

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No:- 349/Del/2019
(Assessment Year- 2014-15)**

M/s Airwill Infra Ltd., 20-21-22, Sector-16, Noida, Uttar Pradesh-201301.	Vs.	DY. Commissioner of Income Tax, Central Circle, Noida.
PAN No: AAKCA0712E		
APPELLANT		RESPONDENT

Assessee by : Shri Sandeep Jain, CA
Revenue by : Mr. Javed Akhtar, CIT(DR)

Date of Hearing : 11.12.2024
Date of Pronouncement : 18.12.2024

ORDER

PER BENCH:

This appeal by the Assessee is arising out of the order of Commissioner of Income Tax (Appeals)-IV, Kanpur, in appeal no. CIT(A)-IV/10851 &10853/DCIT-CC/NOIDA/2017-18/613 & 614 vide order dated 19.11.2018. Assessment was framed by DCIT, Central Circle, Noida for the Assessment Year 2014-15 under

Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.12.2017.

2. At the outset, the Ld. Counsel for the assessee stated that he does not want to press the issue of jurisdiction raised by way of an additional ground i.e., issue of framing the assessment U/s 153A of the Act in the case where the original assessment is unabated and no incriminating material found during the course of search. Since, the assessee is not pressing this issue and has made an endorsement of the same qua that, we dismiss this ground as not pressed.

3. The next ground raised by the assessee, by way of an additional ground is that the approval given by the Joint Commissioner of Income Tax on 29.12.2017 in the assessee's group cases i.e., 110 cases of different assessee was mechanical in manner and not by applying his mind. For this, the assessee has raised the following additional ground no. 2.

" 2. The Ld. CIT(A) has erred in law and in facts as the approval to be taken under section 153D is mechanical. The approval for section 153D of the Income Tax Act, 1961 has to be separate for each assessment year and cannot be a common approval. Further, the approval under section 153D is mechanical in nature."

He argued that this additional ground raised by the assessee is purely jurisdictional and the approval taken by the Department through Assessing Officer for framing the assessment U/s 153D of the Act, which is in mechanical manner. The Ld. Counsel stated that this is jurisdictional issue that go to the root of the matter, and in view of the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Limited Vs. CIT-229 ITR 383 (SC), this ground is to be admitted and to be adjudicated upon.

4. It was the contention of the assessee that the approval granted by the JCIT U/s 153D of the Act is mechanical in manner and not by applying his mind. The Ld. Counsel for the assessee stated that, first of all, the concerned authority has not granted the approval in accordance with the mandate of section 153D of the Act. It was contended that the CIT-A has erred in law and in facts as the approval to be taken under Section 153D of the Act is mechanical and the approval has to be separate for each assessment year and cannot be a common approval. 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. 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 of the Act 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 of the Act 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. The facts of the present case was narrated by Ld Counsel are that in case of assessee group 110 approvals for 19 different assessee has been granted by Joint Commissioner of Income Tax on the same date i.e. on 29/12/2017 & one approval has been granted for different assessment years of single assessee. List of all the assessee & assessment years for which approval has been granted along with communication numbers is enclosed by assessee. The above said fact is evident as it is clearly mentioned that same approval has been granted for different assessments years & approval for 19 different assessees has been granted on 29/12/2017 in the last paragraph of all the assessment orders. We noted that Hon'ble Delhi High Court in the case of Pr. Commissioner of income tax v Shiv Kumar Nayyar ITA 285/2024 & CM APPL 28994/2024 dated 15/05/2024 held that 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. 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. Consequently, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

5. We have heard both sides and noted that this issue is covered by the decision of Delhi High Court in the case of *ShivKumar Nayyar in ITA 285 /2024 & CM APPL 28994/2024*, wherein Hon'ble High Court has considered this view vide para nos. 15,16,17 and 18 as under:

"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.

16. *In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-*

"10. We have gone through the approval granted by the Ld. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states that a letter dated 30.12.2018 was filed by the Id. AO before the Id. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The Ld. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the Id. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the Id. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar. The remaining cases may belong to some other assesseees, which information is not available before us. In any event, whether it is humanly possible for an approving authority like Id. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the Id. Addl. CIT has granted a single approval for all assessment years put together."

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 substantiated question of law which would merit our consideration.”

6. Similarly, this Tribunal in the case of *M/s Aashiyana Buildwell Pvt. Ltd. vs. DCIT in ITA No. 361/Del/2019* for Assessment Year 2014-15, dated 06.09.2024, has considered this issue by following the judgment of the Hon'ble Delhi High Court in the case of *Shiv Kumar Nayyar (supra)* and, quashed the assessment by observing in para 6 as under:

“6. Keeping in view, the facts of the matter as narrated in the judgment passed by the Hon'ble Delhi High Court, we find no mentioning of perusal of the draft assessment order by the concerned authority and no separate application of mind in the instant case in hand while granting approval altogether 110 assessment orders in a single day the same is nothing but the product of total non-application of mind and therefore, relying on the ratio laid down by the Hon'ble Delhi High Court, we do not hesitate to find the same arbitrary, erroneous and thus, liable to be treated as non-est in the eye of law. The Assessment Order passed on the basis of such approval is therefore, found to be without any basis and thus, quashed.”

7. After going through the facts and circumstances of the case, we noted that in the present case, the assessee group has 110 assessments for which approval was placed before JCIT on the same date i.e., 29/12/2017 and total assessees were 19 different assessees. The approval is purely mechanical in nature and hence, the assessment is liable to be quashed and, is accordingly quashed.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 18.12.2024

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 18.12.2024
Pooja/-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI