IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA No.2019/DEL/2022
(Assessment Year: 2016-17)

Sandhya Sharma, 1168, Kucha Mahajani, Chandni Chowk, Delhi – 110 006. **(PAN : AJTPS6309N)**	vs.	ACIT, Central Circle 14, New Delhi.

ITA No.2407/DEL/2022
(Assessment Year: 2016-17)

ACIT, Central Circle 14, New Delhi.	vs.	Sandhya Sharma, 1168, Kucha Mahajani, Chandni Chowk, Delhi – 110 006. **(PAN : AJTPS6309N)**
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Lalit Mohan, CA
Shri Parth Singhal, Advocate
REVENUE BY : Shri Dharm Veer Singh, CIT DR.

Date of Hearing : 27.08.2024
Date of Order : 16.10.2024

O R D E R

PER S.RIFAUR RAHMAN, AM:

1. These cross appeals are filed by the assessee and Revenue against the order of ld. Commissioner of Income-tax Appeals-27, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 19.07.2022 for AY 2016-17.

2. In the Department's appeal, at the time of hearing, ld. DR for the Revenue brought to our notice page 3 of the assessment order and submitted that the assessment was reopened based on the information received from ITO, Ward 47 (4) that Shri Shambhu Dayal Sharma who was indulged in providing accommodation entry in the garb of bullion business. Based on the above information, Assessing Officer after obtaining proper approval, reopened the assessment and found that assessee has made sale of Rs.11,12,37,624/- to Shambhu Dayal Sharma. He observed that the sales are totally bogus because Shambhu Dayal Sharma during his assessment proceedings failed to substantiate that he has purchased gold bar in Delhi and sold them at Satna and Rewa. Based on the findings in the case of Shambhu Dayal Sharma and his statement, the assessee was asked to explain why the same should not be treated as bogus entry provided by Shambhu Dayal Sharma. However, AO of the view that the assessee failed to justify with proper evidences, accordingly, ld. DR supported the findings of the Assessing Officer and submitted that the assessee has converted his own cash by getting accommodation

entries from Shambhu Dayal Sharma and objected to the findings of the ld. CIT (A).

3. On the other hand, ld. AR also brought to our notice findings of Assessing Officer at pages 16 to 18 of the order and also brought to our notice page 43 of the order of ld. CIT (A). He supported the findings of ld. CIT (A) in paras 10.6 to 10.8 of his order. He submitted that ld. CIT(A) has rightly gave a finding that the purchases and sales invoices were figured in VAT and Assessing Officer has not doubted the purchases made by the assessee nor the VAT paid on purchases/sales made. The Assessing Officer has not doubted the opening stock and closing stock and audited books of account submitted by the assessee. Ld. CIT (A) rightly observed that the Assessing Officer thinks that sales are bogus then Assessing Officer should have rejected the books of account by invoking the provisions of section 145(3) of the Income-tax Act, 1961 (for short 'the Act'), however the same was not done. He submitted that ld CIT(A) gave a finding that when purchases were made by the assessee and are found to be genuine and accepted. The obvious facts are, it should be either effect of corresponding sales or same should reflect in the closing stock. However, Assessing Officer treated the sales of Rs.11,22,37,624/- as bogus but has not increased closing stock of the assessee. Ld. AR for the assessee submitted that after observing the

above findings in his order, ld. CIT (A) proceeded to sustain the extra presumed profit @ 2% on the sales. Accordingly, he directed to sustain the addition of Rs.22,24,752/-. Ld. AR objected to the above said notional addition made by the ld. CIT (A) when the assessee's result was accepted by the Revenue wherein both purchases and sales were forming part of the return of income declared by the assessee. Accordingly, he supported the observations of the ld. CIT (A) and objected to the addition of notional profit.

4. Coming to the assessee's appeal on jurisdictional issue on approval granted u/s 151 of the Act. In this regard, ld. AR brought to our notice page 27 and 37 of the paper book wherein approval form for granting approval u/s 151 is placed on regard as per which Assessing Officer has forwarded the form on 26.03.2019 and ld. JCIT has approved the same merely recording 'Yes' in the allotted column. Ld. AR submitted that the approval granted u/s 151 is mechanical without applying the mind. In this regard, he relied on the decision of Hon'ble Delhi High Court in the case of Vinod Kumar Solanki vs. ACIT in WP (C) 4196/2022 order dated 14.08.2024 which is placed at page 150 of the paper book. He specifically brought to our notice page 155 of the paper book wherein Hon'ble High Court has considered similar issue and quashed the reassessment.

5. On the other hand, ld. DR for the Revenue vehemently opposed the above said submissions made by the ld. AR for the assessee. He referred to the approval granted by the JCIT which is placed at page 37 of the paper book. He submitted that it is not the case that 'Yes' alone is recorded whereas records were maintained by his office and reviewed continuously. He relied on the following cases and tried to distinguish the submissions made by the ld. AR for the assessee as under:-

> "I. HIGH COURT OF DELHI in the case of Principal Commissioner of Income-tax-6 v. Meenakshi Overseas Pvt. Ltd. [ITA 651/2015] (Copy Enclosed)
>
> > "Para 16. the Court finds that they are distinguishable in their application to the facts of the present case. It is not as if the Additional CIT here has merely appended his signature without specifically noting his approval. This is also not a case where a "Yes" rubber stamp has been used as was in the case of Central India Electric Supply Co. (supra). For the purpose of Section 151 (l) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151 (1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled. Additionally, by his letter dated 22 March, 2011 the Additional CIT confirmed and reiterated his approval already granted on the Form ITNS-10."
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> Thus, in the above case, Honorable Delhi High Court has considered use of phrase 'Yes, I am satisfied' as sufficient enough mandate for section 151 (2) of the Income tax Act.

II. HIGH COURT OF DELHI in the case of Experion Developers (P.) Ltd Vs. Assistant Commissioner of Income-tax [2020]115 taxmann.com 338 (Delhi)

> "42. Further, it is the case of the petitioner that there was no independent application of mind by the sanctioning authorities for according approval. Whilst it is the settled position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Calcutta High Court in Prem Chand Shaw (Jaiswal) v. Asstt. CIT [2016] 67 taxmann.com 339/238 Taxman 423/383 ITR 597, the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151 (2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. The decision in United Electrical Co. Pvt. Ltd. (supra), as relied upon by the petitioner is distinguishable from the present case, as in the said case, there was no material on record to provide foundation for Assessing Officer's reasons to believe. Therefore, it was held that the recording of the satisfaction by the AO was unjustified and without independent application of mind. However, there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the Principal Commissioner is satisfied with the reasons recorded by the AO. Similarly, in Virbhadra Singh v. Deputy Commissioner "Circle Shimla [2017] 88 taxmann.com 888 (HP) where the competent authority was in agreement with the reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded with proper application of mind, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 1471148 was held to be valid. 43. Therefore, it is clear that necessary

> sanction for issuance of notice under section 148, as required under section 151 had been obtained"

III. HIGH COURT OF DELHI in the case of Principal Commissioner of Income-tax-7 v. Pioneer Town Planners (P.) Ltd. [2024]160 taxmann.com 652 (Delhi) (Copy Enclosed)

In this case, observation of Hon'ble Delhi High Court in Para 22 of the order again confirms the ration laid down in the case of Principal Commissioner of Income-tax-o v. Meenakshi overseas Pvt Ltd. [ITA 651/2015].

In the other word Hon'ble High Court recognized that, the use of phrase "Yes I am satisfied" will II the mandate of the section 151 of the IT act. The said Para 22 of the order is reproduced as under :-

> " 22. So far as the decision relied upon the Revenue in the case of Meenakshi Overseas Pvt. Ltd. is concerned, the same was a case where the satisfaction was specifically appended in the proforma in terms of the phrase- "Yes, I am satisfied". Moreover, paragraph 16 of the said decision distinguishes the approval granted using the expression "Yes" by citing Central India Electric Supply, which has already been discussed above. The decision in the case of Experion Developers P. Ltd. would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval "

IV. ITAT DELHI BENCH in the case of Karishna Devi V.ITO, ward-38(3) [ITA NO.6356IDELl2019] (Copy Enclosed)

Vide aforesaid decision, the Hon'ble ITA T Delhi had occasion to discuss the requirement of See 151(2) of the LT. Act from the point of view of remark of the approving authority while granting approval. Hon'ble ITAT decided the similar issue in favour of the Revenue after taking

cognizance of decisions of Hon'ble High Court dealing with this issue as under:

> Para 36.
>
> "Further, it is the case of the Ld.AR that there was no independent application of mind by the sanctioning authorities for according approval. Whilst it is the settled position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Hon'ble Calcutta High Court in Prem Chand Shaw (Jaiswal) vs. ACIT 383 ITR 597, the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151 (2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires."
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> Para 40.
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> "Similar view has been expressed by the Hon'ble High Court of Delhi in the case Experion Developers Pvt. Ltd . Vs. ACIT 115 Taxman 338. "

4.3 As argued during the course of hearing, it is evident from the page No. 37 of Paper Book filed by the assessee that the satisfaction has been recorded by the Approving Authority i.e. Joint CIT on 26.03.2019 by making following noting/remark in the prescribed pro-forma.

"Yes, I agree with the reasons recorded by AO. In my considered view it is a fit case for the issue of notice u/s 148 of the Income Tax Act, 1961."

(Emphasis supplied)

The above noting has been made by the approving authority on the basis of reason recorded by the Assessing Officer. In

> view of ratio laid down in above mentioned decisions, the approval given by the Joint CIT under Section 151 (2) of the Act is in accordance of the provisions of the I.T. Act and the issue raised by the assessee is found to be squarely covered in favour of the Revenue by aforesaid decisions of Hon'ble High Court of Delhi and ITAT, Delhi."

6. Considered the rival submissions and material placed on record. First let us take up the department appeal, we observed that the AO has considered the information in the assessment proceedings in the case of Shambhu Dayal Sharma, in which it was found that the purchases and sales declared by him was bogus. Based on such findings, the case of the assessee was reopened and the sales declared by the assessee were treated as bogus. The AO proceeded to make the addition u/s 69A of the Act. We observed that the ld CIT(A) has given clear finding that the AO has not rejected the books of account and accepted the purchases and inventory declared by the assessee, proceeded to make the addition. We are also in agreement with the above findings that the basis of financials submitted by the assessee is the sales and the same was accepted. The net profit declared by the assessee was accepted by the revenue. The AO has taken a presumption that the assessee must have rerouted his own funds. This presumptions is not backed by any material and ld CIT(A) has rightly observed that the assessee must have purchased the gold in grey market and the revenue has not found any discrepancy in the financial result.

Therefore, we do not see any reason to take a different view considering the relevant facts on record. Therefore, we are inclined to dismiss the grounds raised by the revenue.

7. Coming to the issue of approval granted u/s 151 of the Act raised by the assessee, we observed that the assessee has brought to our notice the approval form wherein the JCIT has given approval by merely recording 'yes' in the allotted form and the same was also approved on the same day without discussing anything further. The ld AR submitted before us that the approval is mechanical by relying on the decision of Hon'ble Delhi High Court in the case of Vinod Kumar Solanki (supra). At the same time, ld DR heavily relied on the decisions of Meenakshi Overseas Pvt Ltd (supra), Experion Developers (P) Ltd (supra) and Pioneer Town Planners P Ltd (supra), wherein the issue of reasons recorded by mentioning the words, 'Yes, I am Satisfied'. In which the Hon'ble Delhi High Court has decided the issue in favour of the revenue.

8. After considering the submissions of both sides, we observe that the decision relied by the assessee in the case of Vinod Kumar Solanki (supra) is pronounced on 14.08.2024 in which the similar issue of approval was considered and decided in favour of the assessee by considering the earlier decision which are also relied by the ld DR. It is also fact that the decisions relied by the ld DR were decided prior and

also considered the similar views by the Hon'ble High Court on the issue raised by the assessee before us. Therefore, we are bound to follow the recent decision of the Hon'ble Court and accordingly, we are inclined to decide the issue of mechanical approval that too merely recording as 'yes'. For the sake of brevity, the decision of the High Court is reproduced below:

> "18. We note that dealing with an identical challenge of approval having been accorded mechanically and without due application of mind had arisen for our consideration in the case of The Principal Commissioner of Income Tax-7 vs. Pioneer Town Planners Pvt. Ltd. (2024) SCC OnLine Del 1685, wherein, we had held as follows:-
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> > "13. The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority under Section 151 of the Act for reopening of assessment proceedings as per Section 148 of the Act.
> > xxxx xxxx xxxx
> >
> > 17. Thus, the incidental question which emanates at this juncture is whether simply penning down "Yes" would suffice requisite satisfaction as per Section 151 of the Act. Reference can be drawn from the decision of this Court in N. C. Cables Ltd., wherein, the usage of the expression "approved" was considered to be merely ritualistic and formal rather than meaningful. The relevant paragraph of the said decision reads as under:-
> >
> > > "11. Section 151 of the Act clearly stipulates that the Commissioner of Income-tax (Appeals), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if

> the Commissioner of Income-tax (Appeals) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the Income-tax Appellate Tribunal cannot be disturbed."

18. Further, this Court in the case of Central India Electric Supply Co. Ltd. v. ITO [2011 SCC OnLine Del 472] has taken a view that merely rubber stamping of "Yes" would suggest that the decision was taken in a mechanical manner. Paragraph 19 of the said decision is reproduced as under: -

> "19. In respect of the first plea, if the judgments in Chhugamal Rajpal (1971) 79 ITR 603 (SC), Chanchal Kumar Chatterjee (1974) 93 ITR 130 (Cal) and Govinda Choudhury and Sons case (1977) 109 ITR 370 (Orissa) are examined, the absence of reasons by the Assessing Officer does not exist. This is so as along with the proforma, reasons set out by the Assessing Officer were, in fact, given. However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by an Under Secretary underneath a stamped Yes against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the Income-tax Officer was to be agreed upon, the

least which is expected is that an appropriate endorsement is made in this behalf setting out brief reasons . Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Our opinion is fortified by the decision of the apex court in Union of India v. M. L. Capoor, AIR 1974 SC 87, 97 wherein it was observed as under:

"27.. .. We find considerable force in the submission made on behalf of the respondents that the 'rubber stamp' reason given mechanically for the supersession of each officer does not amount to 'reasons for the proposed supersession'. The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion.

28…. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly reasonable."(emphasis supplied)." just and

19. In the case of Chhugamal Rajpal, the Hon‟ble Supreme Court refused to consider the affixing of signature alongwith the noting "Yes" as valid approval and had held as under:-

"5. ---

> Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

20. This Court, while following Chhugamal Rajpal in the case of Ess Adv. (Mauritius) S. N. C. Et Compagnie v. ACIT [2021 SCC OnLine Del 3613], wherein, while granting the approval, the ACIT "This is fit case for issue of notice under section 148 of - has written the Income-tax Act, 1961. Approved", had held that the said approval would only amount to endorsement of language used in Section 151 of the Act and would not reflect any independent application of mind. Thus, the same was considered to be flawed in law.

21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority under Section 151 of the Act must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment under Section 148 of the Act.

> The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of Section 151 of the Act as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose.
>
> 22. So far as the decision relied upon the Revenue in the case of Meenakshi Overseas Pvt. Ltd. is concerned, the same was a case where the satisfaction was specifically appended in the proforma in "Yes, I am satisfied". Moreover, paragraph 16 of-terms of the phrase the said decision distinguishes the approval granted using the expression "Yes" by citing Central India Electric Supply, which has already been discussed above. The decision in the case of Experion Developers P. Ltd. would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval.
>
> 23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression "Yes" could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of "Yes" in the case of Central India Electric Supply."

19. The decision in "Pioneer" case was followed by us in the case of Principal Commissioner of Income Tax, Central Circle-02 vs. M/s. MDLR Hotels Pvt. Ltd. [ITA 593/2023], wherein, the Competent Authority had granted approval in terms of Section 153-D of the Act to as many as 246 proposed assessments by way of a single letter of approval and we had affirmed the finding of the ITAT that such approval has been granted mechanically without application of mind.

20. As noticed aforesaid, we are of the firm opinion that the PCIT has failed to satisfactorily record its concurrence and by

> no stretch of imagination, the approval granted by common order, could be considered to be a valid approval.
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> 21. Hence for the reasons stated above, we are of the view that the approval granted by PCIT for action under Section 147/148 of the Act is not valid. Consequently, the impugned notice issued by respondent No. 1 under Section 148 of the Act for the AY 2015-16 and the proceedings emanating therefrom are set aside and quashed."

9. Even in this case, the approval was granted from the assessment of another person and merely recorded the reason as 'yes', proceeded to approve the same mechanically. Hence we are inclined to allow the ground raised by the assessee and held to be initiation of proceeding itself is bad in law and accordingly, the assessment made in the case of the assessee is set aside. In the result, appeal filed by the assessee is allowed.

10. In the net result, appeal filed by the revenue is dismissed and appeal filed by the assessee is allowed.

Order pronounced in the open court on this 16th day of October, 2024.

Sd/-	**sd/-**
(SUDHIR PAREEK)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16.10.2024
TS

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)-27, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI