

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एच", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
आअसं.1986 & 1987/दिल्ली/2022 (नि.व. 2016-17 & 2017-18)
ITA Nos.1986 & 1987/DEL/2022 (A.Ys.2016-17 & 2017-18)

Shiv Kumar Nayyar,
C/o Anil Jain DD & Co., 611,
Surya Kiran Building, 19, K.G Marg,
New Delhi 110001
PAN: AAFPN-7499-D

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,
Central Circle-20, Jhandewalan, Delhi 110055

..... प्रतिवादी/Respondent

आअसं.2462/दिल्ली/2022 (नि.व. 2017-18)
ITA No.2462/DEL/2022 (A.Y. 2017-18)

Deputy Commissioner of Income Tax,
Central Circle-20, R.No. 269A, 2nd Floor, ARA Centre,
E-2, Jhandewalan, New Delhi 110055

..... अपीलार्थी/Appellant

बनाम Vs.

Shiv Kumar Nayyar,
2B/12, Road No. 12, East Punjabi Bagh,
New Delhi 110026
PAN: AAFPN-7499-D

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Anil Jain, Chartered Accountant &
Shri Sarveshwar Singh, Advocate
प्रतिवादीद्वारा/ Respondent by : Ms. Nimisha Singh, CIT-DR

सुनवाई की तिथि/ Date of hearing : 14/10/2024
घोषणा की तिथि/ Date of pronouncement: 25/10/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These appeals by the assessee for assessment year 2016-17 and 2017-18 and appeal by the Department for assessment year 2017-18 are taken up together as identical issues are involved in these set of appeals. The appeals are arising from same search and seizure action carried out in the case of assessee on 18.11.2016. The assessee is in appeal against the order of Commissioner of Income Tax (Appeals)-31 (hereinafter referred to as 'the CIT(A)') for AY 2016-17 & 2017-18, respectively. The impugned orders for the respective impugned assessment years are of even date i.e. 18.07.2022.

2. Since in both assessment years under appeal the facts germinate from same search and seizure action, the facts are narrated from appeal of the assessee for AY 2016-17; hence, the said appeal is taken up as a lead case.

ITA No. 1986/Del/2022 for AY 2016-17

3. Shri Anil Jain, appearing on behalf of the assessee submitted that although, the assessee in grounds of appeal has raised multiple grounds assailing jurisdictional issues and additions on merits, at this stage he would be pressing only ground no. 2 challenging validity of approval granted by the Addl. CIT u/s. 153D of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). The Id. Counsel for the assessee narrating facts of the case submitted that the search and

seizure action u/s. 132 and survey operation u/s. 133A of the Act was carried out by the Investigation Wing of the Department on 18.11.2016 on the assessee and Neetu Nayyar. The Assessing Officer (AO) completed the assessment on 30.12.2018 u/s. 153A r.w.s. 143(3) of the Act and on the same date the AO forwarded the draft assessment order for approval to Addl. CIT. The Addl. CIT on 30.12.2018 itself granted approval u/s. 153D of the Act in a mechanical manner without any application of mind. He referred to the letter granting approval by the Addl. CIT at page 4 of the paper book. He pointed that a perusal of the said letter would show that the Addl. CIT in a mechanical manner granted approval in the case of assessee for AYs 2011-12 to 2017-18 as well as in the case of Neetu Nayyar for AYs 2011-12 to 2017-18. He further submitted that the assessee had sought information under RTI Act, 2005 from the Department regarding, how many cases and assessment years the Addl.CIT, Central Range-5, New Delhi has given approval u/s. 153D of the Act on 30.12.2018. As per the reply of the Department dated 24.08.2022 (at page 170-171 of the paper book), the Addl.CIT granted approval u/s. 153D of the Act in eight cases spread over 43 assessment years on 30.12.2018. It is humanly impossible to grant approval in 43 files in a single day after examining each and every file. He further stated that a perusal of the approval granted by the Addl.CIT would show that the Addl.CIT has not even mentioned that draft assessment order has been pursued by him. Thus, the bare minimum requirement for approving authority to go through the draft order has not been undertaken by the Addl.CIT. The Addl.CIT has thus, in a mechanical manner granted approval in the impugned assessment years which is against the

law laid down by various High Courts. He submitted that in assessee's own case for AYs 2011-12 to 2015-16 in ITA No. 1282 to 1285/Del/2020 and 1078/Del/2021, respectively, the Tribunal vide order dated 26.07.2023 quashed the assessment order as the approval u/s. 153D of the Act was granted by the Addl.CIT in a mechanical manner without application of mind. The approval granted by the Addl.CIT for AY 2011-12 to 2015-16 and in the impugned assessment year is the same; hence, the issue raised by the assessee in ground no. 2 of appeal for the impugned assessment year is squarely covered by the decision of the Tribunal in assessee's own case for preceding AYs. He further pointed that against the aforesaid order of Tribunal, the Revenue carried the issue in appeal before the Hon'ble Delhi High Court in ITA No. 285/2014. The Hon'ble High Court vide order dated 15.05.2024 upheld the said decision of the Tribunal and dismissed appeal of the Revenue. He further referred to decision of the Tribunal in the case of Neetu Nayyar in ITA No. 1988 and 1989/Del/2022 for AY 2016-17 & 2017-18 decided on 22.11.2013, wherein the Tribunal after considering the same approval of Addl.CIT dated 30.12.2018 quashed the assessment orders following order of Tribunal in assessee' case in ITA No. 1282 to 1285/Del/2020 (supra). The Id. Counsel asserted that once approval granted by the Addl.CIT dated 30.12.2018 has been held to be unsustainable in the eyes of law being mechanical and without application of mind, the same approval cannot be held valid for other assessment years.

4. Per contra, Ms. Nimisha Singh, representing the department strongly supported the impugned order and prayed for dismissing ground no. 2 of appeal by the assessee. Referring to findings of the CIT(A) in para 8.1.2 of the impugned

order, she submitted that the CIT(A) has categorically recorded the fact that the Addl.CIT was involved in framing of the assessment order in the case of Nayyar group at all stages. The questioner issued in Nayyar group of cases by the AO was revised by the Addl.CIT and specific questionnaire based on the seized material and the appraisal report was prepared. The said specific questionnaire was thereafter approved by the Addl.CIT vide letter dated 05.10.2018. Thus, there was full application of mind by the Addl. CIT in the instant case and he was well aware of the facts and proceedings at the assessment stage. The Addl.CIT had also discussed the response in group cases of assessee in meetings dated 07.12.2018, 20.12.2018 and 26.12.2018 with the AO. The Addl.CIT has also written a letter to the Additional Director of Income Tax (Investigation) on 26.12.2018 requesting for certain clarifications with respect to the seized material in group cases. Therefore, it would be wrong to say that the Addl.CIT had accorded approval in a mechanical manner on 30.12.2018. She stated that in the light of specific findings given by the CIT(A), decisions on which the AR of the assessee has placed reliance are distinguishable. The Id. DR further stated that the Tribunal while adjudicating appeals of the assessee for AYs 2011-12 to 2015-16 vide order dated 26.07.2023 has held the assessment order illegal merely on the basis of language and contents of the approval letter dated 30.12.2018. The finding of facts recorded by the CIT(A) based on office records of the Range Head were not considered by the co-ordinate Bench. The department thereafter filed appeal against the said order in ITA No. 285/2024 (supra) before the Hon'ble High Court. The appeal of the department was dismissed by the Hon'ble High Court placing reliance on the


decisions in the case of PCIT vs. Anuj Bansal in ITA No. 368/2023 decided on 13.07.2023 by Hon'ble Delhi High Court, PCIT vs Sapna Gupta 2022 SCC Online (All.) 1294 and ACIT vs. M/s Serajuddin & Co. 2023 SCC Online (Ori) 992. However, the aforesaid decisions rendered by the Hon'ble High Courts are distinguishable on facts. She thus prayed for dismissing ground no. 2 of appeal and upholding validity of approval granted by the Addl.CIT u/s. 153D of the Act.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the case laws on which the Id. AR of the assessee has strongly placed reliance in support of his contentions.

6. The limited issue before us for adjudication at this stage is with regard to validity of approval granted by Addl.CIT u/s. 153D of the Act. For the sake of completeness ground no. 2 raised by the assessee in appeal challenging approval granted by Addl.CIT u/s. 153D of the Act is reproduced herein below:-

"2. That on the facts and circumstances of the case and the provisions of the law, the Id. CIT(A) has failed to appreciate that the approval by the Addl.CIT u/s. 153D is illegal, bad in law and without application of mind and consequently the assessment order passed requires to be quashed."

7. The assessee has challenged the validity of approval granted by Addl.CIT dated 30.12.2018. Before proceeding further it is relevant to refer to the said approval. The same is extracted herein below for ready reference:-


Office of the
Addl. Commissioner of Income Tax,
Central Range-5, 1st Floor, Room No. Room No. 101
A.R.A. Centre, E-2, Jhandewalan Extn. New Delhi-110055

F.No. Addl. CIT/C.R-5/153D/2018-19/ 1045 Dated: 30.12.2018

To

The Assistant Commissioner of Income Tax,
Central Circle-20,
New Delhi.

Sub: Approval u/s 153D of the Income Tax Act, 1961 for making assessment u/s
153A/143(3)- Nayyar Group of cases.- reg.

Ref: Your letter F.No. ACIT/CC-20/153D/2018-19/3628 dated: 30.12.2018

Please refer to your letter mentioned above, whereby you have submitted draft
assessment orders to be passed seeking approval u/s 153D of the I.T. Act, 1961 in the
following cases:-

S. No.	Name of the assessee	PAN	Asstt. Years	Proceedings u/s
1	Sh. Neetu Nayyar	AAFPN7484A	2011-12 to 2017-18	153A/143(3)
2	Sh. Shiv Kumar Nayyar	AAFPN7499D	2011-12 to 2017-18	153A/143(3)

As proposed, approval to the above draft assessment orders are hereby accorded with
the direction to ensure that the orders are passed well before the limitation. The approval
accorded by the undersigned u/s 153D of the Act should be mentioned in the concluding
para of the draft assessment order. Further, the copies of the final orders so passed be sent
to this office for records. The assessment records in all the above cases are returned
herewith.

Encl: As above.

(M. Barnwal)
Addl. Commissioner of Income Tax,
Central Range 5, New Delhi

30 DEC 2018
RECEIVED
Dy. No. 163

30/12/18

Shiv Shiv Shiv

8. From a bare perusal of the aforesaid approval it is not emanating that the Addl.CIT either in the past or even when proposed assessment order was

forwarded by the Assessing Officer to Addl.CIT has examined the same. The said approval is a combined approval for AY 2011-12 to 2017-18 in the case of assessee and Neetu Nayyar. The co-ordinate Bench in assessee's own case while adjudicating appeal of the assessee in ITA no. 1282 to 1285/Del/2020 and ITA No. 1078/Del/2021 for AYs 2011-12 to 2015-16, respectively vide order dated 26.07.2023 after considering the same very approval and placing reliance on the decisions rendered in the case of M/s Serajuddin & Co. (supra), PCIT vs. Subodh Aggarwal by Hon'ble Allahabad High Court and PCIT vs Anuj Bansal of Hon'ble Jurisdictional High Court (supra) concluded as under:-

“14. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Addl.CIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decision of the Hon'ble Orissa High Court and Hon'ble Allahabad High Court referred to supra. Hence, we find lot of force in the arguments advanced by the Id. AR in support of the additional ground raised for all the assessment years under consideration before us. Accordingly, the additional ground raised by the assessee is hereby allowed.”

Thus, the co-ordinate Bench after examining facts of the case and after considering various Hon'ble High Courts decisions held the approval granted by the Addl.CIT u/s. 153D of the Act unsustainable in the eye of law.

9. The Revenue challenged the aforesaid order before the Hon'ble High Court in ITA No. 285/2024 (supra). The Hon'ble High Court upheld the findings of the Tribunal observing as under:-

17. Notably, the order of approval dated 30.12.2020 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.

19. Consequently, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

10. The assessee has also placed reliance on the order of Tribunal in the case of Neetu Nayyar in ITA no. 1988 & 1989/Del/2022 for AY 2016-17 & 2017-18, respectively. The co-ordinate Bench vide composite order dated 22.11.2013 quashed assessment following order in the case of assessee in ITA no. 1282 to 1285/Del/2020 for AY 2011-12 to 2014-15 (supra).

11. The Revenue before us, has vehemently placed reliance on the findings of the CIT(A) in para 8.1.2 of the impugned order to contend that the Addl.CIT was throughout involved in assessment proceedings and was well aware of the facts right from the beginning. If that be the case, we fail to understand that as to what prevented the Addl.CIT in giving reasons for according approval u/s. 153D of the Act. In identical set of facts in the preceding assessment years the coordinate Bench of the Tribunal in assessee's own case for AY 2011-12 to 2015-16 and in the case of Neetu Nayyar for AY 2016-17 & 2017-18 has quashed the assessment order holding approval u/s. 153D by the Addl.CIT mechanical and without application of mind. The findings of the Tribunal have been further upheld by the

Hon'ble High Court. Once the same very approval u/s. 153D of the Act dated 30.12.2018 has been held to be mechanical and without application of mind, we see no reason to deviate from the view taken by the co-ordinate Bench especially when the view of Tribunal has been upheld by the Hon'ble Jurisdictional High Court. For the foregoing reasons, the approval u/s. 153D of the Act dated 30.12.2018 is held to be invalid, consequently the assessment order based on said approval is vitiated, hence, quashed. The assessee succeeds on ground no. 2.

12. Since, we have allowed appeal of the assessee on jurisdictional issue which goes to the root of validity of assessment order, the other grounds raised by the assessee in appeal on merits become academic, hence, not deliberated.

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

ITA No. 1987/Del/2022 & ITA No. 2462/Del/2022 for AY 2017-18

14. Both sides are unanimous in stating that the factual matrix involved in these cross appeals are identical to assessment year 2016-17. The Id. AR of the assessee has confined his submissions in challenging validity of assessment order based on mechanical approval accorded by Addl.CIT u/s. 153D of the Act. Both sides further stated that the submissions made in AY 2016-17 would equally hold good for assessment year 2017-18, as well.

15. While adjudicating appeal of the assessee for AY 2016-17, we have held the approval accorded by Addl.CIT u/s. 153D of the Act to be unsustainable, the consequent assessment proceedings also get vitiated, hence, liable to be

quashed. The findings given by us while adjudicating appeal of assessee for AY 2016-17 would *mutatis mutandis* apply to present appeal. Ergo, appeal of the assessee stands allowed.

16. Since, we have quashed the assessment order, the appeal of Revenue fails, hence, the same is dismissed.

17. To sum up, appeal of the assessee in ITA Nos. 1986 & 1987/Del/2022 are allowed and appeal of the Revenue in ITA No. 2462/Del/2022 is dismissed.

Order pronounced in the open court on Friday the 25th day of October, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 25/10/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI