

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

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 270/Del/2023 : Asstt. Year : 2007-08

K. Narsimha, G-22, Silver Oaks, Civil Services Officers Welfare Society, Greater Noida, Uttar Pradesh-201306	Vs.	ACIT, Central Circle-3, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. ADZPK3188M		

**Assessee by : Sh. Ramesh Chander, Adv.
Revenue by : Mr. Javed Akhtar, CIT-DR**

Date of Hearing: 28.08.2024

Date of Pronouncement: 18.11.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Delhi-42 dated 13.12.2019.

2. Following grounds have been raised by the assessee:

"1. The Ld. CIT (A) has grossly erred on facts as well as in law in partially confirming the Assessment Order passed by the Ld. AO u/s 263/143(3) which is ex-facie illegal, arbitrary and without jurisdiction.

2 The Ld. CIT (A) has grossly erred on facts as well as in law in ignoring the fact that the Impugned Order is bad in law and is a nullity since the Assessment was framed under a wrong section i.e. section 263/143(3) whereas it should have been passed u/s 153A/263 r.w.s. 143(3) of the IT Act.

3. The Ld. CIT (A) has grossly erred on facts as well as in law in ignoring the fact that the Order passed by the Assessing Officer u/s 263/143(3) of the IT Act in consequence to the Order passed u/s 263 of the IT Act is bad in law and is non-est since the Assessing Officer did not take the necessary approval from his superior officer (JCIT/Addl. CIT) in accordance with

the provisions of section 153D of the IT Act. Since no approval u/s 153D was taken before passing the impugned assessment order it was not mentioned in the body of Assessment Order.

4. The Ld. CIT (A) in the facts and circumstances of the present case had erred in holding that prior approval u/s 153D of the assessment of JCIT Addl. CIT is implicit and not separately required because it is second round of assessment based purely on instructions of authority higher than 3CIT/Addl. CIT.

5. The Ld. CIT (A) had grossly erred in law and in facts in remanding back the issue pertaining to the addition of Rs.8,41,000/- on account of (unexplained cash credits to the file of the Assessing Officer to verify the cash credits in the bank accounts of the Appellant/Assessee and then delete the addition instead of deleting the same after verification if any since the Ld. CIT (Appeals) himself could have verified the issue being a fact finding authority and having power co-terminus to that of an Assessing Officer.

6. The Ld. CIT (A) had grossly erred in law and in facts in remanding back R the issue pertaining to the addition of Rs.51,35,842/- on account of (unexplained investments to the file of the Assessing Officer to verify the undisclosed sources of the Appellant/Assessee and then delete the addition instead of deleting the same after verification if any since the Ld. CIT (Appeals) himself could have verified the issue being a fact finding authority and having power co-terminus to that of an Assessing Officer.

7. The Ld. CIT(A) had grossly erred in law and in facts in confirming the R Order of Ld. AO who has added back a Rs. 20,20,000/- on account of cash (seized which was found from the locker of hotel 'The Manohar'."

3. Heard the arguments of both the parties and perused the material available on record.

4. At the outset, both the parties fairly submitted that the issue involved in this appeal has already been covered by the order of the Co-ordinate Bench of Tribunal in assessee's own case in,

ITA No. 2407/Del/2018 : Asstt. Year : 2001-02

ITA No. 2408/Del/2018 : Asstt. Year : 2002-03

ITA No. 2409/Del/2018 : Asstt. Year : 2003-04

ITA No. 2410/Del/2018 : Asstt. Year : 2004-05

ITA No. 2411/Del/2018 : Asstt. Year : 2005-06

ITA No. 8283/Del/2019 : Asstt. Year : 2006-07

ITA No. 8284/Del/2019 : Asstt. Year : 2008-09

5. The appeal of the assessee for the current year also involves the same issue. For the sake of ready reference, the relevant part of the adjudication of the above order for all the 7 years is reproduced below:

"21. *The facts are as under:*

- *The search was conducted on 20.10.2006*
- *Assessments u/s 153A have been completed in the regular course.*
- *Order of the Id. CIT u/s 263 was dated 24.12.2010*
- *The order u/s 263 set aside the order of the AO passed u/s 153A with directions to examine the issues.*
- *The issues raised by the Id. CIT like cash deposits and investment in property for A.Y. 2001-02 to A.Y. 2004-05 are found to be without any reference to cash deposits and even in the absence of any cash deposits in the bank account.*
- *Once, the order u/s 153A is modified, revised or set aside, the Assessment Order u/s 153A still continues to hold its original character of assessment u/s 153A.*
- *Hence, the order passed in consequence to the order u/s 263 by the Id. CIT/PCIT would partake and continue to be the order u/s 153A.*
- *Being the order passed u/s 153A, the rigors of the provisions u/s 153D follows.*
- *The Section 153D reads as under:*

"Prior approval necessary for assessment in cases of search or requisition.

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of

section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

- *Hence, it is mandatory to obtain the approval of the JCIT/Addl. CIT for passing the order u/s 153A even in the case of orders passed in consequence to the order u/s 263.*
- *It is borne from the order of the Id. CIT that all the efforts have been made by the Id. CIT(A) to obtain evidences with regard to the documents approving the Assessment Order passed by the Assessing Officer who is below the rank of Joint Commissioner could not yield any result. No evidences could be brought even before us. Hence, owing to the provisions of Section 153D, we have no hesitation to hold that the Assessment Orders passed by the Assessing Officer are legally invalid and liable to be quashed.*

22. *Since, similar issues are involved for the A.Y. 2001-02 to A.Y. 2006-07, the above said ratio is applicable to all the years.*

23. *In the result, owing to absence of incriminating material found and seized and absence of statutory approval u/s 153D, the appeals of the assessee are hereby allowed."*

6. *In the absence of any change in the material facts and legal proposition, the appeal of the assessee is hereby allowed.*

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

Order Pronounced in the Open Court on 18/11/2024.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 18/11/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR