

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1541/Del/2024
(Assessment Year: 2013-14)**

Amit Gupta and Sons HUF,	Vs. DCIT,
A-88, Defence Colony,	Central Circle,
Mawana, Meerut, UP	Meerut
(Appellant)	(Respondent)
PAN:AAGHA5778R	

Assessee by :	Shri Ankit Kumar, Adv Shri Lalit Mohan, CA
Revenue by:	Shri Poojan Rana, Sr. DR
Date of Hearing	18/11/2024
Date of pronouncement	03/12/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1541/Del/2024 for AY 2013-14, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, Noida [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A),Kanpur-4/10462/2017-18 dated 14.11.2023 against the order of assessment passed u/s 153 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2017 by the Assessing Officer, ACIT, Central Circle, Meerut (hereinafter referred to as 'Id. AO').
2. Though the assessee has raised several grounds of appeal in the instant case, the preliminary legal ground raised by the assessee is that assumption of jurisdiction under section 153C of the Act and consequential framing of assessment thereon under section 153C of the Act is bad in law and

accordingly to be treated void ab initio. We deem it fit and appropriate to address this preliminary ground as it goes to the root of the matter.

3. We have heard the rival submissions and peruse the materials available on record. The return of income for the assessment year 2013-14 was filed by the assessee under section 139(1) of the Act on 19-07-2013 declaring total income of Rs.12,69,960/-. A search and seizure action was conducted under section 132(1) of the Act on Devipriya group of cases of Meerut on 01.03.2016. Subsequently an order under section 127(2) of the Act was passed by the learned PCIT, Meerut on 29-3-2017 transferring the case of the assessee to the assessing officer who has passed the order in dispute. A satisfaction note was recorded by the learned AO of the assessee i.e. DCIT Central Circle , Meerut on 11-10-2017 in terms of section 153C of the Act and accordingly notice under section 153C of the Act stood issued to the assessee on 11-10-2017.

4. The assessee filed the return of income on 2-11-2016 declaring total income of Rs 12,69,960/- in response to notice under Section 153C of the Act. Order under Section 153C read with Section 143(3) of the Act was framed on 27-12-2017 determining total income of the assessee at Rs 2,06,20,220/- after making the following additions:-

- a) Addition on account of gain on sale of equity shares through recognized stock exchange treated as income from undisclosed sources under Section 69A read with Section 115BBE of the Act - Rs 1,86,06,022/-
- b) Addition under Section 69C of the Act on account of alleged commission expenditure at the rate of 4 percent for arranging the aforesaid transaction being treated as accommodation entry - Rs 7,44,240/-

5. The appeal preferred by the assessee before the Learned CITA was dismissed by the Learned CITA vide its order dated 14-11-2023. Aggrieved, the assessee is in appeal before us.

6. At the outset, the Learner AR before us placed on record the approval proceedings under section 153D of the Act granted by Learned Joint Commissioner of Income Tax, Central Range, Meerut dated 27-12-2017 which is enclosed in page 64 of the paper book. On perusal of the said approval, we find that the Learner JCIT Central Range, Meerut had granted approval under section 153D of the Act for assessment years 2010-11 to 2016-17 by giving a single consolidated approval. Further, on perusal of the said approval dated 27-12-2017 under section 153D of the Act, it is crystal clear that the Learned AO had merely placed the draft assessment orders before the Learned JCIT while seeking approval under section 153D of the Act and that the copies of seized documents, seized hard disk, pen drive, CDs, computers, laptops, mobile data, etc., which were also part of the seizure were not even furnished before the Learned JCIT for his perusal before granting approval to the draft assessment orders. Accordingly, the Learned AR pleaded before us that the approval granted under section 153D of the Act should be construed as a mechanical approval without due application of mind. In support of this contention, the Learned AR placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Shiv Kumar Nayyar reported in 467 ITR 186 (Del). The relevant operative portion of the said judgment is reproduced here under:-

"9. We have heard the learned counsels appearing on behalf of the parties and perused the record.

"10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying intent of the relevant provision of the Act i.e., section 153D, which is culled out as under :-

*"153-D. Prior approval necessary for assessment in cases or requisition. —
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 153-A] or the assessment year referred to in clause (b) of sub-section (1) of Section 153-B, 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 144-BA."

11. *A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for "each assessment year" referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of Pr. CIT v. Sapna Gupta [2023] 147 taxmann.com 288/[2022 SCC OnLine All 1294] which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- "each assessment year" used in the language of Section 153D of the Act. The relevant paragraphs of the said decision are reproduced as under:-*

"13. It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled. It was held that the "approval" as contemplated under 153D of the Act, requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.

19. The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A."

[Emphasis supplied]

12. *It is observed that the Court in the case of Sapna Gupta (supra) refused to interdict the order of the ITAT, which had held that the approval under Section 153D of the Act therein was granted without any independent application of mind. The Court took a view that the approving authority had wielded the power to accord approval mechanically, inasmuch as, it was humanly impossible for the said authority to have perused and appraised the records of 85 cases in a single day. It was explicitly held that the authority granting approval has to apply its mind for "each assessment year" for "each assessee" separately.*

13. *Reliance can also be placed upon the decision of the Orissa High Court in the case of Asst. CIT v. Serajuddin & Co. [2023] 150 taxmann.com 146/292 Taxman 566/454 ITR 312/SCC OnLine Ori 992 to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-*

"22. As rightly pointed out by learned counsel for the assessee there is not even a token mention of the draft orders having been perused by the Additional Commissioner of Income-tax. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like "seen" or "approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein, (i) the Assessing Officer should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind ; (ii) the final approval must be in writing ; (iii) the fact that approval has been obtained, should be mentioned in the body of the assessment order."

[Emphasis supplied]

14. *During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of Serajuddin & Co. (supra), came to be dismissed by the Supreme Court vide order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.*

15. *A similar view was taken by this Court in the case of Anuj Bansal (supra), whereby, it was reiterated that the exercise of powers under Section 153D cannot be done mechanically. Thus, the salient aspect which emerges from*

the abovementioned decisions is that grant of approval under Section 153D of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.”

7. Considering the above binding precedent, we hold that the approval granted under section 153D of the Act in the instant case need to be construed as a mechanical approval without due and proper application of mind by the Learned JCIT. Further, a single consolidated approval for all the assessment years put together cannot be construed as a valid approval within the meaning of section 153D of the Act. The law mandates approval under section 153D of the Act to be given for each assessment year separately for each assessee after going through the entire seized documents, questionnaires issued by the Learned AO, replies filed by the assessee in response to the questionnaire and draft assessment order prepared by the Learned AO. In the instant case, since only the draft assessment orders were placed by the Learned AO before the Learned JCIT and the other documents were not even placed for the purpose of perusal by the Learned JCIT, the said approval under section 153D of the Act is to be construed as a mechanical approval and consequentially the search assessment proceedings framed under section 153C of the Act need to be held as void ab initio. Similar views were expressed by the Hon'ble High Courts as under:-

- a) *Hon'ble Allahabad High Court in the case of PCIT vs Sapna Gupta reported in 147 taxmann.com 288 (All)*
- b) *Hon'ble Allahabad High Court in the case of PCIT vs Siddharth Gupta reported in 450 ITR 534 (All)*
- c) *Hon'ble Jurisdictional High Court in the case of PCIT vs MDLR Hotels in ITA No. 593/2023 dated 30-7-2024*
- d) *Hon'ble Jurisdictional High Court in the case of PCIT vs Pioneer Town Planners Pvt Ltd reported in [2024 SCC Online Del 1685]*
- e) *Hon'ble Jurisdictional High Court in the case of PCIT vs Anuj Bansal in ITA No. 8/2024 dated 28-3-2024. Against this order, the Special Leave*

Petition (SLP) preferred by the revenue before the Hon'ble Apex Court was dismissed in 466 ITR 254 (SC) dated 11-7-2024.

- f) *Hon'ble Orissa High Court in the case of ACIT vs M/s Serajuddin and Co. reported in 454 ITR 312 (Ori). Against this order, the Special Leave Petition (SLP) preferred by the revenue before the Hon'ble Apex Court was dismissed in SLP (C) No. 44989/2023.*
- g) *Hon'ble Allahabad High Court in the case of PCIT vs Subodh Agarwal reported in ITA No. 86 of 2022 (All)*

8. Accordingly, the ground raised by the assessee in this regard is hereby allowed. Since the entire search assessment framed under section 153C of the Act has been quashed for want of valid approval under section 153D of the Act in the manner known to law, the other legal grounds and grounds raised by the assessee on merits need not be adjudicated as adjudication of the same would become academic in nature. Hence, they are left open.

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

Order pronounced in the open court on 03/12/2024.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated:03/12/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi