

**THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
& MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 361/Del/2019
(Assessment Year 2014-15)**

M/s Aashiyana BuildmartPvt. Ltd. B-20, 21, 22, Sector-16, Noida, Uttar Pradesh - 201301	Vs.	Dy. Commissioner of Income Tax, Central Circle, Noida
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAGCA1134L		
Appellant	..	Respondent

Appellant by :	Sh. Sandeep Jain, CA
Respondent by :	Sh. Sujit Kumar, CIT (DR)

Date of Hearing	12.06.2024
Date of Pronouncement	06.09.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 12.07.2018 passed by the CIT(A)-IV, Kanpur, under Section 153A r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') arising out of the Assessment Order dated

30.12.2017 passed by the Ld. DCIT, Central Circle, Noida for Assessment Year 2014-15.

2. The appeal is barred by limitation and therefore, the assessee has filed an application for condonation of delay in preferring the appeal before us wherein it appears that consequential to the Assessment Order passed by the DCIT, all bank accounts were seized by the department for recovery of outstanding demands due. Apart from that the projects suffered huge losses. Due to shortage of funds in running the projects including one of the project site stopped by the mining department at Greater Noida for which substantial time was deputed in releasing the said site and due to that financial crunch and blockage of bank accounts of all major companies and key managerial personnel, the assessee was unable to arrange funds to deposit fees for filing the appeals before us and hence the delay. The above statement has also been reiterated before us by the Ld. Counsel appearing for the assessee which seems to be true and sufficient to grant relief in condoning the delay in preferring the appeal filed by the assessee before us. Hence, the delay is condoned.

3. The assessee before us has challenged the impugned order on few grounds including the additional grounds challenging the validity of the approval taken under Section 153D of the Act as the same has been obtained in a mechanical manner. According to the assessee the approval under Section 153D of the Act has to be separate in each Assessment Year and the same cannot be a

common approval. Since, this additional ground goes to the root of the matter which clearly appears from the proceeding before the lower authorities with complete facts on records relying on the judgment passed by the Hon'ble Apex Court in the case of National Thermal Power Company Ltd. Vs. CIT, reported into 229 ITR 383 (SC) this additional ground is admitted.

4. The brief facts of the matter are that a search and seizure operation under Section 132 of the Act was conducted on 30.09.2015 in Airwil Group of Cases wherein certain documents were found and seized belonged to the assessee. Notice under Section 153A of the Act was issued and the issue was finalized upon making addition which was further confirmed by the First Appellate Authority and thus impugned before us.

5. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that the approval was done along with 110 in a single day on 29.12.2017 and it was communicated on the same date, details whereof has been submitted before us. Needless to mention that the Ld. D.R has failed to controvert the said document which clearly establishes the fact of granting approval of 110 cases at a time. Nowhere of the said documentsspeaks about draft assessment orders were perused/verified/examined or that there was any independent application of mind by the approving authority. If that view of the matter, the approval of the draft assessment order is invalid and

non-est in the eye of law. The final assessment on the basis of invalid approval is, therefore, liable to be quashed as the crux of the arguments advanced by the Ld. A.R. In this regard, he has further relied upon by the Hon'ble Delhi High Court in the case of PCIT vs. Shiv Kumar Nayyar. The relevant observation made by the Hon'ble Delhi High Court is as follows:

“17. Notably, the order of approval dated 20.12.2020 which was produced before us by the Learned Counsel for the assessee clearly signifies that a single approval has been granted for AYs. 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration.”

6. Keeping in view, the facts of the matter as narrated in the judgment passed by the Hon'ble Delhi High Court, we find no mentioning of perusal of the draft assessment order by the concerned authority and no separate application of mind in the instant case in hand while granting approval altogether 110 assessment orders in a single day the same is nothing but the product of total non-application of mind and therefore, relying on the ratio laid down by the Hon'ble Delhi High Court, we do not hesitate to find the same arbitrary, erroneous and thus, liable to be treated as non-est in the eye of law. The Assessment Order passed

on the basis of such approval is therefore, found to be without any basis and thus, quashed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06.09.2024

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 06.09.2024

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI