available on record.

3. The assessee raised the following grounds before us:-

"1. The Ld. CIT(A) has erred in not appreciating the fact that there is lack of approval in the instant case u/s 153D of the Act and therefore, order of assessment is nullity

2. The Ld. CIT(A) has erred in not appreciating the fact that in any case, purported approval under section 153D of the Act have been granted without application of mind and is invalid, bad in law and is liable to be quashed. Consequently, assessment orders are vitiated for want of valid approval under section 153D of the Act.

3. The Ld. CIT(A) has erred in not appreciating the fact that the assessment records, seized material and appraisal report must be available before approving authority and approval must reflect the application of mind to the facts of the case and in absence thereof approval granted u/s 153D is not in accordance with law.

4. The Ld. CIT(A) has erred in not appreciating the fact that the approval was granted in short time on the date the request was made for approval by the AO

5. The Ld. CIT(A) has erred in not appreciating the fact that the common approval is invalid

6. The Ld. CIT(A) has erred in not appreciating the fact that the validity of assumption of jurisdiction to frame an order of assessment dated 24.12.2018 u/s 153C of the Act

7. The Ld. CIT(A) has erred in not appreciating the fact that addition/disallowance the made are not based on incriminating material detected as a result of search on the searched person and addition therefore made/disallowance is apparently the notice issued u/s 153C of the Act and, the order of assessment so framed are without jurisdiction

8. The Ld. CIT(A) has erred in not appreciating the fact that the approach adopted by revenue is inconsistent contradictory and,

9. *The Ld. CIT(A) has erred in not appreciating the fact that the addition tantamounts to double taxation and is therefore, not permissible.*

10. *The Ld. CIT(A) has erred in not appreciating the fact that the disallowance of expenditure is factually and legally misconceived*

11. *The Ld. CIT(A) has erred in not appreciating the fact that the lack of enquiry by the learned assessing officer*

12. *The Ld. CIT(A) has erred in not appreciating the fact that no addition can be made on the basis of surmises, suspicion and conjectures*

13. *The Ld. CIT(A) has erred in not appreciating the fact that any document found from third party premises in absence of any corroborative evidence cannot be relied upon to draw any adverse inference against the appellant*

14. *The Ld. CIT(A) has erred in not appreciating the fact that the computation made is otherwise too arbitrary and wholly untenable*

15. *The Ld. CIT(A) has erred in not appreciating the fact that the addition cannot be made merely on the basis of statement of third party recorded behind the back of without providing an opportunity to cross examine such witness, is contrary to the principles of natural justice and any inference drawn on basis of such statements be held unsustainable under law*

16. *The Ld. CIT(A) has erred in not appreciating the fact that the percentage of commission adopted either @ 2.5% or increase on assets and liabilities and 1.5% as revenue items/bank deposits /withdrawals is without any basis and thus untenable*

17. *The Ld. CIT(A) has erred in not appreciating the fact that the addition made on substantive basis in the hands of Mukesh Kumar @ 20% and protective basis in the hands of appellant company @ 80% is also based on no material and grossly untenable*

18. *The appellant crave leave to add, alter or amend any of the grounds before or at the time of hearing."*

4. Identical grounds are raised by the assessee for both the years under consideration. Hence, the facts of AY 2012-13 are taken up and decision rendered thereon on the disputed issues shall apply mutatis mutandis for AY 2013-14 also.

5. We have heard the Id. DR and perused the materials available on record. A search and seizure operation u/s 132 of the Act was conducted on 23.07.2015 and on subsequent dates in different business and residential premises of "Shri Deepak Aggarwal and Shri Mukesh Kumar and Others" Group of cases based at Delhi. This group was found to be group of entry operators providing accommodation entries to beneficiaries. The Id. AO had noted that during the course of search and seizure operation, many incriminating papers/ documents were found related to assessee company. The case of the assessee was centralized with DCIT/ ACIT, Central Circle-13, New Delhi vide order u/s 127 of the Act dated 21.04.2016. After recording satisfaction note, notice u/s 153C of the Act stood issued to the assessee on 30.03.2018. In response to the notice, the assessee company filed its return of income of Rs. 1,04,540/-. The assessment for the AY 2012-13 was completed u/s 153C read with section 143(3) of the Act on 24.12.2018 determining total income of Rs. 53,91,550/-. In the assessment, following additions were made:-

- a. commission income of accommodation entries on substantive basis @2% of amount of share capital, share premium, loans and advances and investments and
- b. commission income @1% on bogus purchases and sales is being made in the hands of Shri Mukesh Kumar.
- c. protective addition of the same amount is made in the hands of the assessee company to the tune of Rs. 28,35,528/-. While determining this amount, the Id AO observed that out of total commission amount of Rs. 35,44,410/-, 20% thereon i.e. 7,08,884/- was attributed towards assessee company on substantive basis and remaining 80% portion of Rs. 28,35,528/- was added on protective basis.

d. The Id AO disallowed expenditure debited in Profit and Loss Account to the tune of Rs. 17,42,589/- as non genuine and bogus expenditure.

6. Before the Id CIT(A), the assessee raised additional ground stating that the approval granted by the Additional CIT u/s 153D of the Act was mechanical in nature and hence, the entire search assessment deserves to be quashed. The Id CIT(A) obtained a remand report from the Id AO on 23.05.2022 with regard to additional evidences filed by the assessee ; additional grounds and various legal issues raised by the assessee. The Id CIT(A) ultimately adjudicated all the grounds raised by the assessee by observing as under:-

"6. Ground NO. 1, 2 & 3: The appellant has raised these grounds which submit that the AO has made addition without appreciating the facts and circumstances of the case as there was no incriminating documents found/ seized during the search and the addition was made only on the ground of statement of Sh. Mukesh Kumar, Sh. Deepak Aggarwal and others recorded u/s 132(4) of the Income Tax Act, 1961 without examining the facts and evidences gathered during or after search operation.

6.1 The appellant submitted that the proceedings u/s 153C was initiated but without examining the fact and circumstances of the case during the search operation u/s 132 conducted on 23.07.2015 in the case of Sh. Deepak Aggarwal, Sh. Mukesh Kumar and other group.

6.2 The Assessing Officer while making the assessment order, he has clearly mentioned that in pursuant to search and seizure action u/s 132 of the Income Tax Act on 23.07.2015 in the case of "Sh. Deepak Aggarwal, Sh. Mukesh Kumar and others", it was found that the group was involved in providing accommodation entries to various beneficiaries. During the course of search a large number of incriminating documents / papers /electronics evidences found and seized. Several persons who were connected with the companies / firms being used by Sh. Deepak Aggarwal ^ and Sh. Mukesh Kumar for the purpose of providing accommodation entries had given their statements confirming that these entities were controlled and run by Sh. Deepak Aggarwal & Sh. Mukesh Kumar for the purpose of providing accommodation entries to the beneficiaries. Sh. Deepak Aggarwal and Sh. Mukesh Kumar had also confirmed the same in their statements given under different sectionfidof Ethee tricole Tax Act, during the course of search operation and in post search investigation.

Several incriminating documents / evidences were also found during the course of search operation which were related to the appellant company.

6.3 Accordingly the Assessing Officer has recorded his satisfaction and notice u/s 153C of the Income Tax Act, was issued on 30.03.2018. In response to the query raised by the Appellant, the A.O. has also responded vide his letter, and after that due process of law has been followed and satisfaction note has been drawn before initiation of the proceedings U/s 153C. The same has also been verified and found to be in the assessment record. From the assessment order it transpires that the A.O. had given several opportunities to the appellant to make submissions on different occasions however the appellant had either submitted part reply or taken adjournments in the fag-end of time barring date and the appellant has not given the complete submission during the course of assessment proceedings. The appellant had just tried to delay the assessment proceedings by raising unnecessary legal issues. In the assessment order there was a clear-cut mention about the Annexure- 'A- 19' (Hard Disk of a desktop computer) were found and seized from the office of Sh. Girish Ch. Sharma, CA in which details of several companies were found which were being managed by Sh. Mukesh Kumar & Sh. Deepak Agarwal for the purpose of providing accommodation entry. The copy of the seized documents is placed on record provided by the AO. These papers/documents related to the appellant company were found and seized during the course of search action u/s 132 of the IT Act from the office premises of Sh. Girish Ch. Sharma, CA. Further, the director of the company Sh. Mukesh Kumar himself has admitted during search/post search and assessment proceedings that he was using the companies name and bank accounts for the purpose of providing accommodation entry. Further, in Para-17 of the assessment order clearly establishes and provide details about how the appellant company is an entry operating company and it has never been denied during the assessment proceedings. The above facts proves that all the affairs were in control of the entry provider Sh. Mukesh Kumar and the directors were dummy directors, otherwise blank minutes of Board meetings/ appointment & resignation of Auditors, tax payments detail etc. could had not been seized from the possession of Sh. Girish Ch. Sharma, CA of the appellant. Further, Sh. Mukesh Kumar was also one of the directors of the company who have already accepted on several occasions, including in the submission made before the AO during the course of assessment proceedings that he has been used the appellant company for providing accommodation entry. Thus, considering the facts discussed above, the plea of the Appellant that "the satisfaction note recorded by the AO of the searched person does not satisfy the statutory preconditions U/s 153C of the Act" is not found to be justified and genuine.

6.4 During the assessment proceedings, the Assessing Officer has disallowed the bogus expenses booked in P & L Account as the assessee is not engaged in any business activities, therefore, the expenses claimed in

P & L Account are not genuine but are bogus expenses. Neither the books of accounts including bills and vouchers were found during the course of search nor the appellant had produced any books of account and bills vouchers during the assessment proceedings, therefore, the transactions made in the bank accounts remains unexplained. Further, in the light of the statements given by its director that the company was involved in providing accommodation entry, it has been a matter of fact that the assessee company was not engaged in any business activities but was operated and managed for providing the accommodation entries by Sh. Mukesh Kumar, thus the expenses claimed are not genuine. The appellant has not provided any proper explanation. Considering the facts and evidences in the case of the appellant, I am unable to support the claim of the appellant. Thus, considering the facts and findings discussed above, Buildtech Private Limited the Ground No.-1, taken by the Appellant are not found to be 2 & 3 tenable and therefore, dismissed.

7. Ground NO. 4, 5, 6 & 7: The appellant has submitted that the assessing officer has erred in making the addition on the protective basis without complying the statutory requirement of issuing show cause notice before making the impugned addition. The assessing officer has erred in making the addition without giving opportunity of being heard to Assessee Company and made the assessment only on the basis of appraisal report of the Investigating officer. The submissions made by the assessee company was not appreciated by the assessing officer while concluding the assessment. The addition was made without cross examining the statements of the other parties. The statement of Sh. Mukesh Kumar, Sh. Deepak Aggarwal and others were not confronted with any of them. The assessing officer has erred in making the addition considering the assessee company as Shell Company and providing the accommodation entries to the beneficiaries without establishing the evidences and cross examine the same.

7.1 From the evidences found during the course of search & seizure action it was squarely proved that the assessee company is only a shell company operated and managed by entry operators i.e. Sh. Mukesh Kumar and Sh. Deepak Aggarwal for providing accommodation entries such as share capital, share application money, share premium, unsecured loans and bogus billing in lieu of certain amount of commission. The AO has discussed the findings in detail in the assessment order that the assessee company was engaged in providing accommodation entry, which was accepted in the statements recorded during the course of search and post search proceedings by Sh. Mukesh Kumar. This fact was corroborated by the various incriminating documents seized / found during the course of search operation and other circumstantial evidences. Sh. Mukesh Kumar, the entry provider who had been controlling the affairs of the appellant company had again and again admitted during search, pre search and post search operations as well as during the course of assessment proceedings that the appellant was engaged in the activities of providing

accommodation entries to various beneficiaries in close association with Sh. Deepak Aggarwal and other associates. Para 17 of the assessment order has clearly summarized the modus operandi and Department's findings leaving no doubt that the appellant company was not an accommodation providing entity.

7.2 Further, para-3 of the assessment order provides the details of the opportunities given to the appellant and non-compliance on the part of the appellant. It is also categorically mentioned that final show cause notice was issued to the appellant on 12.12.2018. It is seen that the appellant itself delayed the filing of documents during the assessment proceedings. Initially, there was no compliance to the notices issued under section 153C. Several opportunities were provided by the AO and for non-compliance on the part of the Appellant penalty notice were also issued U/s 271(1)(b) of the Income Tax Act. The appellant has delayed the filing of the requisite details and till the passing of the assessment order full details were not submitted by it in spite of ample opportunities provided to the appellant.

Thus, the plea of the appellant that assessment order was passed without giving proper opportunity to explain his case and without issuing show cause notice is found to be unjustified and factually incorrect.

7.3 The appellant has also submitted that the additions were made only on the basis of the findings of appraisal report of the investigating officer and without providing opportunity to cross examining the persons who had given statements. The undersigned had issued a letter dated 12.07.2022 to provide some specific details including whether it has asked the assessing officer for any cross examination of the witnesses in this case. But the same was not complied. One more opportunity was given to the appellant to submit the same and a letter in this regard was issued on 05.08.2022 fixing the date of hearing on 18.08.2022, however the appellant failed to submit the specific details asked, however, it has submitted all other legal excuses and submission in support of the claim. The letter dated 12.07.2022 has been annexed below for ready reference:-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

कार्यालय आयकर अपील (अपील)-28
OFFICE OF THE COMMISSIONER OF THE INCOME TAX (APPEALS-28)
2nd Floor, E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055
2nd FLOOR, E-2, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI-110055
फ़ोन/Phone: 011-23631305, ई-मेल/E-mail: delhi.cit.apl28@incometax.gov.in

F.No. CIT(A)-28/Entry Operator Co./ 2022-23/192. Dated 11-12-07-2022

To,

M/s Suvidha Buildtech Pvt. Ltd.
4A-27/420, Gali No.1, Ground Floor, Ganesh Nagar,
Shakarpur, New Delhi-110092.

**Sub: Appeal Nos. 10339, 10353, 10371, 10379 & 10280 in case of
M/s Suvidha Buildtech Pvt. Ltd. (PAN No. AAJCS0768H) for A.Y. 2012-
13, 2013-14, 2015-16, 2016-17 & 2017-18- regarding.**

Kindly refer to the above appeal. You are requested to provide following:

i. Please specify all the premises occupied by your company since 31.03.2008 till 30.02.2019, specifying the use of the premises, the copy of electricity bills/water bill/house tax/ society maintenance/telephone bills/ paid, name & residential address of the senior most employee working at each premises, his role/responsibilities/ monthly salary paid, if salary paid by cheque details of the same, name & address, Telephone Nos. of the person who filed IT/VAT/GST/Service tax/ROC Returns on your behalf and amount of fee paid to him along with details of fee paid to him (if paid by cheque pl. provide details), who was the owner of the premises, if the premises was not owned by you, the following information/document:

- capacity in which you were occupying
- copy of the rent agreement/ any other agreement,
- amount of compensation paid to the owner(if paid by cheque pl. provide details)


ii. Please provide particulars of the persons who were directors (from 31.03.2009 till 31.03.2016) in your company with their roles and responsibilities/ compensation paid, if compensation paid by cheque details of the same and their return of income for the above period.

iii. Please specify all the transactions, including share capital/share application money/share premium, (from 31.03.2009 till 31.03.2016) between your company on one part and any of the companies where Sh. Mukesh Kumar is/was Director. Please furnish copy of the relevant ledger accounts in the books of your company.

2. Also, please state as to whether, during the assessment proceedings, you demanded the cross examination of any of the witness used by the revenue. If yes, please produce evidence to support your contention.

3. The above details may be filed on or before the next date of hearing i.e. **21.07.2022.**

Thanking you,


(Binod Kumar)
Commissioner of Income Tax,
(Appeals)-28, New Delhi

From the above following is proved in the case of the assessee:

1) no sign of real existence of the company or of any activities carried out was noticed during pre-search/search/post search visits to the premises

purportedly connected with the companies managed by Sh. Mukesh Kumar, including the registered office address.

ii) the company was not having any supporting vouchers/bills. Books of account were being manufactured by the CA (Shri Girish Sharma) based on the statement of the bank account(s) and instructions of the director and entry operator (Shri Mukesh Kumar).

iv) the appellant company had no real employees.

v) all the directors (except Shri Mukesh Kumar (entry operator)) of the companies including this one (which were being managed by him for providing accommodation entry) were petty people and were directors only for the namesake.

vi) the company had no specific business premises either owned by it or rented.

vii) the company had no electricity connection in its name.

viii) the appellant company had not been paying any society maintenance bill.

ix) None of the purported director or employee or even Legal consultant was ever paid through cheque.

Therefore, the actions of the AOs in terms of treating these transactions as accommodation entries and disallowing claimed deduction, in the hands of the appellant company, is found to be in order. The addition (in form of disallowing the claimed deductions in respect of purported expenses) have been made because during the assessment proceedings, no details of nature of business were furnished and supporting evidence for incurring such expenses were furnished. During the present appellate proceedings, also, it was not the claim of the AR that such details/supporting documents were furnished, but has raised the legal issues which is not found to be tenable considering the facts on record.

The observations made in the Para-7.1 above and the findings discussed in the assessment order proves beyond doubt that the sale & purchase, share premium and expenses booked in the profit and loss account are not genuine but are only accommodation entries. The AO has discussed in detail about the modus operandi of the company and conclusively proved that the appellant company is an entry providing company.

Accordingly, the assessing officer has computed the total amount of entry passed on in the relevant Financial Year and considering the case of the appellant the commission has been computed @2% on the entry provided in the form of share capital, share premium, loans & advances,

investments and @1% on bogus purchases and sales.80% of such commission has been considered as income in the hands of Sh. Mukesh Kumar on substantive basis and on protective basis in the hands of the assessee company, while 20% of such commission has been added on substantive basis in the hands of the appellant. Accordingly, the A.O. has computed the commission on entries provided as share capital, share premium, loans & advances, investments @2.5% i.e. Rs.24,05,021/- and on the entries reflected in the bank accounts in the form of credit and debit entries at 1.25% i.e. Rs.11,39,397/-. Thus, the A.O. has computed the total commission income at Rs.35,44,410/- for the relevant F.Y.

7.4 Similarly it has been observed that similar view has been taken in all other related companies which have been used for providing accommodation entry by Sh. Mukesh Kumar. The list of such companies has been provided in Para-12 the assessment order in the case of Sh. Mukesh Kumar. The summary of the additions made on substantive basis in the hands of respective companies and in the hands of Sh. Mukesh Kumar has been tabulated below:

SI. No.	Name of the company	Total Commission computed	Commission income added substantially in the hands of the Sh. Mukesh Kumar	Commission income added substantially in the hands of the company
1	GAP Trading & Investment Pvt. Ltd.	3187	3187	0
2	Jai Ambe Foils Ltd.	21715844	21715844	0
3	Karon Information Systems India Pvt. Ltd.	0	0	0
4	Subidha Buildtech Pvt. Ltd.	3544419	2835535	708884
5	First choice Propbuild Pvt. Ltd.	2556360	2045088	511272
6	J K Vehicles Finance Pvt. Ltd.	14821	11857	2964
7	Aravali Infrabuild Pvt. Ltd.	4535368	3628295	907073
8	Bell Flower Infrabuild Pvt. Ltd.	1318758	1055006	263752
9	Mahashiv Metal and alloys Pvt. Ltd.	13670016	10936013	2734003
10	Himgiri Infrabuild Pvt. Ltd.	5258935	4207148	1051787
11	Decent Agencies Pvt. Ltd.	21039770	16831816	4207954
12	Paras Fincap Pvt. Ltd.	1471750	1177400	294350
13	Navdisha International Marketing Pvt. Ltd.	0	0	0
14	Malvin IT Systems India Pvt. Ltd.	0	0	0
15	Melody Enterprises Pvt. Ltd.	0	0	0
16	Emrick Traders India Pvt. Ltd	0	0	0
17	Polo Computers and Softwares Pvt. Ltd.	6220441	4976353	1244088
	Total	81349669	69423542	11926127

7.5 The next relevant question is whether action of charging commission in respect of increase in Share Capital, Share Application & Share Premium and in respect of Debits/Credits entries in Bank account is sustainable?

7.6 The appellant did not submit any specific argument against such action except saying that there is no material to show that commission has been charged. It is noted that during the assessment proceedings (or even during the present appellate proceedings), no details/evidence were furnished to show as to how these were genuine transactions. In fact, during the search/pre-search/Post search enquiries/visits, no sign of genuine activity was seen/noticed. No books of accounts/supporting vouchers were found. As it has already been established and accepted fact that

i) Shri Mukesh Kumar is an entry operator. Shri Mukesh Kumar in his own statement admitted that he was charging commission for such activities.;

ii) The seventeen companies (as per the assessment order dated: 28.12.2018 in the case of Mukesh Kumar) have been used for the purpose of providing accommodation entries,

It was appellant company and its directors who did not comply fully with the statutory requirements till the time and date was very near.

Therefore, the conclusion that the activities of sale/ purchase, receipt of /increase in share capital, debit/credit in the bank accounts are activities of providing accommodation entries cannot be find fault with. In fact, in view of the overwhelming material, including statement of Shri Mukesh Kumar, the preponderance of probabilities is in favour of charging commission in respect of all these transactions. During the assessment proceedings (or during the present appellate proceedings, for that matter), the appellant failed to produce any material to rebut any of the direct and circumstantial evidences against appellants. Also, the appellant failed to submit any material evidence to indicate the contrary conclusion. Therefore, I do not find any infirmity in the actions of the AOs in terms of charging commission in respect of sale/ purchase, receipt of /increase in share capital, debit/credit in the bank accounts.

Since, these activities were basically being carried out by Shri Mukesh Kumar by misusing the bank account maintained in name of the appellant company, the commission would naturally accrue to Shri Mukesh Kumar(in respect of such accommodation entries provided through bank accounts).

In view of the above discussion, the above question is answered in affirmative and consequently, AOs' actions in terms of making additions on the account of commission earned on increase in Share Capital, Share Application & Share Premium and in respect of Debits/Credits entries in Bank account are confirmed.

7.7 The next relevant question is whether action of charging commission in respect of sale/ purchase, receipt of /increase in share capital, debit/credit in the bank accounts maintained in the name of appellant company is sustainable.

The AR also argued that the AO has not made out a case as to how the appellant company has charged commission. I agree with the contention of the appellant's AR that although, the material on record conclusively proves that the transactions were carried out through the bank accounts in the name of the non-descript companies (including the appellant company under consideration) with a view to colour these transactions and to show them as genuine transactions in form of sale/ purchase, receipt/ payment of share capital/share premium/ loan etc. It is also logical to conclude that the commission was being charged from the beneficiaries of these accommodation entries. This commission was being charged in cash. However, it is not proved that any part of this commission was income of the appellant company.

In my considered opinion, none of the material cited in the assessment order suggested that the appellant company were entitled to receive any part of the said commission. In order to assess any part of the said commission in the hands of the appellant company which are artificial juridical persons, either the appellant company should have legal right to receive such part of commission (then, it 'accrues' to the appellant company) or some part the said commission should become property of the company (by way of route of share capital or any other receipt which is claimed to be tax free). Therefore, in spite of confirming the conclusion arrived at by the AO as mentioned earlier, including the following conclusions,

- i) no sign of real existence of the company or of any activities carried out was noticed during pre-search/search/post search visits to the premises purportedly connected with the companies managed by Sh. Mukesh Kumar, including the registered office address.*
- ii) the company was not having any supporting vouchers/bills. Books of account were being manufactured by the CA (Shri Girish Sharma) based on the statement of the bank account(s) and instructions of the director and entry operator (Shri Mukesh Kumar).*
- iv) the appellant company had no real employees.*
- v) all the directors (except Shri Mukesh Kumar (entry operator)) of the companies including this one (which were being managed by him for providing accommodation entry) were petty people and were directors only for the namesake.*

- vi) *the company had no specific business premises either owned by it or rented.*
- vii) *the company had no electricity connection in its name.*
- viii) *the appellant company had not been paying any society maintenance bill.*
- ix) *None of the purported director or employee or even Legal consultant was ever paid through cheque.*

Considering the above findings, I am of the considered opinion that the AO erred in making the impugned addition in terms of charging commission in the hands of the appellant company. Such commission should have been rightly charged in hands of actual beneficiary that is individual accommodation entry operator (Shri Mukesh Kumar).

In view of the above discussion, the above question is answered in negative and consequently, actions of the AOs in terms of making additions of Rs. 35,44,410/- on account of commission (out of which, 80% on protective basis & 20% on substantive basis) in the hands of appellant company is not sustained and hence deleted.

Further, since the 20% of the unaccounted commission (Rs. 7,08,884/-) was added in the case of the appellant on substantive basis, the summary of which has been provided in the table in Para 7.4 above, is not found to be sustainable in the hands of the appellant company and the same should have been considered in the hands of the Individual entry operator, Sh. Mukesh Kumar in respective assessment year. The AO, therefore, may take remedial action u/s 148 r.w. Section 150 of the IT Act, 1961 in the hands of Sh. Mukesh Kumar in the relevant assessment year to make addition of unaccounted commission of Rs. 7,08,884/-. Therefore, in view of the above, these grounds i.e. 4, 5, 6 & 7 of appeals are Partly Allowed.

8. The appellant has taken an additional ground which says that "approval u/s 153D of the Act being mechanical and, invalid approval having been granted without due application of mind to the facts of the appellant and provision of law and therefore, order of assessment is invalid and deserves to be quashed."

In support of this appellant has submitted that "It is submitted that from perusal of section 153D of the Act, it is evident that it provides for approval of learned Additional Commissioner for each assessment year referred to section 153C of the Act. It is submitted that learned Joint Commissioner therefore required to verified and approved that each of assessment year is complies with law as well as procedure laid down under the Act. It is submitted that, for each unabated and abated assessments,

the learned Assessing Officer and the Approving Authority [Additional CIT] shall have to verify the incriminating material found during the course of search or the seized material if pertain to the same assessment year and its basis. It is therefore submitted that, for granting approval under section 153D of the Act, the Approving Authority shall have to verify and consider each assessment year and shall have to apply independent mind to the material on record to see whether in each assessment year there are unabated or abated assessments and their effect, if any. It is however submitted that in the present case, the Approving Authority has granted common approval and, therefore, there is no application of mind on the part of learned Addl. Commissioner of Income Tax Central Range 4, New Delhi while granting common approval instead of granting approval under section 153D for each assessment years separately. Reliance is placed on decision of Delhi Bench of Hon'ble Tribunal in the case of Sanjay Duggal vs. ACIT and others in 1813/D/2019 and others dated 19.1.2021. "The Appellant has also relied upon several other judgements which has been reproduced in the forgoing para.

8.1 Admission to allowing additional ground: The powers conferred on the CIT(A) by the IT Act are much wider than the powers of an ordinary Court of Appeal. Once the assessment comes before the CIT(A), his competence is not restricted to examining those aspects of assessment which are complained of by the assessee but ranges over the whole assessment and it is open for him to correct the AO not only with regard to matter raised by the assessee in appeal but also with regard to any other matter considered by the AO and determined in the course of assessment. In other words, the powers of the CIT(A) is coterminous with that of the AO. He can do whatever the AO can do and can direct the AO to do what he failed to do. Refer: Kanvur Coal Syndicate 53 ITR 225 (SCI In view of this, the Courts have taken a view that there is no reason to justify the curtailment of powers of the CIT(A) to entertain additional grounds of appeal raised by the Assessee in seeking modification of the assessment order passed by the AO. Jute Corp. of India Ltd. 187 ITR 688 (SC) National Thermal Power Co. Ltd. 229 ITR 383 (SC), Ahmedabad Electricity Co. Ltd. 199 ITR 351 (Bom) (FB). Further, the AO in his remand report has also not raised any objection against the additional" ground taken by the assessee. Thus, the additional ground taken is allowed to be considered.

8.2 The AO in his remand report has submitted that:

"The above submissions of the assessee company, are not acceptable as the contentions raised therein are not supported by any documentary evidence. In this respect, it is submitted that before passing original assessment order u/s 153A/153C of the Act, a draft assessment order is to be sent to Additional CIT for obtaining prior approval u/s 153D of the Act. The seized material etc. along with appraisal report are also to be provided to the Addl. CIT having jurisdiction over the case. Thereafter, the Addl. CIT first examines the seized material, applies his mind and then after going

through the draft assessment order, he issues approval u/s 153D of the Act to pass the assessment order through his letter sent to AO. In this process, the assessee company is not called for by the Addl. CIT because it is a departmental internal administrative matter. In view of the facts stated above it cannot be said that no valid approval had been obtained u/s 153D of the Act, for passing original assessment order u/s 153C of the Act. Also, it cannot be said that the assessment made u/s 153C is invalid and not in accordance with law. It can also not be said that the Addl. CIT has granted approval u/s 153D without due application of his mind. A copy of order of approval u/s 153D of the Act granted by the Addl. CIT vide his letter dated 24.12.2018 is also enclosed herewith. It is also important to submit that there is no bar in the Income Tax Act to pass a common order while granting approval by Addl. CIT to the AOs of all circles/Ranges.

Further as per CBDT guidelines as contained in Search and Seizure Assessment (F.No. 286/161/2006-IT (Inv. II) issued on 22.12.2006.

The AO and Range Head should jointly scrutinize the appraisal report and seized material and had to examine:

Cases where notice u/s 153A of the I.T Act, 1961 are required to be issued. Cases where notice u/s 153C of the I.T Act, 1961 are required to be issued.

A detailed questionnaire should be prepared by the AO under the guidance of Range Head mentioning details of the Annexures relating to the seized material.

The final show cause should be prepared in consultation with the Addl. CIT.

Draft order should be prepared in consultation with the Addl.CIT.

Further, it is also needless to mention that the appraisal report was forwarded to the Pr.CIT and Range Head along-with the AO. Further, during assessment proceedings, the AO had forwarded drafted questionnaire to the range head, vide letter dated 04.10.2018 and the Range Head after analysing the draft questionnaire, had approved the questionnaire and sent to the AO vide letter dated 27.10.2018 (copy enclosed), it clearly indicates that the Range Head had gone through the issues involved and the material available with the department which was required to be further clarified by the assessee. It clearly indicates that Range Head had applied his mind and due diligence before giving approval u/s 153D of the Income Tax Act, 1961 during the block assessment of assessee" company. Hence, the approval given by the Range Head with respect to the draft assessment order proposed by the AO cannot be termed as mechanical.

Further, in view of the above as per the CBDT guidelines stated above, the due procedure was followed during block assessment proceedings by AO and Range Head and there was no mechanical procedure adopted. Further, the case-laws relied upon by the assessee company are also of no use."

8.3 The submission of the assessee and the report submitted by the AO is perused. It has been found that the AO has to be in constant touch with the Jt./ Addl. Commissioner for approval of issuance of questionnaires and to discuss the issues involved on a regular basis. It cannot be said that the AO has just sent the draft order to get the approval of it U/s 153D. The Joint Commissioner has complete knowledge of the facts of the cases since the matters are time barring and he/ she regularly interact with the Assessing Officers to get hold of the progress in the cases which he/ she has to approve. The final show cause notice and draft assessment order are also prepared by the AO in consultation of the Joint./ Addl. Commissioner. It appears that the AO has followed the CBDT guidelines stated in above para (8.2) and the due procedure was followed during block assessment proceedings by AO and Range Head and there was no mechanical procedure adopted. From the remand report submitted by the AO it is found that the AO had submitted questionnaire on 04.10.2018 which got approved on 27.10.2018. Further, the AO also submitted that draft assessment order for approval before the Jt./ Addl. Commissioner which was approved as per provision U/s 153D of the IT Act. The appellant cannot say that there was no application of mind just by seeing the approval letter of the Jt./ Addl. Commissioner. It is a well-known fact that AO & Jt./ Addl. Commissioner have to keep interacting regularly and discuss the cases which are being time barred in near future. Many a times, assessee just keep delaying the submissions so that no adverse findings are made or can take flimsy legal grounds before the appellate authorities. In this case too, the assessment order reveals that the assessee was not complying regularly and penalty notice U/s 271(1)(b) of the Act was also issued for non-compliance. The appellant company has also not made full submission as demanded by the AO.

8.4 The appellant further submitted that the assessment record, seized materials and appraisal report must be available before approving authority. It is a normal practice in the department that the draft order is put up along with the assessment records and relied upon documents before the approving authority and the additional copy of the Appraisal Report is already given to the Jt./Addl. Commissioner. Further, from the records it is nowhere evident which proves that these records were not provided to the approving authority.

8.5 Thus, the issue raised by the appellant does not find to be proper and just. The case laws relied upon by the appellant is not applicable in this case as the facts of this case is different. Considering the facts discussed above, it has been held that the approving authority had approved the

assessment order as per provision U/s 153D of the IT Act. Accordingly, the additional ground taken by the Appellant is dismissed.

9. In result the appeal is "Partly Allowed."

7. We find that the Id CIT(A) had elaborately adjudicated grounds raised by the assessee before us. No contrary submissions were made with cogent evidences by the assessee before us to controvert the aforesaid findings of the Id CIT(A). Hence, we do not deem it fit to interfere in the said order of the Id CIT(A). Accordingly, grounds raised by the assessee are dismissed.

8. As stated earlier, identical grounds were raised by the assessee for both the years and hence, the decision rendered by us for AY 2012-13 shall apply mutatis mutandis for AY 2013-14.

9. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 02/08/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 02/08/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi