

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 3607/Del/2023 : Asstt. Year : 2016-17

ITA No. 3608/Del/2023 : Asstt. Year : 2017-18

ITA No. 3609/Del/2023 : Asstt. Year : 2018-19

G D Goenka Pvt. Ltd., N-85, Connaught Place, New delhi-110001 PAN No. AAACG0865A (APPELLANT)	Vs.	ACIT, Central Circle-15, New Delhi-110055 (RESPONDENT)
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Assessee by	Shri Amit Goel, CA & Shri Pranav Yadav, Adv.
Revenue by	Shri Surender Pal, CIT-DR

Date of hearing:	07.10.2024
Date of Pronouncement:	29.10.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeals have been filed by the assessee against the respective orders passed by the Commissioner of Income Tax (Appeals)-26, [the CIT(A)] New Delhi all dated 20.10.2023 arising from respective Assessment Orders all dated 31.12.2019 passed by the ACIT, Central Circle-15, New Delhi (hereinafter referred to as 'AO') under Section 153A of the Income Tax Act, 1961 (the Act) concerning Assessment Years 2016-17, 2017-18 and 2018-19.

2. As per the grounds of appeal, the assessee has assailed the additions made by the Assessing Officer under Section 153A of the Act on merits of the additions and disallowances. The assessee has also simultaneously alleged that the so called

approval granted by the superior authority under Section 153D of the Act is *non-est* approval being a mechanical and perfunctory approval.

3. When the matter was called for hearing, the Id. Counsel adverted to approval dated 29.12.2019 granted by the Addl. CIT, Central Range-4, New Delhi under Section 153D of the Act to the draft Assessment Orders placed before him by the AO. The Id. Counsel pointed out that a combined & consolidated approval has been given to as many as 58 cases including the Assessment Orders giving rise captioned appeals. Conceivably, the consolidated approval has been given without taking note of the distinguishing feature of different assessments of different assessee. A combined approval dated 29.12.2019 has been cursorily granted based on communication letter dated 28.12.2019 by the AO seeking approval of the Addl. CIT under Section 153D of the Act.

3.1 The Id. Counsel pointed out that in the identical set of facts arising from the same combined approval memo dated 29.12.2019 wherein one of the assessee namely 'Mysore Bhaskara Pankaja' was also placed for approval at Serial No. 15 -16 of such approval memo, the ITAT has discredited such approval and held such approval to be invalid and bad in law. A reference was made to the decision delivered by the Coordinate Bench of ITAT in *Mysore Bhaskara Pankaja Vs. ACIT, New Delhi in ITA No. 3823/Del/2023*, order dated 10.07.2024.

3.2 The Id. Counsel further pointed out that not only combined approval of 58 different cases have been given in a single approval memo in a span of less than 24 hours, many cases involve multiple Assessment Years too. It is beyond human comprehension to grant approval in one go to such multiple cases spanning over different Assessment Years and carrying different issues in few hours. Such stereotyped approval is a pointer to the factum of non-application of mind.

3.3 The Id. Counsel next pointed out that non-application of mind and approval of symbolic nature to the draft Assessment Order is also self-evident. Despite the fact that even the assessed income has not been measured and quantified in the Assessment Order under challenge, the approval has been granted. The Id. Counsel submitted that the approval under Section 153D of the Act is wholly unsustainable in law and consequently the Assessment Order based on such *non-est* approval requires to be quashed at the threshold.

4. The Id. CIT-DR for the Revenue, on the other hand, defended the approval granted under Section 153D of the Act and submitted that as long as the statutory approval has been granted, a presumption would arise in favour of the grantor of the approval that due process of law has been followed and with proper application of mind.

5. We have carefully considered the rival submissions and perused the material placed on record and case laws cited. The legal objection of the transgression of requirements of approval under Section 153D of the Act, *inter alia*, is in controversy.

5.1 Pursuant to search carried out in the premises of the assessee on 26.07.2017, the assessment for A.Y. 2016-17, A.Y. 2017-18 & A.Y. 2018-19 under appeal were *inter alia* carried out under Section 153A r.w.s. 143(3) of the Act. It is noticed from the approval memo issued under s. 153D that in pursuance of the draft Assessment Orders for 7 years i.e. A.Y. 2012-13 to A.Y. 2017-18 and A.Y. 2018-19 by AO for endorsement and approval of the superior authority at the fag end of the limitation period on 28.12.2019 an approval dated 29.12.2019 was granted by the Addl. CIT, Central Range-4, New Delhi under Section 153D of the Act enabling the Assessing Officer to pass the final Assessment Orders. The approval memo apparently suggests that the superior authority has granted a combined and consolidated approval for

multiple Assessment Years pertaining to large number of different assessee (as many as 58 assessee) *in promptu* on the very next day i.e. 29.12.2019.

5.2 It may also be pertinent to observe at this stage that impugned Assessment Orders were passed under Section 153A r.w.s. 143(3) of the Act pursuant to search carried out under Section 132 of the Act. S. 153D provides for approval of the JCIT before passing order under s. 153A of the Act. The prior approval under Section 153D of the Act by the superior authority acts as a statutory safeguard against arbitrary action of the Assessing Officer, if any. In sync with the object and purpose of such safeguards provided under the Act, the approving authority is necessarily required to objectively evaluate the contents of such proposed Assessment Order with utmost care and circumspection on various issues so as to derive his/her informed satisfaction that the proposed action of the AO is in conformity with the subsisting law. The requirement of law is to grant approval not merely as an empty formality for a symbolic act but a mandatory requirement coupled with duty. The AO is obligated to pass the Assessment Order exactly, as per approval/directions of the designated authority. Inevitably, this such approval is contingent upon appreciating of material gathered at the time of search as well as obtained in the course of assessment proceedings.

6. In the backdrop of facts emerging as noted in the preceding paras, it is the contention on behalf of the assessee that approval granted under s. 153D of the Act does not meet the requirement of law and hence impugned Assessment Orders passed in consequence of such *non-est* approval is a nullity in law. The Assessment Orders thus, passed giving rise to captioned appeal are vitiated in law which illegality cannot be cured.

7. In support of charge of *non-est* approval, several contentions have been broadly raised viz.,

- i) Despite absence of quantification of assessed income, the approval under Section 153D of the Act has been accorded mechanically in breach of statutory safeguard.
- ii) Combined and consolidated approval has been granted to the large number of cases involving multiple Assessment Years showing non-application of mind.
- iii) The combined approval has been granted hurriedly in spur in few hours involving voluminous assessment spanning over several Assessment Years and thus, only a symbolic act to meet the requirement of law.

8. We find potency in the contentions raised on behalf of the assessee. The non-application of mind is glaringly demonstrable having regard to the peculiar facts of the case. Admittedly, combined and consolidated approval has been granted to large number of cases involving different Assessment Years and that too before the end of the next day of the requisition from AO seeking approval. A bare glance at the approval so accorded makes it evident that such approval is generic, listless and accorded in a blanket manner without reference to any issue in respect of any of the Assessment years involved in the case of any of the assessee covered in the consolidated approval. Apparently, the approval has been granted on a dotted line without any availability of reasonable time which firms up the belief towards non-application of mind. Besides, the Addl. CIT has failed to note that the AO has not even cared to determine the assessed income.

9. The whole sequence of action towards approval under s. 153D appears to be illusory to merely meet the requirement of law as empty formality.

10. Identical dispute emanating from the same approval memo in question came up for adjudication in the case of *Mysore Bhaskara Pankaja (supra)* wherein the Coordinate Bench of Tribunal has discredited the validity of the approval granted under

Section 153D of the Act in identical circumstances. It was held therein that the approval so granted suffers from vice of non-application of mind and consequently *non-est* in law.

11. In consonance with the view taken in Mysore Bhaskara Pankaja (one of the parties appearing in the approval memo), we hold that approval granted under Section 153D of the Act under challenge do not meet the requirement of law contemplated under Section 153D of the Act. The Assessment Orders passed in consequence of mechanical approval thus, are rendered *non-est* and invalid in the eyes of law and hence requires to be quashed.

12. Consequently, the additions/disallowances made in such invalid Assessment Orders do not call for adjudication on merits.

13. In the result, all the captioned appeals of assessee are allowed.

Order is pronounced in the open court on 29.10.2024

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Date: 29.10.2024

**Subodh Kumar, Sr. PS*/*

**Kavita Arora, Sr. PS*

Copy forwarded to:

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

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR