

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

**BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIALMEMBER**

**ITA No.1326/DEL/2023
(Assessment Year : 2012-13)**

**ITA No.1327/DEL/2023
(Assessment Year : 2015-16)**

**ITA No.1328/DEL/2023
(Assessment Year : 2016-17)**

Aravali Infrabuild Private Limited,
D – 8, O and P, Pocket Aggarwal Chamber,
Dilshad Garden,
Delhi – 110 095.

vs.

ACIT,
Central Circle 13,

(PAN: AAFCA9182R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Javed Akhtar, CIT DR

Date of Hearing : 17.10.2024

Date of Order : 06.11.2024

ORDER

PER S. RIFAUH RAHMAN, AM :

The assessee has filed three appeals against the separate orders of Id. Commissioner of Income-tax (Appeals)-28, New Delhi (hereinafter referred to 'Ld. CIT (A)') all dated 28.10.2022 for Assessment Years 2012-13, 2015-16 and

2016-17.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

3. At the time of hearing, none appeared on behalf of the assessee even though notice was served on the assessee for the hearing. The matter was called several times but none appeared on behalf of the assessee. While going through the record, we observed that the appeal was filed by the assessee on 03.05.2023 and the assessee removed the defects vide letter dated 24.05.2023. Subsequently, six hearing notices were issued through RPAD but none appeared on behalf of the assessee. Further we noticed that no counsel was appointed till date. Therefore, the above details show that assessee is not interested to proceed with the case. Considering the above facts on record, we proceeded to hear the case with the assistance of ld. DR of the Revenue.

4. We take up assessee's appeal in ITA No.1326/Del/2023 for AY 2012-13 as lead case as per which brief facts of the case are, a search and seizure operation u/s 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted on 23.07.2015 and subsequent dates in different business and residential premises of Deepak Agarwal, Mukesh Kumar and others, group of cases based at Delhi. It was found by the Investigation Wing that a group of entry operators were providing accommodation entries to beneficiaries. They found various incriminating

papers/documents and seized during the abovesaid search and seizure operation in the group of cases, as per the statements recorded during the course of search and post-search proceedings, it was found that the group was involved in providing accommodation entries. The AO observed from the record that many incriminating material/documents were found relating to the assessee also. Based on the above findings, notice u/s 153C of the Act was issued and served on the assessee. Subsequently, notices u/s 143(2) and 142(1) were issued and served on the assessee. Based on the incriminating material found during the search and verification during assessment proceedings, the AO came to the conclusion that assessee is only a shell company operated and managed by Deepak Aggarwal for providing accommodation entries such as share capital, share application money, share premium, sale/purchase of security loans etc. in lieu of certain amount of commission. Accordingly, he determined various accommodation entries provided by Deepak Aggarwal and made additions based on the commissions would have earned by him. The Assessing Officer passed the order u/s 153C r.w.s. 143 (3) of the Act on 24.12.2018 by making addition of Rs.36,28,295/- on protective basis to the extent of 80% and addition on substantive basis of Rs.9,07,073/- to the extent of 20% on account of commission income and Rs.7,50,793/- on account of expenses disallowed u/s 37 of the Act.

5. Aggrieved with the above order, assessee preferred an appeal before the Id.

CIT (A) and ld. CIT (A) after considering the detailed submissions of the assessee deleted the protective and substantive addition made by the AO in the hands of the assessee relating to the commission but rejected the additional ground relating to approval u/s 153D of the Act.

6. Aggrieved with the above order, assessee is in appeal before us.

7. At the time of hearing, ld. DR for the Revenue reiterated the findings of the ld. CIT (A) and relied on the order of the ld. CIT (A).

8. Considered the submissions of Ld. DR for the Revenue and material placed on record. Since none appeared on behalf of the assessee and assessee chose not to pursue its case, hence, after analyzing the appeals under consideration, we deem it fit and proper to dispose of these appeals after considering the relevant material on record. We observed that the assessee is in appeal before us on the issue of approval granted u/s 153D of the Act. We observed that ld. CIT (A) on the jurisdictional issue viz. approval granted u/s 153D has given the following findings :-

"8. The appellant has taken an additional ground which says that "approval u/s 153D of the Act being mechanical and, invalid approval having been granted without due application of mind to the facts of the appellant and provision of law and therefore, order of assessment is invalid and deserves to be quashed."

In support of this appellant has submitted that "It is submitted that from perusal of section 153D of the Act, it is evident that it provides for approval of learned Additional Commissioner for each assessment year referred to section 153C of the Act It is submitted that learned Joint Commissioner therefore required to verified and approved that each of assessment year is complies

with law as well as procedure laid down under the Act. It is submitted that, for each unabated and abated assessments, the learned Assessing Officer and the Approving Authority [Additional CIT] shall have to verify the incriminating material found during the course of search or the seized material if pertain to the same assessment year and its basis. It is therefore submitted that, for granting approval under section 153D of the Act, the Approving Authority shall have to verify and consider each assessment year and shall have to apply independent mind to the material on record to see whether in each assessment year there are un-abated or abated assessments and their effect, if any. It is however submitted that in the present case, the Approving Authority has granted common approval and, therefore, there is no application of mind on the part of learned Addl. Commissioner of Income Tax - Central Range 4, New Delhi while granting common approval instead of granting approval under section 153D for each assessment years separately. Reliance is placed on decision of Delhi Bench of Hon'ble Tribunal in the case of Sanjay Duggal vs. ACIT and others in 1813/D/2019 and others dated 19.1.2021. "The Appellant has also relied upon several other judgements which has been reproduced in the forgoing para.

8.1 Admission to allowing additional ground: The powers conferred on the CIT(A) by the IT Act are much wider than the powers of an ordinary Court of Appeal. Once the assessment comes before the CIT(A), his competence is not restricted to examining those aspects of assessment which are complained of by the assessee but ranges over the whole assessment and it is open for him to correct the AO not only with regard to matter raised by the assessee in appeal but also with regard to any other matter considered by the AO and determined in the course of assessment. In other words, the powers of the CIT(A) is coterminous with that of the AO. He can do whatever the AO can do and can direct the AO to do what he failed to do. Refer: Kanvur Coal Syndicate 53 ITR 225 (SC). In view of this, the Courts have taken a view that there is no reason to justify the curtailment of powers of the CIT(A) to entertain additional grounds of appeal raised by the Assessee in seeking modification of the assessment order passed by the AO. Jute Corp. of India Ltd. 187 ITR 688 (SC) National Thermal Power Co, Ltd. 229 ITR 383 (SC), Ahmedabad Electricity Co. Ltd. 199 ITR 351 (Bom) (FB). Further, the AO in his remand report has also not raised any objection against the additional ground taken by the assessee. Thus, the additional ground taken is allowed to be considered.

8.2 The AO in his remand report has submitted that:

"The above submissions of the assessee company, are not acceptable as the contentions raised therein are not supported by any documentary evidence. In

this respect, it is submitted that before passing original assessment order u/s 153A/153C of the Act, a draft assessment order is to be sent to Additional CIT for obtaining prior approval u/s 153D of the Act The seized material etc. along with appraisal report are also to be provided to the Addl, CIT having jurisdiction over the case. Thereafter, the Addl. CIT first examines the seized material, applies his mind and then after going through the draft assessment order, he issues approval u/s 153D of the Act to pass the assessment order through his letter sent to AO. In this process, the assessee company is not called for by the Addl. CIT because it is a departmental internal administrative matter. In view of the facts stated above it cannot be said that no valid approval had been obtained u/s 153D of the Act, for passing original assessment order u/s 153C of the Act. Also, it cannot be said that the assessment made u/s 153C is invalid and not in accordance with law. It can also not be said that the Addl. CIT has granted approval u/s 153D without due application of his mind. A copy of order of approval u/s 153D of the Act granted by the Addl. CIT vide his letter dated 24.12.2018 is also enclosed herewith. It is also important to submit that there is no bar in the Income Tax Act to pass a common order while granting approval by Addl. CIT to the AOs of all circles/Ranges.

Further as per CBDT guidelines as contained in Search and Seizure Assessment (F.No. 286/161/2006-IT (Inv.II) issued on 22.12.2006.

The AO and Range Head should jointly scrutinize the appraisal report and seized material and had to examine:

Cases where notice u/s 153A of the I. T Act, 1961 are required to be issued.

Cases where notice u/s 153C of the I. T Act, 1961 are required to be issued.

- A detailed questionnaire should be prepared by the AO under the guidance of Range Head mentioning details of the Annexures relating to the seized material.

- The final show cause should be prepared in consultation with the Addl.CIT.

- Draft order should be prepared in consultation with the Addl.CIT.

Further, it is also needless to mention that the appraisal report was forwarded to the Pr.CIT and Range Head along-with the AO. Further, during assessment proceedings, the AO had forwarded drafted questionnaire to the range head, vide letter dated 04.10.2018 and the Range Head after analysing the draft

questionnaire, had approved the questionnaire and sent to the AO vide letter dated 27.10.2018(copy enclosed), it clearly indicates that the Range Head had gone through the issues involved and the material available with the department which was required to be further clarified by the assessee. It clearly indicates that Range Head had applied his mind and due diligence before giving approval u/s 153D of the Income Tax Act, 1961 during the block assessment of assessee company. Hence, the approval given by the Range Head with respect to the draft assessment order proposed by the AO cannot be termed as mechanical.

Further, in view of the above as per the CBDT guidelines stated above, the due procedure was followed during block assessment proceedings by AO and Range Head and there was no mechanical procedure adopted. Further, the case-laws relied upon by the assessee company are also of no use."

8.3 The submission of the assessee and the report submitted by the AO is perused. It has been found that the AO has to be in constant touch with the Jt./ Addl. Commissioner for approval of issuance of questionnaires and to discuss the issues involved on a regular basis. It cannot be said that the AO has just sent the draft order to get the approval of it U/s 153D. The Joint Commissioner has complete knowledge of the facts of the cases since the matters are time barring and he/ she regularly interact with the Assessing Officers to get hold of the progress in the cases which he/ she has to approve. The final show cause notice and draft assessment order are also prepared by the AO in consultation of the Joint./ Addl. Commissioner. It appears that the AO has followed the CBDT guidelines stated in above para (8.2) and the due procedure was followed during block assessment proceedings by AO and Range Head and there was no mechanical procedure adopted. From the remand report submitted by the AO it is found that the AO had submitted questionnaire on 04.10.2018 which got approved on 27.10.2018. Further, the AO also submitted that draft assessment order for approval before the Jt./ Addl. Commissioner which was approved as per provision U/s 153D of the IT Act. The appellant cannot say that there was no application of mind just by seeing the approval letter of the Jt./ Addl. Commissioner. It is a well-known fact that AO & Jt./ Addl. Commissioner have to keep interacting regularly and discuss the cases which are being time barred in near future. Many a times, assessee just keep delaying the submissions so that no adverse findings are made or can take flimsy legal grounds before the appellate authorities. In this case too, the assessment order reveals that the assessee was not complying regularly and penalty notice u/s 271(l)(b) of the Act was also issued for non-compliance. The appellant company has also not made full submission as demanded by the AO.

8.4 The appellant further submitted that the assessment record, seized materials and appraisal report must be available before approving authority. It is a normal practice in the department that the draft order is put up along with the assessment records and relied upon documents before the approving authority and the additional copy of the Appraisal Report is already given to the Jt./Addl. Commissioner. Further, from the records it is nowhere evident which proves that these records were not provided to the approving authority.

8.5 Thus, the issue raised by the appellant does not find to be proper and just. The case laws relied upon by the appellant is not applicable in this case as the facts of this case is different. Considering the facts discussed above, it has been held that the approving authority had approved the assessment order as per provision U/s 153D of the IT Act. Accordingly, the additional ground taken by the Appellant is dismissed.”

9. In the background of the aforesaid findings of the Ld. CIT(A), we find that Ld. CIT(A) has observed that it is a normal practice in the department that the draft order is put up alongwith the assessment records and relied upon documents before the approving authority and the additional copy of the Appraisal report is already given to the Jt. /Addl. Commissioner. We further observed that Ld. CIT(A) noted from the records that it is nowhere evident which proves that these records were not provided to the approving authority. Hence, it has been rightly held by the Ld. CIT(A) that approving authority had approved the assessment order as per provisions u/s. 153D of the Act. In absence of any submission or material provided by the assessee, we do not find any infirmity in the findings of the Ld. CIT(A) on the jurisdictional issue of approval u/s. 153D of the Act. Accordingly, the grounds raised by the Assessee are rejected with regard to issue relating to merits of the case in absence of any material on record, we are not able to

adjudicate the same. Accordingly, the appeal filed by the assessee for the AY 2012-13 stands dismissed.

10. Since, the facts in other AYs i.e. 2015-16 & 2016-17 are exactly similar, our above findings in AY 2012-13 are applicable *mutatis mutandis* in AYs 2015-16 and 2016-17. Accordingly, the appeals being ITA Nos.1327 & 1328/Del/2023 for AYs 2015-16 & 2016-17 filed by the Assessee are dismissed.

11. In the result, all the three appeals filed by the assessee stand dismissed.

Order pronounced in the open court on this 6th day of November, 2024.

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

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 06.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-28, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**