

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'G': NEW DELHI

BEFORE,

SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.1227 & 1228/Del/2022

(ASSESSMENT YEARS: 2011-12 & 2015-16)

Asstt. Commissioner of Income Tax, Central Circle – II, Noida, Income Tax Office, 2 nd Floor, ARTO Complex, Sector-33, Noida, U.P. 201301	Vs.	Shaloo Garg, F-22, F-Block, Model Town-II, Delhi- 110009 PAN-AADPG1563F
(Appellant)		(Respondent)

C.O Nos. & 146/Del/2023&147/Del/2023

(in ITA Nos. 1227/Del/2022 & 1228/Del/2022)

Shaloo Garg, B-16, Sector-2 Noida, Uttar Pradesh 201301 PAN-AADPG1563F	Vs.	Asstt. Commissioner of Income Tax, Central Circle – II, Noida, Income Tax Office, 2 nd Floor, ARTO Complex, Sector-33, Noida, U.P. 201301
(Appellant)		(Respondent)

Appellant by	Sh. Amit Goel, Adv., Sh. Pranav Yadav, Adv.
Respondent by	Ms. Jaya Chaudhary, CIT-DR

Date of Hearing	09/10/2024
Date of Pronouncement	18/10/2024

ORDER

PER YOGESH KUMAR U.S., JM:

Both these appeals filed by the Revenue and the Cross Objections filed by the Assessee are against the order of Learned Commissioner of

Income Tax (Appeals)-4, Kanpur, ["Ld. CIT(A)", for short], dated 14/02/2022 for Assessment Years 2011-12 & 2015-16 respectively.

2. Since the Assessee has filed the above Cross Objections for both the assessment years challenging the Assessment Orders contending that the assessment orders have been passed contrary to provision of Section 153D of the Income Tax Act, 1961 (Act for short), the Cross Objections filed by the Assessee are taken up for hearing. For the sake of convenience grounds of C.O. for A.Y. 2011-12 is reproduced as under:

"1. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the addition of Rs.2,60,32,428/- made by the assessing officer u/s 68 of the Act is beyond the scope of provisions of section 153A of the Act and CIT(A) erred in not holding so."

3. The Id. Counsel for the Assessee arguing on the Ground No.1 of the C.Os. drawn our attention to the letter dated 30/12/2016 addressed by the AO to JCIT seeking approval and the letter dated 31/12/2016 issued by the JCIT to CIT granting single approval in 18 Assessee's case, submitted that the JCIT while granting approval has not examined the facts of the case, which was empty rituals and the same is contrary to the provisions of Section 153D of the Act. Further submitted that the very same approval u/s 153D of the Act dated

31/12/2016 was subject to judicial scrutiny by this Tribunal in the case of M.G. Metalloy Private Limited Vs. DCIT, Central Circle, Noida, in ITA No. 3693/Del/2018 and vide order dated 08/05/2023, the Tribunal has quashed the Assessment Order in respect of another group company i.e. M.G. Metalloy Private Limited. The ld. Counsel has placed reliance on Plethora of judicial pronouncement and sought for allowing the appeal.

4. The ld. Departmental Representative submitted that the granting of approval u/s 153D of the Act is an internal correspondence, which cannot be called in question before the Tribunal, the approval has been granted with due application of mind and after verifying the materials and the Assessee is nowhere prejudiced by the said Approval, therefore, the Ground No.1 of the Assessee in the C.O. is devoid of merit, by relying on the orders of the lower authorities sought for dismissal of the appeal.

5. We have heard the parties and perused the materials. In the present case, a search and seizure operation was conducted u/s 132 of the Act on 11/11/2014 on the premises of Assessee comprising Apple Group of cases. In view of the said search operation, the group cases were centralized to Central Circle, Noida, the jurisdiction order u/s 127 of the Act was also passed by ld. PCIT. The assessment order came to be passed on 31/12/2016 u/s 153A r.w.s 143(3) of the Act.

Prior to passing of the assessment order the AO addressed a letter dated 30/12/2016 seeking the approval u/s 153D of the Act. The ld. JCIT has written a letter 31/12/2016 to CIT granting his approval u/s 153D of the Act in the case of the Assessee along with 17 other Assessee in a single approval order.

6. The very same approval granted u/s 153D of the Act was subject to legal scrutiny by the Coordinate Bench of the Tribunal in ITA No. 3693/Del/2018 (M.G. Metalloy Private Limited Vs. DCIT, Central Circle, Noida), vide order dated 08/05/2023, the Coordinate Bench of the Tribunal allowed the appeal of the Assessee by quashing the Assessment Order in following manner:

“9.2 On perusal of communication dated 30/12/2016 (para 9.1.1) addressed by the AO to the JCIT, the salient features that emerge are

a) The approval is merely a technical approval. The JCIT in the communication letter himself has made a discordant remark that the draft orders have been received on the last date and thus he is having very little time/ no time at his disposal for proper examination of facts of the case or for conducting enquiries etc. The JCIT in its last minute approval letter, in dated 31/12/2016 (para no. 9.1.2) while granting approval under Section 1530, in turn, has again noted that the technical approval has been accorded to pass assessment orders in 18 cases including assessee, for which draft assessment orders were submitted by the Assessing Officer Noida.

b) The JCIT in his approval memo for all 18 cases also directed the AO to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to AY's under reference The JCIT thereafter also observed that the fact of initiation of penalty proceedings, wherever applicable, must also be incorporated in the last para of the order The initiation of correct penalty provisions of the Act under Section

271(1)(c)/ 271AAB as per facts of the case were also directed to be ensured at the end of the AO

c) After taking into consideration the above points, a copy of the final orders passed be sent to the JCIT

d) As many as 18 draft assessment orders including the assessment order of the assessee herein were combined placed before the JCIT in one go seeking statutory approval under Section 1530 of the Act in relation to multiple assessment years of each assessee.

e) No reference to the assessment records being sent along with the draft assessment order to the JCIT stationed long away is found in the communication addressed to JCIT by the Assessing Officer.

1) The communication letter dated 30/12/2016 have been delivered to the Office of JCIT on 31/12/2016 le the very last date of limitation for completion of the assessment. Subject to these broad observations, the approval was granted vide approval memo F NO JCIT/Central Range/Meerut/S&S/1530/2016-17/1477 dated 31/12/2016. By implication, the JCIT, while granting the approval, was not privy to seized material, appraisal report etc. and left the onus of varied compliances to the wisdom of the AO

9.3 From the perusal of the communication made by the AO seeking approval under Section 153D and the approval given under Section 153D thereon by the JCIT, it is seen that the AD has forwarded the draft assessment orders for as many as 5 assessment orders in the case of the assessee along with multiple assessment orders in the case of remaining 17 assessee in one go on the last day of the expiry of limitation for carrying out assessment under Section 153A for endorsement and approval of designated authority Le JCIT to meet the legal requirement imposed under Section 153D of the Act. The JCIT i.e the competent authority, in turn, was forced to grant a combined and consolidated approval for all assessees named therein for all assessment years in promptu on the same day of receipt of the order i.e on 31/12/2016, it is a classic case of approval by giving a complete go bye to the inbuilt safeguards intended by insertion of S. 153D of the Act.

9.4 It may be pertinent to observe at this stage that the impugned assessment order was passed under Section 143(3) r.w.s. 153A of the Act pursuant to search carried out under Section 132 of the Act. For passing such assessment orders, the Assessing Officer is governed by Section

153D of the Act whereby the AO should complete the assessment proceedings and prepare a draft assessment order which needs to be placed before the approving authority i.e Joint/Addl. Commissioner (designated authority giving approval to search assessment under Section 153D of the Act) for his perusal and prior approval. The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law and with underlying factual matrix. The AO is obligated to pass the assessment order exactly, as per approval/directions of the designated authority. It is not open to the AO to modify the assessment order without the knowledge and concurrence of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

9.5 In the instant case, it is a matter of record by the own admission of JCIT that the approval granted is merely technical and without appraisal of evidences or enquiries. Thus fact thus need not be traversed any further in the backdrop of the unequivocal observations made by the JCIT approval granted under Section 153D apparently does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment order thus passed is vitiated in law which illegality cannot be cured

10 in nutshell, the approval under 3. 1530 is repugnant for more than one reasons:

(1) the approval accorded under Section 1530 is admittedly without any occasion to refer to the assessment records and seized materials, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders and consequently suffered from total non-application of mind

(ii) approval granted humdly in a spur involving voluminous assessments spanning over 5 assessment years admittedly a symbolic exercise to meet the requirement of law. The JCIT himself has made such fact abundantly clear without any demur

(iii) The red flag raised by JCIT and unambiguous assertions of the JCIT himself that the approval granted is in the nature of technical approval

and he is having very little time at his disposal for proper examination of facts of the case or for related enquiries says it all and has brought quietus to any different possibility or interpretation. The approving authority himself has thus discredited its own approval.

(iv) abject failure in drawing satisfaction on objective material while giving a combined approval for 5 assessments and also without evaluating the nuances of each assessment year involved The combined approval of several assessee combinedly for multiple assessment years runs contrary to the judgment of the Hon'ble Allahabad High Court in the case of PCIT vs Sapna Gupta judgment dated 12-12-2022 Income Tax appeal no 88 of 2022 The Hon'ble High Court inter alia observed that the compliance of S 1530 qua each assessee and for each assessment year is expected

(v) The mundane approval under Section 1530 in a cosmetic manner gives infallible impression of approval on dotted line and without discharging the onus placed on competent authority thus defeats the intrinsic purpose of supervision of search assessments. Such hawkish approval has thus tarred the assessment and rendered it bad in law.

11 It may be pertinent to observe, Section 1530 bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to conform to the statutory requirements in letter and spirit. As noted in the preceding paragraphs, it is a classic case of collective abdication of statutory responsibility assigned under Act and yet putting civil consequences of onerous nature on a tax payer It is axiomatic from the plain reading of approval memo that the JCIT is in complete dark on facts while being called upon to grant his clearance to the draft assessment orders. It is evident from the CBDT Circular No. 3 of 2008 dated 12.03.2008 that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order The solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional Joint CIT concerned, with his experience and maturity of understanding, should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any

statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 1530 of the Act enjoins due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard. At the cost of repetition, it may be reiterated that in the instant case, the approving authority has granted a mere Technical approval by his own express admission in departure to a substantive approval expected in law. The JCIT rather himself fairly recorded his objections to the fag end supply of draft assessment orders by the AO in bulk for several assessees involving multiple assessment years and effectively claimed that he had no opportunity to peruse the relevant underlying material for effective discharge of duty of supervisory nature owing to last minute supply of draft assessment orders. As discernible from the conjoint approval memo, the sanctioning authority (JCIT) has, in fact, under the force of circumstances, relegated his statutory duty to the subordinate AD, whose action the JCIT, was supposed to supervise as per the scheme of the Act. Manifestly, the JCIT, without any consideration of factual and legal position in proposed additions/disallowances and without contents of appraisal report before him or incriminating material collected in search etc. has buckled under statutory compulsion and proceeded to grant a simplicitor approval with caveats and disclaimers. This approach of the JCIT has ipso facto rendered the impugned approval to be a mere ritual or an empty formality to meet the statutory requirement and can not thus be countenanced in law.

12. The identical issue has been favourably adjudicated in assessee's own case in ITA 3306/Del./2018 order dated 23-06-2021 concerning other AY 2015-16 where co-ordinate bench found total lack of propriety in such statutory approval There are plethora of decisions of various co-ordinate benches including Sanjay Duggal &ors (ITA 1813/Del/2019 &ors; order dated 19.01.2021 which have also echoed the same view on similar fact situation

13. The CIT(A) in para 7 of first appellate order has brushed aside the legal objection summarily merely on an inept & indifferent premise that the assessment order makes mention of the approval from JCIT under 153D of the Act. The cryptic conclusion drawn by the CIT(A) is bereft of

any reasons whatsoever and thus cannot be reckoned to be a judicial finding on the point. The observations so made are not tenable in law

14. In the light of foregoing discussions, We are unhesitatingly disposed to hold that the assessment order for AY 2014-15 in question, in pursuance of a hollow & cosmetic approval accorded under S 153D and undeniably without application of mind, is rendered unenforceable in law and hence quashed.

15. In view of legal objection answered in favour of the Assessee, the aspects of other objections on jurisdiction or merits of additions/disallowance does not call for separate adjudication.

16. In the result, the appeal of the Assessee is allowed.”

6. On careful consideration, we find that the legality or otherwise of the very same approval dated 31/12/2016 issued u/s 153D of the Act has been gone into by the Coordinate Bench of the Tribunal in the case of M.G. Metalloy Private Limited, wherein held that the Sanction accorded under Section 153D of the act as invalid and quashed the Assessment Order. Applying the said Order to the present Appeal with *Mutatis Mutandis*, we hold that the impugned assessment framed pursuant to the very same invalid approval is erroneous, accordingly we set aside the assessment order by allowing the Ground No. 1 of the C.Os. No. 146 and 147/Del/2023 of the Assessee.

7. Since we have set aside the Assessment Orders as invalid, the Ground No.2 in the C.Os. of the Assessee and the Grounds of Appeals of the Revenue require no adjudication.

8. In the result C.O. No. 146 and 147/2023 of the Assessee is party allowed and the Appeals of the Revenue in ITA No. 1227 and 1228/Del/2022 are dismissed.

Order pronounced in the open court on 18/10/2024

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 18/10/2024

Rohit/R.N. Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI