

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

Sl. No.	I.T.(S.S).A.No.	Name of the Assessee	Respondent	A.Y.	Order appealed against CIT(A), Pune-12 DIN & Order No.ITBA/APL/ S/ 250/2021-22	Proceedings u/ sec.
1.	21/PUN./2021	Shri Subhashappa V. Mukta, 1, Mahadeo Galli, Ausa, LATUR - 413520. Maharashtra. PAN BHXP2747P	The Assistant Commissioner of Income Tax, Central Circle-2, AURANGABAD.	2008-09	1037393730(1) dated 30.11.2021	153A r.w.s. 143(3) of the Income Tax Act, 1961
2.	22/PUN./2021			2009-10	1037393734(1) dated 30.11.2021	
3.	23/PUN./2021			2010-11	1037393735(1) dated 30.11.2021	
4.	24/PUN./2021			2011-12	1037393736(1) dated 30.11.2021	
5.	25/PUN./2021			2012-13	1037393737(1) dated 30.11.2021	
6.	26/PUN./2021			2013-14	1037393740(1) dated 30.11.2021	
7.	ITA.No. 60/PUN./2022				2008-09	1038325104(1) dated 31.12.2021
8.	03/PUN./2022	Shri Ganesh Subhashappa Mukta, 1, Prop of Shri Sairam Petroleum, Ausa, LATUR. PIN - 413 520 PAN BHUPM1096E Maharashtra.	The Assistant Commissioner of Income Tax, Central Circle-2, AURANGABAD.	2008-09	1038317515(1) dated 31.12.2021	153A r.w.s.143(3) of the Income Tax Act, 1961 (in short "the Act").
9.	04/PUN./2022			2009-10	1038317645(1) dated 31.12.2021	
10.	05/PUN./2022			2010-11	1038320571(1) dated 31.12.2021	
11.	06/PUN./2022			2011-12	1038316770(1) dated 31.12.2021	
12.	07/PUN./2022			2012-13	1038319667(1) dated 31.12.2021	
13.	08/PUN./2022			2013-14	1038319924(1) dated 31.12.2021	
14.	09/PUN./2022			2014-15	1038320226(1) dated 31.12.2021	

For Assessee :	Shri Somnath Ghosh and Mrs. J.R. Chandekar
For Revenue :	Shri Ajay Kumar Keshari, CIT

Date of Hearing :	12.09.2024
Date of Pronouncement :	25.09.2024

ORDER

PER BENCH :

These twin assessee's viz., Shri Subhashappa V.
Mukta and Shri Ganesh Subhashappa Mukta, seven appeals

each, arise against the respective order(s) of the learned CIT(A), Pune-12, Pune as tabulated in the above cause title with all the relevant details.

Heard both the parties. Case files perused.

2. Both the sides are indeed *ad-idem* during the course of hearing that all these cases involve sec.153A assessment(s) framed by the department in furtherance to its sec.132 search action dated 27.09.2013 in assessee's and related parties. Learned counsel submits in this factual backdrop that the assessee's first and foremost plea challenges validity of sec.153D approval(s) herein going to root of the matter and therefore, the same is taken-up for adjudication being a fundamental issue.

3. Learned CIT-DR submits that the department has filed its paper book/written submissions wherein we find at page-62 that the learned JCIT, Central Range, herein had granted only a conditional approval dated 18.03.2016 to the Assessing Officer as under :

*“Sub: Approval of draft orders in the case of Shri Santosh
5 Mukta, PAN AJRPM7166R for the Assessment
Years 2008-09 to 2014-15-regarding*

Ref: Your letter dated 17.02.16

Please refer to the above.

2. *Approval u/s 153D of the LT. Act, is granted subject to the compliance of following –*

- a) The order sheet is to be completed properly.*
- b) All submissions made by the assessee are to be placed in the respective folders for the respective assessment years.*
- c) A detailed office note shall be written elaborating the issues raised in the appraisal report, the additions proposed in the appraisal report, the verifications carried out on the issue and the final finding if the AO has decided not to make additions on that issue.*
- d) If the A.O. has made references on any issue in accordance with the instructions of the CBDT issued from F.No.256/161/2006/IT Inv.II) dated 22.12.2006. The replies received should be kept on record. A noting on all such issues should be made in the office note.*
- e) All the office notes (not for assessee) along with the copies of the final assessment orders issued be forwarded to the office for records.*
- f) All references contemplated u/s.153C of the L. T. Act promptly be forwarded to the Assessing Officer having jurisdiction over such other person along with the*

respective books of accounts, documents or assets seized or requisitioned under intimation to this office.

g) Wherever, penalty proceedings u/s.271(1)(c) are initiated, proper explanation below that section shall be invoked. In case penalties initiated u/s.271AAA, the same should be invoked under the respective issue itself as well as at the bottom of the order.

h) The Computation interest u/s 234A, 234B, 234C will be a part of the assessment order itself.

i) Wherever, the A.O. found the provisions of the section 269SS/269T are violated, separate proposal for initiation of penalty proceedings u/s.271D/271E should be submitted.

j) Wherever, necessary, A.O. should forward third party information to the A.O. of such party.

3. The orders along with the demand notice and penalty notices may be served on the assessee before the last date prescribed for completion of assessment and acknowledgement to that effect shall be kept on record.”

4. The Revenue could hardly rebut the clinching fact that not only the above extracted approval is a “conditional” one in nature u/sec.153D of the Act, but also it is found to be a common one for all the impugned assessment years from 2008-2009 to 2014-2015 (supra). That being the clinching

fact, we quote case law Pr. CIT vs. Sapna Gupta [2023] 147 taxmann.com 288 (All.); PCIT vs. Siddharth Gupta [2023] 450 ITR 534 (All.) and PCIT vs. Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Del.) that such a sec.153D approval has to be granted on standalone basis after perusing the entire records for each assessment year instead of treating it as a mere mechanical exercise. This tribunal's recent coordinate bench's order in SMW Ispat (P.) Ltd., vs. ACIT [2014] 112 ITR (Trib.) 224 (Pune) has rejected the Revenue's arguments whilst concluding that a conditional approval than an absolute one is not sustainable in law and therefore, the corresponding assessment(s) framed u/sec.153A of the Act is null and void as under :

17. We find the department of Revenue filed SLP against the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (*supra*) before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to dismiss the SLP © Diary No. 44989/2023. The relevant decision is reproduced as under :

"SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 44989/2023

(Arising out of impugned final judgment and order dated 15-03-2023 in ITA No. 43/2022 passed by the High Court Of Orissa at Cuttack)

ACIT, CIRCLE 1 (2) Petitioner(s)

VERSUS

M/S SERAJUDDIN AND CO. Respondent(s)

(FOR ADMISSION and I.R. and IA No.232700/2023-CONDONATION OF DELAY IN FILING and IA No.232701/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date: 28-11-2023 This petition was called on for hearing today.

CORAM: HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. N Venkatraman, A.S.G.

Mr. Raj Bahadur Yadav, AOR

Mr. Udai Khanna, Adv.

Mr. H R Rao, Adv.

Mr. Akshat Singh, Adv.

For Respondent(s)

Mr. S. Ganesh, Sr. Adv.

Mr. Ramesh Singh, Sr. Adv.

Mr. Gaurav Khanna, AOR

Mr. Venugopal Mohapatra, Adv.

Ms. Natasha Sahrawat, Adv.

Ms. Deepali Bhanot, Adv.

Mr. Rudraksh Pandey, Adv.

Mr. Gautam Barnwal, Adv.

UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

Having regard to facts and circumstances of the case, we are not inclined to interfere in the matter. The Special Leave Petition is dismissed.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA) ASTT. REGUSTRAR-cum-PS

(MALEKAR NAGARAJ) COURT MASTER (NSH)

18. On careful reading of the above, we note that the Hon'ble Supreme Court declined to interfere in the finding recorded by the Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (*supra*) holding that the approval u/s. 153BD is mandatory requirement and such approval is not meant to be given mechanically, further, approval granted mechanically without application of mind vitiates the assessment orders.

19. In view of the above, let us examine the approval dated 21-03-2016 granted by the JCIT which is reproduced hereunder :

GOVERNMENT OF INDIA INCOME TAX DEPARTMENT	OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX CENTRAL RANGE, NASHIK 3 rd Floor, Kendriya Rajaswa Bhawan, Gadkari Chowk, Old Agra Rd, Nashik-2 PHONE 2575611 to 13, 2314063 FAX : 2538994 / 2583884
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No.Nsk/Jt.CIT(C)/153D/Approval/2015-16/1112 Dated: 21.03.2016

To,

The Assistant Commissioner of Income Tax,

Central Circle-2, Aurangabad.

Sub: Approval of draft orders in the case of Mahalaxmi TMT, for the Assessment Years 2008-09 to 2014-15 - regarding

Please refer to the above.

2. Approval u/s. 153D of the I.T. Act, is granted subject to the compliance of following-

- (a) The order sheet is to be completed properly.
- (b) All submissions made by the assessee are to be placed in the respective folders for the respective assessment years.
- (c) A detailed office note shall be written elaborating the issues raised in the appraisal report, the additions proposed in the appraisal report, the verifications carried out on the issue and the final finding if the AO has decided not to make additions on that issue.
- (d) If the A.O. has made references on any issue in accordance with the instructions of the CBDT issued from F. No. 286/161/2006/ IT Inv.II) dated-22.12.2006. The replies received should be kept on record. A noting on all such issues should be made in the office note.
- (e) All the office notes (not for assessee) along with the copies of the final assessment orders issued be forwarded to this office for records.
- (f) All references contemplated u/s.153C of the L T. Act promptly be forwarded to the Assessing Officer having jurisdiction over such other person along with me respective books of accounts, documents or assets seized or requisitioned under intimation to this office.
- (g) Wherever, penalty proceedings u/s.271(1)(c) are initiated, proper explanation below that section shall be invoked. In case penalties initiated u/s. 271AAA, the same should be invoked under the respective issue itself as well as at the bottom of the order.
- (h) The Computation interest u/s 234A, 234B, 234C will be a part of the assessment order itself.
- (i) Wherever, the A.O. found the provisions of the section 269SS / 269T are violated, separate proposal for initiation of penalty proceedings u/s. 271D / 271E should be submitted.
- (j) Wherever necessary, A.O. should forward third party information to the A.O. of such party.

3. The orders alongwith the demand notice and penalty notices may be served on the assessee before the last date prescribed for completion of assessment and acknowledgement to the effect shall be kept on record.

[Dr. Vivek Aggarwal]

Joint Commissioner of Income Tax,
Central Range, Nashik

20. On an examination of the above, we find that approving authority i.e. JCIT having received the alleged draft orders for approval from AO, Aurangabad on 18-03-2016 and accorded his approval on 21-03-2016. The ld. AR vehemently contended the 19th and 20th March, 2016 were Saturday and Sunday holidays, respectively, there is no time left to JCIT to apply his mind in giving approval. On a close examination of the said approval from (a) to (j), we find the same are procedural in nature, but nowhere we find application of his mind with regard to facts and circumstances of the case, number of evidences, documents, statements of various persons etc. The provision u/s. 153D of the Act provides the prior approval of the JCIT is not required merely for direction but over all approval of draft assessments framed by the AO. We are unable to subscribe the arguments of ld. DR that the JCIT/Addl. CIT frequently goes through the seized documents and makes discussion from time to time with AO on his observations being a supervisory authority since the seized documents are running in hundreds of pages. It is not possible for JCIT/Addl. CIT to ask AO to handover the entire documents and details gathered by him for a long time to apply his mind. The requirement u/s. 153D of the Act for obtaining approval the JCIT is not procedural only, but a mandatory requirement as explained Circular No. 3 of 2008 dated 12-03-2008 issued by the CBDT. Further, the above said approval clearly shows is a conditional approval subject to compliance in (a) to (j) which clearly establishes that the approval given by the JCIT was subjected to compliance of various conditions contemplated therein, in our opinion, is invalid where the approving authority is legally required to discharge the statutory obligation provided under law. Further, the provisions u/s. 153D of the Act requires prior approval before passing final assessment order and there is no provision to alter, change, modify, adjust, amend or rework the order once the approval has been granted. In the present case as discussed above, the approval was granted subjected to compliance of conditions therein.

21. In the light of the above, we note that the AO vide paras 6.1, 6.2, 6.3 and 7 of assessment order observed that the important findings noted during the course of search u/s. 132 and the post search inquiries regarding unsecured loans relating to 49 assessments. On perusal of the letter dated 18-03-2016 vide No.ABD/ACIT/CC-1/2015-16/1702 issued by the AO requesting approval from JCIT shows that the AO requested the approval u/s. 153D of the Act in 49 assessments involving A.Ys. 2008-09 to 2014-15. The said request letter shows no proof of number of evidences, documents, statements of various persons were annexed in support of draft assessment orders. In this regard, the Hon'ble High Court of Allahabad in the case of Sapna Gupta reported in [\[2023\] 147 taxmann.com 288 \(Allahabad\)](#) held "it is humanly impossible to go through the records of 85 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." Admittedly, in the present case, 49 assessments are involved from A.Ys. 2008-09 to 2014-15, therefore, in our opinion, it is humanly impossible to go through the records of 49 cases in one day i.e. on 21-03-2016. Further, it clearly shows the office of AO is located in Aurangabad and the office of JCIT is located in Nashik which is according to the ld. AR is about approximately distance 200 Kms. between Aurangabad to Nashik. Further, it shows the inward stamp receiving the said letter on 18-03-2016. The ld. DR also placed on record a copy of approval granted by the JCIT on 21-03-2016. On perusal of the said letter it is noted that the JCIT granted approval subject to the compliance of (a) to (j). On an examination of the same, we note that the JCIT directed the AO to follow the procedures and to conduct the proceedings as per law, it establishes that no discussion whatsoever made by the JCIT in the approval regarding the seized material as the case may be relating to 49 assessments in respect of number of evidences, documents, statements of various persons etc., therefore, we find force in the arguments of ld. AR that the period of time was available to Jt. CIT is only one day which is not enough to look into all the facts and details of search proceedings, the detailed and voluminous orders containing number of evidences, documents, statements of various persons etc. Thus, it clearly suggests there was no sufficient time for the JCIT to look into to all the evidences, documents, statements of various persons in one day i.e. 21-03-2016 as 19-03-2016 and 20-03-2016 being Saturday and Sunday, holidays. Therefore, the approval granted by the Jt. CIT clearly lacks any application of mind and the approval granted in mechanical manner cannot be said to be valid approval taken in the eye of law. Therefore, the JCIT as being approving authority without application of mind and without verifying details, granted approval u/s. 153D of the Act in a most mechanical manner, of which, in our opinion, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act is vitiated for want of nonapplication of mind.

22. The ld. AR placed on record the decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. reported in [\[2015\] 56 taxmann.com 390/231 Taxman 73 \(Madhya Pradesh\)](#) which is at Page No. 160 of case laws paper book. On a careful examination of the same, we note that in pursuance of search, the assessments processed u/s. 143(1) of the Act were reopened by issuing a notice u/s. 148 of the Act on the basis of certain reasons recorded. The assessee objected to the

same before the Assessing Officer, which was rejected. The Assessing Officer completed the assessment u/s. 143(3) r.w.s. 147 of the Act. The CIT(A) quashed the said reassessment by holding the action of JCIT in according sanction was without application of mind which was done in a mechanical manner. The ITAT upheld the order of CIT(A). The Hon'ble High Court of Madhya Pradesh dismissed the appeal of Revenue by observing no question of law involved warranting reconsideration. The relevant extract of the said decision as under for ready reference :

"7 . We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (*supra*), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (*supra*), we see no question of law involved in the matter, warranting reconsideration.

11. The appeals are, therefore, dismissed."

23. We find the Department of Revenue filed SLP before the Hon'ble Supreme Court against the decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. (*supra*). The Hon'ble Supreme Court dismissed the SLP in favour of the assessee which reported in [\[2015\] 64 taxmann.com 313/\[2016\] 237 Taxman 378 \(SC\)](#) which is at page No. 162 of the case laws paper book. We find the facts and circumstances relating to challenging the approval granted by the JCIT on 21-03-2016 are similar to the facts in the case of S. Goyanka Lime & Chemicals Ltd. (*supra*) before the Hon'ble High Court of Madhya Pradesh. Therefore, the ratio laid down by the Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime & Chemicals Ltd. (*supra*) which was confirmed by the Hon'ble Supreme Court is applicable to the facts on hand, therefore, the approval granted by the JCIT on 21-03-2016 is invalid, consequently, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act is liable to be quashed.

24. Further, the Hon'ble Supreme Court in the case of *Sahara India (Firm)* reported in [\[2008\] 216 CTR 303/300 ITR 403/169 Taxman 328 \(SC\)](#) at page No. 142 of the case laws paper book, while discussing the requirement of prior approval, opined that 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. The Hon'ble Supreme Court was pleased to hold 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.

25. In view of our discussion made here-in-above, considering the submissions of Id. AR, Id. DR, case laws relied on and respectfully following the decision of Hon'ble High Court of Orissa in the case of M/s. Serajuddin & Co. (*supra*) which was confirmed by the Hon'ble Supreme Court vide order dated 28-11-2023 in SLP(C) No. 026338/2023, we hold that the approval dated 21-03-2016 granted by the JCIT u/s. 153D of the Act is without application of mind, therefore, invalid under law. Consequently, the final assessment order dated 30-03-2016 passed u/s. 143(3) r.w.s. 153A of the Act fails and is quashed.

26. In view of our decision in ground No. 1 in quashing final assessment order dated 30-03-2016, ground Nos. 2 to 4 becomes academic, requiring no adjudication.

4.1. It lastly emerges that case law ACIT vs. Serajuddin & Co. [2023] 454 ITR 312 (Orissa) has further settled the issue in assessee's favour and against the department that an assessment framed *post-facto* sec.153D invalid approval deserves to be quashed only. We accordingly hold in light of all the foregoing facts as well as various judicial precedents that all the impugned sec.153A assessments herein, all dated 22.03.2016, are not sustainable in law and therefore, the same stand quashed in very terms since not framed after a valid approval u/sec.153D of the Act. Ordered accordingly.

All other pleadings on merits stand rendered academic in these cases.

5. These instant twin assessee's all cases; except ITA.No.60/PUN./2021 are accepted in very terms. This remaining appeal [ITA.No.60/PUN./2021] involving sec.271 penalty proceedings also follows the suit as this penal action has no legs to stand to anymore as we have quashed the quantum assessment itself. Ordered accordingly.

6. To sum-up, these twin assessee's seven appeals each i.e., I.T.(S.S)A. Nos.21, 22, 23, 24, 25, 26/PUN./2021 and ITA.No.60/PUN./2022; I.T.(S.S.)A.Nos.03 to 09/PUN./2022 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 25.09.2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune, Dated 25th September, 2024

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, "B" Bench, Pune.
5. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.